

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

**O.A NO. 166 of 2011**

**IN THE MATTER OF:**

**Maj Gen D.L. Chowdhary** .....**APPLICANT**  
Through : Ms. Jyoti Singh, Senior Advocate with Mr. N.S. Bajwa and  
Ms. Tinu Bajwa 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.166/2011 was filed in the Armed Forces Tribunal on 27.04.2011.
2. Vide this OA, the applicant has prayed to quash the Special Selection Board (SSB) proceedings for General Cadre Officers of 1975 Batch fresh cases and 1974 review cases held on 07.01.2011. The applicant has also prayed that the respondents be directed to hold the SSB again by applying the parameters laid down in the preceding policy dated 31.12.2008 read with letter of 15.04.2009 and redraw the merit list of Select Panel. The applicant has also sought that in case of empanelment, the applicant be promoted to the rank of Lt General by

01.04.2011 and thereby grant all consequential benefits despite his retirement on 30.04.2011 in the present rank of Maj Gen.

3. As an interim prayer, the applicant has sought the declassification of the SSB held on 07.01.2011 be withheld and the retirement of the applicant on 30.04.2011 in the present rank of Maj General be stayed.

4. Brief facts of the case as submitted in the application are that the applicant was commissioned into the Indian Army (Inf) in 1974 having put in 38 years of unblemished and dedicated service and was promoted to the rank of Maj General. The applicant has undergone all important military courses like Defence Service Staff College Course at Wellington and the Higher Command Course, Mhow. He was promoted to the rank of Maj General in 2008-2009. During the command assignments as a Brig and later on as Maj Gen, he was posted in J&K where he commanded in intense counter insurgency and counter terrorist operations. He has been awarded the VSM, Sena Medal and AVSM for his outstanding performances.

5. It has been stated that for several years the Indian Army selected or undertook Special Selection Board as per policy of 06.05.1987. A new system of selection was introduced with a view to improve the promotion system and bring in greater transparency and objectivity. This was called the Quantified Promotion Policy and was brought into effect w.e.f. 01.01.2009 for a period of three years. A

three year moratorium was laid down with a view to allow the new system of selection to establish thus enabling proper evaluation (Annexure A-1).

6. By another letter dated 15.04.2009, the Army released the detailed distribution of marks in respect of the CRs for various Selection Boards (Annexure A-2). The Army authorities decided to further revise the policy prematurely an year in advance and issued policy dated 04.01.2011. Based on this letter, SSB was held on 07.01.2011 in which the applicant apprehends that his name would not have been selected because of the reasons given in the succeeding paragraphs.

7. As per policy letter of 31.12.2008 and amended vide letter dated 15.4.2009, the break up of marks for the SSB for the rank of Lt Gen for honours and awards, courses, value judgment etc., was as under:-

**(a) Confidential Reports**

*In the last two ranks i.e. Maj Gen and Brig.*

- |      |                              |             |
|------|------------------------------|-------------|
| (i)  | <i>Criteria appointments</i> | <i>: 70</i> |
|      | <i>(aa) Present SB-</i>      | <i>55</i>   |
|      | <i>(ab) Last SB-</i>         | <i>15</i>   |
| (ii) | <i>Staff appointments</i>    | <i>: 22</i> |

**(b) Courses**

- |     |                                 |              |
|-----|---------------------------------|--------------|
| (i) | <i>National Defence College</i> | <i>: 0.6</i> |
|-----|---------------------------------|--------------|

(ii) *Higher Command/Higher Defence Management Course* : 0.3

(iii) *Psc* : 0.1

**(c) Honours and Award**

(i) *Uttam Yudh Seva Medal* : 1.10

(ii) *Ati Vishisht Seva Medal* : 0.90

(iii) *Sena Medal (Distinguished)* : 0.45

(iv) *Vishisht Seva Medal* : 0.40

**(d) Value Judgment by the Board** : 5

8. It is contended that the applicant was screened for promotion to the rank of Lt Gen by SSB in December 2009 and this was on the basis of the policy dated 31.12.2008. However, on the said date the applicant was not having an ACR for the Staff Appointment in the rank of Maj Gen. As a result, the applicant was put to a disadvantage compared to those who had earned Staff Appointment Reports as it is comparatively easier to obtain higher figurative gradings in reports earned in Staff Appointments. Resultantly, the applicant lost out on his approval for the next rank while officers of the senior batch i.e. 1973, having earned Staff Reports and awards were approved as first review cases. The applicant also feels that despite this, he may have missed the Board only narrowly as his profile was otherwise excellent.

