RESERVED

COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 753 of 2010

Monday, this the 20th day of August, 2018

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP, Sinha, Member (A)"

Ex Junior Warrant Officer KP Mishra,

S/O Shri (Late) Rama Shanker Mishra,

Resident of Ganga Vihar Colony,

Transport Nagar, Allahabad (U.P.)

.....Petitioner

Ld. Counsel for the Petitioner : **Shri S.K. Pandey, Advocate**

Versus

1. Union of India through the Secretary Ministry of Defence, New Delhi.

2. The Chief of the Air Staff, Air HQ, New Delhi.

3. The HQ Western Air Command, IAF Subroto Park, New Delhi – 10.
   Through The Air Force Record Officer Subroto Park, New Delhi-10.

--------- Respondents

Ld. Counsel for the Respondents. : **Shri D.K. Pandey, Central Government Counsel Assisted by Wing Cdr Sardul Singh, OIC Legal Cell**

ORDER

" Per Hon'ble Air Marshal BBP Sinha, Member (A)"

1. The matter in hand has come up before us by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon'ble High Court of Judicature at Allahabad and renumbered as Transferred Application No. 753 of 2010.

2. By means of the instant T.A., the petitioner had originally made the following prayers:-

"i. To issue a writ order or direction in the nature of certiorari to quash the impugned discharge order dated 3 Oct.1997 contained in annexure 4 of this writ petition and appellate order dated 06 Oct. 1998 contained in Annexure 3 to this writ petition passed by the authority concerned.

ii. Issue a writ order or direction in the nature of mandamus commanding the respondents directing them to treat the petitioner in service including the period of extension of one year and sixty eight days and other eligible extension of services and treating him to be promoted to the rank of warrant officer, next higher rank master warrant officer and Honorary commission respectively and give all benefits during the course of his service and post retirement benefits.

iii. Issue any other writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the court.

iv. To award the cost of the writ petition to this petitioner against the respondents.

v. Set aside and struck down para 12 (a)(ii) of AFI 12/S/48 being violative of article 14 of Constitution of India.

vi. Set aside and struck down Air H.Q. letter dated 6.11.95 now AFO 11/99 being wholly violative of section 189, 190, 191 of Air Force Act. Hence the same ultravire.

vii. Set aside and struck down Air H.Q. letter dated 6.11.95 now AFO 11/99 being wholly violative of doctrine of delegates non potest delegate and therefore the same is violative of Constitution of India.

viii. Passed order directing respondents to pay salary of JWO to petitioner since 31.10.1998 to 15.12.2001 for period of 3 years 45 days and to pay salary of MWO on the basis of notional promotion for the said period.

ix. Pass order directing respondents to grant notional promotion of warrant officer, MWO, HFO with all consequential benefits including thus pension and pensionary benefits for the rank of HFO accordingly."

3. The facts draped in brevity are that the petitioner was enrolled in the Indian Air Force on 08.10.1963. He was promoted to the rank of Acting Junior Warrant Officer (JWO) on 01.02.1984 and was promoted to the substantive rank of JWO on 09.12.1986. He was considered for next promotion to the rank of Warrant Officer from 1990-91 till 1998-99 but he was not empanelled. The petitioner preferred an application for extension of his service for a period of one year and sixty eight days with effect from 08.10.1998 i.e. upto 55 years of age,

which was rejected by the Air Force Record Office, New Delhi. His appeal dated 30.06.1998 addressed to the Chief of Air Staff, HQ New Delhi, for grant of extension of service and promotion to the next rank of Warrant Officer was also rejected vide order dated 06.10.1998. Thereafter the petitioner was discharged from service w.e.f. 31.10.1998. Being aggrieved by non extension of service and denial of promotion to the rank of Warrant Officer, the petitioner preferred Civil Misc. Writ Petition No 25079 of 2000 before High Court of Judicature at Allahabad which was transferred to this Tribunal and registered as Transferred Application as aforesaid.

