IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH

NEW DELHI.

O.A.No.79 of 2011

Maj. Gen. SKH Johnson, SM, VSM ...Petitioner

Versus

Union of India & Ors. …Respondent

For the Petitioner : Sh. Rajiv Manglik, Advocate

For the Respondents: Sh. Ankur Chhibber, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. Z.U.SHAH, MEMBER (A)

JUDGMENT

(21.12.2011)

BY CHAIRPERSON:

1. Petitioner by this petition has prayed that SSB held on 07/08-12-2009 and the extrapolation of marks of staff appointments from the criteria appointment CRs in the rank of Maj. Gen. may be quashed and the case of the petitioner may be considered by the SSB afresh on the

basis of policy which was in vogue at the relevant point of time.

2. Petitioner was commissioned in the Army on 22.12.1974 in the rank of 2/Lt and was allotted 5 Gorkha Rifles(Inf.). He was posted to various key appointments during his service career and participated in many operations and rose to the rank of the Major General. It is alleged that due to his outstanding performance and devotion of duty he has been awarded many commendations/ awards. He has also successfully undergone the National Defence College course. It is alleged that respondent issued policy on quantification of marks for various Selection Boards vide letter No.04502/MS Policy dated 31.12.2008. In that, the distribution of marks for the Special Selection Board (SSB) for promotion from Maj.Gen to Lt. Gen. is as under:

(a)	CRs	-	92
(b)	Course and Awards	-	3
(c)	Value Judgement	-	5

3. The respondent further clarified the break down of CR marks for criteria appointments and staff appointments vide letter No.04502/MS Policy dated 15 April, 2009 wherein the sub-distribution of 92 marks for CRs for SSB are as under:

(a)	*Reports on Criteria Appt for For present SB*	-	*55*
(b)	*Report on Criteria Appt for For last SB*	-	*15*
(c)	*Staff / Instructional /Other Reports (Reckonable profile)*	-	*22*

4. The policy letters dated 31.12.2008 and 15.4.2009 were made effective to the Selection Boards held w.e.f.01.01.2009. It is alleged that as per the percentage of marks for criteria appointment and staff/instructional/ other appointments and awarding lower percentage for these appointments clearly makes it evident that it is accepted fact that the criteria appointment is much more challenging task and also the CRs on staff/instructional/other appointments are more liberal.

5. It is evident from the policy letters that the reckonable profile for promotion from the rank of Maj.Gen. to Lt.Gen. is the ACRs earned in the rank of Brigadier and Maj. Gen. It is also stated that inputs for SSB Boards shall freeze 05 days prior to the holding of the Board, thereby meaning that the fresh inputs for the SSB boards shall be accepted and incorporated for the Board upto 05 days prior to the holding of the Board.

6. The grievance of the petitioner is that some of the officers who received the distinguished service award (AVSM) on 26.1.2009 were also given an undue advantage as these awards carry additional weightage in the SSB Board. It is also alleged that there is a provision of seeking a special report vide Para 107 and Para 109 of AO 45/2001. The petitioner was considered by Special Selection Board (Fresh) in December, 2009 and the cut of date was kept as June, 2009 though there was sufficient time for seeking the special CR for the latest report upto November, 2009 in terms of Para 107 of AO 45/2001. In petitioner's case

only one CR was available in the rank of Major General and petitioner could not earn CR upto the cut of date of June, 2009 in a staff appointment in which he was posted in the rank of Maj.General.

7. It is further alleged that as per the policy letter dated 31.12.2008 and 15.4.2009 the criteria appointment CRs are given more weightage as compared to staff appointments CR. It is also pointed out that policy letter dated 15.4.2009 laid down that the CR earned in the staff/instructional/other appointments in the reckonable profile, i.e. reports earned as Brig and Maj. Gen. shall be having a weightage of 22% but policy letter dated 15.4.2009 has not laid down the further bifurcation of 22% weightage between the CRs earned in the rank of Brig. and Maj. Gen. Petitioner has earned only one CR in staff appointments in the rank of Brigadier and no CR in staff/instructional/other appointments in the rank of Maj.Gen. and thus the only CR earned as staff appointments should have been weighed for 22% in the quantification of marks. But he

has earned only 02 CRs within a period of 01 year as criteria appointment in the rank of Maj.Gen. and thus the CR of 01 year should have been weighed 55%.