9. On 26.01.2010 the applicant was awarded the AVSM. Therefore, the applicant was quite sure that he would be empanelled for the next rank during the SSB that was scheduled to be held in October 2010.

10. It was intimated to all concerned that the SSB will be held on 28.10.2010. However, this was postponed while the SSB for Non-General Cadre Officers of 1974-75 batch was held on 28.10.2010. The SSB was rescheduled for 26.11.2010 but for some administrative reason it was further postponed. This information was obtained by the applicant through RTI (Annexure A-3). Consequently, the panel of approved officers of Lt Gen in the general cadre had been exhausted and there were vacancies going unutilised.

11. It was contended further that the Army authorities meanwhile sought approval of the MOD for revising the selection parameters. This was obviously with a view to favour some blue eyed officers who seem to have little chances of promotion under the policy in force dated 31.12.2008. Therefore, the revised policy was issued on 04.01.2011. However, it is alleged that the MOD while approving the revised policy had specifically directed that the revised policy will be applied only for Screening Boards scheduled after 01.04.2011 as it is normal practice to apply change in parameters for selection for promotion from a prospective date. The said information obtained by the applicant through RTI to support this contention is at (Annexure A-4).

12. It is urged that the main difference between the policy of 31.12.2008 and policy of 04.01.2011 are as below:-

(a) Confidential reports are now to be considered for the last three ranks i.e. Colonel, Brigadier and Major General as against for two ranks i.e. Brigadier and Major-General in the earlier policy.

(b) Marks for 'distinguished services', awards, i.e., Uttam Yudh Seva Medal, Yudh Seva Medal, AVSM, Sena Medal, VSM etc. have been removed in the new policy as they were in said policy of 31.12.2008.

13. It has further been stated that immediately after the issue of the revised policy, the respondents held the SSB for the 1975 Batch on 07.01.2011 i.e., in less than 3 days from the issue of the policy. Furthermore, the date of applicability of the new policy was conveniently not mentioned in the policy letter dated 04.01.2011 despite MOD's directions to apply the criteria from 01.04.2011.

14. The applicant is due to retire on 30.04.2011 on attaining the age of superannuation of 58 years as fixed for Maj General.

15. Learned counsel for the applicant submitted that as per policy invoked and the Article 309 of Constitution of India, the terms and conditions of service have to be laid down by the GOI. In this case, the letter of 04.01.2011 was not approved by the MOD because vide their communication of 06.01.2011 they had raised certain objections to the

promulgation of letter of 04.01.2011 which states that *“While para 8 of MoD’s ID Note under reference specifically mentioned that the revised policy would be implemented from April 1, 2011, MS Note under reference is silent in this behalf.”* It further went on to state that *“Army HQ propose to follow the existing method for extrapolation of criteria reports for Non Criteria reports in the present rank despite the fact that the same has not been approved by the MoD. In this context, it would be pertinent to invite attention to para 4 of this Ministry’s ID Note under reference in terms of which AHQ were requested to furnish details of the proportionate weightage proposed to be assigned, before the proposal could be considered further. It may also be pointed that the existing method being followed by MS Branch does not have approval of the Competent Authority.”*

16. Learned counsel for applicant further argued that this Note was sent on 06.01.2011 to the Army HQ, it means that the proposed policy of 04.01.2011 had not been approved by the GOI. Learned Senior Counsel further submitted that this information was obtained through the RTI. She further argued that the policy which was promulgated on 31.12.2008 was for a period of three years, till the system stabilised after which the Army HQ could have sought review of the policy before laying down the time limit if the situation so warranted.

17. Learned counsel for the applicant argued that in the opinion of the Solicitor General of India, which was again obtained through the RTI, he has opined on 12.05.2011, which reads as under:-

*“I am of the view that the objections raised by the Ministry of Defence are valid. A sudden change in policy is likely to be considered as arbitrary and violative of the principles contained in Article 14 of the Constitution of India. I agree with the view expressed by Shri Pradeep Kumar, Defence Secretary that reducing the vacancies available for promotion by adopting a new PRV model without taking Government’s approval is not only incorrect but would also result in unnecessary litigation and disquiet in the environment which would be detrimental to the discipline of the Armed Forces.”*

18. Learned counsel for the applicant also argued that the review of the quantified system for Selection Board was also cleared in principle by the MoD on 23.12.2010 and in that again the MoD had highlighted that *“The revised policy to be implemented with effect from April 1, 2011”*.

