

(2019) 09 AFT CK 0006

In the Armed Forces Tribunal

Case No : Original Application No. 841 Of 2019

Admiral Bimal Verma

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14(3)
Navy Act, 1957 — Section 1, 2, 3, 3(2)

Citation : (2019) 09 AFT CK 0006

Hon'ble Judges : Virender Singh, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Ankur Chhibber, Rhea Verma, Rajul Jain, Vardhan Gupta, Aman Lekhi, R. Balasubramaniam, V. Shankar, Vijendra Singh Mahndiyani, Rati Varma, Ritviz Rishabh, Shivani Mishra

Final Decision : Dismissed

Judgement

1. Aggrieved of the order dated 23.03.2019 appointing Vice Admiral Karambir Singh, PVSM, AVSM (the fourth respondent) as the next Chief of the

Naval Staff in the substantive rank of Admiral with effect from the afternoon of 31.05.2019, the applicant being senior most Vice Admiral in the zone

of consideration initially filed O.A No. 559 of 2019 before this Tribunal challenging the validity of the said decision of the first respondent dated

23.03.2019, which, when came up for consideration on 09.04.2019, was allowed to be withdrawn with liberty to the applicant to exhaust the remedies

available under the Navy Act, 1957. Accordingly, the applicant filed a statutory complaint on 10.04.2019. However, without waiting for the response,

the applicant filed another O.A being O.A No. 660 of 2019, which was also allowed to be withdrawn with liberty to file a fresh one against the order

dated 16.05.2019, whereby his statutory complaint was rejected. It was

thereafter the instant O.A has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 challenging (i) the order dated 23.03.2019 appointing the fourth respondent (then Vice Admiral Karambir Singh) as the Chief of the Naval Staff in the substantive rank of Admiral with effect from the afternoon of 31.05.2019 and (ii) the order dated 16.05.2019 rejecting his (the applicant's) statutory complaint filed by him on 10.04.2019.

2. The reliefs now sought by the applicant are as under:

(i) Quash the impugned order dated 16.05.2019 bearing No. 140/US(P)/D(N-II/P), whereby the applicant's statutory petition No. ANC/242/BKV

dated 10.04.2019 has been rejected on grounds that the contentions are extraneous, vague and unsubstantiated;

(ii) Quash the impugned order dated 23.03.2019 whereby Respondent No. 4 has been appointed as the Chief of Naval Staff instead of the applicant;

and

(ii) Call for confidential reports and records of the applicant and Respondent No. 4 which were placed before the competent authority based on which

the impugned order dated 23.03.2019 was passed and examine the same, as to whether any irrelevant or extraneous considerations were placed to

reject the case of the applicant, and if so, to expunge the said extraneous remarks/communications and direct the competent authority to re-examine

the matter, de hors the said extraneous considerations, based on the original service profile of the applicant along with other officers, and if found fit

then appoint the applicant as the Chief of Naval Staff.

3. We may state here at the outset that we have dealt with the instant matter within the parameters of Section 14(3) of the Armed Forces Tribunal

Act, 2007 (AFT Act, in short), therefore, put Respondents 1 and 2 only to notice at this stage. Reply affidavit, verified by the Under Secretary,

Ministry of Defence, New Delhi, has been filed by Respondents 1 and 2. The applicant has also filed rejoinder to the reply filed by Respondents 1 and

2.

4. The factual matrix, in brief, necessary for the proper adjudication of the instant O.A, as emerged from the pleadings of the parties, is that the

applicant was commissioned in the Indian Navy as a Sub Lieutenant in the Executive Cadre on 01.01.1980. Thereafter, he has earned promotions

from time to time. On 01.11.2012, he became Vice Admiral and was appointed as Chief of Staff (CoS), Eastern Naval Command. In 2016, he was

appointed as Commander-in-Chief of Andaman and Nicobar Command (CINCAN) on approval by the Appointments Committee of Cabinet (ACC).

The applicant claims to have an outstanding academic and service record, for which he has been commended time and again, including Commendation

of the Commander-in-Chief, Western Naval Command in 1995 and At/ Vishisht Seva Medal (AVSM) in 2012.

5. In December 2018/ January 2019, the Naval Headquarters forwarded the names of the following officers to the Central Government for

consideration for appointment as the next Chief of Naval Staff:

(I) Vice Admiral Bimal Kumar Verma, Flag Officer, Commander-in-Chief, Andaman and Nicobar Command (the applicant);

(ii) Vice Admiral Karambir Singh, Flag Officer, Commander-in-Chief, Eastern Naval Command (Respondent No. 4);

(iii) Vice Admiral Ajit Kumar, Flag Officer, Commander-in-Chief, Western Naval Command;

(iv) Vice Admiral Anil Kumar Chawla, Flag Officer, Commander-in-Chief, Southern Naval Command; and

(v) Vice Admiral Ashok Kumar, Vice Chief of Naval Staff.

Consequently, after due consideration, Respondent No. 4 was appointed as the next Chief of Naval Staff (CNS), superseding the applicant, who was

senior to him. Being aggrieved, the applicant, the senior most in the aforesaid panel, is before the Tribunal seeking the aforesaid reliefs.

Submissions on behalf of the Applicant:

6. Mr. Ankur Chhibber, learned counsel appearing for the applicant, submitted that the action of the respondents in appointing Respondent No. 4 as

Chief of Naval Staff overlooking the seniority as well as the outstanding profile and achievements of the applicant, including various awards and

laurels, is illegal and violative of the principles of natural justice. The statutory complaint of the applicant has also been rejected on unsubstantiated and frivolous grounds.

