

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI  
(Court No.2)**

**O.A NO. 130 of 2011**

**IN THE MATTER OF:**

**Maj Gen VSS Goudar, UYSM, AVSM, VSM .....APPLICANT**  
Through : Mr. Rajiv Manglik counsel for the applicant

**Vs.**

**UNION OF INDIA AND OTHERS ...RESPONDENTS**  
Through: Ms. Anjana Gosain counsel for the respondents

**CORAM:**

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER  
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 23.04.2012**

1. The OA No.130/2011 was filed in the Armed Forces Tribunal on 06.04.2011.
2. Vide this OA, the applicant has prayed for quashing of the Special Selection Board (SSB) held on 07-08 December 2009 with specific reference to extrapolation of marks of staff appointments from the CRs of criteria appointments contrary to the policy letter dated 15.04.2009. The applicant has also prayed for quashing and setting aside of the proceedings of the SSB held on 07.01.2011 which was under the revised quantified policy which was issued on 04.01.2011, since the Board was originally scheduled to be held in October 2010, thus the old policy should have been applied. The applicant has also

sought that the Board for the General Cadre as per policy of 31.12.2008 and 15.04.2009 be held and the applicant be considered as a fresh case as per the extant policy. He has also prayed for consequential benefits should he be selected by the SSB. The applicant has also prayed for including the YSM Series awards at par with Gallantry awards under the Honours and Awards.

3. Brief facts of the case are that the applicant was commissioned in the Army on 22.12.1974 in the rank 2/Lt and was allotted the 8 Maratha LI in the Corps of Infantry (Inf.). During course of service, the applicant was awarded various distinguished awards viz., VSM, AVSM, UYSM for counter insurgency operations in J&K in 2010. Besides, the applicant had attended various courses and held many key appointments. The applicant has also participated in various operations. He was promoted to the rank of Major General on 18.06.2008 as was appointed as GOC, CIF (K) in J&K. Here he was awarded UYSM for outstanding performance.

4. On 31.12.2008, the respondents issued a policy on quantification of marks for various selection Boards (Annexure A-5). This was further clarified on 15.04.2009.

5. It is contended that the applicant was considered by the SSB on 07-08 December 2009 for the promotion to the rank of Lt General. The results were declared on 13.04.2010 and the applicant was informed that he has not been empanelled for the promotion. The applicant

submitted a statutory complaint against his non-empanelment and highlighted the facts that his staff report in the rank of Major General was not admitted. Instead his command reports were interpolated and were given the weightage as staff reports.

6. It is further contended that the first review of the applicant was scheduled on 28.10.2010. This was postponed for the reasons best known to the respondents to November 2010. Thereafter it was again postponed and finally it was held on 07.01.2011. Meanwhile, on 04.01.2011 a revised quantification policy was issued which apparently did not have the approval of the competent authority, details of which were obtained by the applicant through RTI. The Competent Authority on 23.12.2010 and 06.01.2011 had directed the Army Headquarters to make the new revised quantification policy applicable from 01.04.2011. It is understood by the applicant that the revised quantification policy was used by the respondents when the SSB was held on 07.01.2011.

7. The statutory complaint of the applicant was rejected on 17.02.2011. The applicant has averred that the SSB held on 07-08<sup>th</sup> December 2009 put the applicant to a disadvantage because his marks for the staff as a Major General were interpolated with the help of Command CRs which was unfair and put the applicant to a disadvantage. While in the SSB held on 07.01.2011, the revised quantification policy was utilised which did not give weightage to the awards earned by the applicant.

8. Learned counsel for the applicant argued that the statutory complaint of the applicant has been wrongly rejected on the premise that the policy of 31.12.2008 and 15.04.2009 permitted extrapolation of marks.

9. Learned counsel for the applicant cited the judgment of Hon'ble Apex Court in **Y.V. Rangaiah Vs J. Sreenivasa Rao 1983 (2) SCC 284** wherein the Hon'ble Apex Court has held that the vacancy occurring prior to the amendment of recruitment rules has to be filled as per the unamended recruitment rules and as such vacancies occurring in Feb and Mar 2011 cannot be filled by the policy letter dated 04.01.2011 which was to be effective w.e.f. 01.04.2011. He further argued that the board for general cadre 1975 batch and non general cadre staff only of 1974 batch were scheduled in October 2010. Though it was finally held in January 2011 but since the Board was originally scheduled in October 2010, the policy of 31.01.2008 and policy dated 15.04.2009 should have been applied. Whereas the officers of 1975 general cadre were considered by the revised quantification policy of 04.01.2011 and the non general cadre were considered as per policy of 31.01.2008 and 15.04.2009. Thus, there has been discrimination in application of the policy within the same batch. He further argued that as per policy letter of 15.04.2009, 22% marks were for staff/instructional/other reports in the reckonable profile and does not further lay down any bifurcation for the reports earned in the rank of Brig or Maj Gen. Further bifurcation of 22% weightage of

staff/other reports earned in the rank of Maj Gen and Brig is against the policy on the subject and resorting to such bifurcation without the knowledge of the environment is against the principles of natural justice. Besides, extrapolation of marks has resulted in excess weightage of one year CR. He further argued that the achievements of the applicant and participation in various operations have not been given due weightage. On the other hand, pen pictures of the two CRs earned in one year CRs does not match with the numerical gradings of the concerned CRs and lacks objectivity. He further argued that the award of UYSM should be awarded due weightage at par with the Gallantry Award. He argued that vide policy letter of 15.04.2009, a special CR should have been called by the respondents right upto five days before the SSB so that his staff report could have also been considered.

