

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

8.
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 for R1-3
	Mr. R. Balasubramaniam, Sr. Advocate with
	Mr. Santosh Pandey, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN PHILIP CAMPOSE, MEMBER (A)

ORDER
22.07.2020

Heard on M.A No. 722 of 2020.

2. Mr. Balasubramaniam, learned senior counsel appearing for Respondent No. 4 submits that Respondent No. 4 be granted some time to file reply both in the main O.A as well as in the miscellaneous application. However, learned counsel for the applicant insists on hearing of the M.A for stay. Even though Respondents 1 to 3 have not filed counter affidavit/reply to the application for stay, but, as directed, records of the Selection Board proceedings are made available.

3. On 12.06.2020, we had issued notice to the respondents. Notice was accepted on behalf of Respondents 1 to 3 by Mr. Harish V. Shankar, Advocate and sought for time to file counter affidavit. Notice was issued to the private respondent (Respondent No. 4) and the matter was directed to be listed on 17.07.2020, Respondents 1 to 3

were also directed to keep the Selection Board proceedings ready on 17.07.2020. In the meanwhile, M.A No. 842 of 2020 was filed by the applicant for early hearing of his application for stay. Considering the fact that the case had already been listed for 17.07.2020, the application for early hearing was rejected. In the meanwhile, service of notice to Respondent No. 4 was awaited and when the matter came up on 17.07.2020, no counter affidavit or reply to the application for stay was filed by Respondents 1 to 3. Learned counsel for the applicant made a submission for grant of interim relief, however, we directed listing of the matter today and directed the respondents at least to file their reply to the prayer for interim relief or in the alternative, they were directed to keep the entire Selection Board proceedings ready for perusal of the Tribunal. We had also ordered that in case the Selection Board proceedings are not produced on the next date, we may be compelled to pass appropriate orders on the application for interim relief. It was further directed that any order passed in the matter of promotion of Respondent No.4 should be subject to orders as may be passed by this Tribunal on the next date of hearing.

4. Today, when the matter came up for consideration, even though Respondents 1 to 3 have not filed their reply, they have produced before us the proceedings of the Selection Board, which is said to have been held in June 2020. Learned senior counsel for Respondent No. 4 submits that he may be granted some time to file counter affidavit, so also a reply to the application for stay.

5. On behalf of Respondents 1 to 3 also, prayer is sought for filing counter affidavit. However, as the learned counsel for the applicant has insisted upon for grant of interim relief, we went through the proceedings of the Selection Board and we find that the proceedings were held for filling up of 08 posts on promotion. The name of the applicant as per merit and as per quantified weightage was at Sl. No. 8. However, based on the Board members' assessment, his name has gone to Sl. No. 10 and Respondent No. 4 by securing more marks in the Board members' assessment has been promoted. The reasons given for the same on prima facie consideration does not appeal to us. That being so, taking note of the totality of the circumstances and finding a prima facie case to be made out in as much as in spite of being more meritorious in the quantification of marks done, we find that he has been denied promotion on account of less mark being granted under the category of **'Board members' assessment'**, as contended by him. Without expressing any opinion on the same for the present and subject to objections that may be raised by the respondents in the counter affidavit, for the present, we deem it appropriate to direct the respondents to maintain status quo with regard to the promotion of Respondent No. 4 as on today. Even though, when we orally expressed our intention to pass such an order, learned senior counsel Mr. Balasubramaniam has raised objection by contending that without hearing the said respondent and without giving him an opportunity to file an affidavit we should not pass any interim order, we are conscious of the aforesaid, and have passed the

order only because the respondents have not filed any counter affidavit and, on being, prima facie, satisfied about existence of a prima facie case with regard to the allegation made in the petition, after perusal of the SB proceedings. We grant two weeks' time to the respondents to file their objections or counter/reply to the M.A and on consideration of the same, we would further take a decision on the next date with regard to continuation or vacation of the interim order passed.

6. List again on 10.08.2020.

Dasti

**(RAJENDRA MENON)
CHAIRPERSON**

**(PHILIP CAMPOSE)
MEMBER (A)**

Alex/Priya