

ITEM NO.26

COURT NO.5

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).20898/2024

(Arising out of impugned final judgment and order dated 12-08-2024 in WP(C) No. 7181/2024 passed by the High Court Of Delhi At New Delhi)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

MAJOR GENERAL VINAYAK SAINI

Respondent(s)

(IA No.204699/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 24-09-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s)

Mrs. Aishwarya Bhati, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Karunakar Mahalik, Adv.
Ms. Sanjana Saddy, Adv.
Mr. Rajat Nair, Adv.
Ms. Mani Munjal, Adv.
Mr. Pratyush Srivastava, Adv.

For Respondent(s)

Dr. Pradeep Rai, Sr. Adv.
Mr. Indra Sen Singh, Adv.
Mr. Nasir Mohd, Adv.
Mr. Anuj Kapoor, AOR
Ms. Kaberi Sharma, Adv.
Ms. Priyanshi Gupta, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the petitioner(s).

2. The matter was last taken on up on 17.09.2024, when the

following order was passed:-

1. Heard Ms. Aishwarya Bhati, learned ASG appearing for the petitioners.
2. The counsel accepts that the "Box Grading" recorded against the respondent was expunged on 09.10.2023. But with the "Box Grading" as it was, the respondent could not have been favourably empanelled in the Corps Specific Stream of Engineers of the 1978 batch for promotion to the post of Lt. General and the respondent participated in the Special Selection Board held on 09.02.2023. But following the expunging of the "Box Grading" from the confidential report, the authorities are required to consider the respondent for promotion. But the same at this stage is not possible as there is no vacancy in the rank of Lt. General available for such consideration as all the posts are occupied.
3. The Division Bench of the High Court observed in the impugned judgment that the respondent was denied his rightful promotion and his juniors were promoted and as such injustice was done to him. Accordingly, direction was given to consider his promotion on the basis of the clearance of the confidential report of the respondent.
4. The learned ASG prays for time to obtain instructions on how best the High Court's direction can be given effect having regard to the non availability of posts of Lt. General in the Corps Specific Stream and the respondent's impending retirement date on 31.10.2024.
5. List on 24.09.2024, as prayed for by the learned ASG."

3. The learned ASG submits that considering promotion of the respondent to the rank of Lieutenant General, would be difficult since all posts are filled and it will impact the serving Officers.

4. However the High Court interfered with the decision of the Armed Forces Tribunal and held that it was case of wrongful downgrading of confidential report and it was declared to be a case of injustice done to Major General ranked officer. This was in the context of the corrective order passed on 09.10.2023 (Annexure P-6) which reads as under:-

"The Central Government, therefore orders for grant of partial redress to the officer by way of expunction of IO's assessment at para 12- 'Box Grading' in CR07/21-05/22 9 (Impugned), on ground of inconsistency."

5. We have considered the circumstances and also the peculiar facts in this case. The Special Leave Petition is devoid of merit and is accordingly dismissed.

6. Pending application(s), if any, stand closed.

(DEEPAK JOSHI)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR