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

+ **W.P.(C) 9633/2021 & C.M.Nos.29776-29777/2021**

LT. COL. VANDANA SHARMA Petitioner

Through Mr.Rakesh Kumar, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through Mr.Vijay Joshi with Mr.Sahaj Garg,
Advocates.

+ **W.P.(C) 9643/2021 & C.M.Nos.29793-29794/2021**

LT. COL. ARCHANA SHUKLA Petitioner

Through Mr.Rakesh Kumar, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through Mr.Rakesh Kumar, CGSC with Col.
S.Prabhu, MS Legal Army.

+ **W.P.(C) 9743/2021 & C.M.Nos.30044-30045/2021**

LT. COL. KIRTI SHINTRE Petitioner

Through Mr.Rakesh Kumar, Advocate.

versus

UNION OF INDIA AND ANR Respondents

Through Mr.Harish Vaidyanathan Shankar,
CGSC with Ms.S.Bushra Kazim,
Advocate.

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Date of Decision: 08th September, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA
J U D G M E N T

MANMOHAN,J: (Oral)

1. The petitions have been heard by way of video conferencing.
2. Present writ petitions have been filed challenging the interim order dated 27th August 2021 passed by the Armed Forces Tribunal, Principal Bench, New Delhi [AFT]. Petitioners also seek a direction to the Respondents not to release the Petitioners from service on 12th September, 2021.
3. Learned counsel for the petitioners states that the AFT has by way of an evasive order rejected the prayer of the petitioners for staying the operation of release order dated 15th July, 2021 vide which the petitioners have been ordered to be released on 12th September, 2021. He states that the AFT has fixed the next date of hearing on 27th September, 2021 and if stay on release is not granted by this Court, the petitioners will be released from service on 12th September, 2021.
4. Learned counsel for the petitioners states that the AFT erred in not appreciating that out of 615 Women Officers, who were considered for Permanent Commission by Special Selection Board No.5, only fifteen women officers, who opted for Permanent Commission, have secured less than 60% marks. He contends that all women officers who could not secure 60% marks, are senior officers, whose first five years of service fell between the years 1999 and 2005 i.e. when Unit Assessment Card (UAC) Appraisal System was in force. He states that efficiency of UAC Appraisal System in

judging an officer for Permanent Commission was suspected even by the respondents and consequently the said appraisal System was dispensed with vide letter dated 22nd September, 2005 and Annual Confidential Report (ACR) based appraisal system was introduced. He emphasises that no women officer, whose ACRs were only taken into account by the Special Selection Board No.5, has secured less than 60% marks. He further emphasises that fifteen women officers could not secure 60% marks due to inefficient and defective UAC appraisal System and contends that all UAC affected women officers being in highly disadvantageous position are a distinct class. He states that all UAC affected women officers are therefore entitled to differential treatment and for them benchmark ought to be much lower than 60%.

5. Learned counsel for the petitioners also submits that the action of the respondents is violative of the Supreme Court judgment in the case of ***Lt. Col. Nitisha & Ors. Vs. Union of India & Ors.*** dated 25th March, 2021, wherein it has been held as under:-

“(v) It has been admitted in the counter-affidavit that the confidential reports, discipline and vigilance reports if any, and honours and awards as on the 5th or 10th years of service were considered in the case of the women officers. As a consequence of this, the qualifications, achievements and performance of women officers after the 5th or 10th year of service (as the case may be) have been ignored. At this stage, it is necessary to note that para 13(b) of AO 18/1988 specifically contemplates the “last ACR before assessment for PC” being taken into reckoning for grant of PC. Similarly MoD’s Policy Letter dated 24 February 2012 specifically contemplates that in evaluating the overall performance of the officer, “the average will be worked out for each year as well as for the entire period of officers’ services”. Para 4(a) stipulates thus:

“(a) QAP: Overall performance of the officer is evaluated by taking the average of figurative assessment of all reporting officers other than FTO and HTO. Average will be worked out for each year as well as for the entire period of officers service. The latter QAP will be converted into a proportion of 75 marks.” (emphasis supplied)

In spite of the above clear stipulations, it is now an admitted position that the distinguished record of the WSSCOs beyond the 5th/10th year of service has been disregarded. The laurels achieved by them in the service of the nation after the 5th/10th year of service have been ignored;”

6. Per contra, learned counsel for the respondents submit that Section 30 of the Armed Forces Tribunal Act, 2007 mandates that no appeal lies against an interlocutory order of the Tribunal. They also submit that the grounds urged in the present writ petitions do not warrant issuance of a writ of certiorari.

7. Having heard learned counsel for the parties, this Court is of the view that the benchmark of 60% has been fixed by the Supreme Court in the case of **Lt. Col. Nitisha** (supra). Consequently, it is not open either to the AFT or to this Court to reduce the cut off percentage to below 60% as contended by the learned counsel for the petitioners.

8. Moreover, despite the shortcomings in UAC Appraisal System being pointed out by some of the petitioners in the case of **Lt. Col. Nitisha** (supra), the Supreme Court did not quash the same or direct that it shall not be taken into account while deciding the overall percentage of the candidates for permanent commission.

9. This Court cannot lose sight of the fact that many short service commission officers may have been selected to permanent commission on

the basis of the marks obtained by them in UAC appraisal system. It cannot be that, in the interim, the UAC appraisal system is disregarded for petitioners and taken into account for promoting other candidates.

10. Further, if the UAC appraisal system is to be disregarded for petitioners for the period 1999-2005, then it is not understood as to what marking system is to replace it in the interregnum.

11. This Court is of the opinion that paragraph 93 (v) referred to in the judgment *Lt. Col. Nitisha* (supra) offers no assistance to the petitioners as that is not one of the directions given by the Apex Court.

12. This Court is also in agreement with the AFT and the learned predecessor Division Bench in *WG CDR Nidhi Badhani Vs. Union of India & Ors., W.P.(C) No.5871/2021* wherein it has been observed that if by an interim order an employee is allowed to continue in service and then if the writ petition is ultimately dismissed, it would tantamount to usurpation of public office without any right to the same. However, this Court has no doubt that the AFT shall try to dispose of the original applications filed by the petitioners as expeditiously as possible.

13. Accordingly, the present writ petitions along with pending applications are dismissed.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER, 08, 2021/KA