7. According to Mr. Chhibber, procedural fairness is of central importance in administrative decision making and the competent authority cannot be an

exception to this principle. Accordingly, the respondents should have taken a

decision reasonably and appointed the applicant as the CNS since he was the senior most, without being guided by extraneous or irrelevant considerations. While appointing Respondent No. 4 as Chief of Naval Staff, the respondents failed to take into account Navy Order (Special) No. 01 of 2012, which provides for the procedure for selection of officers to ranks of Rear Admiral and Vice Admiral i.e. merit-cum-seniority. Further, there being no specific Navy Order in respect of promotion to the rank of Chief of Naval Staff (CNS), the respondents should have applied the same yardstick and procedure, as given in Navy Order (Special) No. 01 of 2012 for consideration while selecting one of the short listed Vice Admirals for appointment as the CNS. Further, the respondents have failed to appreciate that even if the post of CNS is a merit-cum-seniority post, seniority cannot be given a go by and wherever merit is comparable, the selection should be guided by seniority. The applicant being the senior most, he should, therefore, have been appointed as CNS. Learned counsel submitted that the Honible Supreme Court in Lt Gen Ravi Dastane v. Union of India and others (2019) 4 SCC 747 w, hile noting that officers in the Army attain the rank of Lt General and progress through the hierarchical structure after fulfilling rigorous criteria of assessment, categorically observed that the authority making such appointment should not ignore seniority and cannot be oblivious of seniority.

8. Learned counsel for the applicant pointed out that, in the Armed Forces, seniority plays an important role for maintaining the command structure of the force, and in normal circumstances, an officer having a good profile and being senior is not superseded. Furthermore, in the past, except in one exceptional case, all the Chiefs of the Navy have been appointed by seniority only. Since the names recommended for consideration were of the same rank and had similar profiles, the only aspect that could have been taken into account was the relative seniority and, the applicant being the senior most, the respondents were not justified in appointing Respondent No. 4 by overlooking the seniority of the applicant. Furthermore, there were no valid or logical reasons to deny the applicant promotion to the post of Chief of Naval Staff, there being no shortcomings with regard to the applicant.

Learned counsel contended that this action of the respondents in giving unfair treatment to the applicant has violated the principles enshrined under

Article 16 of the Constitution. Learned counsel relied on the decision of the Hon'ble Supreme Court in *Badrinath v. Government of Tamil Nadu and others* (2000) 8 SCC 395, wherein it has been categorically held that under Article 16 of the Constitution, the right to be 'considered' for promotion is a fundamental right and it is not mere 'consideration' for promotion that is important but the 'consideration' must be fair according to established principles governing service jurisprudence.

9. While developing his arguments on Navy Order (Special) No. 1 of 2012 dealing with relevant considerations i.e. merit and seniority for promotion to the rank of Rear Admiral and Vice Admiral should necessarily apply for promotion to the rank of Chief of Naval Staff, learned counsel for the applicant submitted that in the absence of specific criteria for appointment of Chief of Naval Staff, the principles of fairness demand that the policy contained and as per the Quantified System of Selection contained in the aforesaid Navy Order, for recommending officers for promotion to higher rank, certain procedures, including system of quantified merit, are to be followed. They are:

- (i) 95% weightage will be assigned to ACRs available in the present rank; and
- (ii) 5% marks will be awarded by the Promotion Board for value judgment.

The learned counsel pointed out that the applicant is aggrieved by the respondents not considering the aforesaid parameters while superseding his seniority, especially when the Appointments Committee of Cabinet in 2016 had approved his appointment as Flag Officer Commanding-in-Chief, Andaman and Nicobar Command (CINCAN) after giving due weightage to the above criteria and having been satisfied that the applicant had fulfilled the rigorous criteria of assessment for that post.

10. Learned counsel conceded that the applicant had been preferred with two Letters of Severe Displeasure (LoSD) viz, the first one on 28.10.2005 for acts of omission with regard to his role as Principal Director Naval Operations (PDNO) during the Navy War Room Leaks case and the second, on 20.06.2007, for an act of negligence in having authorised the flight of an unserviceable Chetak Helicopter while he was Commanding Officer of Indian Navy Ship (INS), Mysore, but counsel contended that the Navy War Room lapses were occurring even before the applicant took over the appointment of PDNO, further his was only a supervisory lapse, the LoSD having

a shelf-life of only two years, hence, it did not come in the way of his promotion as Rear Admiral on 05.01.2008. With regard to the second LoSD, counsel contended that the applicant had filed an appeal to which he was informed orally that it had been put on record that he was not responsible for the lapse, as confirmed from the fact that the respondents have not denied this submission at Para 4.21 of his O.A in their reply at page 135 of the counter affidavit. The fact that the lapses were not serious and that their period of effectiveness was over is further confirmed from the fact that the applicant was promoted as Rear Admiral in 2008, appointed as Flag Officer, Maharashtra and Gujarat in 2010, awarded AVSM in 2012, promoted as Vice Admiral in November 2012 and appointed C-in-C, Andaman & Nicobar Command (CINCAN) in 2016, after approval by the Appointments Committee of the Cabinet (ACC).

11. Learned counsel submitted that the arbitrary manner in which the first respondent had taken the decision to supersede the applicant for the post of CNS is reflective of the fact that the first respondent has exercised its power in an unruly manner, interfering with the past established principles of selection based on seniority in senior military appointments, which principle has played a pre-eminent role in maintaining the independence of the Armed Forces and preserving the command structure.

12. Learned counsel for the applicant then drew our attention to the ACRs of the applicant for the period 2017-18 which, according to the applicant, were not placed before the appointing authority and the first respondent proceeded to appoint the fourth respondent without even examining the ACRs of the applicant, which were important to assess the service profile of the applicant. He also submitted that Navy Order (Special) No. 02 deals with "Rendition and Acknowledgement of Confidential Reports" and according to him, Section 0301 is most important and it reads:

Responsibility for Rendering Report. Officers are to complete Section 1 and handover the CR form to the 10 at least 10 days before the due date stipulated in Section 2 of these orders. The officer reported upon is responsible for ensuring correctness of his/her personal particulars in this section. The JO IS responsible for rendering the report on the due date. If, for any reason, an officer fails to furnish the form duly completed by the due date, the 10 shall initiate the report without the

signature of the officer reported upon, and make a suitable notation thereon. The RO/SRO is responsible for ensuring the correctness of the channel of reporting. 10/R0 is to ensure that the completed reports are forwarded to the next higher authority at the earliest. The final reviewing authority is to ensure that the reports finally reach II-/Q MoD (N) within 45 days of their respective due dates. Timely rendition of CRs is to be checked during Annual Inspection of Units.