8. It is alleged that respondents on their own, without any prior sanction of Ministry of Defence changed the policy & bifurcated the 22% weightage allocated to staff/instructional appointments into 17% for CRs earned in the rank of Maj.Gen. and 5% for the CR earned in the rank of Brig. The respondents further extrapolated the marks of criteria appointment CRs to arrive at the weightage of the staff appointment weightage in respect of the petitioner in the rank of Maj. Gen. The CR earned by the petitioner during one year only as Maj.Gen. has been given an extraordinary high weightage of 72% (55% as criteria appointment and 17% as staff appointment) to one year profile of the applicant in comparison to the other CRs of the applicant during entire service and the service rendered by the applicant in various operations and other fields thus created an imbalance in the profile of

the applicant. It is pointed out that the total weightage assigned for the criteria and staff appointments as per the policy is 70% and 22% respectively and by extrapolating the weightage in respect of the applicant by the SSB has resulted in 87% and 5% for the criteria and staff appointments respectively. It is pointed out that selection for the post of Lt. Gen. is very sensitive and a decimal makes a difference for empanelment. Therefore, the grievance of the petitioner is that officers are considered for the rank of Lt.Gen. after having a very short stint of tenures in the rank of Maj.Gen. and thus the excess weightage upto 72% for two reports within a single year in the rank of Maj.Gen. and the entire selection on such basis is against the principles of natural justice and also against the spirit of the policy of quantification of marks of CRs.

9. Since in this background petitioner could not make it to the post of Lt.Gen., therefore, he was driven to file this petition after exhausting the statutory remedies.

10. The main grievance of the petitioner is that the policy of extrapolation which was employed by the respondent was not approved policy by the Ministry of Defence and it is only for the first time it was introduced by amending the original policy on 23.12.10 and further clarified it on 04.1.2011 and 24.2.2011. The principle of extrapolation was not applicable either in the policy of 2008 or 2009 but still in 2009 while considering the case of the petitioner this policy was employed which was subsequently promulgated by the Ministry of Defence on 23.12.10 and after clarification on 04.01.2011 & 24.2.2011.

11. The reply has been filed by the Respondents and they contested the position and it is admitted that initially when both the policies which were issued by the Ministry of Defence, such procedure of extrapolation was not invoked, however, it was pointed out that the quantified system of selection was the policy formulated by the Ministry of Defence which comes into realm of executive functions of the Government and

the Chief of Army Staff. The respondent in order to bring in more and more objectivity and transparency in the selection process decided to formulat0e the new policy, commonly known as 'Quantified Selection System'. It is pointed out that during this process in order to have a empirical analysis of the issues involved, a study group presided over by Lt.Gen.Susheel Gupta, the then Dy. Chief of Army Staff was constituted. The study group after examining the various issues connected with the promotion, parameters involved in the selection process submitted its report after interacting with the environment. The report was considered at the various levels and the same was formulated.

12. It is also pointed out that policy has been upheld by the various benches of the tribunal. It is alleged that actions of the Respondent with regard to interpolation & extrapolation of staff report is as per the policy on quantification applicable to all the officers. It has been explained how proportionate weightage has been

derived from criteria report in the present rank in case there is no Non criteria report in the present rank and they have given a chart which is reproduced below:

Criteria – Max Marks – 70

Previous Rank (Max Marks)	Marks Obtained	Present Rank Max (Marks)	Marks Obtained	Total Marks Obtained (out of 70)
15	13.5	55	52.5	13.5+52.5=66

