

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9253 of 2010

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Nand Lal Singh, JC- 696482M, NB-SUB (PNA) S/O Satya Ram Singh R/O Vill.- Suryapura, P.S.- Taraitha, Distt.- Bhabhua (Kaimur), Bihar And Presently Posted At Sainik Aspatal, Military Hospital (M.H.), Danapur Cantt., Danapur

.... Petitioner/s

Versus

1. The Union Of India Through The Lt. Gen, D.G.M.S. (Army)/ Dte. Gen. Of Medical Service (Army) Adjutant General's Branch Integrated Hq At Mod (Army), Pin- 908709, L. Block, New Delhi - 110001
2. The Centre Commandant AMC Centre & School, Lucknow-2
3. The Deputy Centre Commandant AMC Centre & School, Lucknow-2
4. The Chief Record Officer AMC Centre & School, Lucknow-2
5. The Commanding Officer, Sainik Aspatal Medical Hospital (M.H.), Danapur Cantt., Danapur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Dubey
For the Respondent/s : Mr. Anjani Kr. Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 18-05-2015

Heard learned counsel for the parties.

This case has a chequered history. The petitioner had moved this Court by filing this writ application on 21.5.2010 for the following relief:-

"1.(i) Issuance of writ in the nature of certiorari for quashing the order dated 08.02.2010 which has been communicated vide letter dated 24.02.2010 vide No. 6000/LC/MH/NB Sub (PNA) NLS issued under the signature of Capt./OIC legal cell for commanding officer (C.O.) Sainik Aspatal, Military Hospital Danapur Cantt. whereby and where under the representation dated 07.11.09 submitted by the petitioner in compliance of order dated 29.10.2009

in CWJC No. 14162/09 by this Hon'ble Court has been rejected being bereft of merit and substance by the Lt. Gen, DGMS (Army) director general of medical services (Army) Res. No.1.

- (ii) Issuance of writ in the nature of mandamus commanding the respondent to rectify the error made by records of AMC, Lucknow as regard preparation of notional seniority and after amendment the actual date of promotion i.e. 1st April 2007 be given to the petitioner.*
- (iii) The respondents further be directed to give the promotion to the petitioner from when junior namely N. Neerathlingam was promoted and also give consequential benefits.*
- (iv) The respondents further be directed not to take any coercive steps against the petitioner."*

This writ application was in fact also heard and allowed by an order dated 24.6.2010 wherein after hearing the parties, the following directions were issued:-

- "3. I see substance in the submission of the learned counsel for the petitioner, accordingly, order dated 8.2.2010, passed by the Lt. General DGMS (Army) and communicated to the petitioner under memo dated 24.2.2010, Annexure-9 is quashed with direction to the competent authority to reconsider the case of the petitioner for grant of promotion treating High Average remarks given during the relevant period as Above Average. Appropriate order be passed by the competent authority as early as possible, in any case within three months from the date of receipt of this order."*

As against the aforesaid order, the respondents had

filed LPA No. 1830 of 2010 which was disposed of by an order dated 7.3.2012 wherein the Division Bench had remitted the matter back to decide the question of jurisdiction and, to that extent, the operative portion of the order of the Division Bench reads as follows:-

"We are not inclined to go into the second issue raised by learned counsel for the appellants because first the matter of jurisdiction should be considered by the Writ Court in the light of arguments advanced on behalf of the appellants. If the Writ Court comes to a conclusion that on account of Annexure-8 which was relied upon by learned counsel for the respondent it has acquired jurisdiction over the matter, it may thereafter consider the matter on merits after giving opportunity of filing counter affidavit to the counsel for the Union of India.

The appeal is allowed to the aforesaid extent. The order under appeal is set aside and the matter is remitted to the learned writ Court for fresh decision after hearing the parties on jurisdictional aspect as well as on merits."

Learned counsel for the parties, however, agree that the issue of jurisdiction with regard to the matter arising out of armed forces stands settle by the two subsequent judgments of the Division Bench of this Court in the case of ***The Union of India & Ors. Vs. IC 38558Y Colonel Sarat Chandra Mishra & Ors.*** reported in ***2012(2) PLJR 101*** and in the case of ***Union of India & Ors. Vs. Ajay Kumar*** reported in ***2012(3) PLJR 805***.

Thus, now when it has already been decided that such service matter arising out of the armed forces initially has to be adjudicated before the Armed Force Tribunal, this writ application obviously has become both incompetent and infructuous.

This writ application is, accordingly, disposed of with a liberty to the petitioner to move appropriate Armed Force Tribunal for redressal of the grievance for which this writ application was filed.

It goes, however, without saying that if the petitioner approaches the Armed Force Tribunal within a period of three months from today, the Tribunal, instead of non-suiting the petitioner on the ground of limitation, if any, shall decide the case of the petitioner on merit.

(Mihir Kumar Jha, J)

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