Therefore, it was the responsibility of the 10 to render the report of the applicant on the due date. In complete disregard to the mandate of the

aforesaid Navy Order, the competent authority had issued the letter dated 07.05.2019 directing the applicant to forward ACRs for the period

01.08.2017 to 31.07.2018 and 01.08.2018 to 31.05.2019. It is thus clear that the ACRs were sought as an afterthought, much after the appointment of

the fourth respondent was decided. The learned counsel, therefore, submitted that the manner in which the first respondent proceeded to appoint the

fourth respondent as CNS without even considering the relevant documents of the applicant is clearly evocative of the prejudged, pre-concerted and

biased motive to deny a fair consideration of the applicant for appointment as CNS.

13. Learned counsel also submitted that the applicant has a strong suspicion that he was denied fair consideration based on extraneous file notings,

therefore, considering the case of the applicant without relevant material i.e. latest ACRs and further, by giving undue weightage to past censures in

complete disregard to Navy Order No. 4 of 2002 and the pre-meditated and pre-concerted manner in which the first respondent denied him important

appointments and awards i.e. appointment of Chief of Personnel in 2015, appointment as FOC-in-C East in 2017 and FOC-in-C South in 2018, award

of PVSM in 2018 and 2019 respectively, despite the Navy recommending the name of the applicant, is clearly reflective of the bias and malice in law

on the part of the first respondent.

14. Learned counsel submitted that though the appointing authority has the discretion to appoint the Chief of an Armed Force, however, the absence

of any specific provision covering the appointment of Chief of the three Services, does not mean that the discretionary power is unfettered. The

appointing authority thus cannot disregard the principles of service jurisprudence

governing promotion in the Navy as also the recommendations of the second respondent and thereafter appoint the CNS in a whimsical manner. Further, considering the extra-ordinary and unique nature of the post of CNS, it is all the more necessary that any opaque and vague decision making process undertaken behind the veil of 'administrative prerogative' should be pierced to uphold the sanctity and impartiality of process for selection for the office of the Chief of an Armed Force. It requires to be restored.

15. Learned counsel for the applicant submitted that the wrong done to him after serving the Nation for forty years and after having reached the pinnacle of the Service, that he has been found to be unsuitable in a most perverse, unjust and whimsical manner has constrained him to move the Tribunal.

16. Learned counsel for the applicant, in order to substantiate his contentions, besides Lt Gen Ravi Dastane's case (supra), has also relied upon the following decisions:

(1) Union of India and others v. N. P. Dhamania and others (1995 Supp (1) SCC 1);

(ii) _ latinder Kumar and others v. State of Punjab and others (1985) 1 SCC 122;

Submissions on behalf of Respondents 1 and 2:

17. Per contra, Mr. Aman Lekhi, learned Additional Solicitor General (ASG), representing the first and second respondents, while refuting the

arguments advanced by Mr. Chhibber, submitted that the appointing authority viz. Government of India has the prerogative to appoint Chiefs of Armed

Forces and interference therewith should be an exception as their appointment stands on a totally different footing from any other appointment in a

particular Force. The Chief of an Armed Force has to necessarily enjoy the implicit confidence of the Executive and the Legislature. An issue relating

to the appointment of the Chief of a Force has to be treated differently from everyday matters of service jurisprudence. It cannot and should not be

tested merely on the accepted understanding of regular promotions in the posts. Further, it cannot also be just treated as a regular promotion.

According to Mr. Lekhi, in the instant case, there is neither any excessive nor abuse of jurisdiction and the impugned order of appointment has been

issued after considering all circumstances relevant to the decision, therefore, an extensive and intrusive review is not warranted in this case.

18. Mr. Lekhi further submitted that the CNS is selected from amongst the seniormost eligible Vice Admirals of the Indian Navy in the rank of C-in-C/ VCNS through a rigorous selection process, where seniority, though an important consideration, is not the sole criterion for selection and that there are number of instances where the seniormost officers were superseded for appointment as the Chief of an Armed Force on well-founded considerations. Furthermore, promotions earned by an officer are significant in so far as they determine basic eligibility for consideration for appointment as CNS, however, they are not necessarily an indicator of suitability, particularly when it relates to consideration for appointment to the highest position in the Navy. After examining the available records with reference to the overall service profile of all the officers in the zone of consideration, including for the appointments held by them, performance appraisals and specific observations regarding suitability for senior appointments, including the appointment as CNS, these parameters for selection were duly applied uniformly to all the officers in the zone of consideration and based on the assessments so made, the applicant, though being the seniormost eligible officer, was considered and found not suitable to tenant the appointment of the CNS.

19. Mr. Lekhi then submitted that the procedure for selection of officers to the rank of Captain and above up to the rank of Vice Admiral is governed by Navy Order (Special) No. 01 of 2012 and not the CNS as this selection is from amongst the senior most eligible Vice Admirals of the Indian Navy in the rank of C-in-C/ VCNS. He pointed out that there were specific reasons for not selecting the applicant for appointment as CNS, more importantly, the two letters of severe displeasure which were conveyed to the applicant, the first one on 28.10.2005 and the other on 20.06.2007. Therefore, the claim of the applicant that throughout the service tenure of the applicant, he had never been informed or communicated about any shortcomings or misdemeanors is factually incorrect. Furthermore, the applicant was not appointed as C-in-C of the two operational commands of the Indian Navy i.e. Eastern and/or the Western Naval Commands.

20. Learned ASG has further emphasized that the applicant had been given a fair consideration and was considered along with other eligible officers in the zone of consideration, and admittedly, rigorous standards have also to be

applied in such like selections. In this regard, he relied on the decision in *Union of India and others v. Lt Gen Rajendra Singh Kadyan* (2000) 6 SCC 698 in the context of selection of Army Commander, a position below the COAS, wherein the Hon'ble Supreme Court observed as under:

Of course, considering the nature of rigorous standards adopted in the matter of selection of officers from the stage of Lieutenant Colonel onwards up to the stage of Lieutenant General in the usual course it may be that the senior most officer is selected as the Army Commander. But that does not debar the Chief of the Army Staff or the Union of India from making the selection of any other person for good reasons who fulfils the necessary criteria.