Non Criteria – Max Marks – 22

Previous Rank (Max Marks)	Marks Obtained	Present Rank Max (Marks)	Marks obtained	Marks Derived from Criteria	Total Marks obtained (Out of 22)
05	4.5	17	No CR	52.5 x17=16.23 55	4.5+16.23=20.73

13. It is pointed out that the proportionate weightage derived for non criteria reports from criteria reports in the present rank is well in consonance with the laid down weightage and procedures of the Army, where more weightage is given to the performance in the present rank in relation to the previous rank. So far as the principle which have been evolved by them and the system of quantification is concerned there is no challenge to that, but the question is that whether the interpolation system which they evolved, was approved

by the Ministry of Defence or was part of the policy at the relevant time when case of the petitioner was considered or not.

14. The grievance of the petitioner is that the principle of extrapolation which was evolved was not existent in the policy till 2009 and it is for the first time sought to be introduced by the proper notification issued by the Ministry of Defence on the 23.12.2010 and thereafter on 04.01.2011 and 24.2.2011. The policy dated 23.12.2010 has been reproduced as under:

Ministry of Defence
D(MS)

Subject: Review of Quantified System for Selection Boards

Reference Army HQs Note No.1 dated 22.10.2010, 26.10.2010 and 10.12.2010 recorded on File No.A/21501/QM-SD.NS-5, on the above subject.

2. The Competent Authority has broadly agreed to Army HQ's proposal to effect certain changes to the existing Quantification based Promotion Policy including the following:-

(i) Changes proposed for modifying marks to Criteria and Non-Criteria reports and 'Look Down Three' reports for promotion to the rank of Lt.Gen.
(ii) Modifying weightage for various courses.
(iii) Doing away with the marks for distinguished awards and modification of weightage to certain gallantry awards
(iv) Laying down timelines for declassification of results of various Selection Boards as per schedule below:-
  (a) No.3 SB - 5 weeks
  (b) No.2&1 SB - 8 weeks (for minor Corps)
  (c) No.2&1 SB - 10 weeks (for large arms)

The recommendations of the Selection Boards shall be forwarded to the Ministry within one week from the date of conduct of Boards.

3. The 'Value Judgement' marks awarded by the Selection Board will be kept at 5 as recommended by the Army HQ. However, in case the award of Value Judgement mark alters the comparative overall merit of an officer resulting in changing promotion prospects, the Selection Board should record the reasons for awarding low/high Value Judgement marks which would help Competent Authority appreciate the rationale and also facilitate in defending the decision should it be contested in a judicial forum.

4. As regards extrapolation of marks for Non-Criteria reports, Army HQ may furnish details of how the proportionate weightage will be provided.

5. On the issue of Selection Board for single officer, the AHQ recommendation for delinking the issue has been agreed to.

6. The vacancies to be declassified at least 15 days before the conduct of Selection Boards.

7. The changes in Quantification Policy should be widely disseminated to the environment / posted on the Army Intranet.

8. The revised Policy to be implemented with effect from April 1, 2011.

(Subhash Chandra)
Joint Secretary (G/Air)
Tel:23011410

16. After this system, a further clarification was sought by the Ministry of Defence and MS Branch sent a break-up explaining how this system of extrapolation will be implemented. This was explained in 06.01.2011 letter which reads as under:

A/21501/QS/MS-5 06 Jan 2011

MILITARY SECRETARY'S BRANCH

(MS-5)

REVIEW OF QUANTIFIED SYSTEM FOR SELECTION BOARDS

1. Please refer to Para 4 of MoD ID No.8(52)2006-D(MS) dt.23 Dec. 2010

2. In this connection please refer to our note No.A/21501/QM-SD/MS-5 dt. 22.10.2010 and even No. 10 December, 2010. The issue is further explained with the help of an example for No.1 SB as to how the proportionate weightage is derived from Criteria report in the present rank in case there is no Criteria report in present rank.

