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

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Date of decision: November 22, 2022

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W.P.(C) 16094/2022 & CM APPL. 50225-50226/2022

COL. AMARDEEP SINGH IC 59054Y

..... Petitioner

Through: Mr. Sanjay Ghose, Senior Advocate
with Mr. Anand Shankar Jha, Ms.
Urvi Mohan and Mr. Abhilekh
Tiwari, Advocates

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Sahaj Garg, GP and Major
Partho Katyanan for UOI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. By way of present petition, petitioner seeks the following reliefs:-

a) Issue a Writ in the nature of Certiorari or any other appropriate writ to quash and set aside letter dated 01.09.2022 having Ref No. A/47352/SOI/MS(X) and letter dated 26.04.2021 having Ref No. A/47352/SOI/MS(X) issued by Respondent No. 2 rejecting the proposal of Respondent No. 3 to grant substantive rank of Brigadier to the Petitioner;

b) Issue a writ in the nature of Mandamus or any other appropriate writ directing Respondent No. 1 and 2 to grant substantive promotion to the rank of Brigadier to the Petitioner with effect from 12.06.2020 in terms of Para 6(iv) of Survey of India (Group A) Service Rules, 1989 and Ministry of Defence Letter No. 7(2)/83/D-(W-11) dated 24.02.1992;

c) Issue a writ in the nature of Mandamus or any other appropriate

writ directing Respondent No. 1 and 2 to decide the representation dated 21.02.2022 issued by Respondent No. 3 for grant of substantive rank of Major General to the Petitioner for completion of 25 years of service with effect from 12.06.2022 in terms of Para 6(iv) of Survey of India (Group A) Service Rules, 1989 and Ministry of Defence Letter No. 7(2)/83/D-(W-11) dated 24.02.1992;

2. Mr. Ripu Daman Bhardwaj, learned counsel appearing on behalf of the respondents on advance notice submits that issues raised in the present petition can only be adjudicated before the Armed Forces Tribunal, since it has the appropriate jurisdiction, thus, this petition is not maintainable before this Court.

3. Contrary thereto, learned senior counsel for the petitioner submits that the present writ petition is very much maintainable before this Court as the respondent no.3-the Surveyor General of India, who is a necessary party, has been duly impleaded, whereas learned counsel for the respondents on the other hand submits that mere impleadment of said respondent no.3 is not sufficient, and in any event, the respondent no.3 has been wrongly impleaded as a party and is actually not a necessary or proper party, which is evident from the fact that no relief(s) has been sought against it.

4. Learned counsel for the petitioner does not dispute the same and submits that the petitioner had made a representation dated 15.07.2022 before respondent no. 1, which has not been decided as yet. Learned senior counsel for the petitioner further seeks permission to withdraw the present petition subject to allowing the petitioner to make a fresh comprehensive representation before respondent no.1.

5. Since learned senior counsel for the petitioner has admitted the non-maintainability of the present writ petition before this Court, there is no occasion for keeping the same pending, however, in the interest of justice,

we hereby dispose of the present petition alongwith pending applications, directing the petitioner to file a fresh representation within a period of one week before the respondent no.1 and further directing the respondent no.1 to decide the above said fresh representation, on its receipt, within four weeks and communicate the final decision thereof to the petitioner in writing within one week thereafter.

6. Needless to state if the petitioner is still aggrieved by the said decision, he may challenge the same before the appropriate forum in accordance with law.



(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 22, 2022/akr