4. The learned counsel for the petitioner pleaded that, petitioner was enrolled in the Indian Air Force on 08.10.1963 as Aircraftman for a period of nine years regular and six years reserve service and was granted extension of service from time to time. He was promoted to the rank of Junior Warrant Officer (JWO) on 01.01.1984. As JWO, he was considered for promotion from the year 1990-91 till 1998-99 but was not empanelled because contrary to the provisions of AFI 12/S/48, the Chief of Air Staff (CAS) changed promotion policies to the disadvantage of the petitioner resulting in his non-empanelment. The crux of his argument was that AFI 12/S/48 has statutory status and the CAS does not have the power to change it. Thus action of CAS are voilative of statutory status

of AFI 12/S/48 and Article 14 of Constitution of India. He also challenged the policy letter of Air Headquarters on extension of service vide its letter dated 06.11.1995 and the subsequent AFO 11/99 based on this letter. The only argument learned counsel took on this matter was that the CAS doesn't have the power on these matters. His contention was that the applicant deserved to serve till 55 years of age and was also eligible for two years extension upto 57 years of age. His final argument was that the CAS could not have gone beyond the provisions of AFI 12/S/48 and therefore the denial of promotion as well as extension to petitioner was unlawfull and needs to be set aside.

5. **Per Contra**, learned counsel for the respondents submitted that the petitioner was enrolled in the Indian Air Force on 08.10.1963 as Aircraftman for a period of nine years regular and six years reserve service. On completion of initial terms of engagement, he was granted first spell of extension of service for a period of six years w.e.f. 08.10.1978, second spell of extension of service for a period of 5 years w.e.f. 08.10.1984, third spell of extension of service for a period of 3 years w.e.f. 08.10.1989, fourth spell of extension of service for a period of 3 years w.e.f. 08.10.1992, fifth spell of extension of service for a period of 3 years w.e.f. 08.10.1995. The learned counsel further submitted that the petitioner was promoted upto to the rank of acting Junior Warrant Officer (JWO) on 01.01.1984 He was

given the substantive rank of JWO on 09.12.1986. He submitted that till 1989 -90 promotion board, the promotion policy was based on seniority. He pointed out that till 1989-90, the last person empanelled and promoted was senior to petitioner, his substantive JWO rank seniority being 20.09.1986. Thereafter from promotion panel year 1990 – 91, the promotion policy was revised from seniority based promotion to seniority cum merit based promotion in terms of promotion policy issued vide Air Headquarters Letter Number Air HQ/S 40641/3/PA (CPC) dated 16.11.89 and 31.01.1995. As per this new policy letter, the seniority cum merit policy demanded that those JWO's who had obtained minimum 479 assessment marks (i.e. 72.5% of total assessment marks scored by them during preceding five years) as minimum assessment/performance criteria. However, the petitioner failed to achieve the minimum performance criteria during promotion panel year 1990 – 91 to 1998 – 99. Specific details are as follows:-

Promotion Panel Year	**Marks of Petitioner**	**Minimum Marks required**
1990-91	448/479	
1991-92	421/479	
1992-93	391/479	
1993-94	422/479	
1994-95	401/479	
1995-96	419/479	

1996-97	445/479
1997-98	474/479
1998-99	455/479

6. Thus he could not qualify for promotion to WO. He applied for grant of extension of engagement for a period of one year and 68 days with effect from 08.10.1998 which was not approved in terms of Para 4 (f) of the Air Headquarters Policy letter No. Air HQ/40811/PA-III dated 06.11.1995. Extension of engagement to the Airman is governed under the provisions of Air Headquarters letter dated 06.11.1995 (later AFO 11/99) as amended from time to time. Merely being medically fit, an airman cannot claim to be suitable for grant of further extension of engagement, he also has to fulfil the other required criteria as enumerated in Air HQ policy dated 06.11.1995. He further submitted that para 3 of the Air Headquarters policy letter dated 06.11.1995 clearly stipulates that 'an Airman who is consistent in his overall performance may be granted extension of engagement, which is governed by the following principles':-

(a) Service requirements.

(b) Willingness for extension of engagement.

(c) Medical Fitness.

(d) Passing of Promotion Examinations.

(e) Conduct records.

(f) ACR/Assessments for last five years.

(g) Suitability for Extension.

