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

+ **W.P.(C) 13758/2022 and CM APPL. 42001/2022**

NARINDER SINGH NAGPAL

.....Petitioner

Through: Mr. Bharat Bhushan Bhatia,
Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Sandeep Kumar Mahapatra,
CGSC, Mr. Gokul Sharma, GP, with
Mr. Tribhuvan and Mr. Ishaan Malhotra,
Advocates with Mr. Piyush Gautam, AE and
Mr. Dinesh Agarwal, Sel. Grade Clerk, for
Respondents No.1 to 6.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

24.01.2025

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1. This writ petition is preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:

“A. Issue a Writ in the nature of Certiorari and quash the nomination of Respondent No. 7 being in contravention of Section 29(3)(i) and Section 34(1)(e) of the Cantonment Act, 2006. Under Part Notification S.R.O. 26(E) F.No.14(5)/2021-D(Q&C) dated 20.12.2021.

B. Writ in the nature of Mandamus directing the Respondent No. 1 to nominate an eligible candidate to the Cantonment Board Meerut in terms of Section 13(1) and 13(2) of the Cantonment Act, 2006.

C. Issue a Writ in the nature of Mandamus directing the Respondent No. 1 to consider the name of the petitioner for being nominated as a member of the Cantonment Board in terms of Section 13(2) of the Cantonment Act, 2006.”

2. The grievance of the Petitioner as ventilated in the present writ petition is that nomination of Respondent No. 7 as Member of the



Cantonment Board is in contravention of Section 29(1) and (3) and Section 34(1)(e) of the Cantonments Act, 2006 ('2006 Act') inasmuch as the said Respondent has reportedly carried out unauthorized construction in the premises where he resides and has also changed the use of the premises from residential to commercial.

3. Learned counsel for Respondents No.1 to 6, on instructions, submits that this writ petition is rendered infructuous since Petitioner has laid a challenge to the nomination of Respondent No. 7 whereas he is now a Member of the Cantonment Board and can only be removed under Section 34 of 2006 Act for which there is neither any pleading nor prayer. Moreover, Section 34(4) of 2006 Act provides that no member shall be removed from a Board under sub-Section (1) or sub-Section (2) of Section 34 unless he has been given a reasonable opportunity of showing cause against his removal. Since Petitioner alleges violation of Section 34(1)(e), Section 34(4) will have to be complied with before any action is taken. It is also urged that the basis of the writ petition is an alleged unauthorized construction by Respondent No. 7, however, the said Respondent has filed an appeal bearing No.22/2001 (renumbered as 01/2025) in respect of the said construction, which is pending and Respondents No. 1 to 6 cannot overreach the authority of the appellate body by removing him as Member of the Board at this stage. However, on instructions, it is assured that since the appeal is pending since 2001, the same shall be disposed of expeditiously and not later than 3 months from today.

4. Broadly understood, grievance of the Petitioner is that Respondent No. 7 was disqualified from being nominated as Member of the Cantonment Board by virtue of Section 29(1) and (3) read with Section 34(1)(e) of 2006



Act. Case of the Petitioner is predicated largely on the alleged unauthorized construction and misuse of the premises in which Respondent No. 7 resides. As a matter of record, Respondent No. 7 has filed an appeal pertaining to the allegations of unauthorized construction/misuse and the same is pending. Moreover, as rightly pointed out by counsel for Respondents No. 1 to 6, Respondent No. 7 is now a Member of the Cantonment Board and can only be removed by invoking Section 34 of 2006 Act and before taking any action, notice is required to be given to him under Section 34(4) to show cause against his removal. In light of this, at this stage, no order can be passed by this Court holding that nomination of Respondent No. 7 is illegal and/or that he be removed. Counsel for Respondents No. 1 to 6 has assured that the appeal filed by Respondent No. 7 will be disposed of within a maximum period of 3 months from today and this assurance is taken on record. Once the appeal is decided and depending on its outcome, it will be open to Respondents No. 1 to 6 to take action as per law.

5. No further order is required to be passed at this stage in this writ petition. Petitioner may take recourse to legal remedies, if aggrieved, at the appropriate stage.

6. Pending application also stands disposed of.

JYOTI SINGH, J

JANUARY 24, 2025

B.S. Rohella/shivam