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

+ W.P.(C) 5080/2019

UNION OF INDIA & ORS

..... Petitioners

Through: Mr.Kirtiman Singh, CGSC with
 Mr.Prateek Dhanda & Mr.Waize Ali
 Noor, Advs.

versus

MAJ. GEN. S. C. MOHANTY

..... Respondent

Through: Mr.Sidhant Krishan Singh, Adv.

+ W.P.(C) 5081/2019

UNION OF INDIA & ORS

..... Petitioners

Through: Mr.Kirtiman Singh, CGSC with
 Mr.Prateek Dhanda & Mr.Waize Ali
 Noor, Advs.

versus

MAJ. GEN. ML MOHAN BABU, VSM

..... Respondent

Through: Mr.Rajiv Manglik, Adv.

+ W.P.(C) 5095/2019

UNION OF INDIA & ORS

..... Petitioners

Through: Mr.Kirtiman Singh, CGSC with
 Mr.Prateek Dhanda & Mr.Waize Ali
 Noor, Advs.

versus

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MAJ GEN SUDHAKAR JEE, VSM Respondent
Through: Mr. Indra Sen Singh with Mr. Ankit
Dogra, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 13.05.2019

C.M. No.22550/2019 in W.P.(C) No.5080/2019

C.M. No.22552/2019 in W.P.(C) No.5081/2019

C.M. No.22576/2019 in W.P.(C) No.5095/2019

Exemptions allowed subject to all just exceptions.

W.P.(C) No.5080/2019 & C.M. No.22549/2019

W.P.(C) No.5081/2019 & C.M. No.22551/2019

W.P.(C) No.5095/2019 & C.M. No.22575/2019

1. These writ petitions have been preferred to assail the common order dated 10.04.2019 passed by the Principal Bench, Armed Forces Tribunal, New Delhi in OA Nos.97/2019, 209/2019 and 352/2019. By the common order, the Tribunal passed an interim order directing the respondents to conduct the Special Selection Review Board fresh for the respondents/applicants within the next three days after noticing the fact that the members of the Special Selection Board (SSB) were already available in Delhi for the Army Commanders' Conference in connection with conduct of other Selection Boards. The Tribunal further directed that after holding the SSB, the entire consequential process should also be completed with regard to selection, except the declassifying the result

of the respondents/applicants which would await further directions from the Tribunal. The matter was further adjourned to 14.05.2019, while issuing the said interim order.

2. The petitioners have not complied with the said order and have approached this Court by filing the present writ petitions on or about 09.05.2019. We are not inclined to interfere with the impugned order firstly considering the fact that the petitioners had sufficient time to comply with the same and if the petitioners were so minded they ought to have approached this Court earlier and not waited for the last minute. It appears to us that since the petitioners are now faced with a possible contempt on account of non-compliance with the impugned order and the OAs are coming up before the Tribunal for further proceedings on 14.05.2019, i.e., tomorrow, these petitions have been filed and got listed today. Even otherwise on merits, we find that the impugned order is completely justified for which purpose we reproduce the relevant extract of the impugned order, which squarely discloses the reasons why the Tribunal has proceeded to pass the same:-

"2. What is common in all these cases is that the applicants from the 1983 batch of the General Cadre, were considered afresh by the Special Selection Board held in October 2017, but were not empanelled and subsequently have been given redress related to their ACRs. In this flashback, they seek direction to the respondents to consider them as Special Review Fresh case in a Special Selection Board at the earliest as per the old Promotion Policy, which was in vogue during their consideration by the Board held in October 2017.

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3. The applicants assert that the same controversy had cropped up in Maj. Gen. V.K. Singh's case (*supra*), wherein the respondents had applied the new Promotion Policy dated 23.12.2017 and the respondents were directed to consider the applicant therein (Maj. Gen. V.K. Singh) 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. It was further directed that if the applicant was found fit by the Board on the result being declassified, he would be promoted to the rank of Lieutenant General.

4. Learned counsel for the applicants have submitted that the order rendered in Maj. Gen. V.K. Singh's case (*supra*) was impugned by the Union of India before the Hon'ble Supreme Court in C.A (Diary) No. 44838 of 2018, in which in an execution petition moved by Maj. Gen. V.K. Singh, the order passed by the Tribunal was modified on a particular aspect, but a specific direction was given to the respondents to hold SSB as a Special Review Fresh case, which exercise was also ultimately carried out. The applicants submit that, essentially, that is the relief which the applicants are asking for in these cases, beside a few other ancillary reliefs, depending upon the facts of each individual case.

5. It is further submitted before us on behalf of the applicants that the Members of the SSB are currently available in Delhi for conduct of the bi-annual Army Commanders' Conference and they will also be participating in the conduct of Special Selection Boards concerning specific Arms/Services of the Indian Army. In case another Special Selection Board (Review Fresh) has to be held again later only for these applicants, for that, all these Members will have to be brought from different parts of the country where they are stationed again, to come only for the conduct of such a

Board. Hence, in case the SSB is held within the next three days, when they are available in Delhi for the bi-annual Army Commanders' Conference and are sitting as part of other Selection Boards, they should be directed to also conduct the Special Selection Board Review Fresh for these applicants.

