

(2021) 06 DEL CK 0072

In the Delhi High Court

Case No : Civil Writ Petition No. 5913, 5914, 5915, 5916 Of 2021, Civil Miscellaneous Application No. 18644-46, 18647-49, 18650-52, 18653-55 Of 2021

WG CDR Kusum Thakuri

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 11-06-2021

Acts Referred:

Citation : (2021) 06 DEL CK 0072

Hon'ble Judges : Navin Chawla, J;Asha Menon, J

Bench : Division Bench

Advocate : Garima Sachdeva, Satya Ranjan Swain, Sahaj Garg, Kautilya Birat

Final Decision : Dismissed

Judgement

Navin Chawla, J

These petitions have been heard through video conferencing.

1. These petitions have been filed challenging the orders dated 04.06.2021 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi

in a batch of petitions filed by the petitioners herein, refusing grant of interim protection to the petitioners.

2. The petitioners were commissioned as Short Service Commissioned Officers (SSC). The respondent issued an HR Policy dated 16.01.2019 laying

down conditions for such officers to be considered for a grant of a Permanent Commission. In terms of the said policy, the petitioners were

considered for grant of Permanent Commission in 2019 and 2020. They were again considered in the year 2021, however, on all three occasions were

found unfit for the grant of the Permanent Commission. Aggrieved of the order dated 24.05.2021 refusing to grant Permanent Commission, the

petitioners approached the learned Tribunal on 03.06.2021 making common prayers, which are reproduced hereinunder from WP(C) 5913/2021: -

â??(A) Set aside the Policy dated 16.01.2019 to the extent that it is unfair and arbitrary in terms of implementation;

(B) Direct Respondents to grant Permanent Commission to the Applicant;

(C) Direct the Respondents to produce signal/documents related to the declassification of vacancies with respect to the SSC Officers for the

BOO of 2019, 2020 and 2021;â??

3. The learned Tribunal by way of the Impugned Orders has refused to grant interim protection to the petitioners, which is in challenge before this

Court in the present batch of petitions.

4. The learned counsel for the petitioners submits that the petitioners have been unfairly denied the grant of Permanent Commission without assigning

any reason for the same. She submits that even if a relief is later granted to the petitioners, the petitioners may suffer prejudice in form of seniority

and rank. She submits that the learned Tribunal has also erred in placing reliance on the judgment dated 04.06.2021 of this Court in Wg. Cdr. Nidhi

Badhani vs. Union of India & Ors., W.P.(C) 5871/2021, inasmuch as in the present case there is no challenge to the HR Policy dated 16.01.2019 of

the respondent; the only challenge is to the retrospective application thereof to the petitioners.

5. We have considered the submissions made by the learned counsel for the petitioners, however, find no merit in the same. The prayers made by the

petitioners in the O.A. (s) have been reproduced hereinabove. The first prayer is a challenge to the HR Policy dated 16.01.2019 while the third prayer

is a challenge to the consideration of the petitioners by the Board of Officers in the years 2019, 2020 and 2021. As noted hereinabove, the petitioners

approached the learned Tribunal only on 03.06.2021. The petitioners have also participated in the consideration process for grant of Permanent

Commissions in terms of the HR Policy of 2019. Therefore, prima facie there appears to be not only considerable delay in filing of the petitions before

the learned Tribunal but also the petitioners may be considered as estopped from challenging the retrospective application of the HR Policy of the

respondents, having participated in the selection process in terms thereof.

6. This Court in Wg. Cdr. Nidhi Badhani (supra) had rejected a similar plea of

interim protection by observing as under: -

8. Once the position in law is as aforesaid, i.e. that by interim order none can be permitted to occupy a public office and once the

balance of convenience is in favour of the respondents and not in favour of the petitioner, inasmuch as the petitioner if ultimately succeeds

can always be reinstated to the same position, no perversity is found in the impugned order of AFT.

9. The counsel for the petitioner contends that reinstatement in service would cause difficulties to the petitioner. However neither are the

said difficulties described nor is the counsel for the petitioner, on our asking, also able to enumerate the same.

7. In view of the above, we find no infirmity in the orders Impugned before us. The petitions are accordingly dismissed making it clear that any

observation made by us in the present order will not in any manner prejudice either party in the petitions pending before the learned Tribunal.

8. There shall be no order as to costs.