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

OA 2557/2025 WITH MA 101/2026

Brig Rohit Mehta … Applicant
Versus
Union of India & Ors. … Respondents

For Applicant : Mr. I. S. Singh, Advocate
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C P MOHANTY, MEMBER (A)

O R D E R

The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the Applicant, a 1992 Batch Armoured Corps Officer, challenging his Non-Empanelment by No. 1 Selection Board (SB). The Applicant seeks reconsideration in Special Review (Fresh) with comparison against his original batch and further seeks to re-agitate issues pertaining to Confidential Report (CR-5) for the period 02/2020–06/2020, with the specific prayers as under:

a) Call for the entire official record of Respondent No. 1 and Respondents No. 2, leading to the rejection of the applicant's statutory complaint dated 14 Nov 2024 vide the impugned order dated 20 Mar 2025;

b) Call for the relevant original record of the considerations accorded to the Applicant by No.1 SB in Apr 2024 & Apr 2025 and after perusal thereof

set-aside the Selection Board Proceedings of said No.1 SB, qua the Applicant herein, held in Apr 2024 and in Apr 2025, the same having been held without due consideration to the observations & directions given by this Hon'ble Court vide judgement/order dt 08.08.2023 (Annexure A-3, Pg.88) in Applicant's OA 06/2023 and also for the reason of having been held without comparing the Applicant's upgraded/updated quantified-merit with the bench-mark & the parameters set during the original consideration accorded to his 1992-batch in Apr 2023;

c) Direct the Respondents to re-consider the case of the Applicant by No.1 SB for promotion to the rank of Major General without taking cognizance of the Applicant's Deflated Confidential Report (CR) for the period 12 Feb 2020 to 13 Jun 2020, since the Respondents have not bothered to follow the observations & directions made by this Hon'ble Court vide Para 22, 23, 24 (c) & 25 (c) of the judgement/order dt 08.08.2023 (Annexure A-3, Pg88) passed in Applicant's OA 06/2023, while considering his case for promotion by No.1 SB held in Apr 2024 & Apr 2025;

ALTERNATIVELY,

d) Direct the Respondents to re-consider the case of the Applicant by No.1 SB for promotion to the rank of Major General after re-evaluating the Applicant's Deflated CR for the period Feb 2020 to Jun 2020 on the basis of the observations & directions made by this Hon'ble Court in Para 22, 23, 24 (c) & 25 (c) of the judgement/order dt 08.08.2023 (Annexure A-3, Pg 88) passed in Applicant's OA 06/2023;

e) Direct the Respondents to promote the Applicant to the rank of Major General if in the fresh consideration, as prayed for above, Applicant's updated/upgraded quantified merit matches with the quantified merit (less the Board Member Mark) of the Officer of the Applicant's original batch (1992-Armd) placed last in the order of merit in the empaneled list in the Fresh consideration by No.1 SB in Jun 2023 or in the consideration held in Apr 2024 or in Apr 2025; and

f) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.

2. The principal grievance of the Applicant is that his empanelment is vitiated due to the alleged "deflation" of CR-5 and that he ought to be

granted comparison with his original batch during Special Review consideration, with the existing policy.

3. It is essential to note that this is a second round of litigation, thus, before proceeding to examine the grievance of the Applicant, it is important to analyse the previous round of litigation, wherein applicant had earlier approached this Tribunal by filing OA No. 06/2023 challenging two Confidential Reports (CR-4 for the period 07/2019–02/2020 and (ii) CR-5 for the period 02/2020–06/2020 earned during his tenure as Commander 62 Armoured Brigade.

4. Vide order dated 08.08.2023, this Tribunal has exhaustively dealt with the grievance of the applicant, of which relevant paras are reproduced herein as under:

> *22. Internal Assessment CR-4 and 5. During the internal assessment of CR-4, the MS Branch noted that in comparison to the past CR average of the applicant, this CR had a variation beyond the permissible lower limits and therefore, the competent authority approved that the CR be enfaced as 'Deflated'. In the case of CR-5 too, the variation in comparison to the past CR average was beyond the permissible lower limits and was also thus enfaced as 'Deflated'.*
>
> *23. However, it is seen from the present case that there is no formal laid down policy as to how deflated reports are to be dealt with, except that the particular CR is enfaced as 'Deflated'. Even where such enfacement is brought to the notice of a Selection Board, it is left to the consideration of the Selection Board as to how it should be dealt with. Therefore, in the absence of a policy on how a deflated report is to be moderated/dealt with, there is likely to be an element of subjectivity in dealing with such reports, which is likely to place a ratee at a disadvantage in all considerations where CR inputs*

are taken. Thus, in our view there have to be policy directions on how a deflated report is to be dealt with, since it impacts the overall assessment of an officer. The respondents should examine this issue and formulate a policy of how deflated reports are to be expunged/moderated and assimilated optimally in the assessment system so that a ratee is not placed at a disadvantage due to certain whimsical reports.

Conclusion

24. In view of the above consideration, we conclude the following:-

a. CR-4 covering the period 07/2019 – 02/2020 is inconsistent with the overall profile of the applicant and clearly the IO has not endorsed adequate reasons for the downward assessment, having assessed the applicant as 'outstanding' in the previous report. The SRO too has not endorsed any reason for assessing the applicant as 'above average', specially where the assessment of the IO/RO differ. This CR, therefore, needs to be completely expunged.
b. CR-5 covering the period 02/2020 – 06/2020 is held valid and merits no further interference.
c. In the absence of a clear policy on how deflated reports are to be expunged/moderated and assimilated optimally in the reporting system, the respondents need to review and issue the requisite policy.

25. The OA is, therefore, partially allowed and we direct the following:-

a. CR-4 covering the period 07/2019 – 02/2020 be completely expunged being inconsistent with the overall profile of the applicant.

b. Respondents to examine the mechanism for handling deflated reports and issue necessary policy on their expunction/ moderation and assimilation into the assessment system. This revised policy be promulgated within four months of this order.

5. It is clear from a detailed analysis of the above order that this Tribunal adopts a restrained approach to judicial review of CR-5, acknowledging that although the SRO again recorded a cryptic one-line pen picture and both IO and RO graded the applicant only as "above

average". Their figurative assessments and laudatory pen pictures were broadly aligned with the applicant's overall profile, and were rendered by fresh set of IO and RO with no prior involvement in his reporting chain. The Tribunal therefore treats the cryptic SRO endorsement as an irregularity that does not, by itself, vitiate the entire report, and declines to substitute its own view for that of three operational commanders in the absence of patent perversity, arbitrariness or violation of policy, demonstrating deference to domain-based assessment and adherence to the limited scope of judicial review in confidential report matters.

6. Similarly, in para 22 of the aforesaid order, the Tribunal records that MS Branch, on internal assessment, had enfaced both CR-4 and CR-5 as "deflated" because they fell below the permissible lower variation compared to the officer's past profile, but it treats this as an internal quality-control device rather than an automatic ground to invalidate the reports, maintaining the distinction between an unfavourable or stricter assessment and an illegal one.

7. In para 23, instead of judicially reading in a remedy, this Tribunal performs a corrective advisory role by directing the competent authority to examine the issue and frame a policy on expunction, moderation and assimilation of such deflated CRs so that the assessment system remains fair, transparent and predictable.

8. Para 24 of the aforesaid order crystallises the Tribunal's conclusions in a calibrated way, wherein it holds that CR-4 is inconsistent with the applicant's overall profile because the same IO who had previously graded him "outstanding" offered no contemporaneous reasons in the pen picture or otherwise for a downward shift, and the SRO, despite a divergence between IO and RO, also assigned an "above average" grading without a reasoned pen picture, thereby rendering the report arbitrary and contrary to the objectivity and consistency requirements of the applicable Army Orders and justifying complete expunction.

9. At the same time, it upholds CR-5 as valid, emphasising that a deflated or less-favourable report is not per se illegal where new IO and RO have independently assessed the officer, figurative assessments remain broadly in sync with the officer's long-term profile, and no concrete breach of policy or bad faith is shown, thus underscoring that courts will not act as "super-selection boards".

10. Aggrieved by aforesaid order of this Tribunal, particularly, non-expunction of CR-5, the Applicant preferred ***WP No. 15167/2023*** before the Hon'ble High Court of Delhi, challenging the same. Vide judgment dated 13.03.2024, the Hon'ble High Court dismissed the writ petition, holding inter alia as under:

20. The grading/ assessing of CR-5 of the petitioner herein is a result of a policy decision taken by the respondents after they have devised specific procedure/ mechanism after due deliberation. The CR-5 involved the due application of mind by not one, but as many as three officials being first the IO, then the RO and finally the SRO and that too at three different stages. Thus, there is no scope of overlap or connection inter se them. Needless to mention, each of the IO, the RO and the SRO are specialised experts in their respective fields. In view thereof, this Court is neither inclined to meddle nor dwell upon the correctness of the CR-5 of the petitioner. Even otherwise, as per settled law, this Court ought not to generally interfere where such factors are involved. This Court is fortified by Jacob Puliyel v. Union of India and Ors., 2022 SCC OnLine SC 533 wherein the Hon'ble Supreme Court has held as under:

> *"21. .... It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary.".*

21. This is more so since there can be no straight jacket formula or fix benchmark or some yardsticks or specific prescribed guidelines for grading/ assessing by the IO, the RO or even the SRO as it all depends upon their respective discretion as also on the surrounding, intrinsic and extraneous circumstances involved in every case separately. As such, merely because the petitioner had previously been graded/ assessed as 'Outstanding'

in CR-1, CR-2, CR-3, does not necessarily mean that he ought to be graded/ assessed as such even at the time of his CR-5. In any event, grading/ assessing by the IO or the RO or even the SRO, is not a matter of right. Thus, holding such would render any fresh CR, in this case the CR-5 of the petitioner, otiose. Therefore, since there can be no comparison of CRs, the petitioner cannot avail any benefit of any of his previous CRs be it CR-1, CR-2, CR-3 or for that matter CR-4.

