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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th December, 2020

+ **W.P.(C) 11230/2020**
CDR RAVINDRA PAL SINGH Petitioner
Through: Mr. Jaideep Singh, Advocate
versus
UNION OF INDIA AND ORS. Respondents
Through: Mr. Harish Vaidyanathan Shankar,
Advocate

AND
+ **W.P.(C) 11231/2020**
CDR AMIT KHAJURIA Petitioner
Through: Mr. Jaideep Singh, Advocate
versus
UNION OF INDIA AND ORS. Respondents
Through: Mr. Harish Vaidyanathan Shankar,
Advocate

AND
+ **W.P.(C) 11232/2020**
CDR MANIKSH KUMAR SINGH Petitioner
Through: Mr. Jaideep Singh, Advocate
versus
UNION OF INDIA AND ORS. Respondents
Through: Mr. Harish Vaidyanathan Shankar,
Advocate

CORAM:
HON'BLE MS. JUSTICE PRATHIBA M. SINGH
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

Prathiba M. Singh, J.(Oral)

1. This hearing has been done by video conferencing.

CM.APPL 35027/2020 (for exemption) in W.P.(C) 11230/2020

CM.APPL 35029/2020 (for exemption) in W.P.(C) 11231/2020

CM.APPL 35031/2020 (for exemption) in W.P.(C) 11232/2020

2. Allowed, subject to all just exceptions. Applications are disposed of.

W.P.(C) 11230/2020 & CM.APPL 35026/2020 (for stay)

W.P.(C) 11231/2020 & CM.APPL 35028/2020 (for stay)

W.P.(C) 11232/2020 & CM.APPL 35030/2020 (for stay)

3. The present three writ petitions have been filed challenging the impugned order dated 24th December, 2020, passed by the learned Armed Forces Tribunal (*hereinafter* “AFT”), by which the applications moved by the Petitioners seeking stay of discharge as per order dated 18.12.2020, passed by the Ministry of Defence, have been dismissed by the Id. AFT.

4. The Petitioners had originally filed petitions before the AFT seeking directions against non-consideration for grant of Permanent Commission. In the said petitions filed before the AFT, an interim order was passed on 21st December, 2018 to the following effect:

“ This is an application, by virtue of which interim directions are sought with regard to the orders dated 28th September 2018 having been passed by the respondents in respect of Mr. Amit Khajuria, Mr. M.K. Singh, Mr. R.P. Singh and Mr. Varun Sharma who are the applicants in these cases and whose names are appearing at Sr. No.26, 28, 31 and 38 respectively.

2. With regard to the letter dated 28th September 2018, ordering the release of the applicants against the respective dates in the month of August 2019, the contention of the learned counsel for the applicant is that similarly placed officers are already enjoying the effect of interim directions against the discharge, on account of the fact that they have been arbitrarily denied the grant of consideration for Permanent Commission, and the said matters are listed now for 10th January 2019.

3. It has also been pointed out that similar issue with regard to the grant of Permanent Commission to Naval Officers in certain special branches is under the

consideration of the Hon'ble Supreme Court and no final view has been taken by it.

4. It is accordingly prayed that till the time the Hon'ble Apex Court takes a final view in the matter, the release from service of the aforesaid officers be also stayed. The respondents were represented through Mr. Bhati, Senior Central Government Standing Counsel in response to the advance copy having been served. Learned counsel has made a statement, on instructions, that they do not intend to file any reply and have not disputed the submissions made by learned counsel for the applicant.

5. We have carefully considered the averments made in the application as well as the documents placed on record. We are satisfied that the applicants are having a prima facie good case and are likely to succeed on account of the fact that similarly placed persons are already enjoying interim directions against their release till the time the Hon'ble Apex Court takes a final view, and therefore, there is no reason to take different view than the one which has already been taken by the Bench in other cases when the balance of convenience is also in favour of the applicants. Further, the applicants will suffer irreparable loss in case the benefits of the said order are not extended to them.

6. Accordingly, the operation of the impugned order dated 28th September 2016 in respect of the applicants is stayed till further orders. A copy of the order shall be given 'dasti' to the learned counsel for the parties for compliance.

