

NAFR
Reserved
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Transfer Application No. 96 of 2016

Wednesday, this 8th day of February, 2017

Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Maj Gen DVS Rana, AVSM, SM, VSM, son of Shri Ajit Singh Rana, presently posted as Officiating GOC, HQ MB Area, Jabalpur, M.P.

..... Petitioner

By Legal Practitioner Shri K.C.Ghildiyal, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110 011
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi-110 011.
3. The Military Secretary, Military Secretary's Branch, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi-110 011.

..... Respondents

By Legal Practitioner Shri V.P.S. Vats, Learned Counsel for the Respondents, assisted by Maj Soma John, OIC Legal Cell

ORDER

Per Justice D.P.Singh, Member (J)

1. OA preferred by the petitioner bearing No. 01(J)/2016 before the Armed forces Tribunal, Regional

Bench, Jabalpur has been transferred to this Bench by the Hon'ble Chairperson of the Armed Forces Tribunal Principal Bench, New Delhi for adjudication of the controversy raised in the petition. The petitioner has assailed the CRs covering the period 01.01.2014 to 30.06.2014 and 01.07.2014 to 26.03.2015 and prayed for issuance of a direction to the respondents to consider his promotion to the rank of Lieutenant General from the respective date when immediate junior to him has been promoted with all consequential benefits as a Special Review (Fresh) case.

2. We have heard Shri K.C.Ghildiyal, learned counsel for the petitioner and Shri VPS Vats, learned counsel for the respondents, assisted by Maj Soma John, OIC Legal Cell, and perused the record.

3. The factual matrix of the case is that the petitioner was granted permanent commission in the Indian Army on 13.06.1981 in Punjab Regiment of Infantry as a Second Lieutenant. Later on, because of his bright service record, the petitioner was granted promotions to the ranks of Lieutenant, Captain, Major, Lieutenant Colonel and thereafter to the rank of Colonel. The petitioner commanded a Unit in the Kashmir valley for about 29

months and his performance was adjudged as most outstanding. In view of his extra-ordinary performance in the capacity of Commanding Officer as aforesaid, the petitioner was awarded Vishisht Seva Medal (VSM). Because of his outstanding performance/profile, the petitioner was promoted to the rank of Brigadier and posted in North East as Brigade Commander, HQ 11 Mountain Brigade at Goalpara (Assam) on 01.07.2009. For his distinguished performance as Brigadier in counter insurgency environment, he was awarded Sena Medal (SM). Thereafter, the petitioner was promoted to the rank of Major General on 01.01.2014. While posted as General Officer Commanding (GOC) 2 Mountain Division, the petitioner earned two ACRs. The first ACR covering the period from 01.01.2014 to 30.06.2014 was initiated by Lt Gen SL Narasimhan, the then GOC, 3 Corps on 03.07.2014 as Initiating Officer and it was reviewed by Lt Gen MMS Rai, the then General Officer Commanding-in-Chief (GOC-in-C), Eastern Command as Reviewing Officer (RO). The petitioner was assessed as outstanding by the Initiating Officer in figurative assessment with a complimentary pen picture, copy of which has been annexed as Annexure A-7 to the petition. It is averred that the RO after endorsing the

ACR had forwarded the same to MS (X) on 03.08.2014, through which the same was to be endorsed by the SRO i.e. the Chief of the Army Staff. The second CR was initiated by Lt Gen Bipin Rawat, the then General Officer Commanding 4 Corps. It was an interim CR covering the period from 01.07.2014 to 26.03.2015. In this ACR, the petitioner was assessed as outstanding in figurative assessment with commensurate pen picture, appending appreciation that the petitioner had performed consistently (vide Annexure A-9 to the petition). The Initiating Officer forwarded the aforesaid CR for review by Lt Gen MMS Rai, the then GOC-in-C, Eastern Command, who after review was supposed to forward it for endorsement to the SRO, who happens to be present Chief of the Army Staff. It has been stated that the petitioner possessed extraordinary overall performance and consequently he was awarded Ati Vishisht Seva Medal (AVSM) on 26.01.2015 for distinguished services of exceptional order.

4. Vide letter dated 22.09.2015, tentative scheduled date for holding of the Special Selection Board (SSB) for promotion to the rank of Lieutenant General sometime in October, 2015 was intimated. In the said selection, the Major Generals belonging to the general cadre of 1981

batch were to be considered by the SSB. Since the petitioner was in eligibility zone, he was also considered by the SSB convened on 15.10.2015 alongwith others and a list of panel of officers approved for promotion to the rank of Lt Gen of general cadre was issued by respondent No. 3 on 21.04.2016. The said list contained the names of 14 officers excluding the name of the petitioner, hence being aggrieved the petitioner preferred the OA before the Armed Forces Tribunal, Regional Bench, Jabalpur, which on transfer to this Bench is before us as present TA.

5. Following important questions emerge for consideration and adjudication in the present case:

- (1) Whether the SRO can record his opinion in the CR after retirement?
- (2) What shall be the effect of pen picture upon the box grading?
- (3) Whether box grading can be provided ignoring opinion expressed in pen picture?

It has been submitted by learned counsel for the petitioner that the CR profile of the petitioner has been manipulated with the avowed object of lowering down his quantified merit to help some chosen officers in getting promotion. He has drawn our attention to the omission on the part of the SRO of not sending acknowledgement of CR

endorsed by them to the petitioner so as to know as to when the CR has been endorsed by the SRO. It is submitted that the assessment has been manipulated in two CRs covering the aforesaid period in two significant criteria reports in the rank of Maj Gen. The honours and awards bestowed on the petitioner during key operational assignments, leave no manner of doubt of his future prospects making him most probable candidate for promotion to the next higher rank i.e. Lt Gen. It is further submitted that while working as Maj Gen commanding 2 Mountain Division, which is strategically one of the most important Divisions in the North East, enabled bestowal of not only AVSM but he was also assessed outstanding by the first level of reporting officers i.e. Initiating Officers in all his CRs earned by him with a matching pen pictures in both the CRs. The award of AVSM shows the distinguished service rendered by the petitioner as is apparent from the guide-lines filed as Annexure A-12 and copy of citation for Award of AVSM has been filed as Annexure A-13 to the TA.

6. It is further argued that in derogation of the Army Order 45/2001/MS, the respondents did not divulge the date on which the Senior Reviewing Officers had endorsed the CRs notwithstanding request of the petitioner, which lends

credence to the belief of the petitioner that the respondents had acted in the same manner as in the case of Maj Gen K.K.Sinha by bringing him down in his assessment at the level of RO and SRO in one or both the CRs at a belated stage before holding of the SSB to work out the inter se merit. By this reckoning, learned counsel for the petitioner submits, the respondents had placed only those officers in quantified merit against the available vacancies whom they have cherry-picked even before holding of the SSB giving Selection Board only a mechanical task to perform by awarding the value judgment in the same proportion as the quantified merit notwithstanding the fact that the value judgment is supposed to be an objective assessment of the inputs which cannot be quantified and cannot have any correlation with the quantified merit vis-à-vis Policy dated 04.01.2011.

7. Learned counsel for the petitioner expressed his doubt that outgoing Chief of the Army Staff Gen Bikram Singh has made endorsement as SRO while serving as Head of the Indian Army; rather he made an endorsement after a pretty long period from the date of retirement/superannuation. It is vehemently argued and submitted that the bestowal of awards of VSM, SM and AVSM while serving as Colonel,

Brigadier and lastly as Major General should not be in waste paper-box while appreciating the petitioner's overall performance by SRO and the SSB. The petitioner has also assailed the error committed by the SSB in awarding the value judgment as per the parameters on which the value judgment is required to be assessed denying the petitioner's fundamental right of fair consideration flowing from Article 14 read with Article 21 of the Constitution. Learned counsel for the petitioner relied upon the following cases:

- (1) *(1993) 2 SCC 279, Mahesh Chandra versus Regional Manager U.P. Financial Corporation and others;*
- (2) *(2016) 2 SCC 627, Veerendra Kumar Dubey versus Chief of Army Staff and others;*
- (3) *(2013) 9 SCC 566, Sukhdev Singh versus Union of India and others;*
- (4) *(2007) 9 SCC 436, S.T.Ramesh versus State of Karnataka and others;*
- (5) *(1996) 2 SCC 363, U.P.Jal Nigam and others versus Prabhat Chandra Jain and others;* and
- (6) *(2013) 16 SCC 293, Vinod Kumar versus State of Haryana and others.*

8. In response, learned counsel for the respondents has refuted the petitioner's submission that any error has been committed by the SSB. His submission is that the SSB takes

into consideration various factors, such as war/operational reports, course reports, ACR performance in command and staff/other appointments, honours and awards, disciplinary background and the selection is based upon the overall profile of an officer and comparative merit within the batch. While defending the action of the respondents, learned counsel for the respondents, assisted by Major Soma John, OIC Legal Cell, submits that the Army has a pyramidal structure, wherein the number of vacancies at higher ranks is limited and the comparative assessment of the officers is done by the SSB is ACR, regulated by SAO 3/S/89 (which has now been replaced by Army Order 45/2001/MS. It is also submitted that the assessments of IO and SRO are independent of each other. The selection/rejection is based upon the overall profile of an officer and comparative merit within the batch as evaluated by the Selection Board. The assessment of the SSB is recommendatory in nature and is not binding until approved by the Central Government. The petitioner has not availed the statutory remedy available to him before the ACC and it is not justified to exclude the ACC because the petitioner is aggrieved by the action of the ACC. It is also submitted by learned counsel for the respondents that when the open portion of confidential report

is communicated to the ratee, he is required to sign the same and forward to MS Branch. It is prohibited under the Army Order for the ratee to retain the copy of open portion of the confidential report. It is also submitted that the distinguished service awards given to the petitioner in the rank of Col, Brig and Maj Gen have no co-relation with the policy of quantified system of selection; they are not part of the quantified marks but they are considered for the purpose of value judgment.

9. It is also submitted by the respondents that the courts should not substitute the findings of Selection Boards by its own opinion. The petitioner was awarded suitable value judgment marks based on objective consideration and was not discriminated against his batch-mates. In support of his submissions, learned counsel for the respondents has relied upon the following case-laws:

- (1) *(2008) 2 SCC 649, Surinder Shukla versus Union of India and others;*
- (2) *(2008) 2 SCC 119, M.V.Thimmaiah and others versus Union Public Service Commission and others;*
- (3) *(2001) 10 SCC 424, Amrik Singh versus Union of India and others;*
- (4) *(2000) 6 SCC 698, Union of India and others versus Lt Gen Rajendra Singh Kadyan and another;*

- (5) *(1993) Supp (4) SCC 441*, Air Vice Marshyal **S.L.Chhabra, VSM (Retd.) versus Union of India and another.**
- (6) *(1990) 1 SCC 305*, **Dalpat Abasaheb Solunke and others versus Dr. B.S.Mahajan and others;**
- (7) *OA No. 905 of 2015*, **Brig Mandeep Singh versus Union of India and others (AFT PB New Delhi);**
- (8) *OA No. 208 of 2015*, **Maj Gen R.P.S.Bhadauria versus Union of India and others (AFT PB New Delhi);**
- (9) *OA No. 473 of 2014*, Maj Gen Binoy Poonnen, AVSM, VSM versus Union of India and others (AFT PB New Delhi.);
- (10) *OA No. 74 of 2015*, **Maj Gen K.K.Sinha, SM, VSM versus Union of India and others (AFT PB New Delhi.);**
- (11) *OA No. 120 of 2014*, **Maj Gen SK Chakravorty versus Union of India and others (AFT PB New Delhi.);**
- (12) *OA No. 505 of 2011*, **Maj Gen T.S.Handa, SM versus Union of India and others (AFT RB Chandigarh.)**
- (13) *OA No. 109 of 2011*, **Lt Col DCS Mayal versus Union of India and others (AFT PB New Delhi);**
- (14) *OA No. 167 of 2011*, **Lt Col P.K.Bura versus Union of India and others (AFT RB Chandigarh);**
- (15) *OA No. 04 of 2010*, **Lt Col Jagnar Singh versus The Union of India and others (AFT PB New Delhi); and**
- (16) *TA No. 160 of 2009*, **Col Amar Narwat versus Union of India and others (AFT PB New Delhi).**

CR entry by SRO after superannuation.