3. Criteria – Max Marks -65

Previous Rank (Max Marks)	Marks Obtained	Present Rank Max (Marks)	Marks Obtained	Total Marks Obtained (out of 70)
19	17.5	46	44	17.5+44=61.5

Non-Criteria - Max Marks - 26

Previous Rank (Max Marks)	Marks Obtained	Present Rank Max (Marks)	Marks obtained	Marks Derived from Criteria	Total Marks obtained (Out of 22)
8	6.8	18	----	$\frac{44}{46}$ x18=17.21	6.8+17.21=24.01

Total Marks = 61.5+24.01 +85.51

4. The proportionate weightage derived from non criteria reports from criteria reports in the present rank is well in consonance with the laid down weightages and procedures of Indian Army. In the Army more weightage is given to performance in the present rank in relation to the previous rank. Any alteration to this system will alter the weightage and importance of the present rank, which is undesirable for promotion to the next rank.

5. This has the approval of the MS

(KH Singh)
Brig
Dy Ms (B)

Under Secretary (MS)
MoD

This was finally approved by the Ministry of Defence on 24.2.1011 which reads as under:

Ministry of Defence

Subject: Proceedings of No.1 SB and SSB held on 7th Jan., 2011.

Reference: (i) PC No.A/47052/SB/GC/MS(X) dated 31st January, 2011

(ii) PC No.A/47053/1SB/GC-1/MS (X) dated 31st January, 2011.

The following decisions have been arrived at with the approval of the competent authority:-

(i) The names of officers recommended by No.1 SB and SSB held on 7th January, 2011 shall be cleared for promotion after due scrutiny on the basis of the revised Quantified Model.

(ii) The streaming of the officers recommended for promotion into 'Command and Staff' stream and 'Staff only' stream shall be done as per the extant policy.

(iii) The vacancies of Maj. Gen. and Lt.Gen.shall be calculated as per the extant policy.

(iv) The promotion of Brig. to Maj. Gen. shall be made forthwith as per availability of vacancies, and not postponed till 1st April, 2011.

2. In view of above, AHQ are requested to confirm that the streaming of officers recommended for promotion into 'Command and Staff' stream and 'Staff only' stream has been done as per extant policy; if not, No.1 SB and SSB may be convened without any delay to recommend streaming of the officers recommended for promotion as per extant policy as also to fill the remaining vacancies of Man. Gen. and Lt. Gen. as per the calculation of vacancies done under the extant policy.

(K.L.Nandwani)
Deputy Secretary (MS)
Phone:23017523

17. Therefore, the grievance of the petitioner is, it is true that quantified system of policy of 2008 that was supplemented in 2009 was in vogue but the principle of extrapolation marks of non-criteria report was not

available to the Selection Board at the time when case of petitioner was being considered for promotion from Maj.Gen. to Lt.Gen. We reproduced all these relevant orders bearing on the subject and it shows that at the time when Selection Board met for selection to the post of Maj.Gen to Lt.Gen. the policy of extrapolation was not approved by the competent authority i.e. Ministry of Defence. The authorities felt constrained that how it should be done and they on their own evolved the system and considered the persons for promotion from Maj.Gen. to Lt.Gen. on the basis of extrapolation. But without seeking a proper approval of the competent authority i.e. rule framing authority (Ministry of Defence). It is only that a proposal was later on mooted out as it appears from the communication dated 23.12.2010 that Army HQ wrote a letter on 23.12.2010 and onwards correspondence started but before that selection had already taken place and the principle of extrapolation was invoked. It is only after this proposal which is mooted out by the army, same was approved first on the 23.12.2010 and finally a seal of

approval was granted on 24.2.2011. A correspondence as reproduced above, show from the sequence that the time when this selection took place the principle of extrapolation was not part of policy. This principle was invoked and it was unilaterally followed for other Selection Boards also. It is alleged that this method was suggested by the study group but when 2008 policy was promulgated this extrapolation system was not introduced. The extrapolation was incorporated in the policy dated 23.12.2010. It is admitted fact that at the time when selection took place this policy was not in vogue and it was not approved by the competent authority. The petitioner has right to be considered as per the policy which was in vogue. It is his right to be considered on the basis of the policy laid down by the competent authority. The Selection Committee on their own cannot evolve the policy. It is not given to the Selection Committee to evolve their own policy and undertake the exercise. It appears that this was realised by the respondent subsequently that this principle of