7. Expression of any opinion hereinbefore may not be treated as an expression on the merits of the main matter and is tentative keeping in view the fact that the matter is still under the consideration of the Hon'ble Apex Court.

8. Accordingly, MAs are disposed of."

5. As can be seen from the above interim order, the case of the Petitioners, before the AFT, was that the question as to grant of Permanent Commission was pending before the Supreme Court, and there were other similarly placed persons in whose favour, certain interim directions had been passed. In view of the said position, the Id. AFT had granted interim relief to the petitioners.

6. It is the admitted position, not disputed by either parties, that the Supreme Court has, by a detailed judgment dated 17th March 2020, titled ***Union of India & Ors.. v. Lt. Cdr Annie Nagaraja & Ors. (Civ. Appeal Nos. 2182-87 of 2020)***, passed the following directions:

“96. We hold and direct that:

- (i) *The statutory bar on the engagement or enrolment of women in the Indian Navy has been lifted to the extent envisaged in the notifications issued by the Union Government on 9 October 1991 and 6 November 1998 under Section 9(2) of the 1957 Act;*
- (ii) *By and as a result of the policy decision of the Union Government in the Ministry of Defence dated 25 February 1999, the terms and conditions of service of SSC officers, including women in regard to the grant of PCs are governed by Regulation 203, Chapter IX, Part III of the 1963 Regulations;*
- (iii) *The stipulation in the policy letter dated 26 September 2008 making it prospective and restricting its application to specified cadres/branches of the Indian Navy shall not be enforced;*
- (iv) *The provisions of the implementation guidelines dated 3 December 2008, to the extent that they are made*

prospective and restricted to specified cadres are quashed and set aside;

- (v) All SSC officers in Education, Law and Logistics cadres who are presently in service shall be considered for the grant of PCs. The right to be considered for the grant of PCs arises from the policy letter dated 25 February 1999 read with Regulation 203 of Chapter IX Part III of the 1963 Regulations. SSC women officers in the batch of cases before the High Court and the AFT, who are presently in service shall be considered for the grant of PCs on the basis of the vacancy position on the date of judgments of the Delhi High Court and the AFT or as it presently stands, whichever is higher;
- (vi) The period of service after which women SSC officers shall be entitled to submit applications for the grant of PCs shall be the same as their male counterparts;
- (vii) The applications of the serving officers for the grant of PCs shall be considered on the basis of the norms contained in Regulation 203 namely; (i) availability of vacancies in the stabilised cadre at the material time; (ii) determination of suitability; and (iii) recommendation of the Chief of the Naval Staff. Their empanelment shall be based on inter se merit evaluated on the ACRs of the officers under consideration, subject to the availability of vacancies;
- (viii) SSC officers who are found suitable for the grant of PC shall be entitled to all consequential benefits including arrears of pay, promotions and retiral benefits as and when due;
- (ix) Women SSC officer of the ATC cadre in **Annie Nagraja's** case are not entitled to consideration for the grant of PCs since neither men nor women SSC officers are considered for the grant of PCs and there is no direct induction of men officers to PCs. In exercise of the power conferred by Article 142 of the Constitution, we

*direct that as a one-time measure, SSC officers in the ATC cadre in **Annie Nagaraja's** case shall be entitled to pensionary benefits. SSC officers in the ATC cadre in **Priya Khurana's** case, being inducted in pursuance of the specific representation contained in the advertisements pursuant to which they were inducted, shall be considered for the grant of PCs in accordance with directions (v) and (vi) above;*

- (x) All SSC women officers who were denied consideration for the grant of PCs on the ground that they were inducted prior to the issuance of the letter dated 26 September 2008 and who are not presently in service shall be deemed, as a one-time measure, to have completed substantive pensionable service. Their pensionary benefits shall be computed and released on this basis. No arrears of salary shall be payable for the period after release from service;*
- (xi) As a one-time measure, all SSC women officers who were before the High Court and the AFT who are not granted PCs shall be deemed to have completed substantive qualifying service for the grant of pension and shall be entitled to all consequential benefits; and*
- (xii) Respondents two to six in the Civil Appeals arising out of Special Leave Petition (C) Nos 30791-96 of 2015, namely Commander R Prasanna, Commander Puja Chhabra, Commander Saroj Kumar, Commander Sumita Balooni and Commander E Prasanna shall be entitled, in addition to the grant of pensionary benefits, as a one-time measure, to compensation quantified at Rs.25 lakhs each."*

