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

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Date of decision: 13.05.2022

+ W.P.(C) 5923/2022

COLONEL G.P SINGH (RETIRED) Petitioner
Through: Ms.Namrata Malik, Adv. with
Mr.Colonel Kumar Verma, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Ms.Arunima Dwivedi, Central
Government Standing Counsel with
Mr.Ved Prakash & Ms.Kanu Priya
Sharma, Adv. with Maj. Partho
Katyayan.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

CM APPL. 17743/2022 (exemption)

1. Allowed, subject to just exceptions.
2. The application is accordingly disposed of.

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3. By way of the present petition, petitioner seeks quashing of the Armed Forces Tribunal orders dated 27.05.2019 & 28.02.2022 passed in OA



No.865/2019 and RA No. 02/2020 respectively. Petitioner further seeks directions to the Armed Forces Tribunal to restore and tag OA No.865/2019 along with analogous matters upon same cause of action listed before the Tribunal.

4. The background facts of the case are that petitioner was commissioned as a Lieutenant in the Army on 17.12.1988 in the Corporation of Electronics and Mechanical Engineers and at that time, the retirement age of Colonel rank officers was fixed at 52 years. Thereafter, vide notification dated 03.09.1998, the retirement age of regular officer of Colonel rank of all Arms and Services was fixed at 54 years whereas the Colonel rank officers belonging to JAG, AEC, ASC (FIU) and Military Farms (MF) was fixed at 57 years and Military Survey at 60 years. Moreover, the age of retirement of regular officers of Colonel rank in the Army had been fixed at 54 years whereas the age of retirement of Colonel equivalent to the rank of a Group Captain in Air Force of ground duty branch was fixed at 57 years and a Captain in Navy at 56 years.

5. Learned counsel for the petitioner submitted that the petitioner was promoted to the rank of Selection Grade Lieutenant Colonel in October 2001 and thereafter promoted to Selection Grade Colonel and was posted to 604



EME Bn as Commanding Officer, however, he could not be promoted to Brigadier due to limited vacancies in the rank of Brigadier and steep paramedical structure of Army. On 31.10.2015, the petitioner had retired on superannuation in the rank of Colonel on attaining 54 years of age.

6. Learned counsel further submits that due to the disparity in the age of retirement of officers at Colonel level and between Colonel and equivalent level among three services, 67 Colonel rank officers challenged the same before the Armed Forces Tribunal and petitioner had also filed OA No.763/2015 challenging the unfair discriminatory policy on the age of retirement before the said tribunal. The batch matters were adjudicated at length and the OAs were partially allowed by the tribunal by a common order dated 20.12.2017, (lead O.A. being 741/2015 titled as "*Colonel Karunesh Kumar vs. Union of India & Ors.*") by directing the respondents to increase the retirement age of Colonels from 54 to 56 years and for Brigadier from 55 to 57 years, however, while rejecting the directions passed by Tribunal, respondents passed a speaking order dated 23.05.2018 by rejecting the enhancement of retirement age in respect of the petitioner as well as other similarly situated officers.

7. Being aggrieved, petitioner challenged the same being OA



No.865/2019 before the tribunal and vide order dated 27.05.2019, the same was dismissed at admission stage in gross violation of provisions of Section 10 of CPC. Thereafter petitioner again filed RA No.02/2020 before the tribunal for review of its order dated 27.05.2019, however, the same was also dismissed with the reasoning that there is no scope of further review once an application had been dismissed on merit of the case. Hence, present petition has been filed on the ground that the Tribunal has committed a grave error by dismissing the OA No. 865/2019 at the admission stage when the OAs instituted by the similarly situated officers is admitted and listed before another Bench. Another ground raised is that dismissal of second RA was not dismissed on merits but on technical grounds and applicability of provisions of Section 10 CPC should not halt the larger issue in question.

8. Learned counsel appearing on behalf of the petitioner at Bar submits that the OA pending before Bench No.1 also pertains to the retired and similarly situated persons like the petitioner and if the said Bench proceeds with the OA, then it will be cause great prejudice to the petitioner herein.

9. As stated by learned counsel appearing on behalf of the petitioner that similar OA is pending before Bench No.1 of Armed Forces Tribunal, therefore, we hereby dispose of the present petition by making it clear that if



the issue pending before the said Bench is decided in favour of the petitioner therein, then the benefit of the same shall also be applicable to the petitioner herein.

10. In view of above, petition is disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SUDHIR KUMAR JAIN)
JUDGE

MAY 13, 2022/ab

