

**COURT NO. I
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**M.A NO. 2051 OF 2018 & M.A NO. 1945 OF 2018
IN
O.A NO. 1023 OF 2018**

Maj. Gen. V.K. Singh	.. Applicant
Versus	
Union of India and others	.. Respondents

For Applicant	:	Mr. Giriraj Subramaniam with Mr. Sidhart Krishan Singh, Advocates
For Respondents	:	Ms. Barkha Babbar, Advocate with Col. Ajeen Kumar, MS, Legal Cell.

CORAM:

**HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER (A)**

**ORDER
19.11.2018**

The instant Miscellaneous Application is filed in continuation of the application for execution (M.A No. 1945 of 2018) of the order dated 05.10.2018 passed by this Tribunal in O.A No. 1023 of 2018 and should be read as such. During the arguments held on 12.11.2018, the respondents had placed on record the communication sent by the Under Secretary (MS), which, without complying with the order in O.A No. 1023 of 2018 dated 05.10.2018, had requested for grant of three weeks' time to intimate the final decision of the competent authority. Two weeks or so from the said time have already elapsed and the third week will also

lapse by 30.11.2018, which will bring this execution petition at very close to the date for execution of the said order. Today, learned counsel for the respondents, on instructions from Col. Ajeen Kumar, MS (Legal), has brought out that no decision has yet been taken by the competent authority and the said case is pending before the Government Law Officer (Additional Solicitor General) for consideration, whether a Special Leave Petition or otherwise is to be filed against the order of the Tribunal dated 05.10.2018 before the Hon'ble Supreme Court. The counsel confirms that no decision has yet been received so far.

3. Earlier, by filing M.A No. 1851 of 2018, the Union of India had sought leave to appeal under Section 31 of the Armed Forces Tribunal Act 2007, which was declined by order dated 29.10.2018.

4. Thus today, as we see it, the respondents are again seeking additional time for execution of the said order. For ease of understanding, we reproduce the operative portion of the order (Para 30) as under:

"For the aforesaid reasons, the net result is that the instant O.A deserves to be allowed. Ordered accordingly. The respondents are directed to consider the applicant for promotion to the rank of Lieutenant General as a Special Review (Fresh) Case in accordance with the same Promotion Policy as was applied for his batch which was in vogue when the first SSB took place in October 2017 and, if found fit by the Board, on the result being declassified, the applicant shall be promoted to the rank of Lieutenant General, undoubtedly, as per the vacancy available as on that date. We also make it clear that the Board results shall be declassified well in time before 30.11.2018. No order as to costs."

5. In our last order dated 12.11.2018 on the execution application, we had granted three weeks' time to implement the order dated 05.10.2018, while also allowing the applicant to file another miscellaneous application asking for any relief. The operative portion of the said order reads as under:

"5. Learned counsel then submits that in the instant execution application he has not only sought direction to the respondents to comply at the earliest with the order dated 5th October, 2018, passed by the Tribunal and consider the applicant as per the promotion policy in vogue during his initial consideration in the SSB in October 2017, in sub-para (c) the applicant has also sought direction to the respondents not to declassify the results of the SSB held in October 2018 for General Cadre till the disposal of the instant execution application. Learned counsel in the same breath submits that looking at the way the respondents are dealing with the instant execution application and have adopted the delaying tactics; the relief asked for in sub-clause (c) in the instant execution application assumes importance. He further submits that he may also be allowed to move a miscellaneous application in the execution application asking for yet another relief on the basis of the latest communication dated 9th November 2018 sent by Under Secretary, MS, Ministry of Defence. Learned counsel for the applicant submits that request for adjourning the matter to three weeks, as stated in the communication dated 9th November 2018, may not be accepted by the Tribunal and if at all it is to be adjourned, as the applicant also intends to move a miscellaneous application, it may be adjourned to shortest possible date, may be a week or so."