Learned ASG submitted that, in the instant case, the selection of the fourth respondent is in conformity with the norms based on relative merit that has been consistently applied in the matter of appointment of CNS. Therefore, the contention of the applicant to the contra is baseless.

21. Advancing his arguments, Mr. Lekhi asserted that the post of CNS being unique, with the highest responsibilities of operational and administrative command, it requires a person with exceptional leadership qualities and operational experience, untainted by any record of breaches of security or acts of moral turpitude. To that extent, it is an undisputed fact that the applicant was found guilty of a serious breach of security while he, in the rank of Commodore, was responsible for the functioning of the Naval War Room while holding the post of Principal Director Naval Operations (PDNO), which also raised questions on his leadership qualities. Mr. Lekhi also pointed out that the applicant was well aware that two officers junior to him in the zone of consideration were considered for and awarded the PVSM, which is conferred for 'distinguished service of the most exceptional order'.

The applicant is not a recipient of PVSM and the award of PVSM, which is awarded to officers for their distinguished service of the most exceptional order, is a mandatory pre-requisite for determining the suitability of the officer for appointment of CNS.

22. In order to meet the contentions raised that all the ACRs of the applicant were not available with the Ministry/ACC, hence he was not fairly considered for appointment as CNS, Mr. Lekhi submitted that the process for appointing the CNS started in November, six months prior to the

retirement of the outgoing CNS. The applicant's first petition was filed on 05.04.2019 while the second petition was filed on 23.04.2019. The aforesaid contention is on the basis of a letter dated 07.05.2019 issued by the Secretariat of the CNS seeking submission of the applicant's ACR forms for the period 01.08.2017-31.07.2017 and 01.08.2018-31.05.2019. The applicant did not respond to the letter and raise a grievance that the letter was issued after the process of appointment had been completed. The Government was seized of the matter and citing the receipt of the letter by the applicant in the circumstances of the case appears to be purely a tactic to belatedly supply a non-existent cause of action. Mr. Lekhi drew our attention to the General Instructions, handed over to us during the course of arguments. As per Section 2, Para 0202, an ACR is to be initiated on every officer on dates mentioned therein. The relevant due date for Flag Officers is 1st of August. According to Section 3 Para 0301, it is the responsibility of the officers to complete Section 1 and handover the CR form to the JO at least 10 days before the due date stipulated in Section 2. It further states that the officer reported upon is responsible for ensuring the correctness of his/her personal particulars in this Section. The applicant failed to discharge his initial responsibility of handing over the CR form as required under the General Instructions.

This shows the casual attitude and careless approach which does not behove a senior officer aspiring to be CNS. It was not the case of the applicant that no ACRs were available for consideration. It has also not been pleaded as to how the ACR he did not submit would have made his case better.

Mr. Lekhi vehemently submitted that, in any event, the assessment took into account all aspects collectively and, on an overall assessment, the fourth respondent was found better and thus selected for the appointment of CNS. The applicant thus has no legs to stand on to say that he has been superseded without there being justifiable reasons or it is a case of bias, arbitrariness or malice.

23. Mr. Lekhi, justifying the appointment of the fourth respondent as CNS, has also relied upon the following decisions:

- (i) Union of India and others v. Hindustan Development Corporation and others (1993) 3 SCC 499;
- (ii) Arun Kumar Agrawal v. Union of India and others (2014) 2 SCC 609;

- (iii) E.P. Royappa v. State of Tamil Nadu and another (1974) 4 SCC 3;
(iv) Badrinath v. Government of Tamil Nadu and others (2000) 8 SCC 395; and
(v) Lt Gen, Ravi Dastane v. Union of India and others (2019) 4 SCC 747.

Consideration by the Tribunal:

24. May be the instant matter is at admission stage and while taking cognizance of it, on the first date of hearing, it was observed by us in order dated

22.05.2019 that it will be dealt with within the parameters of Section 14(3) of the AFT Act, but keeping in view the fact that both the sides have listed

their cards on records and we, while reserving the present case for orders, have kept the CR dossiers of five Admirals, who were in the zone of

consideration for the appointment of CNS for our indepth perusal so as to arrive at a just conclusion of the case, in our view, the instant matter would

now call for a detailed discussion on all the relevant aspects, to which learned counsel for both the parties have also agreed.

25. Having heard learned counsel on both sides and perused the pleadings and the documents on record, including the Government of India (MoD) file

on the subject, we have formulated two questions, which need answer for a just and fair adjudication of the case. They are:

(i) Whether seniority should be the sole determinant for deciding the appointment of CNS? If not, what should guide this criterion; and

(ii) Whether the first respondent was justified in superseding the applicant and appointing the fourth respondent (C-in-C Eastern Naval Command) to

the post of CNS?

Thus, what falls for the judicial review of the Tribunal would be, whether subjective satisfaction of the Government is based on some credible material

which we might not analyse elaborately but which can comfortably be looked into so as to put a seal of approval on the order passed by the

Government or upset it by finding certain valid justifiable reasons for the same.

26. Before adjudicating upon the questions formulated herein above, we think it essential to refer to the relevant Government of India (Ministry of

Defence) subject file. Accordingly, we have perused the same file, whereby the decision was taken by the first respondent to appointment the fourth

respondent as the CNS after superseding the applicant. Needless to emphasize, there are issues of confidentiality and sensitivity involved in the

contents of the file, which quite logically and justifiably place constraints on us while reproducing extracts of the same in this order. This, we feel, is

required in the present case. Nonetheless, we have left no relevant issues out of our detailed consideration.

27. Though at the cost of repetition, yet we have felt the necessity of summarizing the arguments of Mr. Chhibber, learned counsel for the applicant and Mr. Lekhi, learned ASG in brief.