10. According to the promotion policy applicable till 15.12.2004, promotions in the Army upto the rank of Major were by time-scale. Promotions from Major to Lt Col and above were by Selection Boards in accordance with Para 108 of the Regulations for the Army, 1987 (hereinafter referred to as Army Regulations). The quantified system of selection policy applicable in the present case was issued by MS in accordance to Army Order No. 45/2001/MS replacing Policy No. SAO 3/S/89.

11. The date of superannuation of the officers of the Army is regulated by the Army Act and Army Regulations. From a perusal of the original record, it does transpire that the date of endorsement of CR by SRO (COAS) Gen Bikram Singh was recorded on 01.09.2014. Gen Bikram Singh retired from service on 31.07.2014. There is thus no doubt that the SRO has endorsed the CR after the date of his retirement. Questions that crop up for consideration are- whether the date of filing of ACR by SRO has any bearing on the ACR and whether entry made by SRO after retirement is valid? We have considered the overall effect of an entry made by SRO in accordance with the provisions of statute, Army Regulations and Army Orders issued from time to time.

12. The commission and appointment of the officers of the Army is granted by the President of India under Section 10 of the Army Act, 1950 (for short, the Army Act). The tenure of service has been provided under Section 18 of the Army Act, which provides that every person subject to the Army Act shall hold office during the pleasure of the President. Retirement, release or discharge has been provided under Section 22 of the Army Act. Section 23 provides that an officer, who is dismissed, removed, discharged, retired or released from the service shall be furnished by the Commanding Officer with a certificate. For convenience, Sections 10, 18, 22 and 23 are reproduced as under:

“10. Commission and appointment— *The President may grant, to such person as he thinks fit, a commission as an officer, or as a junior commissioned officer or appoint any person as a warrant officer of the regular Army.*

“18. Tenure of service under the Act.— *Every person subject to this Act shall hold office during the pleasure of the President.”*

“22. Retirement, release or discharge.— *Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.*

23. Certificate on termination of service.— *Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the*

language which is the mother tongue of such person and also in the English language setting forth—

(a) the authority terminating his service;

(b) the cause for such termination; and

(c) the full period of his service in the regular Army.”

13. A plain reading of the aforesaid statutory provisions shows that the tenure of service is subject to the pleasure of the President and while issuing a certificate with regard to relinquishment of the office under clause (c) of Section 23, the certificate shall disclose the full period of service in the regular Army. It means that once a certificate is issued at the time of retirement from service under Section 23, the retired person will have no right to do anything which falls within his/her domain while serving the Army. It shall be the final goodbye from service once a person retired or relinquishes an office of the Indian Army. The doctrine of pleasure inhibits in itself the tenure of service, which is upto the date of superannuation.

14. Tenure means the term during which office is held. It is a condition of holding an office. Once a person is appointed to a tenure post his appointment to said office begins when he/she joins and it comes to an end on

completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate; rather he/she only goes out of office on completion of his/her tenure. The question of prematurely retiring him/her does not arise. Tenure appointment has fixed life but appointment done against sanctioned post without indicating the tenure shall continue till the age of superannuation unless removed, dismissed or terminated in accordance with law (vide *L.P. Agarwal (Dr.) vs. Union of India* AIR 1992 SC 1872). Before enforcement of Constitution of India, it was a well settled principles of English Law that the officers and servants of the crown held appointment till pleasure of the Crown and their services would be terminated without any notice and the inquiry was optional. With the advent of Constitution and in view of Articles 309, 310 and 311 of the Constitution the scenario changed. Article 310 deals with the tenure of office of person serving the Union or the State and such office shall be held during the pleasure of the President if the post is under Union and during the pleasure of the Governor if the post is under the State. Doctrine of pleasure is embodied in Article 310 whereas Article 310 (2) deals with the cases of persons appointed under contract except as specifically provided by the Constitution. Further, persons who are the members of

the Defence Services or of the civil services of Union of India or all India services or holds any post connected with defence or civil post under the Union holds office during the pleasure of President and in the same manner State civil servants hold office during the pleasure of the Governor of the State.

15. It was in *AIR 1958 SC 36, Purshottam vs. Union of India* followed by *AIR 1964 SC, Moti Ram Deka vs. Union of India*, the Hon'ble Supreme Court held that the doctrine of pleasure codified in Article 310 (1) of the Constitution of India is a legacy of the English. It means that a servant of the Crown holds office during the pleasure of the Sovereign. But in order to protect civil servant against political interference, Article 311 introduces certain safeguards in the Constitution which is subject to specific contract entered into between the employer and the employee, but it is not applicable to defence services.

The "*pleasure doctrine*" contained in Section 18 of the Act is in tune with Article 310 of the Constitution of India, which means that the Parliament in its wisdom has not withdrawn or deleted benefits/procedural safe-guard available through "doctrine of pleasure" to the Armed Forces personnel in view of Article 33 of the Constitution of India.

In the absence of any statutory provision and keeping in view the mandate of Section 18 of the Act flowing from the provision of Article 310 of the Constitution of India, “doctrine of pleasure” shall be applicable to Commissioned Officers.

16. Needless to say that the pleasure doctrine (supra) shall continue till the person/commissioned officer is holding office in the Indian Army. After retirement, once a notification is issued indicating the date of superannuation/retirement, such a person shall be *functus officio* in doing anything which he was performing in his official capacity before relinquishment of his office.

17. Para 4 of the Army Regulations provides that the President of India shall be the Supreme Commander of the armed forces and the Chief of the Army Staff is responsible to the President through the Central Government for the command. For convenience, Para 4 of the Army Regulations is reproduced as under:

“4. Control. — (a) *The supreme command of the Armed Forces (of which the Army is a component) is vested in the President of India.*

(b) The Chief of the Army Staff is responsible to the President through the Central Government for the command,

discipline, recruitment, training, organisation, administration and preparation for war of the Army.”

The letter and spirit of Para 4 of the Army Regulations is that the Chief of the Army Staff shall work under the supreme command of the Armed Forces i.e. the President of India. But once he retires or is superannuated, he ceases to have the power to command the Armed Forces and to control the Army staff and all such duties conferred on him under Para 4 of the Army Regulations read with Sections 10 and 18 of the Army Act, shall be deemed to have been transferred to his/her successor.

18. Para 51 of the Army Regulations deals with the duties of officers; Para 55 deals with the commencement of service; Para 75 provides the tenure admissible in the substantive rank of Brigadier and above and Rules governing them and Para 76 relates to age limits for compulsory retirement of officers. Para 104 deals with retirement and resignation and Para 134 of the Army Regulations provides term of officers. Paras 51, 55, 75, 76 and 104 of the Army Regulations are reproduced as under:

“51 .Duties of Officers. -The Chief of the Army Staff will allocate to subordinate commanders and administrative authorities the duties to be carried out by them but in cases of grave emergency nothing will absolve the

senior officer present from his obligation to assume control under the conditions laid down in [para 52](#). In such cases where timely communication with higher authorities is impracticable, responsibility for deciding whether or not the situation is such as to require his intervention rests with the officer himself.”

“55. Commencement of Service. —

Unless specially provided for otherwise, an officer's service commences from the date of his first commission. All appointments, whether permanent or temporary, transfers, promotions, retirements and removals will be published in the orders of the sanctioning authority and in the absence of any specified date, will take effect from the date of the order in which they appear. The grant of first commission and promotion to substantive rank and conferment of local rank will be notified in the Gazette of India.”

“75. Tenure admissible in the substantive rank of Brigadier and above and Rules governing them.—*The tenure admissible and the conditions attached thereto will be as follows: —*

(a) Officers of Armoured Corps, Infantry, Artillery, Engineers, Signals, Army Service Corps, Army Ordnance Corps, Electrical and Mechanical Engineers and Pioneer Corps —

(i) General. - The tenure will be three years. The officer will retire on attaining the age of superannuation specified in [para 76](#) below or on completion of the tenure whichever is earlier.

(ii) The tenure in the appointments of Army Commanders, VCOAS (Lt Gen), and

Heads of Arms and Services namely Director General of Artillery, Engineer in Chief, Signal Officer in Chief, Director General of Supplies and Transport, Director General of Ordnance Services, Director General of Electrical and Mechanical Engineers and the Director of Pioneer Corps will be four years irrespective of the rank or ranks in which held and whether the rank held is acting or substantive. These officers will retire on attaining the age of superannuation specified in [para76](#) below or on completion of the tenure, whichever is earlier.

*(b) **Officers of Army Education Corps, Judge Advocate General's Department and Military Farms.**—The tenure of Additional Director General in the Army Education Corps, Judge Advocate General in the Judge Advocate General's Department and Deputy Director General in Military Farms will be four years, irrespective of the rank or ranks in which held and whether the rank held is acting or substantive. These officers will retire on attaining the age of superannuation specified in [para76](#) below or on completion of the tenure, whichever is earlier.*

*(c) **Military Nursing Service—Maj Gen.** —The tenure will be four years. The officer will retire on attaining the age of superannuation specified in [para 76](#) below or on completion of the tenure, whichever is earlier.*

*(d) **Army Medical Corps.**—There shall be no tenure in the substantive ranks of Maj Gen and below. Officers holding the rank of substantive Lt Gen will serve in that rank for one tenure of 4 years or upto the age of compulsory retirement, whichever is earlier. But an officer holding the appointment of*

DGMS (Army)/DMS (Air)/Chief Consultant/Commandant, AFMC in the rank of Lt Gen will, in the event of his being appointed as DGAFMS, serve for a combined tenure of 5 years or upto the age of compulsory retirement whichever is earlier.

(e) Remount and Veterinary Corps.—The tenure of Additional Director General in this Corps will be four years irrespective of the rank or ranks in which held and whether the rank held is acting or substantive. The officer holding this appointment will retire on attaining the age of superannuation specified in para 76 below or on completion of the tenure, whichever is earlier.

(f) Special List Officers.—The tenure of inspector of Records and Director Army Physical Training Corps will be four years irrespective of the rank in which held and whether the rank held is acting or substantive. These officers will retire on attaining the age of superannuation specified in para 76 below or on completion of the tenure, whichever is earlier.

76. Age limits for compulsory retirement of officers.— *Compulsory retirement in the respective substantive ranks will be on attaining the age limits given below, or on completion of tenure granted under para 75, whichever is earlier: —*

(a) Officers of Armoured Corps, Artillery, Engineers, Signals, Infantry, ASC, AOC, EME and Pioneer Corps: —

General60 years

Maj General 58 years

Brigadier.....56 years

Colonel.... 54 years

Lt Colonel (Selection)..... 54 years

Lt Colonel (Time Scale).....53 years

Major and below.....52 years

ASC (including Food Inspection Organisation), A.O.C., EME and Pioneer Corps:

Lt General60 years

Maj General 58 years

(For officers of Food Inspection Organisation)

Brigadier.....56 years

(For officers of Food Inspection Organisation)

Colonel.... 54 years

Lt Colonel (Selection)..... 54 years

(57 years, For Pioneer Corps, as and when authorized.)