26. Interestingly, though the petitioner has levelled allegations against the IO, the RO and even the SRO, but since they being not substantive in nature and rather bald, general and vague, this Court finds no reason to proceed for adjudication thereon.

27. In any event, it is to be borne in mind that the petitioner by way of the present petition, cannot ask this Court to call upon the IO or the RO or the SRO to conduct a de novo grading/ assessment of the CRs of the petitioner, more particularly, as the same are bereft of any material particulars and/or cogent evidence and merely because there is another interpretation possible from that what has been arrived at by the learned AFT. Moreover, in the present case, change of both the IO and the RO at the time of grading/ assessment of the petitioner during CR-5, leaving only the SRO as it is resulted in a de novo grading/ assessment of petitioner, wherein both the IO and the RO as also the SRO consistently assessed him as 'Above Average'. The same was another additional factor carrying sufficient weightage for consideration by the learned AFT. In fact, dealing with the above, the learned AFT has correctly rendered its finding as under:-

> *"17. CR-5- By the time CR-5 was to be initiated, both the IO and RO had changed and thus the assessment here was a de novo assessment by a fresh IO and RO, with the SRO being the same who had assessed the applicant in CR-4. Though both the IO and RO have assessed the applicant as 'above average', in the figurative assessment both the IO and RO have rated the applicant 'outstanding' in 11 out of the total 16 qualities and 'above average' in the remaining five. Both the IO and RO have given laudatory pen pictures. The SRO assessed the applicant as 'above average' and once again has given a cryptic one-line pen picture; 'An above average offr'. Both, the IO and RO have offered their comments on the statutory complaint. The IO has stated that the Bde under the applicant had performed well and had made significant contributions in both operational and*

> *administrative fields and has recommended that the profile of the applicant be reviewed and aberrations/inconsistencies, if any be removed. The RO in his comments has stated that the applicant is professionally competent and that he had been graded as per his demonstrated performance in the reporting period. Notwithstanding the fact that this report was endorsed by the same SRO as in CR-4, we hold this as a valid CR since the IO and RO have assessed the applicant independently without any previous knowledge, and moreover even if the box gradings of the IO/RO are 'above average', the cumulative figurative assessments are in sync with the overall profile of the officer."*
>
> *28. Lastly, this Court finds that the learned AFT, while adjudicating the case of the petitioner has not found any perversity, arbitrariness, mala fide, bias or such on the part of the respondents be it the IO, the RO or the SRO at the time of grading/ assessing the CR-5 of the petitioner or in the procedure/ mechanism followed by them or the practice adopted by them or the findings rendered by them.*

11. A bird eye view of the aforesaid judgment of Delhi HC reveals that the High Court frames CR-5 as the outcome of a policy-based appraisal mechanism devised by the Army, implemented through a three-tier evaluation by IO, RO and SRO, each acting at different stages and treated as domain experts, and on that basis expressly declines to "meddle" with the correctness of the grading. The Court roots this in ***Jacob Puliyel (supra)***, reiterating that judicial review does not extend to choosing between competing policy choices or reassessing the merits of specialised executive decisions unless there is mala fide, perversity, arbitrariness or violation of constitutional/statutory limits; the emphasis is on

process-based review and strong deference when expert, layered decision-making structures exist.

12. Further, it underlines that there can be no rigid formula for grading, and that the IO/RO/SRO's assessment depends on their discretion and the specific circumstances of each reporting period; past "Outstanding" CRs do not confer any right to similar grading later, nor do they justify comparisons across different CRs. The Court thus rejects the petitioner's core plank of "inconsistency with previous CRs" as a legal ground, clarifying that CRs are year-specific and non-comparative, and that treating earlier reports as a benchmark would render any fresh appraisal illusory and undermine the autonomy of reporting officers.

13. Subsequently, in Para 26 of the aforesaid judgement, the High Court notes that although allegations of mala fides and arbitrariness were levelled against the IO, RO and SRO, they were "bald, general and vague", lacking substantive particulars. From a judicial standpoint, this reflects the settled rule that claims of bias or mala fides must be pleaded with specificity and backed by material; absent such particulars, the Court will not embark on a roving enquiry into motives or disturb an otherwise regular assessment process.

14. Concluding, Hon'ble Delhi HC reinforces that the writ court cannot be used to compel a de novo grading exercise by IO, RO or SRO or to

re-open what the AFT has already adjudicated, especially when the challenge is essentially a re-argument on the merits of the same material. The Court endorses the AFT's reasoning on CR-5, particularly the "de novo" nature of the new IO/RO chain and the concurrence of all three reporting officers on an "Above Average" grading, as an additional factor supporting judicial non-interference, and treats the Tribunal's appreciation of that evidentiary pattern as within its remit.

15. Finally, in paragraph 28, the Court records that the AFT found no perversity, arbitrariness, mala fides or bias in the respondents' conduct in relation to CR-5, nor any flaw in their procedure or practice, and the High Court itself concurs with that view. This paragraph consolidates the earlier doctrinal strands: once both the specialised Tribunal and the writ court see no process violation or bad faith, and the challenge is essentially to the quantum/merits of the grading, the space for Article 226 intervention closes; the Court treats the AFT's order as a reasoned exercise of jurisdiction and refuses to convert writ review into a second appeal on facts.

16. Again, aggrieved the aforesaid dismissal of Writ Petition by Delhi High Court, the Applicant filed ***SLP (C) No. 9350/2024*** before the Hon'ble

Supreme Court, which was dismissed on 29.04.2024, vide the observations reproduced below:

> *1. Having heard learned Senior counsel for the petitioner at length and after carefully perusing the material placed on record, we are not inclined to interfere with the impugned order passed by the High Court.*
>
> *2. The Special Leave Petition is, accordingly, dismissed.*

17. From a judicial perspective, the aforesaid dismissal of SLP embodies the Supreme Court's restrained and non-interventionist stance in SLP jurisdiction under Article 136, signalling that where lower courts have reasoned the matter adequately and no patent illegality surfaces, the Apex Court will not convert itself into a third layer of appellate review; particularly in service jurisprudence involving subjective appraisals like CRs, where the Court defers to specialised tribunals and High Courts unless fundamental rights are breached or executive action is demonstrably arbitrary and hence, upholds the settled service law precedents and implicitly endorses the lower courts' calibration of relief expunging only the demonstrably flawed CR-4 while upholding CR-5 as a valid de novo assessment.

<u>Present OA</u>

18. In the present Original Application, which marks the second round of litigation, the applicant has sought primarily two reliefs. Firstly, that since the Respondents have failed to comply with the directions of this

Tribunal to undertake a review of the policy governing deflated Confidential Reports (CRs), the applicant's CR for the year in question, which has been marked as "deflated", be ordered to be expunged. Secondly, that the applicant's case for Special Review, consequent upon the partial redress already granted to him, be considered with his original batch and not with the subsequent batch as per the newly introduced Comprehensive Promotion Policy, 2023.

19. It is the case of the applicant that the directions given by this Tribunal in its order dated 08.08.2023, since attained finality, Respondents were duty bound to formulate a policy to re-assess the applicant's deflated CR-5 and devaluate the same before considering his case afresh by No. 1 SB, which has not been done by the Respondents and thus, it results in denial of fair consideration.

20. Further, it has been contended by the applicant that while disposing off the statutory complaint dated 14.11.2024 vide the impugned order of GoI, MoD dated 20.03.2025, wherein the assessment of SRO in applicant's two CRs including CR 09/17-03/18 have been expunged, in which the SRO is same as has been in CR-4 and CR-5, and thus, this is the fresh material demonstrating a continuing pattern of adverse assessments and bias traceable to the same SRO, thereby, giving rise to a new and independent cause of action.

21. Further contention made by the applicant is that once CR-4 has been held to be deflated and another CR involving the same SRO has been expunged by the Respondents themselves, the Respondents should have holistically examined the entire reporting chain up to CR-5 and should have expunged the deflated CR-5, and that continued reliance on 'deflated CR-5' ignoring the judicial observations, renders the whole selection process arbitrary and unreasonable, for which, he places reliance on the judgement of Hon'ble Supreme Court in ***Brig Sandeep Chaudhary v. Union of India & Ors.*** [2025 SCC OnLine SC 1109] and the judgement of Delhi High Court in ***Maj Gen Vinayak Saini v. Union of India & Ors.*** [2025 SCC OnLine Del 5562].

22. Arguing on the second leg of his argument, Ld. Counsel for the applicant contends that the two Special Review (Fresh) considerations, wherein the applicant was considered for promotion to the rank of Maj Gen by No.1 SB, was done on the basis of comparable quantified merit with the officers of 1993 & 1994 batch respectively, and not with that of the officers of his original batch of 1992, thereby, denying a fair consideration for promotion, in support of which, he relies on the order of this Tribunal in ***Col V.S. Kahlon v. UoI & Ors.*** [OA 3354/2024] and the judgement of Hon'ble Supreme Court in ***Union of India & ors. v. Maj Gen Manmoy Ganguly*** [2018 (1) SCC 552]

23. The Respondents have opposed the present OA and have submitted that the Applicant was duly considered as a Fresh Case in April 2023 under the No. 1 Selection Board & SSB Policy dated 23.12.2017 and pursuant to the directions of this Tribunal dated 08.08.2023, the Applicant was granted Special Review (Fresh) consideration in April 2024. Thereafter, upon partial redressal dated 20.03.2025, he was again afforded Special Review (Fresh) consideration in April 2025 under CPP-2023. The Respondents have specifically contended that Para 14 of CPP-2023 is *pari materia* with Para 21 of the earlier Policy dated 23.12.2017 and that the said policy framework has been uniformly and consistently applied to all officers since January 2018, without deviation.

24. It is further contended by the Respondents that the Applicant, having participated in the Selection Board process without any protest or demur, is estopped from challenging the same after being declared unsuccessful. It is submitted that having failed on merit in the Special Review (Fresh) considerations held in 2024 and again in 2025, the Applicant cannot now seek comparison with his original batch in deviation of the governing policy. The Respondents also assert that any challenge relating to CR-5 is barred by the principles of *finality* and *Res judicata*, the issue having already attained conclusiveness upon dismissal of proceedings up to the Hon'ble Supreme Court.

Consideration

25. We have heard learned counsel for both the parties, have perused the material placed on record, including the written submissions and proceedings of No. 1 SB, wherein applicant was considered for promotion to the rank of Maj Gen. From the analysis of pleadings, arguments advanced by the learned counsels and the material placed on record, we are of the view that two primary issues require our consideration, and thus, framed herein as under:

(i) Whether the CR-5 warrants interference by this Tribunal in view of alleged non-compliance of the directions of the Tribunal in first round of litigation or is barred by the principle of Res-judicata?

(ii) Whether applicant is entitled to be considered by the earlier Comprehensive Promotion Policy, 2017 instead of Comprehensive Promotion Policy, 2023?

Issue I – Consideration of CR-5 & *Res judicata*

26. With respect to CR-5, we find that the two major contentions applicant has made is that since no policy was framed consequent to the directions of this Tribunal, to govern deflated CRs, he should be granted benefit of the expunction of CR-5, and the same has been marked as 'Deflated' by the Respondents, and secondly, that post partial redressal

dated 20.03.2025, wherein assessment of SRO at Para 24 (a) to (e) – QSAP in CR 09/17-03/18 was expunged, the SRO was the same officer, who was SRO in CR-5 as well, and this reflects a continuing bias of the SRO against the officer.

27. With respect to first contention, we observe that vide Para 25(b) of its order dated 08.08.2023, this Tribunal has directed respondents to examine the mechanism for handling deflated reports and issue necessary policy on their expunction or moderation and assimilation into the assessment system, to which we find that vide Para 22 of the Counter Affidavit filed by the Respondents, it has been contended that Respondents have revisited the policy, and decided to continue with the policy.

28. Although the examination and analysis of the extant policy has not been brought out into the public domain, on perusal of the internal file, notings of the MS Branch, the argument offered in support of confirmation of the policy is that interference of only 'Deflated' Reports by the MS Branch can not suffice, as given the same analogy, it is essential to moderate the reports enfaced as 'Inflated'. In the same line of logic, reports rendered by officers enfaced as 'Strict' rated and 'Liberal' raters will also require to be moderated by the MS Branch, leading to entire loss of basic characteristic of every report that is received from the reporting officers which in turn would make the exercise of initiating a review of the reports

by reviewing officer in channel subject of technical and qualitative interference. We have no reason to differ with the views of the respondents.

29. Besides our observations as above, it merits our consideration that rendering a confidential report by a reporting officer on his subordinates is based on his personal assessment without any reference to the previous reports on the employee as he is not privy to the same. Even though the report is enfaced as 'Deflated' or 'Inflated' by the custodian of the CRs i.e. the MS Branch, grant of sweeping powers to overrule every report rendered by the reporting officers based on their assessment of the ratee merely on grounds that he has been observed as a 'Strict' rater or 'Liberal' rater or report has been enfaced as 'Deflated' and 'Inflated' would render the entire process of reporting as infructuous and will become a subject of inference by set of officials who have not been privy to the performance of the ratee during the period of reports. The above observations of ours are adequately reflected in the case of the applicant as well.

30. On a deeper scrutiny of this CR matrix, it is evident that the two Confidential Reports succeeding CR-5, marked as CR 7 & 8 earned by the officer in question, which have been enfaced as 'Inflated' are typically *'one man report'* and the applicant has reaped the benefits of both reports. If we are to go by the chronology of interference of CR 4 & 5 being Deflated

CR 7 & 8 would also merit to be deleted from the records being 'Inflated' reports. In our considered opinion, the policy governing such matters cannot be invoked in a selective or uneven manner. It must be applied uniformly, so that parity and procedural fairness are maintained. The principle of equality before law mandates that similar situations be treated alike, and the law cannot be so construed as to confer differential treatment in comparable circumstances.

31. At this moment, it is pertinent to record that the directions passed by this Tribunal were prospective in nature, and does not impact the case of the applicant, since the case of applicant with respect to CR-5 has been dealt by this Tribunal in accordance with the existing policy in vogue, wherein there was no mechanism in place, meaning thereby, that the issue with respect to the applicant has already been settled with the adjudication of the *lis.* The applicant cannot be allowed to seek benefit of a policy which was not existing at the time of adjudication of his *lis.*

32. Furthermore, when the Respondents have revisited the policy and have continued to go ahead with the same, this Tribunal cannot in any way direct for the formulation of the policy with respect to the aforesaid issue in view of the settled law laid down by the Hon'ble Supreme Court in ***Union of India v. Air Commodore NK Sharma (17038) ADM/LGL*** [2023 INSC 1074], wherein it has been observed as under:

16. It is in consideration of this statutory scheme that we must look for an answer to the question as to whether the Tribunal could have directed the formation of a policy, albeit in regard to a matter affecting the service of armed forces personnel, to adjudicate which, it otherwise possesses the jurisdiction?

17. Making policy, as is well recognised, is not in the domain of the Judiciary. The Tribunal is also a quasi-judicial body, functioning within the parameters set out in the governing legislation. Although, it cannot be questioned that disputes in respect of promotions and/or filling up of vacancies is within the jurisdiction of the Tribunal, it cannot direct those responsible for making policy, to make a policy in a particular manner.

18. It has been observed time and again that a court cannot direct for a legislation or a policy to be made. Reference may be made to a recent judgement of this Court in Union of India v. K. Pushpavanam where while adjudicating a challenge to an Order passed by a High Court directing the State to decide the status of the Law Commission as a Statutory or Constitutional body and also to consider the introduction of a bill in respect of torts and State liability, observed as under: –

> *"..As far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by Courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation. A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame. Therefore, the first direction issued under the impugned judgment was unwarranted."*
>
> *(Emphasis Supplied)*

19. We may further refer to Union of India & Ors v. Ilmo Devi & Anr wherein the Court, while considering with the case concerning regularisation/absorption of part-time sweepers at a post office in Chandigarh observed:-

> *"The High Court cannot, in exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and 17 create the posts. The High Court, in exercise of the powers under Article 226 of the Constitution, also cannot direct the*

Government and/or the Department to formulate a particular regularization policy. Framing of any scheme is no function of the Court and is the sole prerogative of the Government. Even the creation and/or sanction of the posts is also the sole prerogative of the Government and the High Court, in exercise of the power under Article 226 of the Constitution, cannot issue Mandamus and/or direct to create and sanction the posts."

(Emphasis Supplied)

20. The above being the settled position of law, it only stands to reason that a Tribunal functioning within the strict boundaries of the governing legislation, would not have the power to direct the formation of a policy. After all, a court in Writ jurisdiction is often faced with situations that allegedly fly in the face of fundamental rights, and yet, has not been entrusted with the power to direct such formation of policy.

21. Not only that, it stands clarified by a bench of no less than 7 Judges of this Court in L. Chandra Kumar v. Union of India & Ors as reiterated by a Bench of 5 judges in Rojer Matthew v. South Indian Bank Ltd & Ors16 that a Tribunal would be subject to the jurisdiction of the High Court in Article 226, in the following terms as recorded by Gogoi, CJ, writing for the majority-

"215. It is hence clear post L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] that writ jurisdiction under Article 226 does not limit the powers of High Courts expressly or by implication against military or armed forces disputes. The limited ouster made by Article 227(4) only operates qua administrative supervision by the High Court and not judicial review. Article 136(2) prohibits direct appeals before the Supreme Court from an order of Armed Forces Tribunals, but would not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226.

217. The jurisdiction under Article 226, being part of the basic structure, can neither be tampered with nor diluted. Instead, it has to be zealously protected and cannot be circumscribed by the provisions of

any enactment, even if it be formulated for expeditious disposal and early finality of disputes. Further, High Courts are conscious enough to understand that such power must be exercised sparingly by them to ensure that they do not become alternate forums of appeal. A five-Judge Bench in Sangram Singh v. Election Tribunal [Sangram Singh v. Election Tribunal, (1955) 2 SCR 1 : AIR 1955 SC 425] whilst reiterating that jurisdiction under Article 226 could not be ousted, laid down certain guidelines for exercise of such power : (AIR pp. 428-29, para 13)

"13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal.

It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is "vis-àvis" all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105."

This position stood restated, recently, in Union of India v Parashotam Dass

"26. On the legislature introducing the concept of "Tribunalisation" (one may say that this concept has seen many question marks vis-a-vis different tribunals, though it has also produced some successes), the same was tested in L. Chandra Kumar 18 case before a Bench of seven Judges of this Court.

> *Thus, while upholding the principles of "Tribunalisation" under Article 323A or Article 323B, the Bench was unequivocally of the view that decisions of Tribunals would be subject to the jurisdiction of the High Court under Article 226 of the Constitution, and would not be restricted by the 42nd Constitutional Amendment which introduced the aforesaid two Articles. In our view, this should have put the matter to rest, and no Bench of less than seven Judges could have doubted the proposition… Thus, it is, reiterated and clarified that the power of the High Court under Article 226 of the Constitution is not inhibited, and superintendence and control under Article 227 of the Constitution are somewhat distinct from the powers of judicial review under Article 226 of the Constitution.*
>
> *(Emphasis Supplied)*
>
> *22. Thus, it only stands to reason then, that, a Tribunal subject to the High Court's jurisdiction under Article 226, cannot be permitted by law, to direct the framing of policy by the Government.*

33. It is thus well-settled that this Tribunal, being a quasi-judicial body, lacks the authority to direct the formulation of policy. In the absence of any existing policy, it cannot mandate the Respondents to frame one, nor can it confer any consequential or beneficial fruit arising there from. The Issue No. 2 is thus, answered. Hence, applicant cannot seek parity with the judgement of ***Brig Sandeep Chaudhary (supra)*** and ***Maj Gen Vinayak Saini (supra),*** both being on different factual matrix altogether.

34. With respect to the second contention of SRO being the same officer, we find it essential to refer to the CRs, (even though not impugned by the applicant) expunged by the GoI, MoD order dated 20.03.2025 disposing

off the Statutory Complaint dated 14.11.2024, wherein on a perusal of CR dossier, we find that assessment of SRO in CR 12/09-07/10 has been expunged, wherein the SRO was the GoC-in-C, Eastern Command, on the ground that while IO & RO have marked '9' in the box grading, SRO has marked the applicant as '8'. On the other hand, in QsAP, he was been awarded '8' in all the five qualities.

35. On the other hand, when we go through the CR 09/17-03/18, wherein the Para 24 of CR 09/17-03/18 has been expunged, we find that the SRO has awarded 'Outstanding' in the Box grading, with a laudatory pen-picture. However, we wonder, as to the reason behind the removal of QsAP in Para 24, wherein the applicant has been awarded a healthy mix of '8s' & '9s', with two 'outstanding' and three 'above average' gradings.

36. We find the trend of selective expunction of Confidential Reports (CRs) to be both procedurally and substantively problematic. In the present case, it is noteworthy that the two CRs in question were never impugned by the officer concerned, and one of them, in fact, reflects a commendable grading under the parameters of the Qualities to Assess Potentials (QsAP). The act of removing such CR, without any demonstrable infirmity or procedural irregularity in their recording, undermines the integrity of the assessment mechanism designed to ensure objective evaluation of performance. An arbitrary or selective approach to expunction distorts the

very basis of administrative appraisal, which is meant to be both fair and discerning, that too after the CR issues had attained finality even before the Hon'ble SC. It tantamounts to generating a multiplicity of proceedings, all for the purpose of granting a relief that ought to have been granted at the very first instance itself.

37. If the competent authority were to proceed on the premise that every grading short of 'outstanding' warrants expunction or interference, such an approach would effectively neutralize the purpose of the ACR system. Objective gradation, ranging across a spectrum of performance, is fundamental to maintaining a credible and meaningful evaluation structure. To substitute this with a standard where only the highest possible grading is treated as acceptable would not only dilute the evaluative discipline but also render the entire exercise otiose. The administration must therefore refrain from creating a precedent where the expectation of uniform excellence supplants the principle of objective assessment, and the premised logic that once an officer has been graded 'outstanding, it is his matter of right to be graded 'outstanding' in all the CRs, irrespective of consistent performance or otherwise.

38. Moreover, if the rationale adopted for expunction were to rest upon the ground of an aberration in the service profile, it is the fifth Confidential Report (CR5) that would, in fact, qualify as the earliest instance warranting

such consideration. This is because, while the overall record of the applicant consistently reflects traits of outstanding performance, CR5 bears an imprint of 'above average,' thereby constituting the only perceptible deviation from an otherwise exemplary profile.

39. Nevertheless, such an approach was neither adopted nor permissible in law, since the validity of CR5 has already been examined and upheld by the judicial fora, thereby rendering any further interference impermissible, as the same is barred by the principals of res judicata as containded in Section II CPC. More particularly, when the observations of this Tribunal in the earlier round of litigation have already been duly considered and examined in detail by the Hon'ble Delhi High Court vide paragraphs 20 and 21 of its judgment, and further upheld by the Hon'ble Supreme Court, it thus operates as a bar upon this Tribunal from venturing into an adventure contrary to the settled judicial determination and established principles of propriety and the principals of Res judicata.

40. In that backdrop, the subsequent decision to expunge the including the assessment recorded under the QsAP for the period 09/17–03/18, which was not impugned, appears to have been taken primarily because no remedial action could have been directed in respect of CR5. This selective intervention, prompted not by demonstrable procedural irregularity but by the inability to act on an earlier confirmed record, lacks

a sustainable administrative foundation. Such reasoning, if permitted to stand, would vitiate the consistency of the appraisal process and erode the very rationale underpinning the system of confidential performance evaluation.

41. On the other hand, we find that the ground of bias of SRO in CR5, raised by the applicant seems to be nothing more than an attempt to re-agitate the validity of CR-5, which has already held as 'valid' by this Tribunal, and the dismissal of the Special Leave Petition by the Hon'ble Supreme Court, after due consideration of the matter, confers finality upon the adjudication relating to CR-5.

42. As already discussed above, the QsAP:Para 24 in CR 09/17–03/18, was a healthy mix of '8s' and '9s', showing that there was no bias indeed attached to the SRO to be continued to CR-5, since the grading in CR-5 are marked by decline from the earlier profile of the applicant, by all the three rating officers, and not the SRO himself, for which the CR has been marked as deflated.

43. Further, the doctrine of finality of litigation, founded upon considerations of judicial discipline and certainty in law, precludes the reopening of an issue which has attained conclusiveness between the parties, on the same grounds. The present attempt to assail CR-5, albeit under the garb of new grounds, is in substance an indirect effort to reopen

a matter already settled up to the highest judicial forum. Such a course is impermissible in law, and consequently, any grievance pertaining to CR-5 on this particular ground is not maintainable in our opinion. Even if the Respondents were to formulate a policy, being prospective in nature would not bring any succour to the applicant in removal of CR-5 from the profile.

44. With respect to the issue of *res-judicata,* upon a perusal of the reliefs sought in the present Original Application, it is observed that although the grievance of the applicant pertains to CR-5, which has already been adjudicated upon by three judicial fora, including this Tribunal, and the said adjudication has attained finality having been upheld by the Hon'ble High Court of Delhi as well as the Hon'ble Supreme Court, the present claim does not arise from the same cause of action as that agitated in the earlier round of litigation. Rather, the issue relating to CR-5 raised herein with respect to 'deflation' constitutes a consequential cause of action emanating from the alleged non-compliance by the Respondents with the directions issued by this Tribunal in the previous proceedings, and therefore, cannot be said to be barred by the principle of *res judicata*. However, the re-agitation of arguments on the alleged biasness of SRO in CR-5, since, already adjudicated on merits, does not warrant any adjudication.

45. Likewise, the second issue before us emanates from the dispute regarding the applicability of the relevant promotion policy, wherein the question is whether the earlier one applies or the subsequent one, after the applicant was granted partial redress by the Respondents. This, therefore, constitutes a distinct and fresh cause of action and is evidently not barred by the principle of *res judicata*. The determination of the first issue is thus answered accordingly.

Issue II – Applicability of Promotion Policy of 2017 or CPP, 2023

46. With respect to the applicability of relevant policy, we find that this Tribunal in the case of ***V.S. Kahlon (supra),*** while dealing with the judgement of this Tribunal in ***Maj Gen V.K. Singh (supra)*** as upheld by Hon'ble Supreme Court, has elaborately discussed the intersection of CPP, 2017 and CPP, 2023 as under:

> "a) Whether the Comprehensive Promotion Policy (CPP): 2023 warrants interference by this Tribunal?
>
> 33. In this background, we now move to examine the Comprehensive Promotion Policy (CPP): Select Ranks 2023, of which Para 14 deals with the procedure for Special Review/ Deferred/ Withdrawn case, and the same is reproduced herein for our consideration:-
>
> > ***"14. Special Review/ Deferred/ Withdrawn Cases. Such cases will only be considered with the next physically available Fresh Batch of their own Arm/Service with the same cut-off CR as that of the Fresh Batch under consideration. Such cases will be compared with the Fresh Batch with which they are being considered and will be empanelled, if in merit, against the vacancies accruing for that Fresh Batch. If empanelled for promotion, they will reckon the seniority of their original batch."***
>
> 34. At this point, we note that this Comprehensive Promotion Policy (CPP), 2023 has superseded the Promotion Policy: SSB & No. 1 SB issued vide MS

Branch letter no 04502/MS Policy dated 23.12.2017, wherein a similar provision was incorporated for Special Review/Deferred/ Withdrawn cases in conduct of No. 1 SB and SSB, which has been dealt in vide Para 21, 22 and 23 of the aforesaid policy dated 23.12.2017, reading to the effect:

> *"Deferred/ Withdrawn/ Special Review Cases*
>
> *21. Deferred/Withdrawn Cases. All Deferred/Withdrawn cases will only be considered with the next physically available Fresh Batch of their own Arm/Service with the same cut-off CR as that for the Fresh Batch. In such cases, the officers will be compared with the Fresh Batch with which they are being considered and will be empanelled if in merit, against the vacancies accruing for that Fresh Batch. If empanelled for promotion, they will reckon the seniority of their original Batch.*
>
> *22. Special Review Cases.*
>
> *(a) All Special Review cases will be considered in a manner similar to Deferred/Withdrawn cases as given at Para 21 above.*
>
> *(b) Special Review will be granted to the officer against Non empanelment in the impugned Selection Board only and not for previous ranks/boards, notwithstanding the point of time at which the redress has been granted in the officers' profile.*
>
> *(c) If an officer already approved for promotion as a First Review or Final Review is granted Special Review, then he will be eligible for consideration for Restoration of Seniority (ROS). If approved, his Batch Year of Seniority (BYOS) will be adjusted accordingly.*
>
> *23. Promotion of Deferred/Withdrawn/Special Review Cases. Deferred/ Withdrawn/Special Review cases, if empanelled, will be promoted as per their seniority vis-à-vis the existing panel against the vacancies of the Selection Board in which they are being considered."*

35. A bird eye view of the aforesaid two promotion policy letters i.e. Promotion Policy: SSB & No. 1 SB issued vide MS Branch letter no 04502/MS Policy dated 23.12.2017 and the Comprehensive Promotion Policy (CPP): Select Ranks 2023, makes it clear that the Para 21 of the 04502/MS Policy dated 23.12.2017 and Para 14 of the Comprehensive Promotion Policy (CPP), 2023 is purely same, with no change at all in the language as well as the intention.

36. At this moment, it becomes imperative for us to refer to the observations of this Tribunal in Maj Gen VK Singh v. Union of India & Ors. [OA 1023/2018 AFT PB; Date of decision – 19.09.2018] wherein this Tribunal has discussed Para

21 of the Promotion Policy: SSB & No. 1 SB issued vide MS Branch letter no 04502/MS Policy dated 23.12.2017 at length, and has observed as under:

> *11. Having heard learned counsel for the parties at length and perused the documents made available to us, the following questions arise for our consideration:*
>
> 1. *Whether an individual/applicant can challenge the issue and promulgation of a policy issued by the Union of India before the Armed Forces Tribunal in the lght of Section14(1) of the Armed Forces Tribunal Act, 2007?*
> 2. *Whether there is any illegality or irregularity in the issue, promulgation and giving effect to the new Promotion Policy?*
> 3. *Whether the applicant has made out a case for consideration to the rank of Lieutenant General as a Special Review (Fresh) Case in the SSB to be held in October 2018, in accordance with the policy which was in vogue when his first Board took place in October 2017?*
> 4. *Whether the impugned Promotion Policy is violative of Articles 14 and 16 of the Constitution of India?*
>
> *12. Let us, first of all, advert to Issue No. 1 in order to understand it in the correct perspective. It would, therefore, be apt if we reproduce Section 14(1) of the AFT Act. It reads:*
>
> > *"14. Jurisdiction, powers and authority in service matters.-(1) Save as otherwise expressly provided in this Act the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under Article 226 and 227 of the Constitution) in relation to all service matters."*
>
> *This issue was considered threadbare by a Constitution Bench of the Hon'ble Supreme Court in L. Chandra Kumar v. Union of India and others (1997) 3 sec 261. In this regard, it would be relevant if we re-produce Paragraphs 90 and 93 of the said judgment. They are:*
>
> > *"90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations*

is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes.

While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

xxx xxx xxx xxx xxx

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the

settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."

(emphasis supplied)

Following the ratio of the aforesaid judgment, it clearly emerges that (i) the Armed Forces Tribunal is well within its jurisdiction to deal with the issue of policies initiated by the Union of India for service personnel; and (ii) it further substantiates that not doing so would result in splitting up the proceedings, which may cause unavoidable delay. The aforesaid proposition is squarely applicable to the facts of the present case, therefore, we overrule the preliminary objection raised by Ms. Babbar on this count and hold that the instant 0.A is maintainable..

13. Having said so, we will now delve into the other three issues, formulated and mentioned in Para 11 herein above.

14. Let us now look at the issue of the new Promotion Policy dated 23.12.2017 (Annexure Al) which was implemented with immediate effect i.e. from the date of its issue. There is no dispute that the executive power of the Union of India, when it is not empanelled by any statute or rule, is wide and pursuant to its power, it can make an executive policy. A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, re-examine it, then re-change it, adjust it and re-adjust it according to the compulsions of circumstances and the imperatives of national considerations. The respondents have taken great pains to highlight, with the help of a number of judgments, the inviolable. Right of the Executive to formulate and issue policies to govern and regulate the service conditions and promotion prospects of their employees. In this regard, learned counsel

for the respondents drew our attention to the decision in Union of India and others v. S.L Dutta and another (1991) 1 SCC 505, wherein the Hon'ble Supreme Court had held as follows:

> *"18. • ..... As has been laid down more than once by this Court the court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reasons of their training and experience. In the present case there is no question of arbitrary departure from the policy duly adopted because before the decision not to promote respondent 1 was taken, the policy had already been changed. The question is, therefore, whether this change can be said to be arbitrary or ma/a fide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing. As the matter was considered at some length by as many as 12 Air Marshals and the Chief of Air Staff of Indian Air Force, it is not possible to say that the question of change of policy was not duly considered….*

15. We are fairly conscious of the above realm of the Union of India in formulating policies to meet the changing circumstances, needs and aspirations of their employees. We do not wish to delve into this aspect any further. But, we are also equally conscious of the fact that when the said policy appears discriminatory or arbitrary or violates the right of a selection of employees to their detriment, jurisprudence demands that it be set right, if necessary. More so, if we find that the applicability, implementation or interpretation of the said policy appears discriminatory or violates universal issues of fair play. It is with this in mind alone that we have drawn our scrutiny to the impugned Promotion Policy dated 23.12.2017 (Annexure A1).

16. In general, it is an accepted principle of law that every statute is prospective unless it is expressed in the Statute that it has retrospective operation. In this respect, it would be appropriate if we refer to Paragraphs 28 and 29 of the impugned Promotion Policy. They read:

> *28. Implementation of the Revised Policy. This policy will be applicable for all considerations for Army Cdrs, HoAS/S, SSB and No. 1 SB with immediate effect.*
>
> *29. Provisions contained herein supersede relevant provisions in previous policies. (emphasis supplied)*

It is thus clear that the policy dated 23.12.2017 has prospective application and it superseded the relevant provisions in the previous policies.

17. However, we find that a controversy has emerged on account of the implementation of the new Promotion Policy dated 23.12.2017 which clearly gives a prospective effect but in actual fact applies retrospectively. The applicant thus is aggrieved by the impugned policy because it denies him the following:

- *i) A right for an early consideration by a duly constituted Board after his grant of redressal as a Special Review (Fresh) Case.*
- *ii) A right for consideration under the same guidelines and parameters as for his batch, since he is now a "fresh case"?*
- *iii) Finally, a right for consideration for promotion and, if approved, the said promotion prior to his retirement i.e. 30.11.2018.*

It is in this background that we would venture to adjudicate upon the controversy raised in this case, undoubtedly, considering the policy wherever it hurts the applicant.

18. It is the contention of learned counsel for the respondents that an officer is entitled to three considerations by the Selection Board viz. "Fresh", "First Review" and "Final Review" for promotion to the selection grade rank. After all or any of the considerations, if the profile of the officer earlier considered by the Selection Board undergoes a change, the officer becomes eligible for Special Review Consideration. The counsel for the respondents has very painstakingly brought out that the fundamental aspect of consideration of any batch by the Selection Board

is vacancy. The calculation of vacancies for the Selection Board for promotion are based on the concept of three year rolling block PRV, based on executive instructions issued through a policy letter dated 29.10.2013 (Annexure R3). In this selection system, there are no vacancies earmarked for special review or deferred/withdrawn cases when approved for promotion. These officers, while being considered with their original profile at the time their batch was considered and compared with the merit of their own batch, when approved, took the vacancy of the next batch. This, the learned counsel brought out, was causing serious cadre planning issues, wherein the original batch would ultimately take away more vacancies than those allocated for that batch causing a cascading effect on the future batches, further leading to delayed promotions and at times retirement of some without their well-earned promotions. The counsel further emphasised that this also affected the designated organisational imperatives of a younger age profile and viable tenure in higher ranks in the Army. With this background, the competent authority, after obtaining views of all stake holders, brought in the policy changes through the letter dated 23.12.2017 (Annexure A1).

19. We have analysed these submissions very critically. While these submissions appear very convincing and appropriate in the given organisational imperatives, they strike at a fundamental rule of fair play and discrimination and thus should not be applied to the applicant. Here we are strengthened by the observations of the Hon'ble Supreme Court in Union of India and others v. Maj Gen. Manomoy Ganguly (2018) 1 SCC 552, which read as under:

> *21. . . . . This Review SPB meeting has to be on the same standards which were adopted in original SPB meeting. It has to be on the assumption as if case of the respondent is considered in the original SPB, but with revised profile. ... ... It is because of the reason that Review SPB is nothing but extension of original SPB, wherein the respondent was supposed to be considered on the same parameters as if he was participating in promotion process undertaken in original SPB."*
>
> *(emphasis supplied)*

20. To be fair, the present controversy essentially revolves around Paragraphs 3, 19, 21 and 22 of the impugned Promotion Policy dated 23.12.2017, whereby it is alleged that the right of consideration of the

applicant for promotion has been taken away illegally. We shall adjudicate on these one by one.

21. Para 3 of the Promotion Policy dated 23.12.2017 reads as follows:

> *Schedule of Selection Boards:*
>
> *3. No 1 SB & SSS will be held only once in a year as per fixed schedule, wherein one batch will be considered every year. However, in order to achieve the objective of reducing the age profile in the ranks of Maj Gen & Lt Gen, four such Boards for promotion to the ranks of Maj Gen & Lt Gen will be held in three years as described in subsequent paragraphs; after which the system of annual scheduling of Selection Boards will be restored.*

22. As per Para 3 of the new Policy, learned senior counsel for the applicant contended that having been given a prospective effect to the policy, henceforth all SSBs will be held only when a fresh Batch is physically available for consideration. This, she contends, is against the fundamental principles laid down under Article 14 and 16 of the Constitution of India. The claim of the applicant is that in the light of the partial redress granted to him in the Non Statutory Complaint in April 2018, he should have been considered as a Special Review (Fresh) Case in a Special Promotion Board/SSB at the earliest as per the old policy so that the results could be declassified well before his retirement on 30.11.2018. Learned counsel for the respondents vehemently contended that since, in the meanwhile, a new policy has been put in place making it applicable uniformly to all equally placed personnel, the applicant can only be considered as a Special Review (Fresh) Case in terms of the new Promotion Policy dated 23.12.2017.

22. Let us examine this aspect on the touchstone of fairness. Here is an applicant who was considered for a SSB in October 2017 with his batch based on an existing policy, at which he was not empanelled. Based on his Non-Statutory Complaint, the competent authority detected a 'wrong' in his CR record and 'corrected' it by expunging it. The applicant now deserves a 'fresh' consideration with his batch as per existing parameters. Issue of a new policy in the interim does not alter the ground reality in so far as the applicant is concerned. The applicant deserves a right for consideration as a fresh case with his batch with the same parameters, since the 'wrong' that was done on the applicant, for no fault of his, and which has now been 'corrected' by the competent authority cannot be denied his legitimate right. Without altering the content and context of Para 3 in this regard, we feel that exceptions will have to be

made for those in such cases such as the applicant, who have already been governed by an earlier policy and are now at par with then erstwhile batch for a "fresh" consideration.

23. . We have further been informed by learned counsel for the applicant that a new policy on Quantification System for Promotion has been issued by the competent authority, also dated 23.12.2017. This policy changes the entire parameters of quantification, the system and allocation of quantifiable marks and the methodology for its calculation and implication. Arguably, this new system if made applicable to the applicant further substantiates his plea that his 'fresh' consideration is vitiated, thereby making it unfair and discriminatory. We cannot allow this to be sustained.

24. We now refer to Para 19 of the Promotion Policy dated 23.12.2017, which is reproduced below:

> *Superannuation Before Occurrence of First Vacancy*
>
> *19. If an officer is superannuating before the occurrence of the first vacancy then he will not be eligible for consideration by No 1 SB or SSB. The name of the officer will be included in the agenda and shown as 'Not Eligible'. If all the officers of a particular batch are superannuating before the occurrence of the first vacancy then the next batch will be considered by No. 1 SB or SSB, as the case may be.*

Learned senior counsel for the applicant stated that as per Para 19 of the new Promotion Policy, if an officer is superannuating before the occurrence of the first vacancy then he will not be eligible for consideration by SSB and his name will not be included in the agenda and will be shown as "not eligible". In the case of the applicant, since he is retiring on 30.11.2018, before any further vacancy in the said rank, he is 'not eligible' for even a consideration by the SSB in October 2018. Drawing our attention to Para 19 of the Promotion Policy, learned counsel for the respondents contended that the applicant need not feel aggrieved as the policy has been applied uniformly to all officers of all Arms/Services and no injustice has been done to the applicant in this regard. We feel otherwise. Herein, the applicant, after getting his statutory partial redressal from the competent authority in April 2018 became eligible for a fresh consideration. He had a right for an early consideration by a duly constituted Board, which was not held in the light of the new policy having been made applicable in the interim period. The applicant accordingly awaits his consideration in the first

available SSB i.e. in October 2018. Since the applicant is retiring on 30.11.2018 and very little time being available to him post conduct of the SSB, the applicant is unfairly placed since his "right for consideration as a fresh case" has been denied in view of the implementation of the new policy. This we consider not only arbitrary and discriminatory but also violative of the principles of natural justice (refer to R.S. Deodhar and others v. State of Maharashtra and others (1974) 1 SCC 377 and State of Maharashtra and another v. Chandrakant Anant Kulkarni and others (1981) 4 SCC 130. To first not hold a SSB after his redressal in April 2018, then include him in the agenda for consideration for SSB to be held in October 2018 and now indicating that he is 'not eligible' since there would be no vacancy till the time he retires on 30.11.2018 would, in our view, be highly unfair to the applicant and not in the right perspective of the settled legal position and in the light of the policies existing so far.

25. Paras 21 and 22 of the Promotion Policy dated 23.12.2017 deal with "Deferred/Withdrawn/Special Review Cases" and "Special Review Cases", which are reproduced below:

> *21. Deferred/Withdrawn Cases. All Deferred/Withdrawn cases will only be considered with the next physically available Fresh Batch of their own Arm/Service with the same cut-off CR as that for the Fresh Batch. In such ceses, the officers will be compared with the Fresh Batch with which they are being considered and will be empanelled if in merit; against the vacancies accruing for that Fresh Batch. If empanelled for promotion, they will reckon the seniority of their original Batch.*
>
> *22. Special Review Cases*
>
> *(a) All Special Review cases will be considered in a manner similar to Deferred/Withdrawn cases as given at Para 21 above.*
>
> *(b) Special Review will be granted to the officer against Non empanelment in the impugned Selection Board only and not for previous ranks/boards, notwithstanding the point of time at which the redress has been granted in the officers' profile.*
>
> *(c) If an officer already approved for promotion as a First Review or Final Review is granted Special Review, then he will be eligible for consideration for Restoration of Seniority (ROS). If approved, his Batch Year of Seniority (BYOS) will be adjusted accordingly.*

Para 22 clearly specifies that all special review cases would be considered in a similar manner to the deferred/withdrawn cases as given at Para 21. Para 21 states that all deferred and withdrawn cases will only be considered with the next physically available fresh batch of their own arm with the same cut off CR as that of the fresh batch. Learned senior counsel for the applicant contended that treating the applicant as a deferred case as per Para 21 is illegal, since by asking the applicant to be considered along with the fresh batch cut-off CR, the redressal granted to him has been negated as he is at a disadvantage from his original batch in all parameters including the cut-off CR for his batch and vacancies, as the said parameters of the fresh batch would be different. Therefore, the applicant would not get the same treatment and yardsticks as had been applied to his original batch, but will be made to undergo his selection process with different parameters than what his original batch had been put through, which is clearly discriminatory and violative of Articles 14 and 16 of the Constitution and the principles of natural justice.

26. The contention of the learned counsel for the respondents that there is no right guaranteed under the expansive definition of Article 14 or 16 that special review consideration has to follow the same parameters of the original consideration dehors the policy, nor is there any statutory prescription to this effect. Furthermore, the learned counsel for the respondents pointed out that the applicant was not considered in the SSB held in April 2018 as no SSB for the fresh batch of General Cadre was scheduled and he can now only be considered as a Special Review (Fresh) case along with the fresh batch of 1984 of General Cadre scheduled to be held in October 2018. The learned counsel for the respondents also clarified that the earlier system of comparing Deferred/Withdrawn/Special Review cases with their original batch led to a situation where the officers were compared with the benchmark of their original batch, which may be lower than that of the fresh batch, but was utilising a vacancy from the fresh batch. As per the earlier system, such officers were considered with the same cut off CRs as that of their original batches. Those officers if empanelled were utilising vacancies from next or subsequent batches while being compared with their original batch. Learned counsel for the respondents further contended that the impugned Promotion Policy was finalised after due deliberations with the concerned stake holders and duly approved by the competent authority and is being applied to all Arms/Services uniformly, therefore, the impugned Promotion Policy is not violative of Articles 14 and 16 of the Constitution.

27. We do not dispute the stand of the respondents in this regard. We are conscious that all Deferred/Withdrawn and Special Review cases as per the new policy should be considered along with the next batch with a new yardstick and a new policy. But we feel that while this may be true for first and second review cases but, for a case like the applicant, a Special Review 'Fresh', in other words, a 'fresh' candidate cannot be clubbed with this category of applicants, since a 'wrong' that was done to him for no fault of his has now been corrected by following a due legal process making him a fresh case as of his batch when they were considered in October 2017. This position cannot be altered by any new policy. Placing the applicant to a disadvantageous position because of any implication of the new policy dated 23.12.2017, in particular the above impugned paragraphs, would be highly discriminatory and thus violative of Articles 14 and 16 of the Constitution and, therefore, cannot be sustained. It is his inviolable right which cannot be denied by issuing a policy in the interim period.

28. As has already been emphasised, it is a settled legal position that framing of policy is the prerogative of the Government and the Courts should be slow in interfering with such policy decision unless it is found to be discriminatory and arbitrary violating the principles of equality as enjoined in the Constitution of India. We, at the same time, are also conscious of the statutory position under Section 14(1) of the Armed Forces Tribunal Act. However, it is also true that if the policy decision is arbitrary and discriminatory on the face of it and any part of the said policy adversely affects the cause of an individual, the Tribunal can certainly intervene and correct the anomaly, if necessary. In the case on hand, by giving prospective effect to the impugned Promotion Policy, in our considered view, the applicant is deprived of his right to be considered for selection to the rank of Lieutenant General as a fresh consideration. Such deprivation is to be regarded as unjust and unreasonable.

29. Let us now refer to the judgments relied upon by the learned counsel for the respondents. In Dho/e Govind Sahebraos case (supra), the Hon'ble Supreme Court held that no judicial interference is called for unless chances of promotion and/or inter se seniority are altered arbitrarily, or on the basis of considerations which are shown to be perverse or mala fide or if the same is arbitrary or discriminatory. The facts in that case are entirely different and it does not in any way help learned counsel for the respondents to substantiate her stance. Purohit's case (supra) was a case where the Government changed the districtwise system replacing it by the Statewise system on the ground that the latter

was presumably more conducive to efficiency was mala fide. The facts of that case are different from the one on hand and we do not think the case Purohit's case (supra) would in any way help the respondents. In case of Col. Sangwan (supra), the Hon'ble Supreme Court held that it is perfectly within the competence of the Union of India to change, re-change, adjust and re-adjust the policy according to compulsions of circumstances and the imperatives of national considerations. In the case on hand, while there is no dispute on the issue and promulgation of the new policy, when the said impugned Promotion Policy treats the applicant discriminatorily, it violates the principles of natural justice by denying him the legitimate right of consideration. Therefore, the case Col. Sangwan (supra) cannot be applied at all. In Brig. VK Sharma's case (supra) also, this Tribunal followed the stand that it is the prerogative of the Government to frame policies in relation to its employees and the Courts seldom interfere with such policies. As already stated, the facts and circumstances of the case on hand stand on a different footing altogether and do not specifically deal with the questions involved therein.

30. For the aforesaid reasons, the net result is that the instant O.A deserves to be allowed. Ordered accordingly. The respondents are directed to consider the applicant for promotion to the rank of Lieutenant General as a Special Review (Fresh) Case in accordance with the same Promotion Policy as was applied for his batch which was in vogue when the first SSB took place in October 2017 and, if found fit by the Board, on the result being declassified, the applicant shall be promoted to the rank of Lieutenant General, undoubtedly, as per the vacancy available as on that date. We also make it clear that the Board resultsv shall be declassified well in time before 30.11.2018. No order as to costs.

31. Before parting with the judgment, we observe that the Promotion Policy dated 23.12.2017, which became the subject matter of discussion in the instant case vis-a-vis certain issues as discussed herein above, requires a re-visit by the respondents for its effective implementation in the right perspective, so as to avoid any further litigation.

37. From a perusal of the aforesaid judgement of this Tribunal in Maj Gen V.K. Singh (supra), it is well clear that while Deferred/Withdrawn and Special Review cases under the new policy may be evaluated alongside the upcoming batch using a revised standard and policy framework. However, it shall only apply to first and second review cases, and it should not extend to the applicant's situation, which involves a Special Review classified as 'Fresh.'

38. In essence, the aforesaid observations in Maj Gen V.K. Singh (supra), lays down a fundamental rule that a 'fresh' candidate should not be grouped with the latter category of applicants, specifically, wherein the candidate has been wronged through no fault of his own, and this injustice has been rectified through a proper legal process, thereby he should be categorized as a fresh case in line with his own cohort from the original batch, and this status should not be altered by any new policy. Subjecting the applicant to a disadvantage due to the implications of the new policy would constitute discrimination and violate Articles 14 and 16 of the Constitution, and therefore, such a stance cannot be upheld, since the applicant's right in these matters is fundamental and cannot be undermined by the introduction of an new policy.

39. We also note that the Tribunal in its parting observations has remarked that the Promotion Policy dated December 23, 2017, which has been central to the discussions in the case of Maj Gen V.K. Singh (supra) concerning various pertinent issues, warrants a thorough reassessment by the respondents, since, in the opinion of the Tribunal, such a re-evaluation is essential to ensure its effective implementation within the appropriate framework, thereby mitigating the potential for further litigation.

40. However, while no re-evaluation has been brought to the notice of this Tribunal, nevertheless, the respondents assailed the order dated 17.09.2018 of this Tribunal in Maj Gen V.K. Singh (supra), before the Hon'ble Supreme Court vide Union of India v. V.K. Singh [Civil Appeal Diary No 44838/2018], wherein agreeing with the direction of this Tribunal to consider the applicant as per the original policy vide order dated 04.01.2019, the Apex Court directed as under:

> *We have heard Mr. Aman Lekhi, learned ASG appearing on behalf of the appellants and Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the respondent for quite some time.*
>
> *We may note that Mr. Aman Lekhi, learned ASG has inter alia submitted that the Armed Forces Tribunal (AFT) has allowed the respondent to continue in service even when he has attained the age of superannuation as Major General on 30.11.2018, till his case for promotion to the post of Lt. General is to be decided by the Review Promotion Board. His submission is that the respondent has no right to continue in service after the age of superannuation. His further submission relates to the jurisdiction of the AFT to decide the policy issues. He submits that AFT has referred to the Constitution Bench Judgment of this Court in "L. Chandra Kumar vs Union Of India and Others" (1997) 3 SCC 261 which is not applicable in the case of AFT.*

The admitted facts are that the respondent was considered for the post of Lt. General in October, 2017 but was not recommended for promotion because of certain technically invalid remarks. The Officer who had made such remarks had retired already. The grievance of the respondent was that a retired officer could not have made such remarks in his annual confidential report. For this reason the respondent submitted a non-statutory representation before the competent authority in January, 2018. He got redressal therein inasmuch as the competent authority struck down the said remarks on 16.04.2018. With this, certainly, the respondent became entitled to be considered for promotion to the post of Lt. General by the Review Promotion Board. However, in the meantime, i.e. 23.12.2017 new Promotion Policy came into force. The respondent was considered but the result was never finalised. The case of the respondent is that once there is a review SPB it had to be as on October, 2017 when he was considered originally and the said consideration could be vitiated as the adverse remarks appearing against the respondent as on that date have been expunged by the competent authority. For this purpose Dr. Singhvi has referred the judgment of this Court passed in "Union of India & Ors. Versus Major General Manomoy Ganguly, VSM" (2018) 1 SCC 552.

Having regard to the totality of the circumstances, we are of the opinion that the respondent should be considered for the post of Lt. General by the Review Promotion Board on the basis of promotion policy that was in existence in October, 2017. We would expect the Promotion Board to hold a sitting and undertake the aforesaid process as soon as possible, preferably within three weeks from today.

In the meantime, the respondent shall not perform the duties of Major General. However, how the intervening period is to be treated, shall be decided on the next date of hearing. We have made these remarks keeping in mind that in case the respondent gets promoted to the post of Lt. General he shall get extension of two years and his age of superannuation shall stand deferred to 30.11.2020.

List on 25.01.2019"

41. On further hearing before the Hon'ble Supreme Court, vide its order dated 25.01.2019, it was pleased to pass following directions:

Permission to file appeal is granted.

After hearing learned counsel for the parties, this Court had passed detailed Order dated 04.01.2019 and directed the appellants to consider

the candidature of the respondent herein for the post of Lieutenant General by the review Special Selection Board ("SSB") on the basis of promotion policy that was in existence in October, 2017.

Mr. Aman Lekhi, learned Additional Solicitor General, submits that pursuant to the aforesaid direction, SSB had met on 19.01.2019. He has produced the outcome of the proceedings conducted by the said SSB in a sealed cover. We have opened the sealed cover and perused the Minutes of the SSB. As per these Minutes, the SSB has not recommended the respondent herein as well as one more Officer, whose case was also considered for promotion to the rank of Lieutenant General on the ground that they do not exceed the benchmark of 1983 and 1982 Batch of General Cadre respectively.

In view thereof, it is not possible to continue the respondent in service as in the post of Major General he had already attained the age of superannuation. The directions of the Armed Forces Tribunal to this effect is set aside and the appeal is allowed to the aforesaid extent.

We, however, make it clear that it would always be open to the respondent to make a representation against the recommendations of the SSB and/or take any other steps in accordance with law. Insofar as the question as to whether the Armed Forces Tribunal has jurisdiction to pass any such direction, that question is left open.

The application of impleadment is dismissed.

Pending applications, if any, stand disposed of."

42. An analytical view of the aforesaid observations of the Hon'ble Supreme Court vide its orders dated 04.01.2019 and 25.01.2019 clears few propositions – First, the order of this Tribunal with effect to the consideration of the applicant as per the earlier policy was upheld, which was accordingly complied with by the Respondents. Second, the direction of this Tribunal for the applicant to continue in the rank of Major General till his consideration by the SSB was set aside by the Hon'ble Supreme Court since the applicant after being considered as per the earlier policy was held to be non-empanelled for the promotion to the rank of Lt Gen. Third, the question of law with respect to the power of this Tribunal to pass any such direction was kept open to be adjudicated in further cases.

43. Thus, the clock has turned back to this Tribunal, for which, noting the aforesaid, we must observe that by now, it is the settled position of law, as laid down by the Hon'ble Supreme Court in Union of India v. Air Commodore N.K.

Sharma [2023 SCC Online SC 1673] that it only stands to reason that a Tribunal functioning within the strict boundaries of the governing legislation, would not have the power to direct the formation of a policy. However, the aforesaid judgement nowhere dilutes the power of this Tribunal to adjudicate a question of law, and restricts the application of the such power only to the directions issued for formulation of a policy which certainly is an over-exercise of power enshrined under Article 14. However, the question of law, when to be adjudicated as legal or illegal, touching upon the legal ramifications of violation of fundamental rights enshrined in the Constitution, and safeguarded by the basic structure, this Tribunal certainly cannot said to be restricted from entering the aforesaid area and thus, the constitutionality of a policy can be adjudicated.

44. Noting the aforesaid, we do not wish to embark on an mis-adventure to re-examine the provisions of a policy, which by virtue of it being the same as the provision of an earlier policy, of which the concerned provisions have already been examined at length by a coordinate bench of this Tribunal, the observations of which, acts as binding precedent being the coordinate bench of this Tribunal, and thus, we find it prudent to reiterate the same observations as has been observed by this Tribunal in Maj Gen V.K. Singh (supra), wherein the said directions are ipso facto reiterated with respect to the Para 14 of the Comprehensive Promotion Policy, 2023.

45. We find it pertinent to refer to the observations of Hon'ble Delhi High Court in Maj Gen Vinayak Saini, SM, VSM v. Union of India & Ors [W.P. (C) 7181/2024] as upheld by the Hon'ble Supreme Court in SLP (Civil) No. 20898/2024 filed by the Respondents, which came to be dismissed by an order dated 24 September 2024. Para 27 and 28 of the judgement of Delhi High Court dated 12.08.2024 is reproduced as under:

> *27. Having given our thoughtful consideration to this question, we are of the opinion that if the petitioner is not granted review consideration for promotion with respect to the SSB held on 09.02.2023, despite the redressal granted to him and his stand being vindicated that he had been wrongly downgraded by his IO, the very purpose of redressal being granted to an officer would stand defeated. This may lead to a situation like the present case, where despite being meritorious, an officer may still be denied promotion only because his IO/RO, as the case may be, arbitrarily downgrade his CR. Such an officer, in our view, cannot be told that even though the downgrading of his CR by his IO/RO was illegal and has been subsequently, set aside by the Central Government/the Chief of Army Staff by accepting his statutory/non-statutory complaint, he would still continue to be deprived of his rightful promotion as his*

junior has already been promoted in the meanwhile and he will be required to wait for accrual of the next vacancy.

28. There is yet another angle from which this issue can be examined. In case, the respondents" plea that a review consideration can be given only against the next available vacancy and not with reference to the Board where he was wronged, was to be accepted, it would lead to a situation where in order to harm the promotional prospects of an officer, the disposal of the statutory complaint preferred by him may itself be delayed deliberately. In the present case, the record in itself shows that though the petitioner had submitted a statutory complaint on 27.02.2023, the same was not forwarded to the competent authority/respondent no.1 till as late as July 2023 by which time the result of the Board held on 19.02.2023 was de-classified. Further we also wonder as to why the statutory complaint was not decided before the second vacancy of Lt. General in the Corps of Engineers was filled on 01.10.2023 but was instead decided just nine days thereafter."

46. While Para 27 & 28 of the aforesaid judgement do not specifically relate to factual matrix of the instant case, yet the principle laid down is clearly applicable, to the effect that if an officer has been downgraded by any reporting officer, and on filing of statutory complaint, secures the redressal, yet could not be considered for promotion in a legally justified manner in case of Maj Gen Vinayak Saini because of non-availability of vacancies, and in the instant case, because of a change in policy, which is brought into effect at the time of consideration by the No 2 SB, though the redressal granted was almost 1 month before the CPP, 2023 actually came into effect.

