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

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Date of decision: April 28, 2023

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W.P.(C) 5465/2023 & CM APPL. 21347-21348/2023

DAN SINGH NO JC343405X NB SUB Petitioner

Through: Mr. U.S. Maurya, Advocate

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Sandeep Tyagi, Senior Panel
Counsel with Mr. Rahul Kumar
Sharma, GP with Major Partho
Katyayan

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Vide present petition, petitioner is praying as under:

(a) A suitable writ, order or direction in the nature of certiorari quashing the Impugned Discharge Order dated 20-02-2023 passed by Respondent No. 4 (Annexure A-1).

(b) Direction to respondents to call for relevant records on the basis of that petitioner was empanelled for the promotion to the rank of Sub.

(c) Direction to respondents to call for relevant records on the basis of which petitioner's empanel was recalled/ cancelled.

(d) Direction to respondents to place on records amendments of WE (I) Engr Sqn vide IHQ of MoD (Army), E-in-C's Br, Comb Engr-2 letter dated 22-12-2022 based on which the Respondents cancelled the petitioner's promotion order dated 20-02-2023 (Annexure A-1) after issuance of promotion order dated 24-01-2023 (Annexure A-3) and quash the promotion order dated 20-02-2023;

(e) Direction to respondents to promote petitioner to the rank of Sub as per Promotion order dated 24-01-2023 (Annexure A-3) as soon as possible, but before 30-04-2023 (Date of Retirement), whereas promotion order dated 24-01-2023 was issue service rendered upto and on the ACR from 01-06-2021 to 31-05-2022 and same was cancelled on the later on of amendment of WE (I) Engr Sqn vide IHQ of MoD (Army) letter dated 22-12-2022.

(f) Issue direction to respondent to prohibiting them to apply their policy retrospectively since the empanelment was decided by 31-05-2022 whereas the amendment was carried out on 22-12-2022.

(g) Direct Respondents to keep one vacancy reserve for petitioner since prime facie balance of convenience is in favour of petitioner.

2. Learned counsel for respondents, who is appearing on advance notice, on instructions, has informed this Court that for the issue(s) raised in the present petition, a petition is also pending before learned Armed Forces Tribunal, Principal Bench, New Delhi.

3. Case of the petitioner is that vide order dated 24.01.2023, the petitioner was promoted to the rank of Sub. along with 19 other officers, however, vide order dated 20.02.2023, the promotion order of petitioner was withdrawn/discharged. Thereafter, the other officers have been promoted, however, the petitioner has not been promoted.

4. Learned counsel for respondents submits that after the promotion order dated 24.01.2023, the respondents received an order from the Ministry of Defence whereby 8 vacancies were reduced, therefore, the promotion of the 8 officers was withdrawn including the petitioner herein. Thereafter, due to retirement or otherwise vacancies were created and the officers who were senior to petitioner were promoted.

5. Learned counsel for petitioner submits that there is biasedness on the part of the respondents and four other officers have been promoted except the petitioner herein who is going retire on 30.04.2023 and if he retires, he

will not eat the fruit of promotion and shall lose service of two more years after his promotion.

6. Though the order dated 18.04.2023 passed by learned Armed Forces Tribunal, Principal Bench, New Delhi in O.A. 626/2023 is not under challenge before this Court, however, in the said order, learned Tribunal while passing the order has mentioned as under:

"Challenging the cancellation of the promotion order vide Annexure A- I dated 20th February, 2023, applicant has filed this application under Section 14. Respondents pray for some more time to file counter affidavit.

Even though in Para 9, the applicant prays for stay of discharge. We are of the considered view that at this stage, discharge of the applicant cannot be cancelled. It is not only the applicant but more than 8 promotions that have been cancelled by this order and the same seems to have been done by administrative consideration. That being so, no case is made out for grant of interim relief for the simple reason that the three ingredients necessary for grant of interim relief, namely prima facie, balance of convenience and irreparable damages are not present together even if, ultimately discharge of the cancellation of promotion of the applicant found to be unsustainable, the applicant can be put back to service and he can be compensated by payment of arrears of salary and therefore, there is no irreparable loss or balance of convenience available in favour of the applicant. On the contrary, if on administrative ground an intangible person is granted promotion and promoted to continue service because of an interim order, the balance of convenience may tilt in favour of the respondents. Considering the same, as the ingredients necessary for grant of stay are not made out, we reject the application for interim relief and direct that the discharge of the applicant shall be provisional and subject to final decision of this Petition.

Respondents are granted six weeks' time to file counter affidavit.

List the matter again on 21.07.2023.

A copy of this order be provided DASTI to learned counsel for both the parties."

7. Since the subject matter of the present writ petition is pending adjudication before learned Tribunal and learned Tribunal has mentioned in

the order dated 18.04.2023 that discharge of the petitioner shall be provisional and subject to the final decision of the petition pending before it.

8. In view of above, no interference is required from this Court.

9. Accordingly, present petition and pending applications are disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 28, 2023/rk