19. Learned counsel for the applicant further argued that by applying the new policy the applicant was put to a great disadvantage because he was unable to meet the criteria laid down by the new policy which was detrimental and prejudicial to him specifically and thus changed his ranking in the overall merit. She contended that the promotion avenues being limited in the higher ranks within the armed



forces, the applicant was put to great disadvantage. It is also not legally sustainable. The policy which has not been approved by the MoD cannot be utilised for deliberations of the Selection Board.

20. The learned senior counsel for the applicant also stated that the applicant stands approved at SI No.18 in the staff stream as per notification issued by the MS branch on 25.05.2011. Had he been rightfully considered under the policy of 31.12.2008, he would have obtained 1.35 more marks and he would have come up in the Command and Staff Stream at SI. No.3 being the senior most in 1975 batch. She further argued that on 01.04.2011 the Army top brass quarterly list had only 79 Lt Generals listed against 86 Lt Generals authorised which includes 4 additional vacancies released on 01.04.2011 under A.V. Singh Committee Award. Therefore, there were adequate vacancies available as on 01.04.2011 for the applicant to be promoted had he been shown at SI N0.3 in the promotion list in Command and Staff Stream. Since the new policy issued on 01.04.2011 had not been approved by the GOI, an ex post facto sanction cannot be deemed to be valid because the issue of promotion has to be prospective and cannot be imposed in a retrospective manner nor it was made effective from any retrospective date.

21. In support of her contentions, Learned counsel for the applicant cited AFT (PB) judgment passed in **OA No.79/11 decided on 21.12.2011 in the matter of Maj. Gen. SKH Johnson, SM, VSM**

**Vs Union of India & Ors.,** in which also the same revised policy which was made effective from 01.04.2011 was in dispute and the selection body acted and applied that policy, the Hon'ble Tribunal have directed that *".....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."*

22. Learned counsel for the respondents states that the facts of the case are not in dispute. However, the issue was seized with the MoD and this being the development of a policy, an interactive approach and certain exchange of views was taking place. It is in the effort of making the selection system more transparent and fair that the quantification system was first introduced vide policy of 31.12.2008. It was amended on 15.4.2009. Since certain additional anomalies had arisen, the system was further revised by the issue of policy on 04.01.2011.

23. She also argued that the issue pertaining to the new policy which was material in the SSB of 07.01.2011 was not in dispute. The observation of the MoD on 23.12.2010 pertains to modification of the marks to criteria and non-criteria reports and 'Look Down Three'

reports for promotion to the rank of Lt. Gen. It also dealt with modifying of weightage for various courses. She argued that in the process of vetting of the policy, the MoD had issued the following letter:-

**“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](tel:23011410)”

24. Learned counsel for the respondents stated that this letter gives out the system that was sought to be implemented in the new policy. Subsequently, when the Army HQ issued the policy on 04.01.2011, the MoD in its response further observed the following:-

**“MINISTRY OF DEFENCE**

**Subject: Conduct of Selection Boards by Quantification system**

*Reference MoD ID No.8(52)/2006-D(MS) dated December 23, 2010 and MS Note No.04502/MS Policy dated January 4, 2011 on the subject cited above.*

2. *A quick perusal of the MS Note under reference reveals that*

- (i) Army HQ propose to follow the existing method for extrapolation of criteria reports for Non Criteria reports in the present rank despite the fact that the same has not been approved by the MoD. In this context, it would be pertinent to invite attention to para 4 of this Ministry's ID Note under reference in terms of which AHQ were requested to furnish details of the proportionate weightage proposed to be assigned, before the proposal could be considered further. It may also be pointed that the existing method being followed by MS Branch does not have approval of the Competent Authority."*
- (ii) In terms of para 4(d) of MS Note under reference, CRs relating to war reports/operational reports earned outside reckonable profile will not be quantified if 'out of' reckonable profile. The word 'out of' should be substituted by 'outside'.*
- (iii) Para 13 captioned 'Potential' of MS's Note under reference needs to be elaborated in that "the potential for being employed for higher ranks will be judged based on qualification attained, experience and important appointment held".*
- (iv) The Criteria "service under strick/liberal raters, inflated/deflated reports and reports other than Army Officers" which was part of the proposal does not find mention, in so*

*far as adjusting value judgement marks is concerned in MS's Note under reference.*

- (v) *Para 18 captioned "weak remarks" of MS Note under reference needs to be deleted, as the same did not find mention in the proposal submitted by MS Branch. Even otherwise the weak remarks, if any, in CRs would be quantified.*

2. *While para 8 of MoD's Note under reference specifically mentioned that the revised policy would be implemented from April 1, 2011, MS Note under reference is silent in this behalf.*