The sum of arguments of Mr. Chhibber appears that the decision to supersede the applicant, despite he being the senior most Vice Admiral in the zone

of consideration and being exceptionally meritorious in terms of his professional competence, vast experience, including the fact that he remains C-in-

C Andaman & Nicobar Command, which is a tri-Services Operational Command, is whimsical, arbitrary and without there being any valid reason,

much less justifiable reason. The other argument advanced by Mr. Chhibber is that, in the absence of a written policy for promotion as CNS, the

policy of promotion of Vice Admirals should have been applied. The other argument put forth is that though the applicant was awarded censure in

terms of one Letter of Displeasure (LoD) and two Letters of Severe Displeasure (LoSD), the LoD was not even recordable and two LoSDs had a

limited shelf life, which had elapsed after two years of awarding of LoSD, therefore, these should not have been taken cognizance of while

considering the applicant for promotion to the rank of CNS, though, the applicant cannot otherwise avoid the sting of the LoSD awarded in 2005 as a

result of the Navy War Room Leaks case, as he admittedly had not projected any grievance by moving any representation. Mr. Chhibber, however,

submitted that it was purely for a supervisory lapse in his role as PDNO and the limited effect of the LoSD thereto is confirmed on account of

subsequent developments as the applicant thereafter was promoted to the rank of Rear Admiral, Vice Admiral and then appointed as CINCAN after

approval by the ACC. The other argument is that the ACRs of the applicant for the period 2017-18 was not placed before the appointing authority,

therefore, it was a pre-determined approach adopted by the first respondent for appointing the fourth respondent as CNS.

The long and short of the arguments of Mr. Lekhi, learned ASG, is that it is the Government's prerogative to select the CNS as well as the Chiefs of

the other Services, for which merit is also an important criterion, other than seniority. He has referred to Section 3 of the Navy Act, 1957 to contend

that the CNS is not a promotion post, but an appointment by the Government. To that extent, the promotion to the ranks of Admiral follows the

selection for the appointment of CNS, and not the other way round. He has alluded to the fact that the applicant was awarded two censures in the

form of LoSIDs for serious acts of omission/commission on his part. In the first instance, the applicant was found guilty of a serious lapse impacting

on national security, whereas in the second case, he was found guilty of having authorised the flight of a Chetak helicopter and endangering its four

occupants while being aware that the helicopter had an unserviceable generator. Both lapses put serious question marks on the applicant's professional

competence and leadership qualities, hence, the first respondent was fully justified in not selecting him as C-in-C of operational commands, for award

of PVSM and finally, for the appointment of CNS. To that extent, the fact that the applicant had not commanded an operational command or awarded

the PVSM showed that he was not fit for selection for the appointment as CNS.

28. We would now refer to Lt. Gen. Dastane's case (*supra*), on which learned counsel for both the sides have placed reliance. It has been observed in

Lt Gen. Dastane's case (*supra*) that the authority entitled to make the appointment must not ignore the principle of seniority. It is further observed in

Para 21 and it reads:

21. Seniority may be a relevant consideration: seniority brings with it experience of organisation, experience in handling situations and

experience in perspective and planning. The post, however, remains a selection post. In making appointments to such crucial posts which

carry enormous functional responsibilities bearing on the defence needs of the Armed Forces and ultimately of the nation, a range of

relevant considerations can be borne in mind. It would not be appropriate in the course of judicial review to confine the appointing

authority to a narrow range of considerations.

We are also testing the present case applying the same yardstick, so as to hold, whether the impugned order appointing the fourth respondent as CNS

is bad on the face of it or not.

29. In this context, before entering into the merits of the case, it would be

appropriate if we refer to the decision in *M.A. Rasheed and others v. State of Kerala* (1974) 2 SCC 687 ,wherein, the Honible Supreme Court has held that ""where powers are conferred on public authorities to exercise the same when 'they are satisfied' or when 'it appears to them', or when 'in their opinion' a certain state of affairs exists; or when powers enable public authorities to take 'such action as they think fit' in relation to a subject matter, the courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated"". It further held as under:

Where reasonable conduct is expected, the reasonableness is not subjective, but objective. Lord Atkin of in *Liversidge v. Anderson* (1942 AC 206, 228-229) said:

If there are reasonable grounds, the Judge has no further duty of deciding whether he would have formed the same belief any more than if there is reasonable evidence to go to a jury, the Judge is concerned with whether he would have come to the same verdict.

The onus of establishing unreasonableness, however, rests upon the person challenging the validity of the acts.

Administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration.

The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the

facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the

courts' own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether

conditions precedent to the formation of the opinion have a factual basis.

30. It is also settled that a person on the select panel has no vested right to be appointed to the post. He has only a right to be considered for the

appointment. A person does not acquire a legal right to be appointed only because of his seniority. He, in terms of Article 16 of the Constitution of

India, has only a right to be considered therefor.

31. The following important aspects are evident from the notings in the file:

(a) The process for selection of the new CNS commenced on 19.11.2018.

(b) Five senior Naval officers of Vice Admiral rank, who were holding appointments as Commanders-in-Chief (C-in-C) or equivalent (Vice

Chief of Naval Staff), as follows, were considered for selection for appointment/promotion as CNS:

(i) Vice Admiral &mai Kumar Verma, Flag Officer, Commander-in-Chief, Andaman and Nicobar Command (the applicant);

(ii) Vice Admiral Karambir Singh, Flag Officer, Commander-in-Chief, Eastern Naval Command (Respondent No. 4);

(iii) Vice Admiral Ajit Kumar, Flag Officer, Commander-in-Chief, Western Naval Command;

(iv) Vice Admiral Anil Kumar Chawla, Flag Officer, Commander-in-Chief, Southern Naval Command; and

(v) Vice Admiral Ashok Kumar, Vice Chief of Naval Staff

(c) The past tradition of 'selecting the senior most serving FOC-in-C/ VCNS for appointment as CMS; unless there are other factors

justifying his supersession' was kept in view.

(d) Detailed profile of each of the aforementioned officers, as spelt out on file, in terms of their seniority, posting profile, courses attended,

foreign assignments, awards, ACR profile (including comments, both positive and negative, and recommendations by JO, RO and SRO) and

appointments held, were given due consideration, starting with the senior most.

(e) Thus, the applicant being the senior most, was the first to be given consideration for selection for the appointment, before moving down to

the other officers, as per seniority, once certain negativities were seen in the applicant's records.

(1) With regard to the applicant, admittedly, his professional qualities, both in command, staff and foreign assignments, came up for

positive mention in his ACRs. However, it was also brought to light that the applicant had been commented upon negatively on his perceived

shortfalls by five different reporting officers in five different CR5 between 2005 and 2008.

(g) The seriousness of the fact that the applicant had been preferred with a Letter of Severe Displeasure (LoSD) in October 2005, while he

was the Principal Director Naval Operations during the War Room Leak Case

came up for mention in the consideration of

Discipline/Vigilance status, in the context that three of his subordinates, including his second in command, were dismissed from service in that case.

(h) The fact that two successive Raksha Mantris from two different Governments had expressed serious reservations over his clearance for

promotion thereafter despite his perceived lapse in the War Room Leak Case, first in 2007 while considering the proposal for promoting the

applicant as Rear Admiral, and then in 2016 during consideration for selection of the CNS, was also recorded. However, the applicant was

not considered fit for taking over command of either of the two operational commands viz. Western Naval Command and Eastern Naval

Command and was also not awarded the PV5M.

(i) The fourth respondent (Vice Admiral Karambir Singh), who was second in seniority in the panel, was commented on positively in his

ACRs throughout for his professional caliber and qualities. Further, there were no negative comments on him in any of his ACRs. There was

only one censure in the form of a Letter of Displeasure (LoD) preferred on him (in 2004 in the rank of Captain). In the rank of Vice

Admiral, he had held the appointments of Deputy Chief of Naval Staff, Vice Chief of Naval Staff and FOC-in-C Eastern Naval Command.

Thus, he was recommended for appointment as CNS as he, being second in seniority, was found fit in all respects.

(i) The three other Vice Admirals, at seniority three, four and five in the panel, were also given due consideration, but the fourth respondent

having been found eminently fit and being second in seniority after the applicant, was recommended for appointment to the post of CNS in

the rank of Admiral.

32. Let us now go back to the impugned order passed by the first respondent, whereby the fourth respondent has been appointed as CNS, in the light

of the challenge thrown by the applicant. In this regard, we look at Para 4.34 of the pleadings, wherein the applicant asserts that despite the name of

the applicant being forwarded by the second respondent for consideration as the senior most, the Government, in an arbitrary and whimsical manner,

issued the impugned order appointing the fourth respondent as the next CNS. In

Para 4.43, the applicant asserts that in view of the impugned order dated 16.05.2019 passed on his statutory complaint, it gives him strong apprehension that the first respondent (Government of India/MoD) has, in an illegal and wrongful manner, sought to deny the applicant fair consideration and in a pre-determined and pre-concerted manner, having earlier deprived the applicant specific recognition and appointment, now seeks to use the said deprivation and denial as grounds for adjudging the applicant unfit for further appointment. We would also refer to Para 5.16, wherein the applicant asserts that in the impugned order dated 16.05.2019 passed on the statutory complaint, it is admitted by the first respondent that the applicant was found eligible for appointment as CNS and, therefore, the first respondent has miserably failed to provide reasons for not finding the applicant unsuitable for appointment of CNS. The applicant further asserts in Para 5.28 that it is imperative that the Courts apply the Wednesbury Rule and consider whether relevant facts were not considered and irrelevant facts were considered by the respondents before passing the impugned order. The applicant alleges mala fide and bias also in this case.

33. It is well settled that it is very easy to allege 'mala fide' but very difficult to prove, therefore, there is a difference between 'made' and 'made out'.

One can very comfortably make allegations but whether those allegations are made out or not, the burden is heavily on the person who alleges it. The

allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of

credibility, as held by the Hon'ble Supreme Court in Paragraph 92 of E.P. Royappats case (supra) relied upon by Mr. Lekhi, learned ASG, wherein

Their Lordships, held as under:

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala

fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the

petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a

rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political

custodians of power in the State, and therefore, the anxiety of the Court should

be all the greater to insist on a high degree of proof In this context, it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, not because they are highly placed in social life or administrative set up - these considerations are wholly irrelevant in judicial approach- but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent.

Whenever allegations as to mala fides have been levelled, sufficient particulars and cogent materials making out a prima facie case must be set out in the pleadings, as held in the case *Purusholtam Kumar Jha v. State of Jharkhand and others* ROW 9 SCC 45,8 wherein the Hon'ble Supreme Court, in

Paragraph 23, held as under:

Vague allegations or bald assertion that the action taken was mala fide and malicious is not enough. In the absence of material particulars, the court is not expected to make 'fishing' inquiry into the matter. It is equally well established and needs no authority that the burden of proving mala fides is on the person making the allegations and such burden is 'very heavy/. Malice cannot be inferred or assumed. It has to be remembered that such a charge can easily be 'made than made out/ and hence it is necessary for the courts to examine it with extreme care, caution and circumspection. It has been rightly described as the last refuge of a losing litigant'.

34. What appears to us is that the applicant has very conveniently levelled the allegation of bias and mala fide for the sake of it, without knowing that he is short of material to prove it or in his wisdom thought that he has already missed the bus because of his own shortcomings and, therefore, the

present attempt. It is also quite possible that in his perception, he thought that once he has been promoted to different ranks from Rear Admiral to

Vice Admiral even after two LoSIDs were served upon him and, therefore, he was fit for the appointment as CNS being the senior most in the zone

of consideration amongst all the five officers, whose names referred to herein above were sent by the then CNS for consideration of the first

respondent, therefore, some bias, arbitrary or unjustifiable approach must have been adopted for not appointing him as CNS, therefore, without there

being any material in his hands, he has spelt out mala fide and bias. He has made all these speculations, but if one looks at the entirety of the facts of

the present case, borne out from the records made available to us, upon which, undoubtedly, the respondents have not commented upon fully while

considering the statutory complaint of the applicant before passing the impugned order dated 16.05.2019 showing certain restraints, for which we

would not blame the respondents, as we have also shown reasonable constraint wherever it is required on account of the confidentiality and sensitivity

involved in the present case, the same being of serious nature, nevertheless, in our view, no wrong has been done to him.