Lt Colonel (Time Scale).....54 years

Major and below.....54 years

(b) Officers of Army Education Corps, JAG's Department and Military Farms: —

Lt General.....60 years

(As and when authorized.)

Major General.....57 years

(In the case of Military Farms- as and when authorized.)

Brigadier.....56 years

Colonel and below..55 years

(c) Officers of Intelligence Corps: —

Lt General.....60 years

(As and when authorized.)

Major General.....58 years

Brigadier.....56 years

Colonel54 years

Lt Colonel (Selection)..... 54 years

Lt Colonel (Time Scale).....53 years

Major and below.....52 years

(d) Special List (Quartermasters, Technical Officers and Record Officers) and Army Physical Training Corps (Master at Arms)

Lt General.....60 years

(As and when authorized.)

Major General.....59 years

(As and when authorized.)

Brigadier.....58 years

Colonel and below..57 years

(e) Remount and Veterinary Corps: —

Major General.....60 years

Brigadier.....59 years

Colonel.....57 years

Colonel and below.....55 years

NOTE: The ages of retirement shown above for Int Corps, AEC, JAG's Dept and Military Farms will apply to all officers commissioned on or after 26 Jul 85, all officers

who have opted for these ages of retirement and to all officers who have not given any option till 25 Jan 86. Officers who have opted for the ages of retirement prevailing before 26 Jul 85. will continue to be governed by the old terms.

(f) Service Officers permanently seconded to Research & Development and Inspection Organisations: —

Lt General 58 years or on completion of four years tenure as substantive Lt Gen, whichever is earlier.

Maj Gen and below 57 years, subject to reviews at the ages of 52 and 55 years.

(g) Military Nursing Service: —

Major General.....60 years

Brigadier 59 years

Colonel 57 years

Lt Col and below 56 years

(h) Army Medical Corps: —

Major General.....60 years

Brigadier 59 years

Colonel 57 years

Lt Col and below 56 years

(i) Army Medical Corps (Non-Tech):

As in (h) above.

(j) Army Dental Corps:-

As in (h) above.

For AMC, ADC, MNS, AMC (NT) & RVC.

Lt Generals and equivalents of AMC except DG AFMS- 2 years tenure or on attaining 61 years of age whichever is earlier.

DG AFMS- 3 years tenure or on attaining the age of 62 years whichever is earlier.”

“104. Retirement And Resignation.—*(a) The President may call upon any officer to retire or resign his commission at any time without assigning any reason.*

(b) The Central Government may call upon any officer to retire or resign his commission at any time subject to the provisions of the rules in this behalf, as made under the Army Act.

(c) No authority other than that specified in sub-paras (a) and (b) above, may call upon an officer to retire or resign his commission or exert any pressure on him to do so.

(d) An officer will not be relieved of his duties until receipt of intimation that his application to retire or resign has been accepted. An officer whose application to retire or resign has been accepted may apply to the Central Government for his application to be cancelled. In the case of officers who have once proceeded on leave pending retirement, permission to withdraw such applications will only be granted in exceptional circumstances. The decision of the Central Government on all applications to retire will be final.

(e) An officer of the Army who resigns from the service, vacates any civil appointment under the Central Government that he may be

holding, unless the Central Government otherwise directs.”

19. Para 52 of the Army Regulations further provides that the command shall be exercised by the senior officer, irrespective of the Branch of service to which he belongs. For convenience, Para 52, clauses (a), (b), (c), (d), (e), (f), (g) and (h) and Paras 54, 55 and 56 of the Army Regulations, relevant for the purposes of this case, are reproduced as under:

“52. Command -(a) *Command will be exercised by the senior officer, irrespective of the branch of the service to which he belongs but subject to the conditions specified in sub paras (b) to (1). Exceptions may be made when an officer is specially placed in command.*

(b) The power of command to be exercised by officers of the President's Body Guard, the Armoured Corps, Regiment of Artillery, Corps of Engineers, Corps of Signals, Infantry, Army Service Corps, Army Ordnance Corps and Electrical and Mechanical Engineers will, save as otherwise provided in sub para (c) and (d) be the power of command over all officers junior in rank or in seniority in such corps over all officers of the corps, referred to in sub paras (c) and (d) and over all other ranks in any corps.

(c) The power of command to be exercised by officers [except those referred to in sub para (d)] belonging to the corps other than those mentioned in sub para (b), will extend over all officers junior in rank or in seniority in their own corps, over all officer's

referred to in sub para (d) in their own corps and over all other ranks in any corps. It will also extend over such officers of any corps, junior in rank or in seniority, as may be attached for duty to, or specially placed under the command of officers of the Corps included in this sub para. In the case of officers of the Army Medical Corps and the Army Dental Corps, it will further extend over all ranks who are patients in military hospitals, or are on the sick list and are under their professional care in quarters or elsewhere. An officer of the Army Medical Corps will also have power of command over officers of the Military Nursing Service when such officers are engaged in the nursing of patients under his professional care or when serving in a unit of which he is in command.

(d) The power of command to be exercised by officers specified below will be power of command over all officers of their own category, junior in rank or in seniority, and over all other ranks in any corps. It will also extend over any such officers of any corps as may be specially placed under their command and as provided in sub para (e): —

(i) Officers of the Special List (e.g. Quartermaster, Record Officers. Technical Officers).

(ii) Officers of the Army Service Corps (Postal).

(iii) Officers employed in posts, not paid from Defence Services Estimates (e.g. Survey).

(iv) Officers employed as Military Advisers/Attaches.

(e) Subject to the exceptions mentioned in sub paras (c) and (d), officers referred to there in will not exercise any military command outside their respective services, save only in circumstances of exceptional emergency when exercise of military command by such officers is essential to the safe conduct of military operations. In such cases only, they may be called upon by the senior officers present of the corps referred to in sub para (b). to assume command of troops other than those belonging to their own corps.

(f) Officers of the rank of Colonel and above will retain the power of command pertaining to the corps from which they are promoted.

(g) An officer employed in a civil employment, on the staff of a Governor of a State, under a foreign government or in a special extra regimental employment, will not be entitled by virtue of his military rank, to assume any military command in the regular army unless called out for military duty. He will be liable, in case of necessity, to serve on courts-martial, or to perform such military duties as Army Headquarters may direct.

(h) Military officers will have power of command over such officers and all other ranks of the Territorial Army as may be specially placed under their orders from time to time by any superior military or Territorial Army authorities. Conversely, officers of the Territorial Army will have power of command over such military officers and soldiers as may be specially placed under their orders from time to time by any superior military authority. In no case the superior military authority or the superior Territorial Army authority will be of the rank below field rank.”

“54. Command During Temporary Absence of An OC Unit. — *When an OC unit becomes sick or is temporarily absent, the conduct of his duties devolves on the Second-in-Command whose appointment as officiating OC will be published in unit orders. His legal powers subject to the limitations of the Army Act, will be the same as those of the unit commanders.*

First Appointment, Grading, Posting and Transfers.

55. Commencement of Service. — *Unless specially provided for otherwise, an officer's service commences from the date of his first commission. All appointments, whether permanent or temporary, transfers, promotions, retirements and removals will be published in the orders of the sanctioning authority and in the absence of any specified date, will take effect from the date of the order in which they appear. The grant of first commission and promotion to substantive rank and conferment of local rank will be notified in the Gazette of India.*

56. Grading.- *Officers will be graded in the gradation list and in the corps in which they are permanently appointed according to the dates of their substantive rank in the Army, or when these are identical according to the dates of their last substantive rank.*

The departmental seniority of an officer in the JAG's Department will be regulated by the date of appointment to the grade he holds in that department.”

20. The aforesaid provisions show that it is the Chief of the Army Staff, who allocates to subordinate commanders and administrative authorities the duties to be carried out by them. Corollary to it, once the Chief of the Army Staff retires from service, he ceases to have right to allocate duties or command the subordinates, which includes expression of opinion about his subordinates through ACR entries as SRO.

Apart from above, Para 75 of the Army Regulations (supra), on the face of record, shows that the tenure of service of General shall be three years. Army officers are retired on attaining the age of superannuation specified in Para 76 of the Army Regulations. Subsequently, two years' service was increased for all Government functionaries and currently a General retires at the age of 62 years, and over and above, the full tenure of Chief of the Army Staff, as communicated to us is of three years.

Para 104 of the Army Regulations (supra) deals with the retirement of an officer. It says that the President may call upon any officer to retire or resign his commission at any time without assigning any reason. Corollary to it, a person shall retire/superannuate from service the moment he completes his tenure of service and notified accordingly.

21. Para 167 of the Army Regulations provides that once a person enrolled under the Army Act is discharged, Part II Order is issued for pensionary purposes. All retired persons including Chief of the Army Staff shall be entitled for pension. The day a person retires from service from the next day he/she shall be entitled to post-retiral benefits according to rules. Retirement itself is indicative of the fact of discharge from all duties assigned to a person during his tenure of service, hence no duty can be cast upon him to discharge obligations like award of ACR entries, etc. to his juniors affecting their service careers.

22. The word “**retirement**” in **Black’s Law Dictionary** has been defined as “*Termination of one’s own employment or career, esp. upon reaching a certain age or for health reasons; retirement may be voluntary or involuntary.*”

Similarly, the word “**retirement**” as defined in Major Law Lexicon, means termination of the service of an employee otherwise than on superannuation.

The word “**superannuation**” has been defined in the Major Law Lexicon as under:

“Superannuation”, in relation to an employee who is a member of the Pension Scheme, means the attainment, by the said

employee, of such age as is fixed in a contract or conditions of service as the age on attainment of which such employee shall vacate the employment.”

23. The Hon’ble Supreme Court in a case reported in (2004) 1 SCC 249 **R.N.Rajanna versus State of Karnataka**, while defining the meaning of “superannuation” held that it means discharge from a post on account of the age fixed for retirement, uniformly for all or a particular class or category of service holders. In another case reported in (2009) 5 SCC 313, **Bank of India versus K. Mohandas**, their Lordships of the Supreme Court while defining the word “superannuation pension” held that superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in service regulations or settlements. Needless to say that in the present case, General Bikram Singh had retired from service much before when he made an endorsement with respect to the petitioner as SRO. In *Bank of India versus K. Mohandas* (supra), the Hon’ble Supreme Court defined the word “retirement” as cessation from service. In the present case, since General Bikram Singh retired from service, all rights and duties assigned to him as Chief of the Army Staff became *non est* and transferred to his successor. Permitting him to make

endorsement as SRO shall be an act in contravention to the statutory mandates and an incidence without jurisdiction.

24. In a case reported in *AIR 1952 SC 235*, **Lachmandas Kewalram Ahuja versus State of Bombay**, the Hon'ble Supreme held that the master-servant relationship shall continue till subsisting contract of employment.

Keeping in view the master servant relationship after superannuation, it was not open to Gen Bikram Singh to make ACR entry as SRO after his retirement. Any order passed by the Army as a policy matter contrary to statutory mandates shall not be valid and it being without jurisdiction is liable to be ignored.