3. *MS may kindly see for necessary action.*

*(KL Nandwani)  
Deputy Secretary (MS)  
January 6, 2011"*

25. Learned counsel for the respondents further urged that it will be seen from the above two letters that the objections of the MoD were pertaining to something else and not the conduct of the SSB for which there was an approval in principle. She also argued that the date of implementation as given out was 01.04.2011 in both these letters and therefore, in normal course it should have been implemented only after 01.04.2011. But since there were a lot of vacancies which already existed and it was having an adverse affect on the overall management of the Army, various alternative options were considered by the MoD when the SSB proceedings of 07.01.2011 were received by them. Having considered all the pros and cons of the implications of

conducting the SSB on 07.01.2011 based on the policy of 04.01.2011, finally the Hon'ble RM approved the proceedings on 22.02.2011.

26. Learned counsel for the respondents further stated that in the past while approving the recommendations of No.1 Selection Board on 12 Dec 2006, the RM has made the observations as under:-

*"I would like the proceedings of the Promotion Board to be more transparent and objective. Each case of relaxation and supersession should have sufficient justification which should be clearly brought out. Objective norms for the promotion and conduct of Board proceedings should be laid, which could include inter-alia, the marks for the dossiers gradings, awards/commendations, courses, courses attended etc.*

*I am sure this would not only check arbitrariness and ensure objectivity in assessment but also avoid criticism and litigation."*

27. She further submitted that based on these marks, the effort was to constantly improve on the system of Quantification. Consequently, a review of Quantification System was carried out by a Study Group headed by Lt Gen K.R. Rao which also sought feed backs from the environment. The recommendations included recommendations for giving marks only for Gallantry Awards. Distinguished service awards were recommended to be Value Judged for all Selection Boards. The recommendations of the Study Group were duly examined and approval was accorded vide MoD letter dated 23.12.2010. This included approval of marks for Honours and Awards. She also stated that the revised policy must be implemented w.e.f.

01.04.2011 while the policy letter issued by the MS branch on 04.01.2011 superseding the previous policies. As such, the SSB held on 07.01.2011 took place as per revised policy dated 04.01.2011.

28. She further submitted that the SSB proceedings held on 07.01.2011 were approved by the ACC in May 2011 after detailed scrutiny and no injustice has been caused to any officer under consideration including the applicant. She also clarified that even though the MoD has given date of implementation of policy as 01.04.2011, the names of officers recommended by the SSB on 07.01.2011 were cleared as per the Revised Quantification Policy. The copy of MoD letter of 24.02.2011 is at Annexure R-1 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 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”*

29. The SSB result was approved by the ACC after examining all the issues and no prejudice was caused to any officer. She vehemently argued that once the RM has approved the proceedings, it implies that Government sanction has been obtained.

30. In support of her arguments, learned counsel for the respondents cited the judgment of Hon’ble Apex Court in the matter of **Hon’ble High Court of Judicature for Rajasthan Vs P.P. Singh reported at (2003)4SCC 239** wherein the Hon’ble Apex Court has held as under:-

*“42. In any view of the matter, even in a case where the initial action is illegal, the same can be ratified by a body competent therefor. This aspect of the matter has not been considered by the High Court at all. In Parmeshwari Prasad Gupta Vs Union of India this Court held:*

*“Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on 16.12.1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17.12.1953.”*

43. She also cited **(2006)5 SCC 96 in the matter of Maharashtra State Mining Corpn., Vs Sunil S/o Pundikarao Pathak**, wherein the Hon’ble Apex Court has held as under:-

*“The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently “rectified” by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato 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 retrospectively validated.”*

44. She also cited **1995 Supp (3) SCC in the matter of U.P. Avas Evam Vikas Parishad Vs Friends Coop. Housing Society Ltd.**, wherein the Hon'ble Apex Court has held as under:-

*“7. It is seen that the approval envisaged under Exception (iii) of Section 59(1)(a), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is given by the Government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval get validated and the publications made under the Act thereby become valid.”*

45. She also cited the judgment of Hon'ble Supreme Court in **Civil Appeal No.3973 of 2010 in the matter of Hardev Singh Vs UOI & Anr.**, wherein the Hon'ble Apex Court has held as under:-

*“It cannot be disputed that no employee has a right to get promotion, so the appellant had no right to get promotion to the rank of Lieutenant General but he had a right to be considered for promotion to the rank of Lieutenant General and if as the prevailing policy, he was eligible to be promoted to the said rank, he ought to have been considered. In the instant case, there is no dispute to the fact that the appellant's case was duly*

*considered by the SSB for his promotion to the rank of Lieutenant General.”*

46. She also cited **(2010)3 SCC 616 in the matter of Ashok Kumar Das and others Vs University of Burdwan and others** wherein the Hon'ble Apex Court has maintained that permission subsequently granted may validate the previous act.

