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* **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
Through: **Mr. Ankur Chhibber, Adv.**

versus

UNION OF INDIA & ANR. Respondents
Through: **Mr. Chetan Sharma, ASG with Mr. Harish Vaidyanathan Shankar, CGSC with Ms.Kinjal Shrivastava and Mr. Varun Kishore Advs.**

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

ORDER

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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 to 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.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

SEPTEMBER 18, 2020

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