35. What is important here to note is that the events taking effect are not something which have happened to the applicant very recently. His case has

a long history. Right from 2005 to 2017, the applicant is common, but the decisions taken on him at different levels, are by different authorities.

Nonetheless, the applicant, perhaps, has now thought that it is the present Government which has taken the decision of superseding him may be for the

purpose of obliging the fourth respondent, who falls second in the seniority and, consequently, he wants to project that ignoring his status as senior

most, which is the general practice for appointing the CNS, is an act which can be termed as malice in law also, therefore, his reliance on the ratio of

Lt. Gen. Dastane's case (supra).

36. We must appreciate one aspect in the present case that lack of merit is not the issue before us as merit is common to all the candidates who are

falling in one tub for consideration for appointment of CNS. The process for appointment of CNS, according to the practice, starts six months before

and in this exercise, the CNS in place before demitting the office has to collect the entire material vis-À-vis all the five candidates to be put in the

zone of consideration before the Government, although comparative merit is yet to be adjudged by the appointing authority, which exercise has to be done on the basis of the dossier placed before it qua each individual candidate. Undoubtedly, relative seniority matters here, and should matter also, but, at the same time, the other attending factors cannot totally be brushed aside as it is a very highly sensitive appointment. It goes without saying that if the decision taken at this juncture is based on mala fide or it has a tinge of bias or for that matter arbitrariness also, it should certainly disturb the judicial conscience, which is an embodiment of reasoning, reasoning and reasoning alone. However, the situation here is not that. The decision taken by the first respondent (Government of India/MoD) in this case to recommend appointment of the fourth respondent, the second senior most after the applicant, as CNS after superseding the applicant, in our view, is based on a detailed consideration of the merits and demerits of each candidate in the panel of senior Vice Admirals viz. Cs-in-C/ VCNS, starting with the applicant, he being the seniormost. What we have noticed is that while doing so, the first respondent has taken into account many aspects, including seniority, posting profiles, courses attended, foreign assignments, awards, ACR profile and the recommendations of the RD, RO and the SRO, as well as disciplinary awards.

37. The aspect which would be very relevant for our consideration in the present case is that in terms of Section 3(2) of the Navy Act, the post of CNS is an appointment by the President and not a promotion. Section 3(2) of the Navy Act reads:

(2) "Chief of the Naval Staff" means, the flag officer appointed by the President as Chief of the Naval Staff or in his absence on leave or otherwise

an officer appointed by the Central Government to officiate as such or in the absence of such officiating appointment the officer on whom the command devolves in accordance with regulations made under this Act.

A mere look at the afore-mentioned provision shows that the post of CNS is not a promotion post, but an appointment by the President or by the

Central Government. Promotion to the rank of Admiral follows the selection for the appointment. The post of CNS, no doubt, is appointed through a

selection process, where seniority, though a very important consideration, is not the only criterion for selection, on which aspect Mr. Lekhi, learned

ASG is banking upon heavily.

38. Having noticed that, we would now refer to the legal issues involved in the matter. First of all, we refer to the decision in *Badrinath (supra)* cited

by learned counsel for the applicant. Referring to Paragraphs 50 and 51 of the said decision, learned counsel for the applicant pointed out that

reference on very old adverse remarks relating to the earlier part of an officer's career are ""not quite relevant"" and that it would be an act bordering

on perversity to dig out old files to find out some material to make an order against an officer. Learned counsel pointed out that the LoSD had a

definite period of effect i.e. two years and any attempt by the first respondent to dig out the same and use it to taint the suitability of the applicant is

wholly arbitrary. He further referred to the decision in *Baikuntha Nath Das v. Chief District Medical Officer (1992) 2 SCC 299*, wherein the issue

was whether uncommunicated adverse remarks could be relied upon. It also considered the question of the relative strength of old remarks and also

relevance of remarks made before an earlier promotion. Several important principles, particularly adverse remarks made before granting the earlier

promotion (in a case of selection or merit promotion) must be considered to have lost the 'sting in them' were laid down in the said judgment. Though

we find the arguments made by learned counsel for the applicant on this issue somewhat attractive, but we feel that the post of CNS, like the posts of

Chiefs of the other two Services, is a highly sensitive post and, to that extent, there is also merit in the argument of the respondents that it has to be

treated differently in terms of stricter standards that need to be applied, more so as it is a post which is a lynchpin in the security of the nation. To that

extent, we agree with the contention of the respondents that the appointment of CNS, as in the case of Chiefs of the other Services, is the prerogative

of the Government, however, it would be imperative that no principles of natural justice are violated and time tested practices are followed, and

consequently, no case of mala fide or bias should be made out, so that such appointments stay out of the realm of controversy. We also note here that

the first respondent has accordingly been following a tradition of 'selecting the senior most in the zone of consideration, unless there are other factors

justifying his supersession'. This appears to be a time tested practice which has been followed by the first respondent for selecting the C1\15 in the

past, except for one occasion in 2014, when there were apparent factors justifying the supersession of the senior most Vice Admiral in the zone of consideration. Thus, we are of the view that the Government, even while applying time tested principles and past practices, as the first respondent has done in this case in considering the senior most, can make exceptions to such practice, provided there are clear reasons for justifying supersession of the senior most, which are self-explanatory in this case from the subject file.