extrapolation needed to be incorporated in Policy, therefore, Army Headquarters sent it to the Ministry for approval and it was only approved on 24.2.2011. Learned Counsel for the petitioner has submitted that this method of post approval does not amount to the validation of act done by the respondent. However learned counsel for the respondent has tried to emphasise that the principle which has been adopted by the Selection Committee is confirmed / approved by the Ministry of Defence and subsequently that amounts to ratification of method of extrapolation adopted by the Selection Committee, and in that connection learned counsel has invited our attention to the decision of the Supreme Court in the case of ***Goa Shipyard Ltd. Versus Babu Thomas [(2007) 10 SCC 662]*** to which we will refer later on.

17. Learned Counsel for the petitioner has submitted that policy decisions are normally promulgated and made known to public, they fall in public domain. The Selection Committee cannot change or modify or add in that.

18. In this connection Learned Counsel has invited our attention to decision of the Supreme Court Case of ***Harla Versus The State of Rajasthan [AIR 1951 Supreme Court 467].*** This was the case where Resolution by a Council of Ministers was passed in the year 1924 purporting to enact the Jaipur Opium Act in the year 1924 without promulgation or publication in the Gazette or other means to make the Act known to the public and it was held that it was not sufficient to make it a law. Therefore, it was argued by the learned counsel that once the Defence Ministry has already evolved the policy and made it public that will prevail and Selection Committee has no power to modify or add. If the Selection Committee felt that there was some difficulty with regard to the assessment of the CR then they should have stalled the selection and sought the clarification or proper amendment to the policy from the competent authority i.e. Ministry of Defence and that was done on 23.12.2010 and subsequently on 04.01.2011 and 24.02.2011. Therefore, the action taken by the respondent considering

the case of petitioner without taking legal sanction is illegal. In this connection our attention is also invited to other decision of the Supreme Court in the case of ***Dr. Krushna Chandra Sahu and Ors. Versus State of Orissa and Ors. [AI 1996 SC 352]***. In this case the question arose that the gap was provided by the Selection Board for selecting the teachers in Orissa Homeopathy Medical Teaching Service (Methods of Recruitment and Conditions of Service) Rules, 1980. The Lordships observed:

> *"If the Statutory Rules, in a given case, have not been made, either by the Parliament or the Governor of the State, it would be open to the appropriate Government (the Central Government under Art.73 and the State Government under Art.162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions.*
>
> *Where Rule 3 was silent as to the guidelines on the basis of which suitability of the candidate for appointment to post of junior teachers was to be adjudged and the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of suitability of the candidates was to be determined, the decision of members of the Selection Board, of their own, to adopt the confidential character rolls of the candidates who were already employed as Homeopathic Medical Officers, as the basis for determining their suitability was wholly arbitrary, without authority or jurisdiction. The members of the Selection Board or for that matter any other Selection Committee do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Art.309. It is basically the function of the Rule making authority to provide the basis for selection. Further, the rule*

making function under Art. 309 is legislative and not executive for this reason also, the Selection Committee or the Selection."

It was further observed that Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislation selection. Consequently said selection was set aside.

20. Our attention was also invited to the decision of the Supreme Court in ***Chairman, Railway Board & Others Versus C.R. Rangadhamaiah and others (AIR 1997 SC 3838)***. In this case, the running allowance was amended from retrospective date. In that connection their Lordships have pointed out that:

"Both the notifications in sofar as they have been given retrospective operation are, therefore, violative of the rights then guaranteed under Articles 19(1) and 31(1) of the Constitution. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f) the impugned amendments, in so far as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement."

