

01.
30.09.2020.
Ct. No. 11.
F.B./G.S. Das

WPA 9659 of 2014
(WP 9659 (W) of 2014)
with
IA No. CAN 3 of 2020
(CAN 379 of 2020)

-AND-

CPAN 492 of 2019
-AND-
WPA 3855 of 2014
(WP 3855 (W) of 2014)

With
IA No. CAN 2 of 2020
(CAN 380 of 2020)

(VIA VIDEO CONFERENCE)

Colonel Purna Chandra Jena
-Vs.-
Union of India & Ors.

Mr. Soumya Majumder
Mr. Victor Chatterjee
Ms. Sunjukta Dutta
.... Petitioner/Applicant

Mr. Y. Z. Dastoor
Mr. T.J. Tewari
.... For the alleged Contemors

The present contempt application filed by
the Applicant, who is also the writ petitioner in
the two writ petitions, appears today following

the previous order of this Court dated 24th September, 2020.

Mr. Majumdar, Learned Counsel and Mr. Dastoor, Learned Additional Solicitor General (ASG), respectively represent the Applicant/Petitioner and the alleged Contemnors.

It transpires from the documents produced today at the hearing that much *water has flowed down both the Hooghly and the Yamuna* connected to the endeavours of the petitioner in both the Hon'ble Courts at Calcutta and at Delhi.

Ld. ASG informs this Court that during pendency of the Contempt Application, the petitioner had approached the Hon'ble High Court at Delhi by way of a writ petition being W.P.(C) 5001/2020 along with an application for *interim* direction in CM No. 18003/2020. The writ petition was initially allowed to be withdrawn with an undertaking on behalf of the petitioner furnished through his Learned

Counsel appearing before the Hon'ble High Court at Delhi to withdraw the Contempt Application as filed and pending before this Hon'ble Court. Complaining against such withdrawal, the petitioner filed a Review Petition No. 137/2020 through a new Learned Counsel on the ground that the petitioner did not consent to give any undertaking before the Hon'ble Court through his erstwhile Learned Counsel. The Review Petition was stoutly opposed by Learned ASG appearing for the Union of India/Respondents.

Without venturing further into the maze of circumstances surrounding the purported consent of the petitioner to give such undertaking through his erstwhile Learned Counsel, this Court intends to let the solemn order passed by the Hon'ble High Court at Delhi to speak for itself.

***“IN THE HIGH COURT OF DELHI AT
NEW DELHI***

*W.P.(C) 5001/2020 & CM No.
18003/2020 (for interim directions)*

BRIG. PURNA CHANDRA JENA ... Petitioner

Versus

UNION OF INDIA & ANR ... Respondents

ORDER

18.09.2020

[VIA VIDEO CONFERENCING]

**CM APPL. 23085/2020 (for
exemption)**

1. *Allowed, subject to just exceptions and as per extant rules.*

2. *The application is disposed of.*

Review Pet. 137/2020 (of the petitioner for review of the order dated 8th September, 2020).

3. *The petitioner, by engaging a new counsel, seeks review of the order dated 8th September, 2020 to the extent recording the undertaking of the petitioner to withdraw the contempt petition filed by him before the Calcutta High Court.*

4. *The Additional Solicitor General (ASG) appears for the respondents on advance notice. The counsels have been heard.*

5. *The petitioner, an Army Officer having been seconded to the office of the respondent No.2 Director General, Directorate General of Quality Assurance (DGQA), filed this petition impugning the communication dated 19th May, 2020 denying promotion to the petitioner to the rank of Major General and seeking a declaration that the posts in DGQA are non-combatant posts and mandamus, to consider the petitioner for promotion as Major General.*

6. *The petition came up before this Court on 13th August, 2020 when a detailed order was passed and the petition posted for further consideration on 8th September, 2020.*

7. *On 8th September, 2020 it was inter alia the contention of the ASG appearing for the respondents that the petitioner had invoked jurisdiction of the High Court of Calcutta by way of Contempt Petition being C.P.A.N. No. 492/2019 and in the said Contempt Petition pending in the Calcutta High Court claimed promotion till the rank of Major General and the claim of the petitioner before this Court is the same.*

8. *Upon the ASG appearing for the respondents arguing so, the counsel then appearing for the petitioner on 8th September, 2020 stated that he had instructions from the petitioner to give an undertaking to the Court that the petitioner will withdraw the Contempt Petition before the Calcutta High Court. Recording the said undertaking and binding the petitioner thereto, notice of the petition was ordered to be issued and pleadings ordered to be completed.*

9. *This Review Petition has been filed pleading that the advocate earlier appearing for the petitioner was not authorised to furnish such undertaking on behalf of the petitioner, to withdraw the Contempt Petition from the Calcutta High Court.*

10. *The ASG states that the petitioner was very much present during the virtual hearing on 8th September, 2020 and the review petition, pleading that the advocate*

was not authorised to give the undertaking, is on false grounds. It is also contended that the correspondence between the petitioner and the earlier advocate, appended to the application, is not complete and the communication of the petitioner to the earlier advocate has been concealed and from a reading of the reply of the earlier advocate it is evident that the petitioner, on 8th September, 2020 had consented to the undertaking.

11. *The counsel for the petitioner states that he has instructions from the petitioner to, after the undertaking is so recalled, withdraw this writ petition with liberty to apply again for the same relief as claimed in this petition, if the law so permits, after the disposal of the contempt proceedings before the Calcutta High Court.*

12. *The ASG states that what is otherwise recorded in the orders dated 13th August, 2020 and 8th September, 2020 be not reviewed or recalled. ASG has also referred to **Tamil Nadu Electricity Board Vs. N. Raju Reddiar** (1997) 9 SCC 736 deprecating the practice of engaging another advocate to file a review petition.*

13. *It is however deemed apposite to allow the Review Petition, to the extent sought, without however affecting any rights of the respondents and with liberty to the respondents to make submissions as may be open to them in the context of orders in this petition.*

14. *We accordingly allow this Review Petition, reviewing the order dated 8th September, 2020, only the extent of recording the undertaking of the petitioner to withdraw the Contempt Petition before the Calcutta High*

Court and binding the petitioner to the said undertaking, subject of course to the petitioner withdrawing this writ petition and with liberty as aforesaid to the respondents.

15. *The Review Petition is disposed of.*

W.P.(C) 5001/2020.

16. *We have enquired from the counsel for the petitioner, whether this time the petitioner has properly instructed him to withdraw the petition and whether he has made sure that yet another counsel will not be engaged seeking review of the order of withdrawal of this petition.*

17. *The counsel for the petitioner assures us that the same will not happen.*

18. *The petition is dismissed as withdrawn with liberty to apply again, if law permits, after disposal of the Contempt Petition before the Calcutta High Court.”*

Learned ASG appearing before this Court submits that the post of Lieutenant General and below thereto the post of Major General are selection posts and the petitioner does not have any legally sustainable grounds to claim automatic elevation to the zone of consideration of eligible candidates solely on the strength of the parent order in the present writ petitions dated the 11th of January, 2019. It is also submitted that the order of this Court dated 11th January,

2019 has been adequately complied with by the alleged Contemnors/Union of India by bringing the petitioner at par with his colleagues by remedying his omission from the selection exercise which commenced in the year 2007 from the post of Lieutenant Colonel to Colonel and thereafter to the post of Brigadier, which was the bone of contention in the writ petitions.

Learned ASG submits that the recommendation for selecting a candidate out of a panel for the post of Director General of Defence (Production and Supplies) (the civilian equivalent in the armed forces of the post of Lieutenant General), has been already forwarded to the Appointments Committee of the Central Cabinet and the decision of the Committee is awaited.

Learned ASG therefore, seeks an opportunity to enable the alleged Contemnors/ the Union of India to bring all such additional and subsequent facts to the notice of this Court by way of a consolidated Affidavit.

Mr. Majumder, Learned Counsel for the petitioner however points out that the petitioner at the highest is entitled to be posted/promoted on the basis of seniority to the post of Major General and, that can be done and such ought to have been done by the alleged Contemnors/the Union of India on the strength of the order of this Court dated 11th January, 2019 (supra).

In the event, the petitioner succeeds in convincing this Court that his promotion to the post of Major General is in compliance with the order dated 11th January, 2019 (supra), the petitioner shall automatically be within the zone of consideration to the post of Director General (Production and Supplies).

Having heard the parties and considering the materials placed today, this Court is of the view that the Learned ASG ought to be granted an opportunity to bring the additional and subsequent facts happening or, have happened, both at Delhi and Calcutta High Courts, in the records of this Contempt Application.

The alleged Contemnors shall file such consolidated Affidavit within a period of three weeks from this date.

A period of 10 days is thereafter granted to the petitioner to respond to the consolidated Affidavit, if and so advised.

Both the consolidated Affidavit and the Reply if proposed to be filed by the petitioner, be made available to this court by way of a Supplementary Paper Book to be prepared by Ld. Advocate-on-Record for the petitioner within a further period of a week.

Let an advance copy of the Supplementary Paper Book be supplied to Ld. ASG by the Ld. Advocate-on-Record for the petitioner.

Liberty to mention for enlistment **strictly** upon notice before this Court upon expiry of the cumulative period to exchange Affidavits and to prepare the Supplementary Paper Book.

All parties to act in terms of a server copy of this order downloaded from the official website of this Court.

(Subrata Talukdar, J.)