47. We hold no reservations but to observe that a candidate who has faced unfair treatment without any personal wrongdoing, and whose situations have been addressed through appropriate legal channels, should not be regarded and considered as part of a new group, but must be aligned and considered with their original peers, and any changes in the policy should not affect this situation.

48. Thus, while answering the Question 1, we uphold the Comprehensive Promotion Policy: Select Ranks, 2023 with the only exception to consideration by Special Review (Fresh) in line with Para 14, which requires re-consideration to that effect, keeping in view the observations of this Tribunal herein above, since the aforesaid Para 14 has not been altered even to the slightest and nothing, but pasted as it is from the Para 21 of the MS Policy dated 23.12.2017.

(emphasis supplied)

47. The core judicial opinion from our observations in ***Col V.S. Kahlon (supra)*** is that the we have treated the CPP 2023 as valid in general, but holds that its application to the applicant's special review case is arbitrary and offends settled principles on accrued rights and fairness in promotion matters.

48. Our reasoning on accrued right and legitimate expectation is doctrinally consistent with earlier AFT and Supreme Court jurisprudence relied upon in the extracted precedents including ***Maj Gen V.K. Singh (supra),*** wherein we have emphasized that once an officer has been granted statutory redress that materially corrects his profile, he acquires a right to be considered afresh on the same parameters, with the same batch, and under the same promotion regime that governed the original consideration; a subsequent policy cannot retrospectively deprive him of this remedial benefit. This line of reasoning is firmly rooted in the concept that corrective action must be "real and effective", not illusory. If the wrong in the CRs is acknowledged and expunged, the applicant must not be pushed into a more onerous comparative field created only by the intervening CPP 2023, because that would neutralize the earlier redress.

49. Secondly, we have drawn a clear and careful distinction between the validity of the policy per se and its retrospective or retroactive application to officers whose cause of action and remedial right arose under the

earlier 2002 promotion policy. On the one hand, we have accepted the executive's wide latitude in formulating promotion norms (but on the other hand we have limited that latitude where a new policy is used to defeat an already-accrued right to special review with the original batch. This is a measured approach: we do not "strike down" CPP 2023; instead, we read in an exception for special review cases of this kind, invoking fairness, non-arbitrariness, and protection against retrospective prejudice, in line with the reasoning in the ***Maj Gen V.K. Singh (supra)*** where denial of a meaningful fresh consideration after redress, because of an intervening policy, was held to be arbitrary and violative of natural justice.

50. The judicial concern is not with the marks or benchmarks in the abstract, but with the timing and frame of comparison: placing the applicant against the fresh batch, instead of re-running him against the original batch from which his earlier non-empanelment arose, is treated as converting the statutory redress into a purely cosmetic exercise. In that sense, we had to operationalize natural justice in a highly fact-specific way: we ask a question to ourself, as to whether the applicant is restored "to the position he would have been in" but for the wrong CRs, and finds that the CPP-based comparison with a later batch fails that test.

51. One could critique this as edging close to re-writing the policy, yet the we find it essential to justify it by framing the relief not as

policy-making but as enforcing constitutional constraints of non-arbitrariness and legitimate expectation in the application of that policy, wherein we find that within the Tribunal's own jurisdictional framework under Section 14 of AFT Act, the reasoning is internally consistent, rooted in earlier case law, and tightly linked to the factual matrix of delayed redress and shifting policy regimes.

52. As regards the contention that the decision of this Tribunal in ***Col V.S. Kahlon (supra)*** is confined to selection board policies governing promotions up to the rank of Brigadier and not beyond, we are unable to accept the distinction so sought to be drawn. The substantive provisions of the Promotion Policy, 2002 and the Comprehensive Promotion Policy, 2023, in their application to promotions to the ranks of Colonel and Brigadier, are materially indistinguishable from those contained in the Promotion Policy relating to the Special Selection Board and No. 1 Selection Board, 2017, and the Comprehensive Promotion Policy, 2023 applicable thereto. The principles enunciated by this Tribunal in ***Maj Gen V.K. Singh (supra)***, while examining the policy governing SSB and No. 1 SB, stand merely reiterated and reaffirmed in ***Col V.S. Kahlon (supra).*** The attempted differentiation on the basis of rank, therefore, is without substance and does not advance the case of the respondents in the present matter.

53. We note that the aforesaid order of this Tribunal in ***Col V.S. Kahlon (supra)***, was assailed by the respondents before Delhi High Court in ***UoI v. Col. V.S. Kahlon [W.P. (C) 17883/2025],*** wherein vide its order dated 26.11.2025, Hon'ble Delhi HC has observed as under:

> *1. After some hearing, Dr. Mahndiyan, learned Counsel for the petitioners, restricts his challenge to the impugned order dated 25 July 2025, passed by the Armed Forces Tribunal[1], to the following finding, contained in para 60 thereof:*
>
> > *"However, it is essential to note that consequent to the disposal of the second statutory complaint, the applicant's marks were higher than the last empanelled officer of his original batch i.e., 1997 batch."*
>
> *2. According to Dr. Mehndiyan, this finding is incorrect.*
>
> *3. It is an admitted position that the second statutory complaint was disposed of in October 2023, whereafter the case of the respondent was considered in June 2024, during which marks were awarded to him.*
>
> *4. The finding of the AFT is that these marks, as awarded to the respondent, were higher than the marks awarded to the last empanelled candidate of the 1997 batch who had been considered in June 2022.*
>
> *5. Dr. Mehndiyan, on instructions, disputes the correctness of this finding.*
>
> *6. If a finding rendered by the AFT is erroneous, the remedy with the petitioners would be to move the AFT by way of review. Dr. Mehndiyan, therefore, on instructions, seeks leave to withdraw this writ petition with liberty to move the AFT by way of review.*
>
> *7. We make it clear that the scope of review would be restricted to the question of whether in the consideration of the respondent in June 2024, the marks which were awarded to him were or were not higher than the marks awarded to the last empanelled candidate of the 1997 batch in June 2022.*
>
> *8. If they were, the order of the AFT would remain undisturbed.*

9. This writ petition is disposed of in the aforesaid terms, with no orders as to costs.

10. We respectfully request the AFT, should the review be filed, to decide it as expeditiously as possible."

54. From a plain reading of the aforesaid order of the Hon'ble Delhi High Court, it is evident that, in so far as the applicability of the Comprehensive Promotion Policy, 2023 is concerned, the same stands accepted by the respondents, and the review directed by the Hon'ble High Court is confined in its scope solely to the aspect of recalculation of the marks awarded to the applicant by the Promotion Board and his resultant merit position. This, by necessary implication, signifies that the respondents, having chosen not to assail the judgment of this Tribunal on the issue of applicability of CPP, 2023 before the Hon'ble High Court, have allowed that part of the decision to attain finality in law. The consequence is that the direction issued to the respondents to review Para 14 of the Comprehensive Promotion Policy: Select Ranks, 2023, and the Para 21 of the Promotion Policy: SSB & No. 1 SB dated 23.12.2017, continues to operate and stands undisturbed.

55. In view of the foregoing, the respondents are, accordingly, directed to review Para 14 of the Comprehensive Promotion Policy: Select Ranks, 2023, as also Para 21 of the Promotion Policy: SSB & No. 1 SB dated 23.12.2017, in the light of, and consistently with, the findings returned by

this Tribunal in *Maj Gen V.K. Singh* (supra) and *Col V.S. Kahlon* (supra), wherein the said provisions have been held to operate in an adverse and unlawful manner.

56. At his moment, on a perusal of the statutory complaint dated 14.11.2024 and the order dated 20.03.2025 granting partial redressal to the applicant, we find that they together clearly establish that the respondents themselves have found the applicant's earlier reckonable profile to be tainted by inconsistent and subjective assessments and have therefore, expunged the entire SRO assessment in CR 12/09–07/10 and the SRO's QsAP assessment in CR 09/17–03/18, both expressly noted as "not impugned". Not to lose sight of the fact, that the CRs wherein the redressal has been granted, are the CRs for the period of service, rendered by the applicant prior to his first consideration by the No.1 SB.

57. Once such expunction is ordered by the Central Government on grounds of inconsistency and subjectivity, the necessary legal consequence is that the applicant's profile, for promotion purposes, stands materially altered; his 'current' profile is a 'new' profile which must be tested first in the same legal and factual frame in which his earlier non-empanelment arose, namely, in comparison with his original 1992 batch, and not with later batches.

58. In law, the applicant's right is not merely to have aberrant CR entries removed in the abstract, but to be restored, as far as possible, to the position he would have occupied had those defective assessments never formed part of his reckonable profile. The discovery of inconsistency/subjectivity in CRs of 2009–10 and 2017–18 (never even impugned in the complaint) and their expunction in 2025 shows that such aberrations were present and operative when the applicant was earlier considered for promotion and when he filed his previous statutory complaint dated 05.02.2022 against CR-4 and CR-5. Had the respondents carried out the full scrutiny of the "entire profile" at that earlier stage, the same redress could and should have been granted then; the delay in correction cannot now be used to justify placing the applicant in a harsher comparative field by tagging his Special Review (Fresh) to the 1993 and 1994 batches instead of his original 1992 batch.

CONCLUSION & DIRECTIONS

59. In view of the foregoing analysis, we are of the considered opinion that CR-5, having been duly upheld as valid by the competent judicial fora, warrants no further interference. However, in the interest of ensuring fair and equitable career progression, the applicant shall be entitled to consideration for promotion to the rank of Maj Gen by the No. 1 SB, along with his original batch.

60. In effect, the applicant shall be assessed with the 1992 Batch as a 'Special Review (Fresh)' case. The respondents are, therefore, directed to give effect to the said reconsideration and complete the process within a period of three months from the date of pronouncement of this order.

61. The OA 2557/2025 is hereby disposed off, in terms of above directions.

62. No order as to costs.

63. Pending miscellaneous applications, if any, stand disposed of.

Pronounced in the open Court on 2nd day of April 2026.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P MOHANTY)
MEMBER (A)

/akc/