21. Learned Counsel has also invited our attention to the decision of the Apex Court delivered in the case of

K.Manjushree, etc. V. State of A.P. and Anr (AIR 2008 SC 1470). This was the case with regard to the selection to the post of District and Sessions Judge – Criteria decided by Administrative Committee of High Court – was only marks for written examination and not for interviews will be taken at the time of selection. The Selection Committee introduced the minimum marks for interview after the entire process is completed.

The facts of the case are that the post of the District and Sessions Judge (Gr.II) was advertised and selection was through written examination and candidates were to secure 75% in written and 25% in oral examination. The result was declared on 24-02-2005 and 83 candidates were successful in the written examination. Thereafter, some litigation followed and selection could not be expedited. A Committee of five Judges was constituted for interviewing the candidates and interviews were held in March, 2006. Thereafter, the marks obtained by the 83 candidates obtained by them in the written examination and in the interview were aggregated and a consolidated

merit list of the 83 candidates was prepared in the order of merit on the basis of the aggregate marks. The Administrative Committee recommended the names of 10 persons and same was placed before the full Court. The full Court considered the recommendation of the Administrative Committee but it did not approve the selection list prepared by the Interview Committee and approved by the Administrative Committee by resolution dated 4-4-2006. The full Court authorised the Chief Justice to constitute a Committee of the Judges for preparing a fresh list of candidates to be recommended for appointment of District and Sessions Judge (Gr.II). Thus, the Chief Justice appointed a Sub-Committee of two Judges on 7-4-2006. The sub-committee was of the view that the candidates should be evaluated with reference to the marks obtained by them in written examination and interview marks as per the resolution dated 30-11-2004, instead of being evaluated with reference to written examination marks of 100 and interview of 25, thereby

varying the prescribed ratio between written examination marks and interview marks from 3:1 to 4:1.

Therefore, it scaled down the marks obtained by the candidates in written examination with reference to total of 100 marks, in proportion to maximum of 75 marks. By adding the interview marks of 25, the total marks obtained by the candidates with reference to total marks of 100 (as against 125) were recalculated. The sub-committee was also of the view that apart from applying the minimum marks for the written examination for determining the eligibility of the candidates to appear for the interview the same cut off percentage should be applied for interview marks, and those who fail to secure minimum marks in the interview should be considered as having failed. On this criteria a list of 31 candidates was prepared and out of it 9 candidates were recommended for appointment and same was placed before the full Court and it was approved. One of the candidates Ms.K.Manjusree whose name was found in the first list contended that the minimum marks for interview not

having been prescribed either under the rules or by the resolution dated 30.11.2004 by the Administrative Committee, the action of the full Court altering the norms for selection by introducing minimum marks for interview, after completion of the selection process, would amount to changing the rules of the game.

In this background, a writ petition was filed by K.Manjushree which ultimately reached to the Hon'ble Supreme Court. The Hon'ble Supreme Court after considering the matter held:

> *"We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview".*

22. But in the present case the Selection Committee on their own laid down the criteria and they took the selection and thereafter sent to the Government for ratification of the same, whether this can be done or not. Our answer is in negative. Once the rules have been laid down and Selection Committee has been given procedure then Selection Committee has to make a selection as per that procedure and it cannot on their own supplement the policy and make a selection and thereafter seek the validation of the same by the Government. This seriously affect the rights of the parties. The party has right to be considered as per the policy laid down by the rule framing authority. Once the rule framing authority had laid down the policy and then Selection Committee cannot on their own take upon themselves to supplement the rules.

As against this learned counsel for Respondent invited our attention to a decision of the Supreme Court in the case **of Goa Shipyard Ltd. Versus Babu Thomas *[(2007) 10 SCC 662]***. This was a case under the Companies Act, 1956. In this case action was taken against an