(h) Certificate of undertaking (CoU).

7. Extension of service upto the age of superannuation is granted, subject to fulfilling of certain criteria. However, the petitioner had not fulfilled the minimum required criteria for grant of extension of engagement. His average assessment for last five years was 71.81% which was well below the minimum required grading of 72.5% as specified in Para 4 (f) of Air HQ letter dated 05.11.1995 as amended vide letter dated 19.12.1997. In the instant case, since the petitioner was not meeting ACR criteria required for extension, hence his request for extension of engagement was not approved. His statutory petition was examined at appropriate level and was rejected by the Chief of the Air Staff in terms of Air HQ Policy on extension of engagement and the same was informed to his unit vide letter dated 06.10.1998.

8. Learned counsel for the respondents submitted that it is prerogative of the specified competent authority to grant further extension of service on merit to those airmen who fulfil all the above mentioned criteria as laid down in the existing rules and regulations. He submitted that the petitioner had filed Civil Misc. Writ Petitioner No 4273 of 1998 in Delhi High Court against not granting of extension of engagement. The said writ

petition was dismissed vide order dated 15.09.1998. He submitted that Air Headquarters Policy dated 06.11.1995 had already been upheld by various High Courts including Delhi High Court in Civil Misc. Writ Petition No. 3117 of 1998 and many others. One petitioner JWO K. Shankar had filed a L.P.A. No 416 of 1998 which was disposed of in the favour of Union of India. In the instant case, since the petitioner was not meeting the required ACR criteria, his request for extension of engagement was not approved. He further submitted that this policy in no case has done any injustice to the petitioner. On the other hand, this policy has enhanced organisational interests and given due importance to merit alongwith the importance to seniority. He emphasised that Armed Forces are pyramidical structures, due to compulsions of chain of command control & quick decision making requirements of a combat force, therefore the promotion prospects in armed forces become progressively difficult. It is further contended that policy contained in AFI 12/S/48 specifies the minimum time frame for giving promotion and it does not postulate that on completion of the minimum time frame an individual would be automatically promoted irrespective of vacancies. It was further contended by the counsel that AFI 12/S/48 provides only broad guidelines and does not provide the detailed procedure, mechanism or criteria for carrying out the selection for

authorizing promotions. Therefore, the Chief of Air Staff has issued promotion policies to provide a mechanism for selection among deserving air warriors. The existing merit cum seniority is well within the frame work of AFI 12/S/48, existing regulations on the subject and the powers vested in the Chief of Air Staff in terms of para 917 of Regulations for the Air Force 1964. Additionally, Government of India, MoD letter no. 10 (8) 2001-D (Air-iii) dated 14.08.2001 authorises delegation to Chief of Air Staff to formulate promotion policy of all IAF personnel upto the rank of Group Captain.

9. Air Headquarters letter No Air HQ/40811/PA-III dated 06.11.1995 had been issued by Air Headquarters to all Air Force units in clarification of the aforesaid Air Force Instructions 12/S/48, in respect of the terms and conditions governing grant of extension of service to Airmen. Ministry of Defence formulates policies to ensure optimum efficiency and preparedness of the Defence Services to fulfil its mandate of protecting the national security of India and to take such actions as are necessary to ensure the same. Grant of extension of service of any person of the Air Force is not inherent right vested in such individual. Thus, it is not a matter that can be demanded as a right by the petitioner. Extension of service is solely at the discretion of the competent authority of the Indian Air Force which is directed by AFI 12/S/48 and Air

Headquarters letter dated 06.11.1995 keeping in view grades and marks for last five years, medical fitness, conduct, records, passing of promotion examinations and service requirements etc.