25. Learned counsel for the respondents has invited our attention to Army Order 151, which is reproduced below:

“151. Comments of Retired Officers.-
The comments of reporting officers who have since retired from service will not be asked for. In case such comments become inescapable, approval of the MS in case of officers upto the rank of Brig and COAS in case of Maj Gens and above will be obtained before obtaining comments from retired reporting officers. In other cases, where comments are not received within two months, the same may be dispensed with.”

The provision contained in Para 151 of the Army Order (supra) relates only to reporting officer who has since

retired from service and not to SRO. Though the controversy in question does not relate to reporting officer or IO, but we are of the view that even the reporting officer after retirement from service ceases all rights conferred on him during the course of active service or while serving the Army. Para 151 of the Army Order requires to be deleted. At the cost of repetition, we reiterate that a person retired or superannuated from service shall cease to have control over his subordinates, a power conferred under Para 4 of the Army Regulations (supra).

26. In view of above, the entry recorded by Gen Bikram Singh, the then COAS after one month of retirement is without jurisdiction, hence deserves to be ignored. In **Sushil Kumar Mehta versus Gobind Ram Bohra, (1990) 1 SCC 193**, the Apex Court after placing reliance on large number of its earlier judgments, particularly in **Premier Automobiles Ltd. Versus Kamlakar Shantaram Wadke, AIR 1975 SC 2238; (1976) 1 SCC 496 Kiran Singh versus Chaman Paswan, AIR 1954 SC 340** and **Chandrika Misir versus Bhaiyalal, AIR 1973 SC 2391**, held that “*a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under*

the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, “performance cannot be forced in any other manner.”

27. It is settled law that by the executive instructions (in the present case, the Army Order), the statutory provisions contained in the Act, Rules and Regulations cannot be circumvented or overridden. Conferment of jurisdiction to discharge certain statutory duties while holding the post of Chief of the Army Staff or other statutory post under the Army Act, will be as per provisions contained in the Army Act and thereafter, the Rules and then Regulations. But subordinate legislation should not be contrary to statutory provisions. The letter and spirit of a statutory mandate cannot be allowed to circumvent by executive instructions (Army Orders). (Also see **Poonam Verma versus Delhi Development Authority**, AIR 2008 SC 870, **State of Uttar Pradesh versus Neeraj Awasthi**, (2006) 1 SCC 667, **The Purtabpur Company Ltd versus Cane Commissioner of Bihar**, AIR 1970 SC 1896 and **Chandrika Jha versus State of Bihar**, AIR 1984 SC 322.).

Apart from above, by assigning power to a retired Army General or Chief of the Army Staff (as in the present

case) to award ACR entry as SRO amounts to make inroads in the statutory right of an individual since power to make ACR entry has been conferred on the serving Generals and not on retired ones under the Act. The Hon'ble Supreme Court in the case of **Veerendra Kumar Dubey** (supra), held, *“That is because administrative instructions cannot make inroads into statutory rights of an individual. But if an administrative authority prescribes a certain procedural safeguard to those affected against arbitrary exercise of powers, such safeguards or procedural equity and fairness will not fall foul of the rule or be dubbed ultra vires of the statute.”*

In view of above, only a serving Chief of the Army Staff possesses jurisdiction to express opinion as SRO while awarding ACR entry under the Army Act and Rules and Regulations framed thereunder.

Confidential Report (CR)

28. It is a well-settled law that CR is a tool for human resource development and it should not be used as a fault finding process. The assessment should be strictly objectively, fairly and dispassionately, keeping in view the service rendered by such officer, his/her commitment to the duty assigned to him/her.

We are of the considered opinion that for assessment of overall service working of an officer is required to be assessed strictly objectively, fairly and dispassionately as has been held in the case of **S. Ramachandra Raju vs. State of Orissa**, (1994) Supp 3 SCC 424 and reiterated in the case of **State of U.P. versus Yamuna Shankar Misra and another**, (1997) 4 SCC 7. Writing Confidential Report puts onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices and proclivity or predilections and to make objective assessment. Hon'ble Supreme Court in Yamuna Shanker Misra's case, held that, in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives, if not strictly adhered to, in making an honest assessment, the purpose and career of the officer will be put to great jeopardy. Hon'ble Supreme Court in the case of **State Bank of India vs. Kashinath Kher** (1996) 8 SCC 762 held that, object of writing the Confidential Report is two-fold, i.e. to give an opportunity to the officer to remove deficiency and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The case of Kashinath Kher was also considered by the

Hon'ble Supreme Court in the case of Yamuna Shanker Mishra.

We are of the considered opinion that the parameters given in Forms for evolution of Basic Qualities of an officer Part-II of Form Basic Assessment subsequently covers the various aspects of one officer which individually is different subject for overall assessment of personality of the officer which depends upon the combination of or independent assessment value and thereafter assessment of "potential value" of the officer and other facets to be judged at the different level. An officer can be judged on the basis of initially, by addressing to the various gamut of the person's personality and then by drawing objectively inference about his overall personality. This cannot be done mechanically or numerically and therefore, it is specifically provided in the instruction No.117 of the instructions of 1989 that, reporting officers are required to give overall figurative assessment of the officers in the box which is a box for grading Clause 117 reads as under:

"The reporting officers are required to give overall figurative assessment of the officers in the box provided for this purpose: commonly known as box grading. This assessment is NOT numerical average of the assessment made in other parts of the report

but overall assessment which includes potential of the officer as well. Following need to be ensured by the reporting officers with regard to the box grading.”

The Clause 117 clearly says that ‘assessment is not a numerical average of the assessment made in other parts of the report but overall assessment which includes potential of the officer as well. The ‘potential of an officer’ is not any of the attributes mentioned in Form Part-II of Basic Assessment of the officer nor in Clause 12, 14 and 16 whereunder officers “regimental and command assignments” are assessed. Further more, we are of the considered opinion that any objective assessment of an officer guidelines gives them guidance to examine the officer and while doing so, the initiating officer is required to look into the aspects mentioned in the above Form and that Form alone is not the totality of the objective assessment and therefore, numerical calculation has not been made the criteria for objective assessment of the officer in “Box Grading” and for “potential assessment” of an officer is also required to be assessed though it is not mentioned in Part-II of the Form whereunder personal qualities are assessed by the Initiating Officer.”

29. The Hon'ble Supreme Court in the case reported in **S.T. Ramesh vs. State of Karnataka and Anr.** (2007) 9 SCC 436 by expressing its opinion observed that confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. The performance appraisal through CRs should be used as a tool for human resource development and should not be used as a fault-finding process but a developmental one.

30. It is well settled that assessment of overall service of an officer is to be assessed strictly objectively, fairly and dispassionately, keeping in view the service rendered by such officer, his/her commitment to the duty assigned to him/her. That is why Para 15 of the Army Order (supra) mandates for full signature indicating the date, so that in the event of any controversy or during the course of judicial review of the action, the Initiating Officer or others may be called upon to explain their conduct, keeping in view over all profile contained in the pen picture of the officer concerned.

31. The Military Secretary's Branch issued a Brochure under title "Guidelines for Rendering Confidential Reports". Foreword appended to the said Guidelines, contains the observations made by the Military Secretary on 05.04.2013, as follows:

*"1. Confidential Reports form the foundation of an efficient Human Resource Management System to ensure that only professionally competent and best officers are selected for promotion and tenant higher select ranks of Indian Army. It is the **shared and collective responsibility of all reporting officers** to further strengthen and appraisal system so as to assist the MS Branch in fulfilling its mandate.*

*2. It is the desire of COAS that the environment be continuously sensitized and educated on all important aspects of appraisal, from time to time. Towards that end the need was felt for a **publication that can be brief, handy and encompass all essential aspects of CR policy**. This is a nascent effort to provide such a publication to the environment.*

*3. In addition to the basic issue of technical correctness of CRs, responsibilities of ratee/reporting officers, detailed guidelines have been included for **reporting officers to enable them to render an objective assessment***

on the ratee. A small brief on methodology of analysis of CRs at MS Branch and certain other misc aspects have also been covered to amplify the existing instructions.

4. I am confident that these guidelines will assist all offr both as ratee and reporting offr to ensure correct, timely and objective rendition of confidential reports.”

In para 2 of the aforesaid guidelines, reference has been made to Army Order 45/2001/MS. With regard to Reporting Officer, it has been observed that the period for which the Reporting or Initiating Officer endorses his opinion is the period which the ratee has actually served under the IO. Para 9 (e), (f), (g), (h) and (i) of the said Guidelines relevant for adjudication of the present controversy are reproduced as under:

“(e)Period Covered by Report. This is the period which the ratee has actually served under the IO.(Para 17 of AO). Complete details of physical service of ratee under IO, RO and SRO are required to be provided as part of docus to be att with CR.

(f) Reporting Offrs. The details should be as per the Channel of Reporting applicable. The entitlement of Reporting Offr (Present/Previous) can be ascertained as per Appx F & H of AO. As a guiding principle the

period served under RO/SRO should be concurrent with the period actually served under IO.

(g) **Reason for Initiation.** *Mention the type of CR (eg. Annual CR/ Interim CR/ Early CR/ Delayed CR) and the reason for initiation of current CR (eg. ACR on due date/Posting out of Ratee/IO or Special CR as the case may be).*

(h) **Appts Held.** *Mention all appts held by ratee for the period of report. Appt should be same as reflected in IAFF 3008.*

(i) **Correctness of details.** *The ratee will authenticate the details given in Part I of the CR form. The ratee will be **personally responsible for the correct completion of details in the CR form. Certificate of correctness of details rendered by the ratee is irrevocable.***

The aforesaid guidelines are in tune with Army Order 45/2001/MS. It seems to have been issued to fill up the vacuum to supplement the Army Order 45/2001/MS and Army Act, Rules and Regulations and has binding effect. Vide *AIR 2008 SC 3, Union of India versus Central Electrical & Mechanical Engineering Services.*

Pen-Picture

32. Pen-Picture has been provided under Para 36 of the Guidelines. It says that the quality of a pen-picture **provides valuable input for selection** of officers for important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints. Different qualities which are required to be appreciated while writing pen-picture by IO, RO and SRO, is borne out from Para 36 of the Guidelines. For convenience para 36 of the Guidelines (supra) is reproduced as under:

“36. Pen Picture

(a) The purpose of the pen-picture is to give soul to the skeleton of figurative assessment. The manner in which this is done is left to the indl style of the reporting offr. The same may be formatted under following heads:-

(I) Personality and Leadership.

(II) Employment and performance.

(III) Any other Special Attributes and Achievements.

(b) The quality of a pen-picture provides valuable input for selection of offr for important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints.

(c) Internal assessment in the MS Branch indicates that most reporting offr

concentrate on the figurative assessment and neglect the pen-picture, which are cryptic and non-committal in nature.

(d) Use of superlative adjectives should be avoided. It is clarified that no standard list of words or phrases are expected in support of different grades of figurative awards.

(e) Pen picture must highlight specific achievements by the ratee during the reporting period. This could be his contribution during ops, trg, ex, op discussion, adm, improvement in stn, quality of instr, staff work etc as per the appt tenanted by the offr.

(f) Pen picture should provide additional information over and above what is implicit in the figurative assessment. A suggested list of qualities which may be commented upon in the pen picture is as under:-

(1) Acceptance of Suggestions and Criticism.

Attitude of the ratee towards suggestion and reaction to objective criticism/ corrective measures,

(11) Conceptual Skill. Demonstrated ability to conceive and comprehend plans/concepts. It may also include value additions carried out in discharge of duties.

(111) **Esprit-de-Corps.** Altruist behavior exhibited by the ratee.

(1V) **Emotional.** Capability to resist undesired agitation of the mind.

(V) **Employability.** This may include potential of the ratee for employment in various Important / specific appointments based on his ability, flair and talent. (eg. Media / I T / Foreign language / Financial Management / Project Management)

(V1) **Foresight and Planning.** Demonstrated ability to analyse / foresee a problem and formulate a plan for its solution.

(V11) **Man Management.** Efficient handling of troops/subordinates and specific activities aimed at maintenance of their morale and welfare.

(V111) **Self improvement.** Endeavour of the ratee to improve self in terms of acquiring knowledge and adjusting socially.

(1X) **Tact.** Skilful handling of men and situations which may include mention of specific instances.”

33. While writing pen-picture, recommendations are also to be made for promotional avenues keeping in view the merit of the ratee, as provided under Para 38 of the Guidelines, which is reproduced below:

“38. Recommendations for Promotion.

(a) *Recommendations for promotion are required to be given in four shades, i.e., **Should Promote, May promote, Not yet Recommended and Not Recommended.***

(b) *These shades are meant to provide requisite dispersal in the otherwise congested figurative grades. Amongst these, **only ‘Not Recommended’ is a definite negative recommendation** while the other three shades are meant to be positive, although on a reducing scale.*

(c) *Reporting offrs are required to base their Recommendations for Promotion based on the awards in QsAp.*

(d) *Reporting offrs must ensure that there is no mismatch between QsAP and Recommendations for promotion. **A quantified relationship between QsAP and Recommendation for Promotion has been specified.** However, in its absence a broad co-relationship can still be drawn.”*

Keeping in view the Guidelines referred to hereinabove, there appears to be no room for doubt that pen-picture is the foundation to award Box Grading in a quantified system for figurative awards.

Box Grading

33. Army has introduced the quantified system for figurative awards since they contribute to overall merit of an officer. The purpose is that only deserving officers, who are competent, be promoted to the senior ranks of the Indian Army to meet out the requirement and challenges at Border during war as well as peace. Para 35 of the Guidelines (supra) deals with Figurative Awards and Box Grading. For convenience, the same is reproduced as under:

*“35. **Figurative Awards.** With the introduction of quantified system, the figurative awards have assumed greater significance as they contribute to the overall merit of an offr. It is the moral responsibility of all reporting offr to render an objective assessment to ensure that only deserving and professionally competent offr are promoted to senior ranks to tenant crucial command and staff appointments.*

(a) Figurative assessment in Box Grading, Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP) should be awarded.

*(b) **Box Grading.***

(i) Box grading represents overall assessment of performance as well as potential for promotion.

(ii) Reporting offr must clearly differentiate between truly outstanding offr and others. Grading all offr outstanding would defeat the very purpose of appraisal system.

Box grading reflects the quality of interplay amongst indl characteristics being assessed. It also reflects the **performance and potential which are not being separately assessed but hold value for the org.**

(iii) Box grading is **not meant to be a mathematical** average of the awards in indl qualities. However, **a total mismatch between awards in box-grade and indl qualities is also not in order.** For instance, award of predominantly '9' in PQs/DPVs/QsAP with an award '8' in box, may not be in order.

(iv) Award of '9' in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee.

(c) **QsAP.** The assessment of **performance is de-linked from potential** based on the rationale that it is **not necessary** that an offr who performs well in the present rank has **the capability to do well in higher ranks also.** While assessing QsAP, however, the following aspects should be kept in mind.

(i) **Low awards in QsAP affect the promotion prospects significantly more** as compared to similar awards in PQs/DPVs.

(ii) Reporting offr must be more deliberate while awarding QsAP and endorse the actual promotion aspects of the ratee.

(iii) **In order to guard against IOs harming ratee's "on the sly", discernable variations** between PQs/DPVs (open portion) on the one hand and QsAP (closed portion) on the other come under scrutiny at the MS Branch. However, elaboration of any such variations by the reporting offrs aid in acceptance of their assessment. Pen picture can be suitably endorsed to justify the assessment."

34. A plain reading of the aforesaid Guidelines shows that Box Grading is depending upon overall assessment and performance as well as potential for promotion and is broadly based on pen-picture. However, a total mismatch between awards in Box Grade and individual's qualities, like opinion expressed in Pen-Picture (Emphasis supplied) may not be in order.

35. There is one more thing which requires to be considered. In case Pen-Picture shows the outstanding performance, possessing different qualities required for an armed forces personnel and recommended for promotion to higher/superior post, then ordinarily Box Grading should be '9' i.e. outstanding.

36. Part IV of the Army Order 45/2001/MS deals with potential for promotion. The same is reproduced as under:

“PART-IV-POTENTIAL FOR PROMOTION

(NOT TO BE SHOWN TO THE OFFICER REPORTED UPON)

19. Qualities to Assess Potential (QAP). Mark each quality out of 9 as follows :-

Outstanding 9, Above Average 8 or 7, High Average 6 or 5, Average, Low Average 3 or 2, Below Average 1. (DO NOT USE FRACTIONS IN YOUR MARKING).

	IO	RO	SRO
(a) Professional Competence to Handle Higher Appointments			
(b) Vision and Conceptual Ability (Creativity, Clarity of Thought, Analysis and Decisive Approach to Arrive at Definite Course of Action. Understanding the Broader Picture and Grasp of Macro Issues).			
(c) Exhibition of Foresight, Depth of Understanding and Breadth of Perspective Beyond his Limit of Responsibilities.			
(d) Judicious Delegation of Responsibilities, Balanced Guidance and Supervision.			
(e) Tolerance for Ambiguity. (Ability to take Decision in the Absence of Clear Cut Mandate and in an Environment of Uncertainty).”			

A plain reading of the above quoted format indicates that every perspective of Part-IV Potential for Promotion is based on outstanding entries.

37. In view of above, the pen picture inhibits in itself the different qualities provided under Part-IV (supra) and recommends for promotion, then figurative assessment under Box Grading ordinarily be ‘9’. With regard to Box Grading, the **Full Bench** in the case of **Ranjit Singh** (supra) has observed as under :

*“18. Learned counsel for UOI then relied upon the judgment of **Hon’ble Supreme Court AVM***

*SL Chabra (VSM) (Retd) vs. UOI reported in (1993) Supp 4 SCC 441 wherein Hon'ble Supreme Court held that, when argument was advanced that when adverse remarks in the ACR for the year 1986 have been expunged then the consequential moderating is required to be done in grading for the year 1987. Hon'ble Supreme Court held that neither the High Court nor the Supreme Court can moderate the appraisal grading of the officer for a particular year. The Hon'ble Supreme Court declared that, while exercising the power of judicial review, the Court shall not venture to assess and appraise the merit or grading of an officer. The Hon'ble Supreme Court, then maintained the grading of the appellant of that case and declared that appellant, in view of the grading, could not have been considered for extension. Learned counsel for UOI also elide upon the judgment of **Hon'ble Supreme Court delivered in the case of Sunil Shukla vs. UOI (2008) SCC 2 649.** One judgment of **Delhi High Court delivered in the WPC No.6575/2002 Lt Col (Time Scale) D.S. Pandey vs. UOI and others decided on 31.05.2005.** Another judgment of the **Delhi High Court delivered in writ petition (Civil) No.7074 of 2008 dated 17.07.2009 in the case of Major General V. S. Grewal vs. UOI & others.** Then relied upon the Bench judgment of the Principal Bench of the Tribunal delivered*

in OA 217/2009 Brig. Rakesh Sharma vs. UOI dated 08.04.2010 and few other judgments. Reference of them may not be necessary because that will be multiplying the judgments on the same issue and the issue for consideration in the judgments was with respect to the award of the box mark for assessment of an officer.

19. Learned counsel for UOI vehemently submitted that admittedly as well as, as per the instructions of 1989, the "Box Grading" is not a numerical calculation of the marks given in various columns of attributes mentioned in (Part-II) of the Basic Assessment of ACR. The average of the marks given in the Part-II in Basic Assessment Form and marks given in "Box Grading" are 20 independent assessment of the ratee officers. If the arguments advanced by the learned counsel for the petitioner is accepted, then it will result in holding that the "Box Grading" which was not a result of numerical calculation of the marks given in (Part-II) of the ACR Form for basic assessment will become numerically affected because of deletion of some of the lower marks in the columns of Form of Basic Assessment (Part-II) and in that situation, it will be self contradictory. Learned counsel for UOI fairly submitted that there may be possibility that the adverse entries in the ACR may be set aside on the ground of bias and malafides of the

reporting officer, which may have direct connection with objectivity of the rating officer, but this situation depends on the facts of each individual case. Even a pen picture which is the soul of the skeleton of assessment as per Clause 113 of the instructions 1989 also may be affected in different fact situation, but there cannot be a straightjacket formula to declare that in which act situation pen-picture can change.”

38. Para 35 of the Guide-lines (supra) deals with Quantified System and Figurative Awards. Under clause (b) (iii) while giving importance to award of “9” in Box Grading, it provides that award of predominantly ‘9s’ in PQs/DPVs/QsAP with an award of ‘8’ in box, may not be in order. Award of predominantly ‘9’ in Box Grading must be higher in number than the award of ‘8’. Clause b (iv) further provides that award of ‘9’ in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee. Box grading represents overall assessment of performance as well as potential for promotion. Para 35 of the Guidelines defines the award of ‘9’ box grading as Outstanding.

Petitioner's ACR Profile

39. The petitioner's ACR profile upto the stage of IO and RO is predominated by '9' box grading. Lowering is by SRO, not in tune with pen picture at later stage and at earlier stage, it has been given by a retired Chief of the Army Staff which loses its legal significance.

40. Apart from above, the Brochure covering AVSM provides that such award shall be for distinguished service over a period of time and it shall be given to those persons who have made contributions in an overall context and not restricted to narrow field. It reflects that PVSM and AVSM awards are granted to officers having 'outstanding' service records i.e. box grading of '9'. The recommendation for AVSM to the petitioner shows that he possesses inspiring leadership, unswerving zeal, devotion and commitment to duty. Exemplary service rendered by the petitioner at par with outstanding service career requires box grading of '9' in view of Guidelines (supra), ordinarily should not have been given box grade of '8'. In view of above, award of '9' box grading, that too by a retired Chief of the Army Staff Gen Bikram Singh, is not understandable.

41. While lowering down the box grading from '9' to '8', justifiable reason must have been assigned, so that the

incumbent may know the reason for such downgrading. Lowering down the box grading without assigning any reason is violative of his/her fundamental rights guaranteed by Article 21 and is hit by Article 14 of the Constitution.

42. During the course of hearing, the original ACR folder of petitioner was produced for perusal of the Tribunal. The reckonable ACR profile of the petitioner, for convenience, is reproduced as under:

<u>CRs IN RECKNOABLE PROFILE</u>						
	<u>TOAL</u>			<u>CRITERIA</u>		<u>NON-CRITRIA</u>
<i>LT COL/COL</i>	08			04		04
<i>BRIG</i>	06			03		03
<i>MAJ GEN</i>	02			02		-
Total	16			09		07
	CRITERIA			NON - CRITERIA		
	<i>IO</i>	<i>RO</i>	<i>SRO</i>	<i>IO</i>	<i>RO</i>	<i>SRO</i>
<i>LT</i>	8	8	-	9	9	9
<i>COL/COL</i>	8	8	8	8	8	8
	9	9	8	8	8	8
	9	9	9	8	8	8
<i>BRIG</i>	9	9	9	-	9	8
	9	9	9	-	9	9
	9	9	8	9	9	9
<i>MAJ GEN</i>	9	9	8			
	9	9	8			

Further, Army HQ MS Branch representatives informed the court that a total of 47 officers were considered for promotion against 14 vacancies. The petitioner's merit position was 36.