employee working under the Goa Shipyard(Conduct, Discipline and Appeal) Rules, 1979 and the incumbent was charge sheeted and disciplinary enquiry was initiated and order of dismissal was passed and under the rules major penalty could be imposed by GM/Functional Director with appeal before the CMD. The CMD appeal was heard by Board of Directors and confirmed the sentence and when the question arose that the purpose of the proposed amendment to redesignate the disciplinary, appellate & reviewing authorities for imposing minor and major penalties was correct or not. The rules were approved by circulation, by the Board of Directors and on 29.3.1996 CMD issued a circular notifying all employees, that the amendments to the CDA Rules were approved and that the amendments came into force w.e.f.8-1-1996. The said amendments inter alia substituted the General Manager/ Functional Director as disciplinary authority in place of "the Board" and CMD as the appellate authority in place of "the Board" for imposing major penalties in the cases of officers (upto and inclusive of Managers). In

regard to grades above Deputy General Manager / CMD was designated as the disciplinary authority and the Board was the appellate as well as reviewing authority. The inquiry officer completed the inquiry and submitted its report on 19-9-1996 indicating the charges which were proved and not proved. A show-cause notice dated 5-10-1996 was issued. After examining the reply dated 31-10-1996 to the show-cause notice the respondent was dismissed from service by an order dated 21-1-1997 passed by the Chairman-cum-Managing Director. The respondent's appeal before the appellate authority was rejected by an order dated 27-9-1997.

The High Court held that Rule 41 of the CDA Rules provided that any amendment will take effect from the date stated therein and, therefore, the date of coming into effect should be contained in the amendment itself and not in a circular notifying the amendment. The High Court held that the amendment approved vide Board resolution notified on 29-3-1996 did not mention the date from which the amendment would be effective and therefore

the amendment did not come into effect. Accordingly, the order of dismissal passed by the CMD on 21-1-1997 and the appellate authority's order dated 27-9-1997 rejecting the appeal were set aside by the High Court."

Aggrieved by this order of the High Court, the management took up the matter before the Apex Court and Hon'ble Supreme Court held as under:

> *Having regard to the Board's resolution dated 18-3-1998, it should be taken that the amendment of CDA Rules by Circular Resolution No.13/1995, itself provided that it would take effect from 8-1-1996 (the date on which the same was approved by the majority of Directors). Therefore, Rule 41 of the CDA Rules that the amendment will come into effect from the date stated therein was fully complied with. The question whether the Board of Directors of a company could subsequently ratify an invalid act and validate it retrospectively is no more res integra. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim ratihabitio nandato aequiparatur, namely, 'a subsequent ratification of an act is equivalent to a prior authority to perform such act.' Therefore, ratification assumes an invalid act which is retrospective validated.'*

25. But in the present case it is not the validation retrospectively by the rule making authority. The rule making authority has approved this principle only w.e.f.23.12.2010, 4.1.2011 and 24.2.2011. It was not the case that Ministry of Defence has approved the

unauthorised action taken by the Selection Committee of evolving their own principle of extrapolation retrospectively. There is no ratification as alleged by the Respondent by the Ministry of Defence. The policy which has been evolved by Selection Committee has been approved and it has been incorporated in the policy of 2008 by subsequent notifications i.e.23.12.2010, 4.1.2011 and 24.2.2011. Therefore, these are the policies which came into effect for the first time from the date they had been notified by the competent authority i.e. Ministry of Defence. Thus the action of the Selection Committee in considering the case of the petitioner by policy of extrapolation evolved by them was totally unauthorised. We have been given to understand that since then many selection boards have taken place and number of persons have been selected, as in army action has to be taken very swiftly and it cannot be delayed long as it is going to affect efficiency of forces. However, we are not going to disturb the selections made so far nor are same before us, but so far as petitioner is concerned, we

are limiting the relief to the petitioner as petitioner has made grievance affecting him. As he has right to be considered for promotion according to Rules which are in vogue, the case of the petitioner should be reconsidered by the Selection Committee vis-a-vis his batchmates without resorting to principle of extrapolation. In case he is found suitable & recommended by the Selection Committee then consequential benefits be given to petitioner. This should be done within three months from the date of receipt of copy of this order.

26. No order as to costs.

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[Justice A.K. Mathur]
Chairperson

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[Lt. Gen. ZU Shah]
Member (A)

New Delhi
21st December, 2011