10. Learned counsel for the respondents submitted that the petitioner was considered for promotion to the rank of Warrant Officer but till 1989 – 90 promotion panel, which was seniority based, he was not considered for promotion being outside consideration zone. Thereafter from 1990 – 91, he could not make it in the merit in the promotion panel. Since he was not promoted to the rank of Warrant Officer, so he could not be promoted to the rank of Master Warrant Officer or granted Honorary Commission as per the provision of para 344 of Air Force Regulation 1964. There is no violation of Regulation 282 of Air Force Regulation 1964 and Article 14, 16(i) and 21 of Constitution of India. As per Section 189 & 190, Chief of the Air Staff is authorised to make rules and policies for Indian Air Force. AFI 12/S/48 is broad guidelines for promotion and extension of engagement of airman. It is not violative of Article 14 of Constitution of India and therefore para 12 (a) (ii) of AFI 12/S/48 is not liable to be struck off. Learned counsel for the respondents also submitted that the petitioner had not been adversely reported upon in any ACR however the aggregate of

five years of petitioner could not come upto 72.5% of total five years assessment, hence it was not mandatory to communicate to the petitioner.

11. We have heard arguments of both the counsels and perused policy letter including relevant documents.

12. We are of the view that , there is no right to any employee of the State to claim that rules governing conditions of his service should be forever remain the same as the one when he entered service (vide P.U. Joshi vs Accountant General, (2003) 2 SCC 632). Para 10 being relevant is quoted below:-

> *"We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern*

and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

13. Normally it is not for the court to consider the wisdom or appropriateness of a particular policy, particularly in cases where expert knowledge was required in the formulation of the policy and considering the appropriateness of the policy. Once a policy is settled the government is bound to follow that policy and that,if the policy had to be changed, this could be done only on a proper consideration of the relevant material and could not be resorted to for ulterior purposes or malafides nor could the policy be changed arbitrarily vide judgment in Union of India vs S.L. Dutta (1991) 1 SCC 505. Para 9 to 16 of the said decision being relevant are quoted below.

*"9. In Vincent Panikurlangara v. Union of India **1987 2 SCC 165, 173, 175** a writ petition was filed as in public interest regarding the maintenance of approved standards of drugs and banning of injurious and harmful drugs. A Division Bench of this Court presided over by Ranganath Misra, J. (as he then was) considered the scope of judicial review in matters of this kind. It was observed by the Court that: (**SCC p. 173**, para 15)*

"Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far-reaching implications of the total ban of certain medicines for which the petitioner has prayed, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determination of such matters."

*10. The Division Bench went on to observe as follows: (**SCC p. 175**, para 17)*

"The technical aspects which arise for consideration in a matter of this type cannot be effectively handled by a court. Similarly the question of policy which is involved in the matter is also one for the Union Government — keeping the best of interests of citizens in view to decide. No final say in regard to such aspects come under the purview of the court."

*11. In **Liberty Oil Mills v. Union of India 1984 3 SCC 465, 478** certain questions were raised before this Court regarding the import and export policy followed in India. Chinnappa Reddy, J., speaking for the Court observed as follows: (**SCC p. 478**, para 6)*

*"There must also be a considerable number of other factors which go into the making of an import policy. Expertise in public and political, national and international economy is necessary before one may engage in the making or in the criticism of an import policy. Obviously courts do not possess the expertise and **are** consequently incompetent to pass judgment on the appropriateness or the adequacy of a particular import policy."*

*12. In Shri Sitaram Sugar Co. Ltd. v. Union of India **1990 3 SCC 223, 255** the validity of certain notifications fixing prices of various grades of sugar with reference to geographical-cum-agro-economic considerations and average cost profiles of factories located in respective zones were impugned before this Court. The Constitution Bench of this*

Court which decided the case held as follows: (SCC p. 255, para 56)

"The court has neither the means nor the knowledge to re-evaluate the factual basis of the impugned orders. The court, in exercise of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders ***are****made so long as those findings* ***are*** *reasonably supported by evidence."*

13. In the said judgment the court cited with approval the following observations of Justice Frankfurter of the U.S Supreme Court in ***Railroad Commission of Texas v. Rowan and Nichols Oil Company*** *311 US 570-77:*

"Nothing in the Constitution warrants a rejection of these expert conclusions. Nor, on the basis of intrinsic skills and equipment, ***are*** *the federal courts qualified to set their independent judgment on such matters against that of the chosen State authorities…. When we consider the limiting conditions of litigation the adaptability of the judicial process only to issues definitely circumscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers it is clear that the Due Process Clause does not require the feel of the expert to be supplanted by an independent view of judges on the conflicting testimony and prophecies and impressions of expert witnesses."*

