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

% Judgment delivered on: 22.09.2023

+ W.P.(C) 11613/2023 & CM APPL. 45301-45302/2023

LT. COL. B. P. PATHAK

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Shree Prakash Singh, Mr. Anand Kumar, Mr. Akshit Anand and Mr. Rakesh Mishra, Advocates

For the Respondent: Mr. Harish Vaidyanathan Shankar, CGSC, Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. M. Sriram, Mr. Krishanan V. & Kholi Rakushuro Advocates with Ms. Archana Surve, GP, Major Partho Katyayan

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 08.05.2023 whereby the Armed Forces Tribunal has rejected the Original Application filed by the petitioner seeking quashing of non-empanelment of petitioner to the rank of Colonel by No. 3 Selection Board held in October, 2019.



2. Petitioner was commissioned as Lieutenant in the Infantry (TA) of the Indian Army on 27.09.2019. Petitioner rose to the rank of Lieutenant Colonel. However, when petitioner was considered by No. 3 Selection Board in 2019 for the rank of Colonel, he was not empanelled. Petitioner thereafter approached the Tribunal impugning his non-empanelment.

3. The Tribunal in the impugned order considered the issue with regard to the redressal of the grievances of petitioner qua his non-empanelment by No. 3 Selection Board for promotion to the rank of Colonel

4. The Tribunal has noticed that the Indian Army has a Pyramidical Rank Structure and the number of vacancy get reduced as one progresses up in rank. Only those officers, whose record of service within a particular batch, are better are selected to fill up the vacancies available in the higher rank. All officers of a particular batch are considered together with the same cut-off, ACRs and inputs and based on individual profile and competitive merits of the officers, they are either empanelled or not empanelled.

5. Every officer is entitled to three considerations which are called Fresh Consideration, First Review and Final Review. Initially the officer is considered with his batch as a Fresh Consideration. In case the officer is not empanelled then he is considered with the next available batch as the case of First Review and then with the next



available batch as a Final Review.

6. Petitioner was considered by the No. 3 Selection Board in September, 2019, September, 2021 and October, 2022.

7. The Tribunal had looked at the original record of the Selection Board and noticed that petitioner was not empanelled as he was lower in merit than the empanelled candidates.

8. The Tribunal noticed that petitioner was considered by all three successive Selection Boards as per the policy and guidelines and noticed that no doubt the petitioner was an excellent officer, however, other officers in his batch and batches where petitioner was considered had shown better merit and as such the petitioner did not get empanelled in view of the Pyramidical Structure of the Defence Forces.

9. Before us learned counsel for petitioner submits that for final grading the Quantified Merit based on the past profile of the officer is taken into account which is added with marks graded upto five percent by the Board Member Assessment and then a final score is worked out to assess the final merit of an officer to be empanelled or not to be empanelled. He submits that petitioner has been graded very low by the Board towards the five percent Board Member Assessment.

10. We find no merit in the contention of learned counsel for



petitioner that there could have been incorrect assessment by the Board whereby the petitioner has been assessed lower in the Board Member Assessment thereby depriving him of the opportunity of empanelment.

11. Though, in law, no such argument was entertainable on behalf of the petitioner, however, to satisfy our judicial conscience, we directed the respondents to produce the record of the three Selection Boards.

12. The record of three Selection Boards has been produced before us.

13. No doubt petitioner was a very high ranking officer amongst the other officers who were under consideration. However, the Quantified Merit of the petitioner was not the highest and there were other officers who had higher Quantified Merit than the petitioner who also have not been empanelled.

14. We also notice that the Board Member Assessment marks which were given to the petitioner were comparable to marks given to other officers. Even if Board Member Assessment marks awarded to the empanelled candidate by the Board were taken as the marks awarded to the petitioner, he would still not have made it and there would still have been other officers who had a Final Score higher than that of the petitioner.



15. In view of the above, we find that there was no bias or prejudice caused to the petitioner by the Selection Boards and petitioner did not get empanelled solely on account of there being other more meritorious candidates available for consideration.

16. In view of the above, we find no infirmity in the view taken by the Tribunal or error in the impugned order.

17. In view of the above, we find no merit in the petition. Petition is consequently dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 22, 2023/dr

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