



\$~34

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

% ***Date of decision: September 13, 2022***

+ **W.P.(C) 13288/2022**

MAJ GEN S S JOHAL

..... Petitioner

Through: Mr. Indra Sen Singh, Mr. Abhishek Singh, Mr. Jawal Anand and Mr. Aditya Bari, Advocates

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Harish V Shankar, CGSC with Mr. Rudra Paliwal GP, Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates
Major Partho Katyayan & Col. Sarika, MS Legal

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.40294/2022(exemption)

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

W.P.(C) 13288/2022& CM APPL. 40293/2022(Stay)

3. By way of the present petition, petitioner seeks following reliefs:-
(a) *Issue a writ of certiorari to set aside the impugned order dated 28.07.2022 passed in OA No. 1298/2022 and order dated 24.08.2022 passed in MA No. 2370/2022 by the learned Tribunal to the extent it summarily rejects the*



petitioner's prayer not to hold/ declare the result of the Special Selection Board (SSB) held on 25/.26.08.2022 in respect of Petitioner's junior batch (1986-AOC) and not to promote petitioner's junior ahead of the petitioner.

(b) direct the respondents not to promote any officer from petitioner's junior batch, ahead of the petitioner, against the sole vacancy of Lt. General Available in Army Ordinance Corps (AOC), pending disposal of the petitioner's OA No. 1298/2022.

4. Learned counsel appearing for the petitioner submits that the respondents are considering the candidates who are junior to him for promotion and if they are promoted, they will continue on the said post even after 31.01.2023 whereas the petitioner will retire on the said date.

5. From perusal of the impugned order, it reveals that the records/documents connected with the case submitted by the respondents were examined in detail by the learned Tribunal. Consequent to the returning of the Board proceedings of the SSB initially held on 23.12.2021, the petitioner was reconsidered by the SSB convened on 26.05.2022. After detailed deliberations of the case, the Board did not recommend the petitioner to be empanelled. The said reasons have been recorded in the file in detail. Thus, the results were finally promulgated vide letter dated 20.06.2022 stating that the petitioner was not empanelled for promotion to the rank of Lieutenant General.

6. In view of the aforesaid, the learned Tribunal vide the impugned order has returned a specific finding to the effect that it was only after reconsidering the petitioner's case that the duly constituted SSB did not recommend him for promotion for reasons elaborated in the file and found



him *prima-facie* having no case and further that the balance of convenience was not in his favour. It is on the basis of the above that the interim prayer of the petitioner was rejected by the learned Tribunal.

7. It is not in dispute that the interim relief was not given to the petitioner by the learned Tribunal, however, respondents were directed to file the counter affidavit within four weeks, which, has already been filed as stated by learned counsel for the respondents.

8. The said matter has been listed before the learned Tribunal on 30.09.2022 and thereafter on 19.10.2022. Thus, the issue raised before the learned Tribunal has not been closed. Accordingly, since the petitioner is retiring on 31.01.2023, therefore, we expect from the learned tribunal to dispose of the OA on or before 15.01.2023.

9. In view of the above, the present writ petition is disposed of alongwith the pending application.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

SEPTEMBER 13, 2022

rr