6. It needs to be mentioned here that when O.A No. 97 of 2019 was taken up by the Tribunal for its consideration, after issuance of notice and time was granted to file counter affidavit within a stipulated period, the respondents moved M.A No. 936 of 2019 praying for another four weeks' time for filing counter affidavit carving out the grounds as spelt out in Paragraphs 6 and 7 of the said miscellaneous application, which read as under:

6. That after having filed an appeal in Maj Gen V.K. Singh case (Civil Appeal Diary No.44838/2018 arising out of orders in OA No.1023/2018 (Maj Gen V.K. Singh v. Union of India and Ors. decided by Hon'ble AFT(PB) New Delhi, wherein the Union of India has been directed to consider the General Officer after holding the promotion board on the basis of promotion policy that was in existence in October 2017 and while allowing the Civil Appeal in favour of Union of India, left the question of law open. It is submitted that post the decision of the aforesaid Civil Appeal, the matter was again referred to the Government for identifying all such similarly placed cases for re-consideration as per the directions of the Hon'ble Tribunal merged with the directions of the Hon'ble Apex Court.

7. That the Government is considering all the aspects in a holistic way again and the decision regarding the same is still awaited.

7. We considered the grounds to be genuine as the respondents, in our view, were carrying out the exercise in the right direction in tune with the directions given in Maj. Gen. V.K. Singh's case (supra). It is in this background that another two weeks' time was granted to the respondents to file counter affidavit. Meanwhile, O.A Nos. 209 of 2019 and 352 of 2019 were also filed by similarly paced applicants, in which the respondents have already been put to notice.

8. In today's hearing, Col. Ajeen Kumar, MS (Legal), still projects his difficulty in not filing the counter affidavit in all these three connected matters stating that a common case for all similarly situated Major Generals, including the applicants, has been taken up with the first respondent, but the decision is still awaited.

9. Learned counsel for the applicants, while reiterating their prayer, as stated herein above, submitted that in the present set of circumstances, when the respondents are intentionally delaying the matter and all the applicants may be put to irreparable loss if they retire in between, it turns out to be a case for granting interim relief, directing the respondents to conduct a Special Selection Board Review Fresh within the next three days when the members of the SSB are available in Delhi and sitting for conduct of other Promotion Boards. Learned counsel further submitted that, at the most, the declassification of the result can be withheld till any further direction by the Tribunal.

10. We find substance in the submissions advanced by learned counsel for the applicants for the interim relief as asked for.

11. Col. Ajeen Kumar, faced with this situation, made a request to us that the instant matters may be taken up in the second half of the day, enabling him to receive instructions in this regard. We thus deferred consideration of the case to the second half of the day, and when taken up. Col. Ajeen Kumar states that he is running short of instructions. He makes a request that the instant matters may be taken up after 2-3 days so that he is able to get complete instructions in this regard, which request is not acceptable to us in the present circumstances when all the members of the Special Selection Board are present in Delhi.

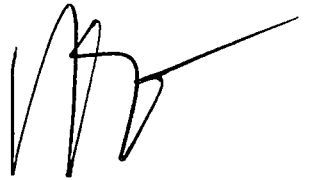
12. Viewed thus, the respondents are directed to conduct a Special Selection Board Review Fresh for the applicants within the next three days while the members of the SSB are available in Delhi with regard to conduct of other Selection Boards and the Army Commanders' Conference. It is further directed that after holding the SSB, the entire process shall also be made complete with regard to the selection except declassifying the result of the present applicants, which shall await further directions from the Tribunal."

3. On a perusal of the impugned order, it appears that after the same controversy as in the present set of OAs had cropped up in the case of Major General V.K. Singh, wherein the same relief was granted. The respondents had approached the Supreme Court. The Supreme Court however, did not interfere with the order passed by the Tribunal while leaving the questions of law open. The stand taken by the petitioners before the Tribunal was that it was considering implementing the decision in the case of Major General V.K. Singh across the board.

4. That being the position, there is no justification furnished to us as to why the petitioners have been stubborn in the matter of implementation of the impugned order.

5. The submission of Mr. Singh, learned counsel for the Union of India is that to hold the SSB the presence of all the Commanders and of the Chief of Staff, and the Vice Chief is required and it would, therefore, take time. The Tribunal passed the impugned order being mindful of the aforesaid position and in view of the fact that the Members of the SSB were available in Delhi when the impugned order was passed. In any event, the aforesaid cannot be a reason not to comply with the impugned order. The delay in holding the SSB cannot be indefinite, merely because the concerned officers constituting the Selection Board have to convene the same at Delhi.

6. For all the aforesaid reasons, we dismiss these petitions and leave it to the petitioners to explain their non-compliance of the impugned order before the Tribunal.



VIPIN SANGHI, J



REKHA PALLI, J

MAY 13, 2019

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