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

Date of decision: 04.10.2024

+ W.P.(C) 7541/2023
COL. SANDEEP SHARMAPetitioner
Through: Mr.K.C. Mittal and Mr.S.S. Pandey, Advs. (through VC)
versus
UNION OF INDIA & ORS.Respondents
Through: Mr.Harish Vaidyanathan Shankar, CGSC with Mr.Srish Kumar Mishra, Mr.Alexander Mathai Paikaday, Advs. with Col. Sarika, MS Legal and Major Anish Muralidhar, OIC Legal.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE AMIT BANSAL

NAVIN CHAWLA, J. (ORAL)

CM APPL. 48662/2024

1. For reasons stated in the application, the delay of 45 days in filing of the present review petition is condoned.
2. The application is, accordingly, disposed of.

REVIEW PET. 312/2024

3. This petition has been filed by the respondents seeking review of the Judgment dated 28.05.2024, primarily being aggrieved of the findings of this Court in paragraph no.108 of the Judgment, wherein this Court has recorded as under:

“...Though, the case of the petitioner is that he should have been considered for promotion to



the post of Brigadier in October 2012, i.e., immediately when he was declared fit by SRMB, it may be stated here that the petitioner had not approached any forum seeking promotion immediately thereafter. Therefore, it is too late in the day for the petitioner to seek promotion w.e.f. 2012....”

4. The learned counsel for the respondents submits that the petitioner could have been promoted to the post of Brigadier only in the month of December 2019, therefore, the submission of petitioner recorded in the aforesaid paragraph is incorrect.

5. The learned counsel for the petitioner, who appears on advance notice, fairly does not object to this correction being made in the Judgment.

6. Accordingly, the above-quoted portion shall stand deleted from the Judgment dated 28.05.2024 being not relevant for the consideration thereof.

7. The respondents/review petitioners further contend that for promotion from the post of Colonel to Brigadier and to be considered by Number 2 Selection Board, an officer is also required to meet the requirements as stipulated in paragraph no.16 of the ‘*Adequately Exercised (AE) Policy for consideration of officers by Number 2, Number 1 and Special Selection Boards*’ dated 20.05.2013 as amended by ‘*Adequately Exercised (AE) Policy for consideration of officers by Number 2, Number 1 and Special Selection Boards*’ dated 02.04.2013.

8. The learned counsel for the respondents/review petitioners submits that the petitioner does not meet the above criteria for being



considered for promotion to the post of Brigadier. The learned counsel for the review petitioners submits that, therefore, the petitioner cannot be considered for the said post.

9. We do not find any merit in the said contention.

10. In the Judgment dated 28.05.2024, this Court has already held that the fact remains that the disciplinary proceedings against the respondents were dropped by the respondents for being time barred, and even the administrative action was dropped being in violation of Rules 180 and 182 of the Army Rules, 1954, therefore, the petitioner has to be considered for promotion to the post of Brigadier as if there was/is no impediment for such consideration. These impediments would also include the requirements as stipulated in the policies mentioned hereinabove as it is due to the own fault of the review petitioners that the Writ Petitioner could not meet the criteria as laid down in the above mentioned policy documents.

11. We therefore, find no merit in the above challenge of the review petitioners.

12. However, we clarify that the above findings are rendered in the peculiar facts of the present case, and the present Order shall not be considered as a precedent.

13. With these clarifications, we dispose of the present review petition.

NAVIN CHAWLA, J

AMIT BANSAL, J

OCTOBER 4, 2024/ns/VS

Click here to check corrigendum, if any