

ITEM NO.6

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No. 2661/2023 in MA 246/2023 in W.P.(C)  
No. 1109/2020

(Arising out of impugned final judgment and order dated 03-11-2023  
in MA No. 246/2023 passed by the Supreme Court Of India)

NITISHA

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(FOR ADMISSION and IA No.242231/2023-CLARIFICATION/DIRECTION  
IA No. 242231/2023 - CLARIFICATION/DIRECTION)

WITH

CONMT.PET.(C) No.27/2024 in MA 246/2023 in W.P.(C) No.1109/2020 (X)  
(FOR ADMISSION)

Date : 04-03-2024 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE J.B. PARDIWALA  
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Huzefa Ahmadi, Sr. Adv.  
Mr. Rakesh Kumar, AOR

For Respondent(s) Mr. R Venkatramani, AGI  
Mr. K M Nataraj, A.S.G.  
Mr. R Bala, Sr. Adv.  
Mr. Adit Khorana, Adv.  
Mr. Swarupma Chaturvedi, Adv.  
Ms. Seema Bengani, Adv.  
Ms. Shradha Desh Mukh, Adv.  
Mr. Chinmayee Chandra, Adv.  
Mr. Rajan Kumar Chourasia, Adv.  
Ms. Sonali Jain, Adv.  
Mr. Kartikey Aggarwal, Adv.

**Mr. Raman Yadav, Adv.**  
**Mr. Abhishek Kumar Pandey, Adv.**  
**Dr. Arun Kr Yadav, Dy. Gov, Adv.**  
**Dr. N. Visakamurthy, AOR**

**Mr. Anas Tanwir, AOR**  
**Mr. Anas Tanwir, AOR**

**UPON hearing the counsel the Court made the following  
O R D E R**

1 The issue in the present case turns on the interpretation of directions (i) and (iv) of paragraph 23 of the order of this Court dated 03 November 2023 which are extracted below “

- (i) A fresh exercise of reconvening Special No 3 SB shall be conducted no later than within a fortnight from the date of this order for all the women officers who were considered by the earlier Special No 3 SB (except for those officers who have already been empaneled);
- (iv) Those officers who have already been empaneled or promoted as Colonels, shall not be disturbed or affected In any manner nor will their seniority be affected by the implementation of these directions.

2 A circular was issued by the Military Secretary's Branch of the integrated headquarters of the Ministry of Defence (Army) on 14 November 2023 indicating that :

2. Affected Batches- WOs Spl No 3 SB for seven Arms & Services (Engrs. Sigs. EME, ASC, ADC, AAD & INT) for 14 batches (1992 to 2006) was conducted in Jan 2023. Out of these, 2005 & onwards batches of Engrs, Sigs, EME, ASC, AOC & AAD and 2004 & onwards batches of Int Corps were considered with overall profile (Jun 2021) during the subject consideration and hence these batches are not reconsidered again. All entitled looks will be given again to Wos of affected batches by No 3 SB Empanelled officers of these

batches will also form part of the agenda, however, their promotion status and seniority will not be disturbed as per directions of the Hon'ble Court.

- 3 Mr Huzefa Ahmadi, senior counsel appearing on behalf of the applicants in support of the contempt proceedings submits that the directions of this Court required the consideration of all women officers who are considered by the earlier Special No. 3 SB except for those officers who are already empanelled. Hence, it is submitted that considering other empanelled officers would amount to abreach of the directions.
- 4 Responding to the above submission, the Attorney General for India submits that the concept of empanelment is based on the comparative merit among officers of the same "batch". In support of this, he has relied on the policy document annexed at Annexure R-8 of the Miscellaneous Application filed by the Union Government. It has been submitted that the officers who had already been empanelled were not be disturbed. However, when the fresh Special No 3 SB convened, it was necessary to benchmark the officers to be considered with empanelled officers.
- 5 Mr Ahmadi, on the other hand, submits, on instructions, that a similar exercise was not carried out for the empanelment of male officers. In their case, it has been submitted that the male officers who were under consideration were not considered together with the batch of officers who were already empanelled. Hence, it has been urged that a discrimination has been made insofar as women officers are concerned.

- 6 In order to enable the Attorney General to clarify the above submission which has been urged on behalf of the women officers, we direct that an affidavit be filed explaining the position.
- 7 List the Miscellaneous Application and the Contempt Petition on 11 March 2024.

**(GULSHAN KUMAR ARORA)**  
**AR-CUM-PS**

**(SAROJ KUMARI GAUR)**  
**ASSISTANT REGISTRAR**