7. It is the case of the Petitioners that direction nos. (iii), (iv), (vii) and (viii) are applicable to the Petitioners herein. As per the Respondents, pursuant to the above directions passed by the Supreme Court, the

Petitioners were shortlisted and the Selection Board was constituted for consideration of grant of Permanent Commission. The Selection Board, after a detailed consideration of the matter, decided to grant discharge to eight Officers, including the three Petitioners herein. A notice of discharge was served upon the Petitioners on 18th December 2020, pursuant to which the Petitioners moved before the AFT and sought stay of the discharge order. In the said application, the Id. AFT observed that the case of the Petitioners was that they were entitled to interim relief till the matter was pending in the Supreme Court. The question as to whether the judgment of the Supreme Court has been followed and what was the policy which was applied by the Respondents, was left open. The Id. AFT was, however, of the view that in view of the directions of the Supreme Court having been carried out and a Selection Committee having taken a final decision in the matter, the Petitioners are not entitled to any interim relief.

8. Mr. Jaideep Singh, Id. counsel appearing for the Petitioners, submits that since the Petitioners were protected by the interim order passed by the AFT on 21st December, 2018, the discharge order would in effect be violative of the said interim order. Moreover, it is the case of the Petitioners that consideration has not been given, in accordance with the principles laid down by the Supreme Court.

9. Mr. Harish Vaidyanathan Shankar, learned counsel appearing for the Respondents submits that the directions of the Supreme Court have been carried out in letter and in spirit. In any event, the non-filing of an application before the AFT, could at best be a procedural irregularity on part of the Respondents. The Petitioners themselves having sought interim orders initially, on the strength of the pendency of the matter before the

Supreme Court, now cannot resile from their own earlier position. Mr. Harish Vaidyanathan submits that due to the fact that the Petitioners participated in the selection process and the Selection Board considered the matter comprehensively and took a final decision accordingly, the judgment of the Supreme Court in *Lt. Cdr Annie Nagaraja & Ors.* has clearly been implemented.

10. Heard Id. Counsels for the parties. After considering the record, this Court is of the view that the ideal course of action for the Respondents, during the operation of an interim order, was to move before the AFT. However, in the present writ petitions, this Court is only concerned as to whether the Respondents have implemented the directions given by the Supreme Court. It is clear from a reading of the directions of the Supreme Court, as also the decision taken by the Respondents on 18th December, 2020 and the impugned order of the AFT, that the case of the Petitioners for grant of Permanent Commission, has been duly considered.

11. Under these circumstances, no interference is called in the present petitions, under Article 227 of the Constitution. The question as to whether the policy applied and whether the rejection of Permanent Commission to the Petitioners is valid or not, would have to be decided on merits by the Tribunal, either in the pending petitions or in any fresh challenge which may be mounted by the Petitioners.

12. Accordingly, the writ petitions are dismissed. However, considering the fact that the Petitioners have served for several years in the Navy and that they would be required to look for fresh accommodation, as also on humanitarian grounds during a global pandemic, they are permitted three months time to vacate their official accommodations. It is made clear that

the Respondent authorities would cooperate with the Petitioners during this period, for their smooth transition.

13. Finally, it is submitted by Mr. Jaideep Singh, ld. counsel, that usually Short Service Commission officers are given eight to ten months release time in order to enable them to seek alternate employment. If that is the usual practice, the Petitioners are permitted to make a representation to that effect to the Respondent authority, which shall be considered in a compassionate manner considering the prevalent situation of a pandemic. The Petitioners are permitted to approach the Ld. AFT for any further directions in this regard.

14. Needless to add that the observations made in the present petitions would not affect the final determination by the ld. AFT.

15. The petitions and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
(VACATION JUDGE)

SUBRAMONIUM PRASAD
(VACATION JUDGE)

DECEMBER 28, 2020/pst/Ak