
(2022) 03 DEL CK 0071

In the Delhi High Court

Case No : Civil Writ Petition No. 4107 Of 2022

Lt. Col. Nandita Satpathy

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Army Act, 1959 — Section 122, 123

Citation : (2022) 03 DEL CK 0071

Hon'ble Judges : Suresh Kumar Kait, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Sandeep Kumar Mahapatra, Sahaj Garg

Final Decision : Dismissed

Judgement

CM APPL.12237/2022 & 12238/2022

1. Exemptions allowed, subject to just exceptions.
2. The applications are disposed of accordingly.

W.P.(C) 4107/2022 & CM APPL.12236/2022

3. The present petition has been preferred under Article 226 of the Constitution of India praying as follows:

"a) Issue a writ in the nature of Certiorari, or any other appropriate Writ/Order/ Direction, thereby quashing the Impugned Order dated 02.03.2022 passed by the Hon'ble Armed Forces Tribunal in O.A. No. 276/2022 vide which the Petitioner was declined interim relief to maintain status quo while the Ld Tribunal was deciding the legality of the impugned order dated 20.01.2022 impugned before the Ld Tribunal by the Petitioner;

b) Issue a Writ of Mandamus directing the Ld Tribunal decide the pending Original Application No. 276/2022 as expeditiously as possible.

c) Pass such other and further orders as this Hon'ble Court deemed appropriate in the facts and circumstances of the present case."

4. The petitioner is aggrieved by order dated 02.03.2022 passed by learned Armed Forces Tribunal in O.A. No.276/2022 whereby her application seeking interim stay of order dated 20.01.2022 issued by the respondents directing her to be released from service w.e.f. 19.03.2022, has been rejected.

5. Learned counsel for the petitioner has drawn our attention to the prayers made before the learned Tribunal, which read as under:

"(a) Call for the records based on which the Respondents have conducted the Court of Inquiry at such a belated stage and finalized the same in violation of Rule 180 by blaming the Applicant by issuing direction of disciplinary action, putting her under DV Ban unnecessarily and ordering her attachment vide impugned order dated 21.05.2021 ignoring the statutory bar under Section 122 of the Army Act as well as the order dated 20.01.2022 passed on the basis of DV Ban thereby releasing the Applicant from service w.e.f. 19.03.2022 even though the Application has been found fit and orders were required to be issued for her PC latest by 17.05.2020 on which date the Applicant was free from any DV Ban and thereafter quash all such orders including the order of DV Ban as well as order dated 21.05.2021 and 20.01.2022.

(b) Issue further directions to the Respondents to relieve the Applicant from the consequences of such direction of disciplinary actions and by lifting DV Ban etc and direct the Respondents to issue orders for PC with all consequential benefits.

(c) Issue necessary directions even otherwise to apply the criteria of DV which is required to be seen after the no. 5 SB has already found the Applicant fit before issuance of order for PC irrespective of present DV status in the same way as required in case of Medical Category as per the directions of the Hon'ble Supreme Court of 5th /10th year of service (In case of the Applicant 5h year when she was not under any such DV Ban).

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."

6. Issue notice.

7. Learned counsel for the respondents, appearing on advance copy, accepts notice.

8. Learned counsel appearing on behalf of the respondents has drawn the attention of this court to the allegations pending against the petitioner in the tentative charge sheet dated 14.08.2021 issued to her, which reads as under:

"TENTATIVE CHARGE-SHEET

The accused, WS-00281F, Lieutenant Colonel Nandita Satpathy, Bombay Engineer Group and Centre, Kirkee, attached to 10 Jammu and Kashmir Light

Infantry, an officer holding a Short Service Commission in the regular Army, is charged with:

Army Act Section 69

COMMITTING A CIVIL OFFENCE THAT IS TO SAY, BEING A PUBLIC SERVANT, ATTEMPTING TO OBTAIN ILLEGAL GRATIFICATION OTHER THAN LEGAL REMUNERATION AS A MOTIVE FOR DOING AN OFFICIAL ACT, CONTRARY TO SECTION 7 OF THE PREVENTION OF CORRUPTION ACT, 1988.

In that she at Delhi, between March and April 2016, which came to the knowledge of the authority competent to initiate action on 16 September 2020, while being the Senior Barrack Stores Officer, Commander Works Engineers (Air Force), Palam, demanded illegal gratification from Shri Himanshu Tiwari, an authorised representative of M/s Rudraksh Enterprises, an enlisted Military Engineering Service Contractor, at the rate of 10% of the value of Supply Order number 3050/SO/15-16/133/E-3 dated 31 March 2016, as a motive for issuing the said Supply order to M/s Rudraksh Enterprises.

Place: New Delhi (Vijayant Bist)

Dated: 14 August 2021

Colonel Commanding Officer

10 Jammu and Kashmir Light Infantry"

9. It is the respondents' contention that the allegations against the petitioner are grave, especially considering that the petitioner is in the armed forces; and, that in any case, if the petitioner is exonerated, she would be liable to be reinstated.

10. Controverting the above submission, learned counsel for the petitioner points-out that if the inquiry is not completed within six (06) months, the petitioner will be removed from service and may not be reinstated, even if she is exonerated. For this purpose, learned counsel for the petitioner has invited our attention to paragraph 29 of Army Order 18/88, which is reproduced hereunder:

"29. Any individual case decided in favour of an officer leading to his exoneration after the expiry of six months may be taken up with the Government for a decision regarding grant of Permanent Commission / extension of service on its merits."

11. It is therefore stated that if the inquiry is not completed within 06 (six) months, reinstatement is not assured and would be at the discretion of the Central Government.

12. Learned counsel appearing on behalf of the respondents draws our attention to paragraph 27 and 28 of Army Order 18/88, to say that these provisions must be read in conjunction :

"27. Officers for whom grant of Permanent Commission/extension of service is

held up only on account of their having been charged with a view to taking disciplinary action, will be released on due date and Section 123 of the Army Act invoked to finalize their disciplinary cases.

28. Such officers if exonerated within a period of six months from the date of release, will be taken back in service and granted Permanent Commission/extension of service, if found fit for the same in all respects.”

13. Furthermore, on instructions from Col. S. Prabhu, MS (Legal) who is present in court, learned counsel for the respondents submits that disciplinary proceedings against the petitioner shall be decided within six (06) months from the date of her release, which is 19.03.2022.

14. We have heard learned counsel for the parties at length and have perused the material on record. It is clear from the observations made by the learned Tribunal, that if the petitioner is discharged and ultimately exonerated of the charges, she will be granted the relief under paragraph 28 of the Army Order 18/88; and it is on this basis that interim relief has been declined at this stage, while issuing notice on the O.A. and directing the respondents to file counter affidavits.

15. In view of above, we find no illegality, much less any perversity, in the impugned order passed by learned Tribunal.

16. Accordingly the writ petition is dismissed.

17. CM APPL. No. 12236/2022 also stands disposed of.