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

+ W.P.(C) 8197/2016

BRIG GOPAL BHANDARI (RETD) Petitioner

Through Mr. S.S. Pandey & Mr. H.S. Tiwari,
Advocates

versus

UNION OF INDIA AND ORS Respondents

Through Ms. Anjana Gosain & Mr. A.W.
Siddiani, Advocates along with Lt.
Col. Neeraj Mohey.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **21.09.2016**

1. Notice. Ms. Anjana Gosain, Advocate accepts notice for the respondents.

2. The challenge in this writ petition is to the orders dated 05.09.2014, 10.09.2016 and 29.08.2016 whereby the petitioner was found guilty by the General Court Martial which resulted in sentence of cashiering from service and Rigorous Imprisonment of two years which has been confirmed by the respondent No. 2, (vide Order dated

August 29, 2016) which order was communicated to the petitioner (September 10, 2016). This writ petition has been necessitated by the petitioner in view of the fact that even though the petitioner has filed an original application before the Armed Forces Tribunal, the OA could not taken for hearing for want of coram/bench. We note that the petitioner had earlier approached the Armed Forces Tribunal by way of OA No. 65/2015 whereby the Tribunal vide order dated February 12, 2016 had granted bail pending decision by the confirming authority on condition so as to facilitate completion of the process of confirmation and promulgation. Finally, the said OA was withdrawn by the petitioner on 12.05.2015 with liberty to file afresh in the event of confirmation of the findings and sentence recorded by the General Court Martial. The Tribunal had extended the bail order dated 12.02.2015 till the confirmation proceedings. We have been informed by Mr. Pandey that an order dated August 29, 2016 passed by the respondent No.2 intimating rejection of the petitioner's pre-confirmation petition and also that the findings of the General Court Martial of guilty have been confirmed without remission.

3. Ms. Anjana Gosain, learned counsel for the respondents states that for initiating promulgation proceedings, the appearance of the petitioner shall be required.

4. Mr. S.S. Pandey, learned counsel for the petitioner states that the petitioner is ready to appear before the concerned authorities for promulgation proceedings, if the respondents in such eventuality shall not take the petitioner in custody till the hearing of the OA by the Tribunal. This submission of Mr. Pandey appears to be reasonable. We accordingly direct the petitioner to appear before the concerned authorities on September 22, 2016 for promulgation proceedings, which shall initiated and completed on the same day. It is made clear that on the culmination of the promulgation proceedings, the petitioner shall not be taken into custody till such time the matter is heard by the Tribunal which we are informed shall be either September 27, 2016 or September 28, 2016. In view of the uncertainty in the dates, we deem it appropriate to request the Chairperson (Officiating) to hold a sitting of the Tribunal on September 28, 2016 for considering and passing appropriate orders on

Original Application filed by the petitioner, including the bail application. The petitioner shall be present before the Tribunal on that day. This order has been passed in the peculiar facts as exist.

5. We dispose of the writ petition in the aforesaid terms.

6. *Dasti* under the signature of the Court Master.

CM No. 33977/2016 (for interim direction)

Dismissed as infructuous.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

SEPTEMBER 21, 2016

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