10. In support of her contentions, learned counsel for the applicant cited the following case laws:-

- (i) AIR 1951 SC 467 Harla Vs The State of Rajasthan
- (ii) AIR 1997 SC 3828 Chairman, Railway Board & Others Vs C.R. Rangadhamaiah and others
- (iii) AIR 1996 SCC 352 Dr. Krushna Chandra Sahu and other Vs State of Orissa and others

(iv) AIR 2008 SCC 1470 K. Manjusree & Ors. Vs State of A.P. and Another

(v) OA No.79/2011 AFT(PB) Maj Gen SKH Johnson Vs Union of India and others

11. Learned counsel for the respondents stated that the policy for selection by quantification was issued on 31.12.2008 (Annexure A-5). It was made effective from 01.01.2009. The policy was further amplified vide letter of 15.04.2009 (Annexure A-6). The applicant was first considered by the promotion Board as per revised policy on 07<sup>th</sup>-08<sup>th</sup> December 2009. In this Board he was not empanelled. The statutory complaint preferred by the applicant on 15.04.2010 (Annexure A-8) was considered by the Central Government and rejected on 15.02.2011.

12. Learned counsel for the respondents stated that it was expected that the next Board i.e. first review in respect of the applicant was to be held on 28.10.2010. However, it was postponed due to certain management reasons to November 2010. It was further postponed to 07.01.2011. Meanwhile fresh policy was issued dated 04.01.2011 and the Board was held as per norms contained in this revised policy.

13. Learned counsel for the respondents argued that the revised policy issued on 04.01.2011 had been approved in principle by the MOD vide their letter dated 23.12.2010 (Annexure R-1). It was further accepted by the MOD vide their letter dated 06.01.2011 (Annexure R-

2). These two notes indicate the date of policy being effective was to be from 01.04.2011. However, since the Board on 07.01.2011 was held as per revised quantification policy of 04.01.2011, having considered all the options, the Hon'ble RM decided to give ex post facto approval which was conveyed to the Army HQ on 24.02.2011 (Annexure R-3).

14. In view of the foregoing, learned counsel for the respondents argued that due sanction had been accorded by the competent authority for the Board held on 07.01.2011 which was held as per the revised quantification system detailed in the letter of 04.01.2011. In support of her contentions, she also cited **OA No.79/2011 AFT(PB) Maj Gen SKH Johnson Vs Union of India and others** decided on 21.12.2011.

15. Having heard both the parties at length and having examined all the documents, we are of the opinion that the facts of the case are exactly similar especially in respect of the Board held on 07<sup>th</sup>-08<sup>th</sup> December 2010 as that of **OA No.79/2011 AFT(PB) Maj Gen SKH Johnson Vs Union of India and others**. In view of this factum valid, we consider that the applicant should be given the same relief as has been given to Maj Gen SKH Johnson since the applicant had filed the OA at about the same time and the cases were being heard concurrently though before the separate Benches.

16. During the course of arguments attempts were made to distinguish the judgment of Maj Gen SKH Johnson (Supra), but it has not been convincing. To that extent the judgment is fully binding on this case also.

17. As such, the judgment given in the case of Maj Gen SKH Johnson (Supra) will also apply mutatis mutandis to this case and the relevant para of the said judgment is quoted below:-

*"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."*

18. As regards the Promotion Board held in respect of the applicant on 07.01.2011, we have examined the material including the original noting sheets in which the Hon'ble RM, was the competent authority, recorded specific approval on 22.02.2011 for the SSB held on 07.01.2011. It is clear that the revised quantification model was approved by the Hon'ble RM. Therefore, to this extent the applicant is not entitled to any relief. Similar contentious issues were raised and discussed in case of Maj Gen D.L. Choudhary, OA No.166 of 2011

which was heard and decided by us vide judgment dated 23.04.2012.

The same is also applied in this case.

19. In view of the foregoing, we hold that the applicant is entitled to a fresh consideration by the respondents as of 09<sup>th</sup> December 2009. During this consideration, the policy of 31.12.2008 and 15.04.2009 will apply. He will be entitled to all consequential benefits accordingly. However, as regards the SSB of 07.01.2011, the applicant has been considered by the Revised Quantification Policy of 04.01.2011 which stands approved by the Competent Authority. We, therefore, are not inclined to interfere in the matter.

20. The exercise will be completed within a period of 90 days from the date of the order. The OA is partially allowed. No order as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**

**(MANAK MOHTA)**  
**(Judicial Member)**

**Announced in the open Court**  
**on this 23<sup>rd</sup> day of April, 2012.**