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

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Date of decision: 25.08.2022+ **W.P.(C) 12325/2022****MAJ GEN ANIL KUMAR****..... Petitioner**Through: **Mr. Indra Sen Singh, Mr. Abhishek Singh & Mr. Aditya Bari, Advs.**

Versus

UNION OF INDIA & ORS.**..... Respondents**Through: **Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat & Mr. Alexander Mathai Paikaday, Advs. Col. Sarika MS Legal, Major Partho Katyayan, UOI.****CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE SAURABH BANERJEE****J U D G M E N T (oral)****CM APPL. 36984/2022 (exemption)**

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

W.P.(C) 12325/2022 & CM APPL.36983/2022

3. By way of the present petition, petitioner seeks quashing of the interim order dated 10.08.2022 passed by Armed Forces Tribunal, Principal Bench, New Delhi to the extent that it summarily rejects the petitioner's prayer not to declare the result of the Special Selection Board held on 23.12.2021 and not to promote any officer from petitioner's junior batch, till pendency of OA No.2637/2021.



4. Learned counsel for the petitioner submits that petitioner is aggrieved by the interim order dated 10.08.2022 passed in his MA No.108/2022 whereby the interim order granted earlier was vacated.

5. Learned counsel next submitted that the petitioner has been ignored despite the fact that he is eligible for promotion and if a candidate junior to the petitioner is approved for promotion, he will occupy said lone vacancy until 31.10.2024 and in the meantime, petitioner will retire on superannuation in his present rank w.e.f. 30.04.2023.

6. On the perusal of the impugned order, it is revealed that the learned AFT had perused the records of the ACC which was produced on 10.08.2022 itself and after perusal, the learned AFT has observed as under:

“4. On perusal of the records, it is seen that Department of Military Affairs (DMA) referred the case back to the Cabinet Secretariat on 06.05.2022 for their reconsideration and based on the directions of the Cabinet Secretariat, the DMA submitted a self-contained proposal. Certain clarifications were sought by the Cabinet Secretariat, all of which were replied to by the DMA and the case was then referred to the ACC on 07.07.2022. The case was considered by the ACC and vide PMO's office note dated 28.07.2022, it was intimated that the proposal of the DMA for empanelment of Major Gen Anil Kumar (petitioner herein) for promotion to the rank of Ltd. Gen. was not approved. This was then intimated to the DMA by ACC vide their Note dated 28.07.2022. Since the recommendations of the SSB has now been considered by the competent authority and has not approved the applicant for empanelment, the Respondents can now proceed with further action on issue of any promotion or orders in the matter.”

7. It is not in dispute that OA No.2637/2021 filed by the petitioner is pending adjudication before the learned Tribunal and vide order dated



10.08.2022, learned AFT directed the respondents to file counter affidavit within six weeks and rejoinder thereto, if any, to be filed within two weeks thereafter and adjourned the matter for 14.10.2022.

8. Since the OA of the petitioner is pending before the learned Tribunal, we hereby direct the respondents to ensure filing of counter affidavit within the time granted by the learned AFT, if not already filed, failing which the same shall be accepted with a cost of Rs.50,000/- to be paid in favour of “*Bharat ke Veer*”. Petitioner shall also file rejoinder, if any, within the time granted.

9. The issue raised in the present petition is that once the officer from petitioner’s junior batch (1989 batch-RVC) is promoted to the sole vacancy of Lt. General available in the petitioner’s Corps/Department, he will occupy said lone vacancy until 31.10.2024 and the petitioner will be retiring on superannuation in his present rank w.e.f. 30.04.2023, therefore, we expect from the learned AFT to decide the OA filed by the petitioner as early as possible.

10. In view of all the above, petition as well as pending application stand disposed of.

11. Needless to state that promotion, if any, in question shall be subject to the outcome of the OA filed by the petitioner before the learned AFT.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

AUGUST 25, 2022/ab