

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 617 of 2017

Wednesday, this the 18th day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Brig Dinesh Kumar Ahluwalia son of Shri Jai Kishan Ahluwalia, presently posted as Dy JAG, HQ Central Command, Lucknow Cantt - 226002 Applicant

Ld. Counsel for the Applicant : **Applicant in person**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), Military Secretary’s Branch, New Delhi - 110011.
3. Military Secretary, Military Secretary’s Branch Integrated Headquarter of the Ministry of Defence (Army), New Delhi - 110011.
4. No. 1 Selection Board, held on 21 Apr 2017 presided over by the Chief of the Army Staff Integrated Headquarter of the Ministry of Defence (Army), Military Secretary’s Branch, New Delhi - 110011.
5. Brig DEVENDRA SINGH, DDG (B) Litigation, Integrated Headquarters of the Ministry of Def (Army), New Delhi – 110011.

.....Respondents

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal,**
Advocate, Sr. Central Govt.
Standing Counsel assisted by **Maj
Salen Xaxa,** OIC Legal Cell.

**ORDER ON M.A. No. 1089 OF 2018 OF APPLICANT WITH
THE PRAYER FOR INTERIM STAY ON SELECTION BOARD
PROCEEDINGS.**

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. This matter came up for hearing today though the case was originally fixed for 24.4.2018. The instant OA relates to promotion to the rank of Major General of 1987 batch officers of JAG (Army) branch. The OA has been filed by the applicant who is a Brigadier from 1987 batch, under section 14 of the Armed Forces Tribunal Act, 2007. The OA has been filed against the order dated 09.10.2017 vide which the proceedings of the No.1 Selection Board held on 21.4.2017 were annulled. The applicant has also assailed the order dated 04.12.2017 whereby Brig. Devendra Singh, Respondent No. 5 has been empanelled as Major General in the JAG’s Department, Ministry of Defence (Army) in a reconvened Selection Board held on 14.10.2017.

2. The facts of the case in nutshell are that the Applicant was commissioned in the Indian Army in the JAG (Judge Advocate General) Branch on 23.08.1986 in the rank of Second Lieutenant. During the course of his service in the Army, he was promoted from time to time and presently he is holding the rank of Brigadier. From the rank of Brigadier, he was due for being considered for promotion by the Special Selection Board No 1 which was scheduled to be held on 21 April 2017 wherein Applicant as well as Brigadier Devendra Singh along

with Brigadier Vipin Chakrawarti, all belonging to 1987 Batch were considered. However, the proceeding of the Selection Board No 1 was annulled by the impugned order dated 09.10.2017 and the board was ordered to be reconvened. On 14.10.2017, a fresh Selection Board in respect of 1987 batch of JAG (Army) officers was held. The annulment of Selection Board held on 21.4.2017 as well as the reconvening of Selection Board on 14.10.2017 was challenged by the applicant in this tribunal. The result of the reconvened Board was declared on 04.12.2017 in which respondent no 5 namely Brigadier Devendra Singh was shown as empanelled subject to outcome of the O.A No 551 of 2017.

3. The applicant has basically challenged the process of selection and promotion of 1987 batch on three counts i.e. annulling the proceedings of Number one Selection Board held on 21.4.2018, reconvening of the board on 14.10.2017 and empanelment of fifth Respondent i.e. Brig Devendra Singh.

4. The respondents in their counter had justified the selection of Respondent no 5 on the grounds that the proceedings of number one Selection Board held on 21.4.2017 were annulled on the instructions of the Govt (MOD), though, no plausible reasons for the same have been enumerated. They have justified the selection of Respondent No 5 after reconvening of the Board on 14.10.2017 on the grounds of pyramidal

structure in Army and the overall wisdom of the Selection Board. On the specific issue of respondent No 5 being low in AR Merit as well as apparent overall profile vis a vis applicant and still being awarded higher value marks resulting in his empanelment, the same was again justified in the counter and during hearing on grounds of wisdom and discretion of Selection Board. One of the issues raised by applicant in OA was stricture of AFT Chandigarh bench on the professional conduct of respondent no 5. The same was denied by the respondents in their counter affidavit on the ground that the matter has been considered by competent authority including the Govt and the matter stood closed. During the course of hearing, it was found that the stand taken by respondents on the issue of AFT Chandigarh passing stricture on professional conduct of respondent No. 5 was factually and legally incorrect. On a pointed question during hearing, by the bench, as to whether the Selection Board was briefed about the judicial strictures against the professional conduct of Respondent No 5, the respondents had no clear answer to make.

5. It is in this backdrop that the interim order of this Tribunal dated 11.1.2018 was passed. Relevant extract of order are as follows: (copy para16,17,18,19,20,21,22 of order).

"16. Thus, while filing counter affidavit, the respondent no. 2 has not brought on record correct facts and has tried

to mislead the Tribunal without applying mind to the order of the Chandigarh Bench of the AFT.

17. From perusal of comparative merit, it has not been disputed by Union of India, that apparently the career of the applicant is multi-time better than respondent no. 5. We are not on the issue as to how and under what ground the applicant was given a different appointment, but the fact remains that the whole career of the applicant, on the face of the record, appears to be outstanding and better than respondent no. 5. But, we leave this issue to be adjudicated upon merit at the time of final hearing of the O.A.