For promotion the criteria reports have greater Weightage than non criteria reports. Among the criteria reports, barring the first two as Lt Col, the IO and RO in all cases has assessed the petitioner as **'9' in Box Grading**. However the SRO on four occasions has lowered the Box grading to **'8'**. In the non criteria report the SRO has lowered the Box grading in one report as Brigadier.

43. Undoubtedly, box grading of '9' denotes 'Outstanding' service record. Lowering down it to '8' amounts to downgrading the ACR entry from 'Outstanding' to 'above average'. In Law Lexicon "outstanding" means prominent, conspicuous; that which stands out. There is a thin difference between the said two ACR entries- 'outstanding' and 'above average'. But the fact remains that it makes a lot of difference with regard to service career of an armed forced personnel when their comparative merits amongst the batch-mates is considered by the Selection Board. Hence without assigning reasons, the box grading may not be lowered down from '9' to '8'. Lowering down the box grading without assigning any reason amounts to arbitrary exercise of power. The Hon'ble Supreme Court in

the case of **Mahesh Chandra versus Regional Manager, U.P. Financial Corporation and others** (supra) held as under:

“Every wide power, the exercise of which has far reaching repercussion has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason.”

44. One important fact borne out from the record is that both the SROs, Gen Bikram Singh and Gen Dalbir Singh, while making their respective entries, not only recorded that the petitioner be promoted to next higher post, but also tick-marked their opinion indicating that the entry awarded by RO

is justified. Once Box Grading awarded by RO as well as pen picture held to be justified, then why it has been downgraded to '8' is not understandable. There appears to be non-application of mind. In the event of agreement with the opinion of RO with regard to Box Grading and pen-picture of the petitioner's service career, which denotes Box Grading of '9', then lowering down the Box Grading from '9' to '8' seems to be irrational, unjust and improper, that too without assigning any reason, lacking inconsistency in decision making process, hence hit by Article 14 of the Constitution of India.

The petitioner has approached the Tribunal in respect of reports for the periods 01.01.2014 to 30.06.2014 and 01.07.2014 to 21.3. 2015 for the rank of Maj General. There being relevant the pen picture of IO, RO and SRO are reproduced below:

Period from 01 Jan 2014 to 30 Jun 2014

***IO Lt Gen SL Narasimhan,
AVSM, VSM(GOC 3 Corps)***

Dharam is a professionally competent General Officer who has commanded the division that looks after three operations very successfully. He has maintained a good rapport with the civil administration. Under his command, the insurgency situation was kept under control, due to which troops could be freed for conventional operations. Dharm

is a mature officer and handles tough situation in a practical and efficient manner.

**RO Lt Gen MMS Rai, AVSM, VSM
(GOC-in-C, Eastern Command)**

A professionally competent officer, he has had a complete grip of both the conventional and the CI/CT ops envt prevailing in his AOR. A mature and balanced offr, he has displayed ability to rise to higher and ranks and appt in the org.

**SRO Gen Bikram Singh,
PVSM, UYSM, AVSM, SM, VSM, ADC (COAS)**

The Overall performance of the offr during the reporting pd has been above average.

SD/- Dt 01.09.2014

Period from 01 Jul 2014 to 26 Mar 2015

**IO Lt Gen Bipin Rawat,
AVSM, YSM, SM, VSM (GOC 3 Corps)**

Maj Gen Rana has performed consistently retaining focus on op prep of his fmn for conventional ops, whilst simultaneously not loosing sight of the resp for conduct of CI/CT ops in his AOR.

The fmn under his ldrship was motivated to carry out extensive recce of hitherto untraversed areas in difficult trn, which has had led to a holistic appraisal of the threat along the Northern borders. The def prep of the Fmn also witnessed a quantum jump with constr of PDs, resns of old defs, constr of CPs, Svl centres and prep of areas for dply of guns and op lgs echs.

He has displayed adm acumen by improving the living conditions, taking special care on lgs and san issues. The improvement in aesthetics in Dinjan has led to devp of the stn into an eco friendly envt.

The offr has ensured that the Fmn remains a professional comb ready out fit, committed, prep for ops, when necessitated.

Period from 01 Jul 2014 to 26 Mar 2015

RO Lt Gen MMS Rai, AVSM, VSM (GOC-in-C, Eastern Command)

A sincere, professionally competent and motivated offr who has led his fmn in an exemplary all round manner. I consider the offr fit for comd of a Corps. An asset.

Period from 01 Jul 2014 to 26 Mar 2015

SRO Gen Dalbir Singh, PVSM, UYSM, AVSM, VSM, ADC (COAS)

Maj Gen Rana is a professionally competent offr who is sincere, motivated and diligent. As GOC of the fmn he has ensured enhancement of Op preparedness of his fmn. He also ensured sound trg and adm of troops under his comd.

SD/- dated 25.07.2015.”

45. The citation for AVSM which was granted to the petitioner for the work done in the period of the two relevant reports is reproduced below:

“ATI VISHISHT SEVA MEDAL

IC- 39676Y MAJOR GENERAL

DHARMAVIR SINGH RANA

SENA MEDAL VISHISHT SEVA

MEDAL/INFANTRY

Major General Dharamvir Singh Rana, SM, VSM is commanding 2 Mountain Division deployed in three challenging operations viz

OPERATION FALCON, OPERATION ORCHID and OPERATION RHINO.

Proactive operations against insurgents resulted in neutralization of four apprehension, surrender of 143 and recovery of 72 weapons & 8.9 kg of explosives while maintain impeccable human rights record, ensuring no untoward incident in the entire area of responsibility and peaceful conduct of Parliamentary Elections in 2014.

He painstakingly refined the operational plans resulting in reduction in mobilization timings, improvement in infrastructure in border areas for induction of towed guns to inaccessible forward areas, planning of additional permanent field fortifications, aggressive patrolling along the Line of Actual Control, resolute and mature handling of Chinese transgressions, compiling of a compendium on best practices of patrolling implemented push model of logistics and optimized the porter management affecting savings to the exchequer.

Excellent synergy with Civil Administration coupled with well orchestrated perception management helped wean away youth from militancy and bridged the gap with locals.

He has administered his command with zeal and ensured comfort and well being of all ranks and the families by launching a number

of welfare and recreational facilities with special focus on women empowerment.

For his inspiring leadership, unswerving zeal, devotional and commitment to duty, Major General Dharamvir Singh Rana, SM, VSM is recommended for the award of ‘ATI VISHISHT SEVA MEDAL’.

CTC

(Prabhat Ross)

Dy MS (A)

MS Branch

IHQ of MoD(Army)

New Delhi – 110100’’

46. The guide lines on honours and awards are issued under Auth: 30397/MS (X) dated 30 Mar 88 have been produced at Annexure A/12. Para 5 (c) to (f) of this being relevant is reproduced below.

“(c) PVSM and AVSM awards should be for those persons who have made contributions in an overall context and not restricted to a narrow field e.g contribution made in specific terrain confined to a section of the force, should be eligible for a lower award. PVSM and VSM should be awarded depending upon the quality and utility of the contribution made by the individual irrespective of his rank.

(d) Personal staff of Army Commanders and PSOs at Army HQ should be considered for award, in exceptional cases for outstanding contributions only. The recommendations for grant of award in these cases will be endorsed by the COAS.

(e) If an individual has once been decorated with VSM series of awards then he may be considered only for higher awards but not for similar or lower awards. This in contrast to what has been visualised for gallantry awards, as these series of awards in most cases is bestowed on individuals rendering distinguished service over a period of time and not for any specific action.

(f) Since these awards are for distinguished service over a period time, it is only apt that individuals with less than average marks in mandatory qualities in confidential reports should not be considered for these awards.

47. Our experience shows that majority of ACR entries of most of the Army officers are at '8' or '9', out of which '9' is 'Outstanding' and '8' is 'Above Average'. Keeping in view the pyramidal structure of the Army and the fact that sometimes even 0.1% marks make a difference in promotional avenues, lowering down the Box Grading from '9' to '8' by the SRO or any superior authority entails a serious implication in so far as the service career of an Army officer is concerned.

48. We are, accordingly, of the opinion that:- (i) while granting ACR entry and lowering down the Box Grading from '9' to '8', the provisions contained in the Guidelines (supra) must be followed and reflected from the pen-picture; (ii) while lowering down the Box Grading, reason must be assigned by superior authorities, like RO and SRO while

writing pen-picture. In the absence of any reason assigned by the RO or SRO, lowering down the Box Grading would amount to arbitrary exercise of power by the authority and hit by Articles 14 and 21 of the Constitution of India; (iii) the Hon'ble Supreme Court in catena of decisions has held that while downgrading the entry, reason must be assigned or notice be issued to the incumbent to show cause why the entry may not be downgraded. Though for a civil servant, it has also been provided by the Hon'ble Supreme Court that every entry should be communicated to the incumbent, but that does not apply to the Army officers; and (iv) in so far as the assigning of reasons is concerned, it is necessary because the Army Act and other statutory provisions have not created any bar to such assigning of reasons.

49. Under Article 33 of the Constitution, the Parliament has power to modify the rights of the members of the Armed Forces so as to ensure the proper discharge of their duties and the maintenance of discipline among them. For convenience, Article 33 of the Constitution is quoted below:

“33. Power of Parliament to modify the rights conferred by this Part in their application etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

- (a) *the members of the Armed Forces; or*
- (b) *the members of the Forces charged with the maintenance of public order; or*
- (c) *persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or*
- (d) *persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),*

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.”

In view of above, it is clear that even members of the Armed Forces cannot be deprived of their fundamental rights, subject to Parliamentary restrictions under Article 33 of the Constitution of India.

50. Army officers have right to know the reason of down-gradation of entry in view of the observations made by the Hon’ble Supreme Court in the case of **U.P.Jal Nigam and others versus Prabhat Chandra Jain and others**, reported in (1996) 2 SCC 363 and others cases discussed hereinafter. In the case of **Prabhat Chandra Jain** (supra), the Hon’ble Supreme Court held as under:

“.....If the variation was warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasized that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain.”

So far communication of every entry is concerned, it has not been extended to Armed Forces, vide (2008) 8 SCC 725, **Dev Dutt versus Union of India** and (2013) 9 SCC 566, **Sukhdev Singh versus Union of India and others**, hence that part seems to be not applicable in the present case in view of catena of decisions of the Hon'ble Apex Court. But keeping in view the fact that the applicability of principles of natural justice has not been excluded by the Legislature under Section 21 of the Army Act read with Section 33 of the Constitution of India, to assign reason while downgrading the entry from '9' to '8' is a must so that during the course of judicial review, appropriate court, authority or tribunal may satisfy itself from perusal of record that power exercised by

the higher authority while downgrading the entry is well-founded on law, fair play and judicious application of mind. Analogy may also be drawn from **Union of India versus Tulsiram Patel**, (1985) 3 SCC 398, apart from recent judgments of the Hon'ble Supreme Court, where reasons have been held to be pulse-beat of Article 14 of the Constitution of India.