47. She also cited **(1990)2 SCC 228 in the matter of K. Jagadeesan Vs Union of India and Others** wherein the Hon'ble Apex Court has held that a right to be considered for promotion is a term of service, but mere chances of promotion are not. Any amendment in this rule affecting chances of promotion cannot said to be retrospective application of the rules.

48. She also quoted **1986 Supp SCC 584 in the matter of TR Kapur Vs State of Haryana** wherein the Hon'ble Apex Court has held that *“An authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively.”* In the same judgment, their Lordships have further observed that *“Unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled.”*

49. In view of the above, learned counsel for the respondents contended that the applicant was given due consideration. He had not qualified in the first chance in April 2010. Subsequently, in Jan 2011 his name appeared in this Select List for "Staff Only Stream". Since he was low in the merit, he was unable to pick up his rank before superannuation on 30.04.2011.

50. Having heard both the counsel at length and having examined all the documents placed before us in original, we are of the view that the respondents i.e. Government of India has the powers to make the rules i.e. under the terms and conditions of services as enshrined in the Constitution of India. Therefore, it was incumbent on the part of the MoD to have approved the so called modification to the Quantification System. This aspect has not been disputed by the applicant.

51. The system of modification was separately approved by the MoD in principle. However, certain issues were left open for discussion and refinement before taking up the issue as a policy. It is correct that the MoD intended to make the revised policy effective from 01.04.2011. However, the AHQ issued the policy without incorporating the date of applicability on 04.01.2011. It implies that the policy will, therefore, be effective from 04.01.2011 i.e. the date of issue. The revised policy envisaged revision of Quantification System. In fact it deals with overall distribution of CR Profile, performance on courses, Honours and Awards. It also amplifies the parameters for awarding

Value Judgment marks. Thus, it is just a refinement of the existing policy to make matters more transparent and uniform. It does not deal with other issues that have been mentioned in the MoD Note of 23.12.2010 and 06.01.2011.

52. Having taken these aspects into account, we have also gone through the records which clearly indicate that the MoD was fully conscious of the policy letter of 04.01.2011 not having mentioned the date of applicability i.e. w.e.f. 01.04.2011. Consequently, the MoD examined in great detail as to the options open to them under the given circumstances with the Board having been held on 07.01.2011 as per the letter of 01.04.2011. Having considered all the options open to them, a conscious decision was taken by the RM on 22.02.2011 which ratified the SSB proceedings held on 07.01.2011.

53. In the letter of 24.02.2011 which was taken after the competent authority approved on file the proceedings of No.1 SB and SSB held on 07.01.2011, the letter specifically mentions that :-

*“(i) The names of officers recommended by **No.1 SB and SSB** held on **7<sup>th</sup> Jan, 2011** shall be cleared for promotion after due scrutiny on the basis of the **revised Quantified Model.**”*

54. The SSB proceedings of 07.01.2011 was further approved by the ACC on 25.05.2011. In any case, had the applicant been empanelled under either of the systems, he would have retired before

the declassification of the Board which was effected on 25.05.2011 i.e. after his superannuation on 30.04.2011.

55. We have also studied the decision of Hon'ble Supreme Court in the case of **Goa Shipyard Ltd. Versus Babu Thomas [(2007) 10 SCC 662]** wherein the Hon'ble Apex Court has 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.”*

56. We have also perused the judgment of Hon'ble AFT (PB), Bench No.1 in the case of **Maj. Gen. SKH Johnson, SM, VSM Vs Union of India & Ors.(Supra)**. This judgment does not help the

applicant on the relevant issue. In that case the Selection Board was held in December 2009. In fact it strengthens our view that the Revised Quantification Policy issued on 04.01.2011 was made effective from the date of promulgation. Thus, the SSB held on 07.01.2011 was retrospectively approved by the competent authority on 24.02.2011. The Hon'ble Tribunal has observed as under:-

*“25. ....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.”*

57. It is our conclusion that where the competent authority specifically accords sanction for the revised Quantification System to be used in the SSB held on 07.01.2011, even though retrospectively, is final. The revised Quantification System, therefore, has been validated on the approval given by the Competent Authority vide MOD letter of 24.02.2011. The citations relied upon by the learned counsel for the respondents also support our conclusion wherein it has been observed the



circumstances under which an action can be justified retrospectively.

58. In view of the foregoing, we do not find any merit in the present OA. The same is hereby dismissed. 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.**