

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

6.

OA 2831/2022 WITH MA 4204/2022

Brig Ram Prakash Pandey

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S S Pandey, Advocate

For Respondents : Shri Neeraj Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

23.12.2022

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by a serving Brigadier of the Army Intelligence Corps who is aggrieved on not being nominated for NDC-63 and has prayed that the records based on which the respondents had categorised his injury as physical injury instead of battle casualty be called for; the records and policy letter based on which the applicant had been denied nomination to NDC-63 be called for and all such orders be quashed. That the respondents be directed to reconsider the eligible officers of Int Corps afresh, including the applicant after considering his injury as battle casualty

and that in the interim, no officer be nominated to the single vacancy of Int Corps on NDC-63 Corps till the final disposal of the present OA.

2. The matter was first heard on 07.12.2022 when notices were issued to the respondents and who were also directed to file a short reply affidavit with regard to the prayer for interim relief.

3. The prayer for the interim relief was heard today. The counsel for the applicant elaborated the facts that the change in policy promulgated vide the impugned letter dated 03.11.2022 (Annexure-A1) had caused irreparable damage to the applicant as he had been denied nomination to NDC-63 based in a last minute change in policy regarding acceptable medical category for attending such courses. Referring to the short affidavit filed by the respondents, the counsel stated that the change in policy had been necessitated to align the selection process for the NDC and equivalent courses in sync with the selection process for the No-1 Selection Board. He further stated that since the intention was to align the selection process for both the NDC and the No.1 Selection Board, it was only fair that the consideration too was done in

a similar fashion without out rightly rejecting an officer because of an existing medical category. He then drew our attention to the order dated 21.09.2022 of the Armed Forces Tribunal (PB) in OA 1607 of 2021- **Lt Col. Karan Mehta** Vs. **Union of India and Ors** and emphasised the requirement of a fair consideration initially for promotion on professional merit and where required, a subsequent consideration by SRMB as applicable. The counsel added that the respondents in order to merely ensure that another officer was nominated for NDC-63 in place of the applicant, had in a mala fide manner orchestrated the change in policy just prior to the nomination. He also drew our attention to the averments made by the respondents that change in policy had been examined over two years and final approval by the competent authority was accorded in August 2022, after which the entire case was forwarded to HQ ARTRAC for effecting necessary amendment in SAO 04/S/2014. The applicant then vehemently asserted that while HQ ARTRAC had been delegated the responsibility of issuing/ amending the SAO it had no jurisdiction to further delegate the issue of an interim policy as had been done in this case, where in, HQ

ARTRAC had instructed the MS Branch to issue the new policy pending amendment to the SAO. Further referring to the overall process of nomination for NDC, the counsel stated that the process had commenced in Jul 2022 when the provisional list of those under consideration had been issued. While the nomination board was to be held originally in Oct 2022, along with the Special SB and NO-1 SB, the nomination board was finally held in Nov 2022, and the results promulgated vide MS Branch letter dated 7.11.2022, with the new changed policy on medical category being promulgated on 03.11.2022, just a few days prior to the actual consideration. The counsel asserted that had the Board been held in Oct 2022 as per its original schedule, this new policy letter would not have been applicable to the applicant and he would have been nominated for the course. The counsel vehemently asserted that there had been a grave malice in law and certain mala fides which had been carried out only to benefit another officer. In consideration of these issues, the Counsel for the applicant concluded by vehemently asserting that there would be irreparable injury

to the applicant if the nomination of the Int Officer to NDC-63 was not held in abeyance pending finalisation of the OA.

4. The counsel for the respondents vehemently refuted the assertions made by the counsel for the applicant and said that the application of the policy was only relevant if the applicant, after consideration had been found fit and was subsequently not nominated based on the new policy. The Counsel asserted that the available details and records would show that the applicant has been fairly considered as was his right, but was not finally nominated for the single vacancy based on merit. He further added that the plea that change in policy had affected his nomination or had resulted in denial of his nomination for NDC-63 was totally unfounded. He concluded that in consideration of these issues the interim prayer be rejected.

5. Having heard both sides, we have examined the records produced by the respondents. We have examined the Board Proceedings pertaining to the nomination of Brigadiers for NDC-63 and have also examined the file pertaining to the formulation of change in policy and its issue on 03.11.2022. Based on the facts available on record, we find that *prima-*

facie the applicant does not have a case and neither is the balance of convenience in his favour. We, therefore, dismiss the interim prayer. The applicant is at liberty to agitate all these issues during the final hearing, when all aspects pertaining to the case will be examined in detail and relief, if any, would be accordingly granted.

Copy of this order be provided '**DASTI**' to the learned counsels for both the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

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