The larger Bench of the Hon'ble the Supreme Court in the case of **Maneka Gandhi versus Union of India**, (1978) 1 SCC 248, held that even if there is no specific provision in the statute or rules made thereunder for showing cause against action proposed, which affects the right of the individual, duty to give reasonable opportunity to be heard is implied from the nature of the function to be performed by authority which has power to take punitive or damaging action. Their Lordships of the Supreme Court categorically held that the rule of reasonable opportunity applies specially in those cases where action taken entails civil consequences. In another case reported in (1979) 1 SCC 537, **Mazharul Islam versus State of U.P**, the Hon'ble Supreme Court held that the Legislature can exclude operation of the principles of natural justice expressly or impliedly. But in absence of any such exclusion, these principles will have to be followed.

51. It is well settled that principles of natural justice are meant to prevent miscarriage of justice and are applicable not only to domestic inquiries but also to administrative proceedings, vide **A.K.Kraipak and others Vs. Union of India and others**, AIR 1970 SC 150 and **Dr. C. Sarena Vs. University of Lucknow**, AIR 1976 SC 2228.

In (1987) 4 SCC 431, **K.L. Shephard and others Vs. Union of India and others**, the Hon'ble Supreme Court had considered the applicability of principle of natural justice with regard to pre and post decisional hearing. While holding that every agency requires to act fairly, principle of natural justice should be complied with while affecting civil rights and it should not be ousted by implication. To quote relevant portion:-

“15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to

conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame.”

Where a vested right is adversely affected by an administrative order or where civil consequence ensue, the principles of natural justice apply even if the statutory provisions do not provide for and the persons concerned, must be afforded opportunity of hearing and show cause before the order is passed, vide (1991) 3 SCC 38, **Union of India Vs. E.G. Nambudiri**; AIR (1967) 2 SCC 625, **State of Orissa Vs. Dr. (Miss) Binopani Dei**; 2001 (1) SCC 182, **Kumaon Mandal Vikas Nigam Ltd. Vs. Girija Shanker Pant and others**; 2008 14 SCC 151, **Sahara India (Firm) Vs. CIT.**

In 2009(27) LCD 1258 **Allwyn Housing Colony welfare Association versus Govt of A.P. and others**, the Hon’ble Supreme Court held that no order adverse to a party may be passed without providing opportunity of hearing.

In a case reported in 2011 (2) SCC 258, **Automotive Tyre Manufacturers Association Vs. Designated Authority**, the Hon’ble Supreme Court has reiterated the

principles of natural justice as *sine qua non* to justice meant to check arbitrary exercise of power by the State and its functionaries. To quote relevant portion as under:

“77. It is trite that rules of “natural justice” are not embodied rules. The phrase “natural justice” is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak (supra), it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

78. In Mohinder Singh Gill (supra), upon consideration of several cases, Krishna Iyer, J. in his inimitable style observed thus:

“48. Once we understand the soul of the rule as fair play in action--and it is so--we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary. Executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one’s bonnet. Its essence is good conscience in a given situation: nothing more-but nothing less. The ‘exceptions’ to the rules of natural justice are a misnomer or rather are but a shorthand

form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.”

79. *In Swadeshi Cotton Mills Vs. Union of India, (1981) 1 SCC 664, R.S. Sarkaria, J., speaking for the majority in a three-judge Bench, lucidly explained the meaning and scope of the concept of “natural justice”. Referring to several decisions, his Lordship observed thus: “Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo iudex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle -- as distinguished from an absolute rule of uniform application -- seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-*

decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

80. *It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infringement of property, personal rights and material deprivations for the party affected. The principle holds good irrespective*

of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application.”

52. Lowering down the Box Grading from ‘9’ to ‘8’ makes substantial difference in the service career of an Army officer where there is high competition on account of pyramidal structure. Admittedly, under the Guidelines (supra), Box Grading of ‘8’ and ‘9’ deals with different status of performance. While Box Grading of ‘8’ denotes the performance as “Above Average”, Box Grading of ‘9’ denotes the “Outstanding” service career. From the record, it does not transpire that while lowering down the Box Grading of the petitioner, reason has been assigned by Gen Dalbir Singh as SRO or earlier by Gen Bikram Singh. It is noteworthy that during the same period, Gen Dalbir Singh recommended for grant of AVSM to the petitioner in an operational criteria appointment. In the circumstances, it is not understandable as to why in spite of having such a merit, owing to which he was recommended for grant of AVSM, his Box Grading was lowered down.

53. The petitioner has expressed apprehension that in the absence of acknowledgment of CR endorsement by SRO, General Bikram Singh, the date of actual filling of CR by SRO may have happened after retirement in which case the report would not be valid, seems to be correct.

54. We have scanned the original documents in order to ascertain the date of endorsement. From a perusal of the original record, it does transpire that the date of endorsement of CR by SRO is recorded as 01.09.2014. The date of retirement of General Bikram Singh was 31.07.2014. By this reckoning, it leaves no manner of doubt that the SRO has endorsed the CR after date of retirement. However, the petitioner could not show any provision vide which it prohibits to complete the CR after retirement.

55. As discussed above, the entry made by Gen Bikram Singh as SRO on 01.09.2014 i.e. more than a month after retirement, is an incidence of action without jurisdiction. Once a person retires from service, he/she ceases from all his rights and control over his subordinates. He was '*functus officio*' to make an ACR entry in view of Army Act as well as Rules and orders framed and issued thereunder, hence SRO acted without jurisdiction, therefore, a nullity in the eyes of law.

56. So far as the entry made by Gen Dalbir Singh is concerned, it seems to be a well considered entry as regards Pen-Picture of the petitioner. However, grant of Box Grading '8' does not seem to be in consonance with the Pen-Picture and AVSM (Annexure A-12) awarded to the petitioner. Para 5 (c) to (f) of the Guidelines on Honours and Awards issued under Auth: 30397/MS (X) dated 30.05.1988 quoted above show that these Awards are granted for distinguished service over a period of time. It reveals that in exceptional cases of outstanding contribution only, AVSM is awarded, that too to those persons who have made contribution in over all respects. Keeping in view the Pen Picture read with Policy No. 30397/MS (X) dated 30.05.1988, the Box Grading of '8' awarded by Gen Dalbir Singh as SRO does not seem to be justified, having regard to the conditions and circumstances provided by Guidelines (supra), which provide that for outstanding contribution, the Box Grading should be '9'. In pyramidal structure of the Army, even 0.1 % mark during assessment of comparative merit matters. While proceeding with figurative assessment, neither Gen Bikram Singh nor Gen Dalbir Singh adhered to the Guidelines issued for figurative assessment provided by Army Order 45/2001/MS.

57. It appears that while granting box grading of '8', attention of Gen Dalbir Singh, who wrote the ACR as SRO, was not invited to Guidelines (supra) which deal with the conditions, circumstances and material under which figurative assessment is to be made. It seems to be an instance of non-application of mind to the materials on record (supra). No reason was assigned as to why Gen Dalbir Singh differed with the opinions expressed by IO and RO. Further he has not taken note of entire profile like award of VSM, SM and AVSM.

It is well settled law that if an administrative authority prescribes a certain procedural safeguard to those affected against arbitrary exercise of powers, such safeguards or procedural equity and fairness will not fall foul of the rule or be dubbed *ultra vires* of the statute. The figurative assessment must have been made in the light of Guidelines (supra) and Army Order 45/2001/MS. Opinion expressed by SRO Gen Dalbir Singh lacks consistency and application of mind to overall profile.

58. The power vested in the authority is not uncanalised and absolute under the teeth of Guidelines (supra). Otherwise also, unregulated and uncanalised power would in turn offend Article 14 of the Constitution, vide **Veerendra**

Kumar Dubey versus Chief of Army Staff and others (supra). The safeguards provided by the Guidelines (supra) against the arbitrary exercise of power must be adhered to while awarding ACR entry by IO, RO and SRO.

There should be fairness in administrative action and it must be free from vice of arbitrariness. Arbitrariness is antithesis to rule of law.

VALUE JUDGMENT

59. So far as the submission of learned counsel for the petitioner that the SSB committed error in awarding the value judgment denying the petitioner his basic fundamental right of fair consideration, is concerned, it may be noted that the Selection Board takes decision on the basis of the objective consideration of (a) Annual Confidential Report profile of the officer in the relevant ranks (b) War Reports (c) battle Awards and Honours earned by the officer during his service (d) Professional courses done by the officer, his performance during the course and grading obtained therein. (e) Special achievements and weaknesses (f) Appointments held by the officers including the criteria command/staff appointments (g) Disciplinary background and punishments (h) Employability and potential including consistent recommendations for promotion to the next higher rank (i)

important character qualities of the officer particularly drive and determination, decisiveness, initiative, dependability, integrity and loyalty (j) Important aspects of demonstrated performance which indicate an officer's professional knowledge and its application as also the conceptual ability of an officer. (k) Management of recourses and technical equipment. (l) Thereafter, the entire proceedings of the Selection Board are submitted to the competent authority of the Ministry of Defence for approval. (m) The Selection Board considers overall merit as per the criteria laid down for selection of the officers. Only seniority is not a criterion for promotion to the rank of Major General. The allegation of malafide and discrimination is wholly without merit and substance. The selection Board is not obliged to record the reasons for not selecting a particular officer for promotion and there is no violation of the principles of natural justice or denial of fundamental rights of fair consideration.

60. As stated supra, the Army has a pyramidal rank structure. The number of vacancies in higher ranks are limited. From the broad base of the pyramid, only those officers whose record of service within a particular batch are better would be selected to fill up the vacancies available in the higher ranks. As per the promotion policy which was

applicable till 15th December 2004, promotions in the Army upto the rank of Major were by time scale. Promotions from Major to Lt Col and above were decided through Selection Boards as per the Policy contained in Para 108 of the Regulations for the Army, 1987 (Revised Edition) and Army HQ letter No.31525/P/MS/5B dated 6.5.1987 and the Quantification System of Selection introduced vide IHQ of MoD (Army) MS Branch letter No.04502/MS Policy dated 31st December 2008. The Quantified System of Selection Policy applicable as on date was issued vide MS Branch letter No.04502/MS Policy dated 04 January 2011.

61. The assessment of officers in ACR was regulated by SAO 3/S/89 which was replaced by AO 45/2001/MS and other relevant policies at the given time. The grading is numerical from 1 to 9 as well as in qualities to assess potential for promotion and in the form of pen picture also. The entire assessment of an officer in any ACR consists of assessment by three different Reporting Officers, viz., Initiating Officer (IO), Reviewing Officer (RO) and Senior Reviewing Officer (SRO) whose assessments are independent of each other. The Selection Board takes into consideration a number of factors such as war/operational reports, Course Reports ACR performance in command and

staff appointments, honours and awards, disciplinary background and not only the ACR or one/few ACRs etc. The Selection/rejection is based upon the overall profile of an officer and comparative merit within the batch as evaluated by the Selection Board. It is upto the Selection Board to assess the suitability of the petitioner for promotion. The assessment of the Selection Board is recommendatory in nature and not binding until approved by the competent authority, viz., COAS or the Central Government as the case may be.

