

**COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

46.

OA 2055 of 2019 with MA 1356/2020

Ex Rect Dhan Singh

..... Applicant

Vs

Union of India and others

..... Respondents

For Appellant : Mr. R.K. Rastogi, Advocate

For Respondents : Mr. K.K. Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN PHILIP CAMPOSE, MEMBER (A)

ORDER

23.09.2020

O.A No. 2055 of 2019:

Learned counsel for the respondents submits that he has received all the papers and the reply will be filed very shortly, may be within one week. It is stated that the reply could not be filed because of the Covid-19 pandemic and certain other administrative difficulties that consequently arose in view of the pandemic.

2. Taking note of the aforesaid, we direct the respondents to file their counter affidavit within two weeks. Rejoinder, if any, be filed within one week thereafter.

3. List the matter again on **16.10.2020**.

M.A No. 1356 of 2020:

4. This is an application filed by the applicant for grant of interim relief and the prayer made in the application reads as under:

The instant matter be proceeded ex-arte and at least interim relief be granted to the applicant at this juncture in the interest of justice and fair play.

5. Learned counsel for the applicant took us through the medical documents and the facts and argued that the applicant was in the verge of completing his training when in an illegal manner, he has been discharged on the basis of an action which is unsustainable. He tried to demonstrate before us that a prima facie case is made out for staying his discharge and permitting him to rejoin duty and start with training so that he does not suffer any consequence. The respondents have yet to file reply and bring on record the medical documents.

6. Considering the fact that the applicant has already been discharged and is not undergoing training since the time of filing of this application in November 2019 and at this stage, granting an interim relief and putting him back in service for training will not be in the interest of justice, particularly when there is no irreparable loss or damage that cannot be rectified after hearing all concerned and by passing the final order. It is the cardinal principle of law that interim injunction or stay can be granted only if a prima facie case, balance of convenience and irreparable loss are present together in this case. Even if, considering the contention of the applicant that he is only in the medical category Shape-I and was entitled for enrolment in the Army the prima facie case may be available in his favour but balance of convenience and irreparable loss are admittedly not in his favour and

in view of the fact that ultimately if the application is dismissed, the respondents will be required to keep a person medically unfit in service. That apart, there is no irreparable loss to the applicant and the loss suffered by him due to non-grant of any interim relief can be compensated by passing an appropriate order while finally disposing of the matter.

7. Keeping in view all these factors, for the present, we are not inclined to grant any interim relief.

8. The M.A is dismissed.

(RAJENDRA MENON)
CHAIRPERSON

(PHILIP CAMPOSE)
MEMBER (A)

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