

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**

T.A. No. 12 of 2014

(Arising out of C.W.J.C. No. 22779/2013)

DATED THE 7TH DAY OF DECEMBER 2018.

CORAM :

**Hon'ble Dr. (Mrs.) Justice Indira Shah, Member (J)**

**Hon'ble Lt Gen Gautam Moorthy, Member (A)**

RAJESH KUMAR  
S/O Birendra Kumar Thakur,  
R/O VILL/ P.S. Patha  
Dist - Muzaffarpur

.....APPLICANT

BY MR. S. K. CHOUDHURY, LD. COUNSEL

VERSUS

1. Union of India, service through the Secretary,  
Ministry of Defence, New Delhi – 110011.
2. The Chief of Army Staff,  
Army Head Quarter, South Block, New Delhi
3. The Director General of Army Forces, Medical Service  
Army Head Quarter, North Block, New Delhi
4. The Officer In Charge Record, Army Medical Corpse  
Lucknow - 226002

..... RESPONDENTS

BY MR. SHAMIK CHATTERJEE, CENTRAL GOVT. COUNSEL

ORDERHON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

This application T.A. No. 12/2014 arising out of C.W.J.C. No. 22779 of 2013 filed at Patna High Court. In this application, the petitioner has invoked Writ Jurisdiction of the High Court for issuance of writ in the nature of mandamus or any other appropriate writ/s, order/s, direction/s for the following reliefs:

- (i) *"To direct the respondents to grant the mode of promotion to the petitioner at par with the 230 females candidates with whom petitioner got three years Diploma in General Nursing which commenced from 21<sup>st</sup> of August 1995 at Army Hospital, Delhi Cantt. and completed on 20<sup>th</sup> of August 1998.*
- (ii) *To direct the respondents to facilitate the similar avenue of service facilities of promotion to the petitioner at par with the aforesaid female co-trainee.*
- (iii) *To direct the respondents to grant the promotion to the petitioner in the rank of Lieutenant Military Nursing Service as promotion has been granted to female candidates.*
- (iv) *To command the respondents to grant all other service benefits to the petitioner as granted to aforesaid female co-trainee.*
- (v) *That to grant any other relief(s) for which the petitioner is entitled to have."*

At the very outset, counsel for respondents has stated that this case has already been decided by the Delhi High Court in Civil Writ Petition No. 763 of 2001 Subedar/NT A. K. Saxena VERSUS UOI & Others. The relevant paragraphs of the order are set out as under:

*"Because the petitioner had undertaken the same course with the probationer female nurses, the same will not and cannot entitle him to be appointed the same category as that of the female nurses, who after completion of the aforesaid course would become members of the Indian*

*Military Nursing Service. The Ordinance, called the Indian Military Nursing Ordinance, 1943 is also placed before me. Para 6 thereof provides that one of the eligibilities for appointment is that it is available only to a woman, who is aged 21 years. Such a woman, who is aged 21 years, and is found eligible for appointment is to be appointed as an officer in the Indian Military Nursing Service. It is thus apparent that the cadre of Military Nursing Service and the cadre of Nursing Technician are two different cadres and, therefore, they cannot be equated for any purpose. Procedure for recruitment and conditions of service for the two cadres are also distinct and separate.*

*In that view of the matter, there is no discrimination since the persons are not similarly situated and have different avenues of promotion. There is no merit in the petition and the petition stands dismissed."*

He has also produced Calcutta High Court Order W.P. No. 1532 of 2006 on 8<sup>th</sup> May 2015 wherein it was stated that *"intra court appeal against the order of a High Court be transferred to Tribunal by operation of Sec 34 of AFT Act. Therefore, we opine that Tribunal cannot sit as an appellate authority over the orders of the High Court and, therefore, appeals arising under Letters Patent or Intra-Court provisions cannot be transferred to Tribunal."*

He has also produced AFT Chandigarh Regional Bench Order in O.A. 90 of 2016 dated 21.01.2016 which is a similar matter. The relevant portions of the order are set out as under:

*"Coming to the merit of the case, we find that the controversy involved in the case at hand has been addressed by the Delhi High Court in Subedar/Nursing Technician AK Saxena Vs. Union of India & others CWP No. 763 of 2001 decided on 22<sup>nd</sup> February, 2001.*

*The submission of the learned counsel for the petitioner is that in the above judgment, the Delhi High Court does not lay down the law*

*correctly. Except making general argument he could not point out any specific error therein.*

*In view of the fact that the issue raised in the present case has been set at rest by Delhi High Court by its above judgment, we do not find any merit in the present petition.*

*The petition is dismissed summarily."*

Thus, we opine that as the matter has already been decided by the Delhi High Court, nothing remains for this Bench for adjudication.

Hence the T. A. is liable to be dismissed.

T.A. is accordingly dismissed.

There shall, however, be no order as to cost.

(Lt Gen Gautam Moorthy (Retd)  
Member (Administrative)

(Justice Indira Shah)  
Member ( Judicial )