6. Through the medium of the instant miscellaneous application (M.A No. 2051 of 2018), the applicant has sought the following reliefs:

- (A) Direct the respondents to stay the retirement/superannuation of the applicant till the applicant is considered in a SSB as a Special Review (Fresh) Case as per the policy which was in vogue during his initial

consideration in the SSB held in October 2017 and the same is declassified, and if found empanelled promote to the rank of Lieutenant General;

- (B) Direct the respondents to conduct an SSB and consider the applicant at the earliest but not later than 23rd November 2018, as a Special Review (Fresh) Case as per the policy in vogue during his initial consideration in October 2017;
- (C) Direct the respondents to reinstate the applicant, in the event that the results of the SSB are not declassified before his superannuation or the SSB is not held before his superannuation and then depending upon the result of the SSB held for him (as per the policy which was in vogue during his initial consideration in the SSB held in October 2017) if found empanelled promote the applicant to the rank of Lieutenant General; and
- (D) Direct the respondents to hold a vacancy in the rank of Lieutenant General pending the result of the applicant's consideration in a SSB as a Special Review (Fresh) Case as per the policy in vogue during his initial consideration in the SSB held in October 2017.

7. We have heard Mr. Subramaniam in support of the instant application, who submitted that the respondents are duty bound to execute the order dated 05.10.2018 passed by this Tribunal in O.A No. 1023 of 2018 and consider the case of the applicant, if permissible in accordance with law. He also contended that the Legislature intended to ensure that this Tribunal not remain powerless in terms of being able to enforce its orders and that Rule 25 of the Armed Forces Tribunal (Procedure) Rules grants inherent powers to this Tribunal, especially when Section 29 of the Armed Forces Tribunal Act states that any order which is passed by this Tribunal is final and shall be executed

'accordingly.' A conjoint reading of both the provisions indicates that this Tribunal has ample powers to pass any orders as it deems fit to ensure enforcement of its decree. According to him, Courts cannot hold a decree or order passed after long deliberations, as in the present case also, to be merely paper decree/order incapable of deciding, in fact, what it was intended to decide or incapable of changing the position which it intended to change. The Court cannot take a role of a silent spectator and see its order being frustrated by a party. The power of enforcement of orders cannot be reduced into an empty one.

8. On the other hand, Ms. Barkha Babbar states that the respondents may be given some more time for compliance of the order as the last date is 30.11.2018. She requests that the instant matter may be taken up on 29.11.2018.

9. We have considered the matter in the light of the latest position brought out by the respondents and the apprehension expressed by counsel for the applicant in the matter of execution of the order of this Tribunal dated 05.10.2018. We find that not only has no preliminary action been initiated to comply with the said order, a perusal of the communication sent by the Ministry of Defence dated 09.11.2018 indicates that the direction given by this Tribunal on 05.10.2018 have also not been complied with. In fact, the letter indicates that the applicant has been considered by a Selection Board on 13/14.11.2018 in a manner that

is entirely in contravention to the order dated 05.10.2018. Furthermore, it also indicates that it is perhaps unlikely that the respondents will be able to either comply with the order or obtain requisite relief from the Hon'ble Supreme Court by the date given in our order i.e. 30.11.2018. We, in any case, cannot initiate any action under Contempt of Courts Act, the matter having been placed before a duly constituted larger Bench, so as to decide "whether a wilful disobedience to or non-implementation of its order may amount to causing any interruption or disturbance in the proceedings of this Tribunal thereby attracting action for contempt, under Section 19 of the Act read with Rule 25", but no decision in the matter has been taken as yet. However, in the interest of justice, it is imperative not to allow an impression to go across that the Armed Forces Tribunal is totally toothless in getting its order implemented under Section 29 of the Armed Forces Tribunal Act.

10. In the circumstances of the case and the manner in which the respondents have delayed execution of the said order, we, in the interest of justice, partly allow the prayer of the applicant directing that the applicant will continue to remain in service (i.e. even after his date of retirement 30.11.2018), till such time the direction contained in Paragraph 30 of the order dated 05.10.2018 in O.A No. 1023 of 2018 is complied with. We further add that if, in compliance with the said order dated 05.10.2018, the applicant is considered and found fit for promotion, he

will be promoted accordingly and the present directions shall get merged with it. In case, however, he is not considered fit for promotion, he will be deemed to have retired on due date and in that eventuality, shall refund the salary earned by him after 30.11.2018 minus pension. This order, in our view, is in tune with our original order dated 05.10.2018 and in pursuance to advance the cause of justice enabling the applicant to reap the fruits of the order earned by him.

11. With this direction, M.A No. 2051 of 2018 and M.A No. 1945 of 2018 stand disposed of.

(VIRENDER SINGH)
CHAIRPERSON

(SANJIV CHACHRA)
MEMBER (A)

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