

(2021) 03 DEL CK 0191

In the Delhi High Court

Case No : Civil Writ Petition No. 3138 Of 2021, Civil Miscellaneous Application
No. 9518-9519 Of 2021

Maj Rajinder Kaur

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Citation : (2021) 03 DEL CK 0191

Hon'ble Judges : Manmohan, J;Asha Menon, J

Bench : Division Bench

Advocate : Indra Sen Singh, J. Amal Anand, Vivek B. Saharya, Suraj Kumar

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the interim order dated 26th February 2021 passed by the Armed Forces Tribunal only to the extent it rejects/disallows the Petitioner's prayer for interim stay of the order dated 11th January 2021 passed by Respondent No. 2 thereby denying Permanent Commission/Extension of Service to the Petitioner and directs the compulsory release/discharge of the Petitioner w.e.f. 18th March, 2021.

2. Petitioner also seeks direction to the Respondents not to give effect to the impugned order dated 11th January, 2021 and not to release/discharge the Petitioner from service until disposal of the Petitioner's statutory complaint dated 25th January, 2021 or until disposal of the Petitioner's O.A. 359 of 2021 whichever is later.

3. Learned counsel for the Petitioner states that the Petitioner was commissioned in the EME Corps as a SSC (Woman) Officer. He states that as per the terms of engagement of SSC Officers, the Petitioner was required to serve for a mandatory period of ten years (i.e., up to 18th March 2021) extendable by another four years. He also points out that in the ninth year of the Petitioner's

service, the Petitioner was required to be considered along with the Petitioner's batch for grant of Permanent Commission (PC)/extension of service and if found fit for PC, the Petitioner could serve up to the age of superannuation like any other PC Officer.

4. Learned counsel for petitioner emphasises that the Petitioner has had a good service record, has done all the courses required to be undergone, has maintained a good physical fitness and is currently in SHAPE 1.

5. He states that though Petitioner applied for grant of PC/Extension of Service, yet the Respondents delayed in releasing the results and the results were declared vide order dated 11th January 2021 wherein the Petitioner was not granted either PC or extension of service and the impugned order further directed that the Petitioner be released from service w.e.f. 18th March 2021.

6. He states that the Petitioner preferred a statutory complaint addressed to Respondent No. 1, thereby requesting reconsideration, however the statutory complaint dated 20th January, 2021, has not been considered/disposed off till date.

7. He further states that the Petitioner filed OA No. 359/2021 before the Armed Forces Tribunal praying for interim relief to stay the operation of the impugned order pending disposal of the Petitioner's OA. However, he states that the AFT issued notice but rejected the Petitioner's prayer for interim relief vide impugned order dated 26th February 2021 on the erroneous assumption that there are adverse report against the petitioner.

8. From a perusal of the paper book, this Court finds that the petitioner has herself speculated the probable reason for denial of PC and/or extension of service as downgraded/underrated assessments in the ACRs for the period 29th April, 2013 to 31st October, 2013, 26th April, 2015 to 31st October, 2015, 1st November, 2015 to 31st October, 2016 and 1st November, 2016 to 13th April, 2017.

9. In the opinion of this Court, if the petitioner has, according to herself, downgraded/underrated assessments for the periods 26th April, 2015 to 13th April, 2017 and 29th April, 2013 to 31st October, 2013, the impugned order cannot be prima facie stated to be without any reason or groundless.

10. Even the AFT in the impugned order has observed that No.5 Selection Board in November/December, 2020 did not consider the case of the petitioner for extension of service on account of certain adverse reports so also on scrutiny of service record of the petitioner.

11. Consequently, this Court is of the view that the petitioner is not entitled to continuance in service pending disposal of OA by the AFT.

12. At this stage, learned counsel for the petitioner states that the petitioner's appeal before the AFT shall not be disposed of for a long time and ultimately

even if the appeal is allowed, the petitioner would not get any relief due to application of the principle 'No Work No Pay'.

13. To balance the equities, this Court directs that the petitioner's statutory complaint dated 20th January, 2021 shall be disposed of by way of a reasoned order within four weeks.

14. This Court is also confident that in the event the petitioner files an application for early hearing before the AFT, the AFT shall try to dispose of the matter as expeditiously as possible.

15. Needless to say, the AFT would consider the petitioner's prayer for reimbursement of full salary in accordance with law in the event the petitioner's appeal is allowed.

16. With the aforesaid direction, present writ petition and applications stand disposed of.