18. Keeping in view the fact that the conduct of respondent no. 5 has not been appreciated on judicial side by the Chandigarh Bench of the AFT in aforesaid O.A. and cost was imposed upon him on account of filing false affidavit and for concealment of facts and that the respondents have not taken any action to implement the order of the Tribunal, we still feel that the person against whom no due inquiry was conducted in pursuance of order of the Tribunal, prima facie, shall not be entitled to hold the highest post of JAG Branch, i.e. post of Major General.

19. There appears to be, prima facie, a case for grant of interim relief apart from the fact that balance of convenience leans in favour of the applicant, besides it may cause irreparable loss and injury in case no interim order is granted. Hence, it is a fit case where interim order should be passed.

20. Accordingly we stay the selection and appointment made in pursuance of the impugned selection by the No. 1 Selection Board. In case respondent no. 5 has been promoted, he shall not be permitted to discharge duties on the post of Major General of JAG Branch in view of the

observations made by the Chandigarh Bench of the AFT (supra).

21. However, it shall be open to respondents to proceed de novo, and implement the order of Chandigarh Bench of the AFT, to clear the cloud and make interim arrangement.

22. Let counter affidavit be filed within four weeks. Rejoinder affidavit, if any, may be filed within two weeks' next thereafter."

6. The respondents 1 to 3 have thereafter filed writ petition in Hon'ble High Court Lucknow bench vide **Writ petition No 1864/2018(SS), Union of India and others Vs Brig. Dinesh Kumar Ahluwalia**, challenging the Interim order of the Tribunal dated 11.1.2018. However the high court has not yet passed any order in the said writ petition.

7. During the pendency of OA, in an unfortunate development, Respondent No 5 has expired on 14.2.2018.

8. The case was heard on 12.1.2018 wherein supplementary affidavit of respondent No 1 to 3 was taken on record and also the Amendment and Abatement applications filed on behalf of applicant were taken on record. The next date of the case was fixed on 24.4.2018.

9. The applicant has however moved an application for interim stay on operation of MS branch letter dated 12.4.2018 titled 'NO 1 SELECTION BOARD: JAG 1988 BATCH'. The applicant has pleaded that before a final decision on his OA related to 1987 batch promotion is given by Tribunal, inclusion

of 1988 batch for promotions along with 1987 batch, treating 1987 batch officers as first review case will defeat the ends of justice and create third party rights for 1988 batch.

10. The Applicant also raised related issues on the basis of which the Tribunal passed the order dated 13.04.2018 asking the respondents to file their response and the date of hearing on interim stay was preponed to 17.04.2018 for hearing on interim stay and the conduct of fresh Selection Board was stayed till 19.04.2018 on the basis of statement made by learned counsel for respondent as per instructions received.

11. During the course of hearing on 17.04.2018, the respondents took the stand that the Army is a very large organisation and the post of one top officer's in JAG (Army) is lying vacant since Jan 2018 initially due to the interim stay order and thereafter due to the death of respondent no 5. Additionally, the second vacancy of Major General was falling vacant on 01.07.2018 owing to a retirement. Since promotion Boards take nearly 2 to 3 months before finalisation and approval, it is critical that the Indian Army conducts Promotion Board for both the vacancies as soon as possible. Hence the new Promotion Board was proposed on 19.04.2018 with the caveat that the vacancy of 1987 and 1988 batch would be subject to final outcome of the O.A filed by the Applicant.

12. On a specific question posed by the Bench as whether treating 1987 batch officers as first Review cases when the

original selection is under stay, and thereafter conducting their selection Board along with 1988 batch could result in future legal and procedural complications. At this stage, the respondents replied that they were willing to keep the result of promotion Boards classified till the final outcome of the O.A.

13. On the other hand the Applicant vehemently countered this plea saying that this could create more complication and third party rights and eventually could deprive him from getting justice.

14. We have given our anxious thoughts to the whole situation. While the demands of natural justice demand a finality to the OA, the functional demands of a large organisation like Indian Army demand timely filling up of its top legal vacancies. We have also considered the fact that without finalising the promotion board of a senior batch, consideration of promotion for junior batch has the potential to further complicate matters for the organisation. We are also conscious of the fact that due to death of respondent no 5, the facts of the case have changed. The earlier vacancy of 1987 batch is once again available and requires to be filled up at the earliest in organisational interest.

15. Thus considering all the issues involved, and considering the peculiarities of this case we pass following orders:

(a) The respondents may conduct the promotion board for 1987 batch only, for a single vacancy of Major General as was originally available on 14.10.2017 as fresh case. The Board has to be conducted with all relevant material for consideration as was available on 14.10.2017, strictly in accordance with promotion policy. Since promotion is always in present and is prospective, the only issue which will remain to be decided for the empanelled officer will be notional seniority in the past. This aspect will be decided in the final judgement of the present OA after considering the submissions of all involved parties.

(b) We are of the view that organisational interest is better served if things are done correctly rather than in a hurry. Hence for one remaining vacancy of Major General, for 1988 batch, the selection may be done in near future only after the promotion board of 1987 batch is finalised.

(c) The outcome of Selection Board for 1987 batch shall be subject to final order passed in this OA.

16. Interim application for stay vide M.A. No. 1089 of 2018 stands disposed off accordingly.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: April, 18, 2018
MH/-