14. In connection with the question as to whether the conditions of service of respondent 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni 1981 4 SCC 130. There it was held by a bench comprising three learned Judges of this Court that mere chances of promotion ***are*** *not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the*

conditions of service. A right to be considered for promotion is a term of service, chances of promotion ***are*** *not. (See* ***SCC p. 141****, para 16.) Reference was also made to the decision of this Court in K. Jagadeesan v. Union of India 1990 2 SCC 228 where the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni was followed.*

15. Additional Solicitor General also drew our attention to the decision of this Court in Col. A.S Sangwan v. Union of India ***1980 Supp SCC 559, 561****. In that case the court was concerned with the competing claims of the petitioner, Col. Sangwan, and respondent 3, namely, Col. A.S Sekhon to be promoted as Brigadiers in the Directorate of Military Farms. A submission was made that once a policy had been made in exercise of the general executive power of the Union of India and made known and acted upon, it would be arbitrary to depart from it overnight by making a fresh selection without an antecedent reformulation of policy and making that policy known to the concerned sector in the army.*

*It was held: (****SCC p. 561****, para 4)*

"The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive ***are****a of Defence, courts should be cautious although courts* ***are*** *not powerless. The Union of India having framed a policy relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy."*

16. Mr Datar, learned counsel for respondent 1 did not dispute that, normally, it was not for the court to consider the wisdom or appropriateness of a particular policy, particularly in cases where expert knowledge was required in the formulation of the policy and considering the appropriateness of the policy. It was, however, submitted by him that once a policy was settled the government was

bound to follow that policy and that, if the policy had to be changed, this could be done only on a proper consideration of the relevant material and could not be resorted to for ulterior purposes or mala fide nor could the policy be changed arbitrarily. He placed reliance on the judgment of this Court in case of A.S Sangwan, discussed earlier. What is, however, significant is that in that very judgment this Court held (see para 4 of the aforesaid report) that a policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. That judgment, therefore, is of no avail to the appellant."

14. The basic issue raised by learned counsel for the petitioner relates primarily to two issues i.e. firstly does CAS has the power to make changes or amplify to what is specified in AFI 12/S/48 and secondly on similar lines can he specify changes in extension of service policy vis-a-vis provisions of AFI 12/S/48.

15. We have given our anxious thoughts to all the related aspects. We have also taken note of the fact that the CAS is responsible to ensure that the IAF remains fighting fit as a fighting force and delivers effectively in war and peace and therefore he has been given the necessary powers through various statutes to take necessary measures to keep IAF in fighting fit shape. The basic issue here is that the petitioner is not complaining of any specific bias by respondents or a

specific wrong done to him, he is questioning the policy of IAF on promotion as well as extension of service.

16. We are of the view that the primary matter raised by learned counsel for the petitioner about the statutory status of AFI 12/S/48 vis a vis the power of CAS is no more RES INTEGRA. In a recent case this Tribunal has given a judgment of three member Bench with 2:1 majority that AFI 12/S/48 does not have statutory force and that the CAS is well within his power to issue policy letters on promotion.

17. The challenge to the seniority cum merit promotion policy of IAF effective w.e.f. 1990 – 91 is no more RES INTEGRA. The aforesaid policy also came under challenge before the Rajasthan High Court in the case of ***JWO S.K. Karfa V Union of India & Ors*** which was dismissed vide judgment dated 17.05.2004.

18. The same policy was also challenged in the Gauhati High Court in the case of ***Parath Singh Gaur SMQ No 59/2 V Union of India & Ors*** which was dismissed vide judgment dated 13.03.2008. Paras 9 to 11 being relevant are quoted below:-

> *"9. The rival cases as set out above have received the due and anxious consideration of the Court. From the Air Force Regulations framed in the year 1964 as made available to the Court it*
>
> *appears that the said Regulations have been issued by the government of India in supersession of the earlier Regulations*

holding the field, i.e. 'Regulations for the royal India Air Force' and 'Regulations for the Indian Air Force-Instructions by His Excellency the Commander-in-Chief of India'. The preamble to the said Regulations does not state that the same have been issued under section 190 of the Air Force Act, 1950. Chapter XVII, Section 7, Regulation 915 prescribes that all Government of India Orders of general nature or those that affect an appreciable number of units, individuals or classes of individuals are to be published as Air Force Instructions. Air Force Instructions 12/S/1948, therefore, appears to have been issued under the aforesaid provisions of the Regulations and are not statutory in character, as contended by the petitioner. The projections and Air Force Instructions 12/S/1948 are non-est in law and the promotions made on that basis are illegal, therefore, will have no legal force.

10. Regardless of what has been held above, there is no denial to the fact that the Regulations and the Air Force Instructions lay down norms including norms for promotion which must be adhered to by the respondents while performing their duties and exercising their powers. Departures from the existing norms, though permissible, will have to be judged on the touchstone of the proximity or relevant of such

departures to the needs of the institution as well as to the needs of reasonableness, fairness and rationality.

11. In the present case, as already noticed, both under the 1964 Regulations and the Air Force Instructions 12/S/1948, promotion to the rank of Junior Warrant Officer is required to be made by selection. The detailed parameters by which selection is required to be made are not laid down either in the Regulations or in the Air force Instructions. The stand taken by the respondents in the affidavit filed in that to keep pace with the changing times and to make the Indian Air Force more responsive to the needs of time, it was felt necessary that merit which had earlier played a less prominent role should now come to the forefront for deciding the fitness for promotions. At the same time, some role to seniority should also be assigned. It is the above conceptualisation that has found manifestation n the circular dated 23.09.2002. If that be so

and in a situation where the circular dated 23.09.2002, is not in conflict with any statutory prescription, the same must be understood by the Court to be in the realm of policy which the decision taker is always competent to take even by altering the existing policy. The reasons for change in the policy, in view of the grounds assigned in the affidavit, cannot be understood by the Court to be wholly unconnected with the institutional needs of the Air Force keeping in mind the ever increasing challenges that the Air Force is required to meet. The materials on record also indicate that the case of the petitioner was successively considered for promotion to the rank of Junior Warrant Officer but on such consideration he was found not to possess the requisite merit in comparison to his juniors to earn the promotion in question. Accordingly, the same has been refused to him. Such refusal, in the backdrop of the facts noticed above, appears to the Court to be justified. The petitioner, as the respondents have stated, will continue to be considered in each successive promotions in the future. He must, therefore, make an endeavour to improve his performance if he is inclined to continue in service and to earn promotion on the basis of the wholesome principle of merit."

19. This policy has also been assailed before Delhi High Court in ***Writ Petition (C) No 6943 of 2003*** and ***CM Application No 12067 of 2003 JWO A.K. Singh and Others vs Union of India and Others*** decided on June 2, 2008. Para 32 being relevant is quoted below:-

"32. It is, thus, obvious that about 1,47,000 AF personnel have been considered in accordance with the impugned policy, out of whom, around 17,000 have been promoted as well. There we agree that any interference with this settled policy at this stage is bound to create an upheaval in a combatant and disciplined force like the Indian Air Force and will disturb the existing placement and

postings of personnel, who have been promoted in accordance with the laid down instructions. It is bound to create a lot of uncertainty and confusion in the middle level functionaries, who are backbone of the IAF. The reverberations are being felt. This all will adversely affect the operational preparedness and state of disciplines in the IAF. There cannot be any policy which can satisfy the aspirations of each and every employee. Some are bound to feel dissatisfied. However, the policy does good to the majority if it has subserved its purpose."

Thus these judgments have taken finality.

20. In view of the above mentioned aspects, the basic stand of learned counsel for the petitioner that AFI 12/S/48 is a statutory provision and that the CAS has no power to issue any policy letter on promotion and extension of service has no legs to stand upon. Hence we don't find anything wrong or illegal in the respondents not granting promotion and extension of service to the petitioner.

21. Accordingly, the Transferred Application No 753 of 2010, being devoid of merit, is hereby **dismissed**.

No order as to costs.

(**Air Marshal BBP Sinha)**
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : August, 2018
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