62. Learned counsel for the respondents has invited our attention to the case of **M.V.Thimmaiah and others versus Union Public Service Commission and others** (supra) in support of his submission that the recommendation of the Selection Board cannot be challenged except on the ground of mala fide and serious violation of statutory rules. To quote:

“Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory Rules. The Courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the Court of appeal. This discretion has been given to the Selection Committee only and Courts rarely sit in court of appeal to examine the selection of the candidates nor is the business of the Court to

examine each candidate and record its opinion.....”

“10. Keeping in view the ratio laid down by this Court in several decisions, now we shall examine the argument of learned senior counsel for the appellants which had been addressed. But we may at the very outset observe that the Court while considering the proceedings of the Selection Committee does not sit in a court of appeal. Courts have limited scope to interfere, either selection is actuated with mala fide or statutory provisions have not been followed.”

63. In view of above, we are of the view that so far as the value judgment and decision taken by the SSB is concerned, it does not call for any interference since no substantive illegality or mala fide has been alleged or pointed out making any member of the SSB as party attributing bias against him. It is for the Selection Board to assess the suitability/merit of the officer for promotion which ordinarily may not be questioned except on the ground of jurisdictional error or mala fides. However, a prayer has been made for expunction of the ACR entries relating to the period 01.01.2014 to 30.06.2014 and 01.07.2014 to 26.06.2015 awarded by retired Chief of the Army Staff Gen Bikram Singh and Gen Dalbir Singh respectively, which appear to suffer from jurisdictional error and arbitrariness. Since the figurative assessment of the petitioner is predominantly ‘9’, he seems to have got outstanding service record. The cumulative effect of Pen

Picture and Awards (supra) granted to the petitioner make him an outstanding officer and eligible for Box Grading '9' which makes a deference in pyramidal structure of the Indian Army. The figurative assessment of '8' by Gen Bikram Singh, which is an opinion expressed after retirement, seems to be without jurisdiction. The opinion of Gen Dalbir Singh seems to be an incidence of arbitrary exercise of power for the reason that he has not adhered to the guidelines (supra) and has also not taken into account the award of VSM, SM and AVSM while recording pen picture.

64. It would be appropriate to deal with certain case law referred to by the learned counsel for the respondents, which have not been taken into account up till now.

In the case of **Surinder Shukla versus Union of India and others** (supra), the Hon'ble Supreme Court held that the court while exercising power of judicial review should not interfere with the decision of the Selection Board unless it suffers from mala fide or violation of certain statutory provisions.

The case of **Amrik Singh versus Union of India and others** (supra), which relates to non-promotion on account of adverse remark, seems to be not applicable in the present case.

In the case of **Union of India and others versus Lt Gen Rajendra Singh Kadyan and another** (supra), their Lordship of the Supreme Court held that unless no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. In para 29 of the report, the Hon'ble Supreme Court held as under:

“It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions has nexus to the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”

65. In view of the aforesaid decision of the Hon'ble Apex Court, it appears that the decision by the SSB was taken on the basis of ACR entry given by Gen Bikram Singh, retired Chief of the Army Staff, who lacked jurisdiction to award such entry after attaining the age of superannuation and the

notification issued in the Government gazette indicating his retirement. In consequence thereof, the ACR entry of the relative period deserves to be expunged.

The case of **Dalpat Abasaheb Solunke and others versus Dr. B.S.Mahajan and others** (supra) is also not applicable to the facts and circumstance of the present case.

In the case of **Air Vice Marshal S.L.Chhabra, VSM (Retd.) versus Union of India and others** (supra), the Hon'ble Supreme Court held that while exercising power of judicial review, court should not venture to assess and appraise the merit or the grading of an officer, but in the present case, one of the entry was granted by SRO, the then Chief of the Army Staff, who had already attained the age of superannuation and was leading a retired life, hence action was without jurisdiction and entry granted by him deserves to be expunged.

In the case of second entry granted by Gen Dalbir Singh, Guidelines provided as a safeguard to maintain fairness in appraisal have not been adhered to, hence the same is also liable to be expunged.

The other judgments relied upon by the respondents were rendered by Armed Forces Tribunals where entry made

by retired SRO and its validity has not been discussed, hence in no way they are applicable to the facts and circumstances of the present case.

66. On the other hand, we refer to the observations made by the Hon'ble Supreme Court in the case of Vinod Kumar versus State of Haryana and others (supra) relied upon by learned counsel for the petitioner. To quote:

“23. We may usefully refer to the judgment of the English Court in the case of Roberts v. Hopwood; 1925 All E.R. 24 laying down the law in the following terms:

“.... A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably.....”

“25. The decision of the administrative authority must be related to the purpose of the enabling provisions of Rules or Statutes, as the case may be. If they are manifestly unjust or outrageous or directed to an unauthorized end, such decisions can be set aside as arbitrary and unreasonable. Likewise, when action taken is ultra vires, such action/decision has no legal basis and can be set aside on that ground. When there are Rules framed delineating the powers of the authority as well as the procedure to be followed while exercising those powers, the

authority has to act within the limits defined by those Rules. A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. This was so explained in Shri Sitaram Sugar Co. Ltd. v. Union of India (1990) 3 SCC 223, p 253, paras 51-52) in the following manner:

“51. A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 K.B. 223. In the words of Lord Macnaghten in Westminster Corporation v. London and North Western Railway, [1905] AC 426 (HL), p.430:

“...It is well settled that a public body invested with statutory powers such as those conferred upon the Corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first...”

In Barium Chemicals Ltd. v. The Company Law Board [1966] Supp. SCR 311, this Court states:

“...Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which

confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.”

In Renusagar, AIR 1988 SC 1737, p 104, Mukharji, J., as he then was, states:

“86.The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated”.

52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.”

26. Thus, if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set

aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be ultra vires. Of course, it is to be done after following the principles of natural justice. This is precisely the position in the instant case and we are of the considered opinion that it was open to the respondents to take corrective measures by annulling the palpably illegal order of the earlier DGP, Haryana.”

67. The information with regard to entry by SRO to the extent provided by Army Order 45/2001/MS should have been communicated to the petitioner and the distinguished service record like award of AVSM during period of report should have been mentioned in the pen picture in order to understand the overall profile of the ratee, which has not been done in the present case for reasons best known to the SROs and others. In none of the cases pronounced by different Armed Forces Tribunals and relied upon by the respondents, the binding nature of the guidelines (supra) and recording of entry by SRO seems to have been considered, hence not applicable.

Findings

68. We cull down our findings on merit as under:-

- (1) Once a member of Indian Army retires from service and hands over charge, he/she becomes a pensioner.

He/she shall not be entitled to exercise power conferred by the Army Act and Rules framed thereunder. In the present case, Gen Bikram Singh shall cease to discharge duty after retirement as SRO, conferred on him under law. He retired on 31.07.2014 but recorded ACR entry as SRO on 01.09.2014 without jurisdiction.

- (2) CR covering the period 01.01.2014 to 30.06.2014 recorded by Gen Bikram Singh, Chief of the Army Staff as SRO after retirement is without jurisdiction and the same cannot be taken into account for the purposes of service benefits.
- (3) Entry made by another SRO Gen Dalbir Singh on 25.07.2015 for the period 01.07.2014 to 26.03.2015 is not in consonance with the Pen Picture as well as the Guidelines (supra). According to Policy of the Ministry of Defence (supra), AVSM, VSM and SM are awarded to an officer who has over all outstanding service record. Keeping in view the fact that the petitioner was awarded AVSM, during the period of report coupled with the guidelines for figurative assessment, denial of Box Grade '9' shows the non-application of mind and is an incidence of arbitrary exercise of power without assigning reason, that too under teeth of entry by RO justified by him. Pen

picture is silent on the award (supra) granted to the petitioner.

- (4) Value judgment may not be questioned except on the ground of jurisdiction, violation of some rules or regulations or proved mala fides. In the present case, the petitioner has not impleaded any person alleging mala fides or shown any substantive illegality committed by the Selection Board, hence its decision/recommendation may not be interfered with, based on comparative merit of candidates.
- (5) In pursuance to the Policy and Guidelines (supra), both Gen Bikram Singh and Gen Dalbir Singh have made endorsement that the petitioner should be promoted to the rank of Lt Gen. IO and RO have also made endorsements for promotion of the petitioner to higher post. It means that the petitioner possesses outstanding service career and all qualities necessary for promotion.
- (6) Both the SROs, Gen Bikram Singh and Gen Dalbir Singh, while making their respective entries, not only recorded that the petitioner be promoted to next higher post, but also tick-marked their opinion indicating that the entry awarded by RO with '9' Box Grading is justified. Once Box Grading awarded by RO as well as pen picture

is justified, then why it has been downgraded to '8' is not understandable. There appears to be non-application of mind. In the event of agreement with the opinion of RO with regard to Box Grading and pen-picture of the petitioner's service career, which denotes Box Grading if '9', lowering down the Box Grading from '9' to '8' seems to be irrational, unjust and improper, that too without assigning any reason, lacking inconsistency in decision making process, hence hit by Article 14 of the Constitution of India.

- (7) While granting ACR entry and lowering down the Box Grading from '9' denoting 'Outstanding' to '8' depicting 'Above Average', the SRO must assign the reason, as it affects the right of the individual for fair consideration, a right protected by Article 14 read with Article 21 of the Constitution. It shows that while lowering down the Box Grading of the petitioner from '9' to '8', the provisions contained in the Guidelines (supra) have not been followed and reflected from the pen-picture. While lowering down the Box Grading, reason must be assigned by superior authorities, like RO and SRO while writing pen-picture. In the absence of reason for disagreement in the pen pictures recorded by IO and RO, the ACR entries

in question granted by SROs relating to the periods in question seem to be arbitrary exercise of power and hit by Articles 14 and 21 of the Constitution.

(8) Even members of the Armed Forces cannot be deprived of their fundamental rights. They have right to know the reason of down-gradation of entry. (Vide **U.P.Jal Nigam and others versus Prabhat Chandra Jain and others (supra)** and **Maneka Gandhi versus Union of India (supra)**).

(9) Duty to give reasonable opportunity to be heard or reasons to assign is implied from the nature of the function to be performed by authority which has power to take punitive or damaging action. The Legislature can exclude operation of the principles of natural justice expressly or impliedly. But in absence of any such exclusion, these principles will have to be followed. (Vide (1979) 1 SCC 537, **Mazharul Islam versus State of U.P.**) In any case, without Parliamentary legislation in view of Article 33 of the Constitution, principles of natural justice or fundamental rights of the Armed Forces personnel may not be excluded.

(10) There is nothing on the record to indicate that Gen Dalbir Singh, who himself had recommended for grant of AVSM to the petitioner and having agreement with opinion of RO, why in spite of having such a merit, the Box Grading of the petitioner was lowered down.

ORDER

In view of above, the OA deserves to be allowed in part and is hereby partly allowed. The impugned figurative assessment and Box Grading by SRO dated 01.09.2014 and 25.07.2015 are declared to be illegal, invalid and void, hence expunged. Let a Special Service Selection Board be constituted within two months to consider the petitioner's name for promotion to the rank of Lt Gen with Bench Mark of immediate junior batchmate to the petitioner empanelled by the Selection Board in its meeting dated 15.10.2015.

OA is allowed accordingly to the extent as above.
Rest of the reliefs claimed are denied.

Costs made easy.

Let this order be communicated to the respondents by Respondents' counsel as well as OIC Legal Cell immediately.

Original records shall be returned back to the OIC
Legal Cell forthwith by the Registry.

Certified copy of the order be issued to the parties on
usual charges within three days.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P.Singh)
Member (J)

Dated : 8 Feb. 2017