

COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

16.

OA 588/2020 WITH MA 722/2020

Col Rajbir Singh	.....	Applicant
VERSUS		
Union of India and Ors.	.....	Respondents

For Applicants :	Mr.Anand Shankar Jha, Advocate
For Respondents :	Mr. Harish V. Shankar, Advocate R 1-3
	Mr. R. Balasubramaniam, Sr. Advocate
	with Mr.Santosh Pandey, Advocate R-4

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE AIR MARSHAL, B.B.P. SINHA, MEMBER (A)

ORDER  
10.08.2020

Respondents No.1 to 4 have filed their counter affidavits. Applicant has filed rejoinder to the counter affidavit of respondent No.4. It is taken on record.

2. Mr. R. Balasubramaniam, learned Senior Counsel for respondent No.4 and Mr. Harish V. Shankar, learned counsel for respondents No.1 to 3 submit that on the last date promotion of respondent No.4 was stayed primarily on the ground that counter affidavit has not been filed in spite of repeated opportunities being granted, so also after considering the selection board proceedings which were produced, this Tribunal was of the opinion that respondent No.4 has secured more marks in the “Board Members’ assessment” which has resulted in his promotion and this requires consideration. It is submitted that taking note of these factors promotion of respondent No.4

was stayed and an opportunity was granted to the respondents to file their counter affidavits within two weeks, it was further observed that today the question of continuation or vacation of stay shall be considered after considering the objection/affidavit of the respondent.

3. We have heard learned counsel for the parties and we find that the primary consideration made by us on the last date of hearing with regard to staying the promotion of respondent No.4 was only because we were prima facie of the opinion that grant of marks under the category of “Board Members’ assessment” did not appear to be proper. However, now after going through the counter affidavit filed not only by the departmental authorities, namely, respondents No. 1 to 3 but also by the private respondent No.4, we find that the discretion exercised by the Selection Board and the reasons for assessment have been explained both with regard to the applicant and respondent No.4. All this requires detailed consideration now at the time of hearing. However, Mr. Balasubramaniam, learned senior counsel for respondent No.4 points out that persons including certain juniors to respondent No.4 have been promoted and now withholding the promotion of respondent No.4 would be causing grave injustice to him.

4. Taking note of the totality of the circumstances, we are of the considered view that interest of justice would be met in case the interim order staying the promotion of respondent No.4 is

modified and instead his promotion and action taken is made subject to final decision of this petition and after granting some time to the applicant to file a rejoinder to the counter filed by respondents No. 1 to 3, the matter be heard finally at an early date.

5. Accordingly, we direct that the applicant may file rejoinder within four weeks from today. Office to list the matter immediately thereafter for final hearing at this stage itself. In the meanwhile, the order passed on 22<sup>nd</sup> July, 2020 is modified to the extent that respondents No.1 to 3 may issue promotion order of respondent No.4. However, the same shall be provisional and subject to final outcome of this petition.

6. List the matter on 14<sup>th</sup> September, 2020 for analogous hearing along with OA No.994/2020.

7. A copy of this order be provided **DASTI** to learned counsel for the parties.

**(RAJENDRA MENON)**  
**CHAIRPERSON**

**(B.B.P. SINHA)**  
**MEMBER (A)**

vkcs/ps