39. Learned counsel for the applicant has also drawn our attention to Paragraphs 9, 14, 18, 19 and 20 of the decision in the Dhamaniats case (*supra*)

and contended that the Government has not stated any reason while overlooking the seniority of the applicant. We find no force in this argument of the

learned counsel for the applicant. The decision to appoint the fourth respondent as CNS after superseding the applicant was taken by the first

respondent (Government/MoD) after detailed consideration of the merits and demerits of the applicant. While doing so, the first respondent had taken

into account many aspects, including seniority, posting profiles, courses attended, foreign assignments, awards, ACR profile and the recommendations

of the 10, RO and the SRO. The first respondent had taken note of the professional qualities of the applicant, both in command, staff and foreign

assignments, which were in his favour. However, the applicant had been commented upon negatively on his perceived shortfalls by five different

reporting officers in five different CRs between 2005 and 2008. Furthermore, the applicant had been preferred with a LoSD in October 2005 while he

was the Principal Director Naval Operations during the War Room Leak case, in which his three subordinates, including his second in command, were

dismissed from service. Two successive Raksha Mantris from two different Governments had thereafter expressed serious reservations over his

clearance for promotion. We also take note that the fourth respondent, who was second in seniority after the applicant, was commented on positively

in his ACRs throughout for his professional caliber and qualities. There were no negative comments against him in any of his ACRs. There was only

one lesser censure in the form of LoD preferred on him in 2004 in the rank of Captain. In the rank of Vice Admiral, he had held the appointments of

Deputy Chief of Naval Staff, Vice Chief of Naval Staff and FOC-in-C Eastern Naval Command, therefore, he was recommended for appointment as

CNS, he being second in seniority. Therefore, in our view, the decision in Dhamania (supra) hardly advances the case of the applicant.

40. Learned counsel for the applicant has also drawn our attention to Paragraph 12 of the decision in Jatirider Kumar (supra), wherein the question

that was considered by the Honible Supreme Court was, whether a person selected by the Subordinate Service Selection Board for direct appointment

to the post of Assistant Sub Inspector of Police had got an unfettered right to be appointed on the basis of the recommendation made by the said

Board? This decision does not lend any help to the case of the applicant, as the Honible Supreme Court had succinctly held that the process for

selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post.

41. With regard to the award of PVSM and merits thereto, we find that the PVSM is a military award. The honour is conferred on senior military

officers in recognition of distinguished service of the most exceptional order and lifetime achievements in service to the nation and is the highest

peacetime military distinguished award in the country. It is the prerogative of the Government of the day to award or not award the PVSM or other

distinguished/gallantry awards to members of the Armed Forces. The importance or otherwise of such awards and its relation to promotion policy is a

prerogative of the Executive, where once again Courts do not have a say. The applicant is not a recipient of a PVSM. The applicant has attributed

mala fides and illegal intent to the non-award of a PVSM, which, we feel, are baseless. The award is not a matter of right, therefore, the allegations

made by the applicant have no merit.

42. Mr. Chhibber has made an attempt to derive some advantage for not placing before the appointing authority the ACRs of the applicant for the

period 2017-18 and submitted that the service profile of the applicant, which has been looked into, was incomplete. He also made an attempt to bank

upon the letter dated 07.05.2019 directing the applicant to forward ACRs for the period 01.08.2017 to 31.07.2018 and 01.08.2018 to 31.05.2019 to

contend that all these ACRs, which were asked for, were an afterthought much after the appointment of the fourth respondent as CNS. From this,

learned counsel for the applicant attributed bias/motive of the respondents to project that it was a pre-concerted attempt by the first respondent to

favour the fourth respondent.

43. The arguments advanced by Mr. Chhibber may appear to be somewhat attractive, but deserve to be rejected in light of Section 2, Para 0202 of the

General Instructions. An ACR is to be initiated on every officer on dates mentioned therein. The relevant due date for Flag Officers is 15th of August.

According to Section 3, Para 0301, it is the responsibility of the officers to complete Section 1 and handover the CR form to the TO, at least ten days

before the due date stipulated in Section 2. The General Instructions further states that it is the responsibility of the officer reported to ensure the

correctness of his/her personal particulars in this section. The applicant failed to discharge his initial responsibility of handing over the ACR form as

required. As Mr. Lekhi pointed out, this shows the casual attitude towards an important aspect having direct bearing on his career prospects and such

a cavalier and off-hand approach discloses a very laid back individual who is careless where he needs to be concerned and thus is wholly unsuited to

be CNS. We have given due consideration to this aspect. What appears to us is that whereas the applicant was blameworthy of not submitting his

ACR form to his TO in time, which was his duty, he is now attempting to put blame on the respondents. Now, at this stage, the applicant wants to take

advantage of his own lapse on the ground that all his ACRs have not been taken into account as these were not available before the first respondent.

It has not been pleaded by the applicant, however, as to how these particular ACRs, which he had to submit, so that they could have been initiated in

time, would have made his case better. We thus reject the arguments of the applicant on this issue. Rather we take it adversely against him. Such a

carefree or casual approach cannot be accepted, especially when he is holding the appointment of CINCAN in the rank of Vice Admiral and aspiring

to become CNS and knowing very well that he is the seniormost Vice Admiral.

We do not feel the necessity of referring to all the judgments cited by either side as in our view, we have considered all the main issues involved in the

present case.

44. To summarise, we find that the primary reason why the applicant was superseded for the post of CNS was the fact that he had been preferred

with a LoSD after being found guilty of a serious supervisory lapse in 2005 involving the security of the Navy's War Room, an incident which was

serious enough to have resulted in dismissal from service of his subordinate officers at that time. It is a testimony to the fairness of the respondents that, rather than debar the applicant from all promotions thereafter, after serving him LoSD, they were able to take a nuanced and fair approach by continuing to promote the applicant to senior ranks and appoint him to important assignments despite negative remarks in his ACRs and such observations made on file by senior functionaries at various points of time. Clearly, the respondents have been very fair to the applicant despite the serious nature of his supervisory lapse in 2005. To that extent, a generous approach in the past in a certain set of circumstances cannot become the primary basis of a claim for similar consideration in a different set of circumstances in the future. Cognizance taken of his lapses by the first respondent in terms of his subsequent non-approval for appointments meriting higher operational and functional responsibilities, including that of CNS, thus, cannot be inferred as reflective of mala fide or bias.

45. Therefore, we are in agreement with the approach adopted by the first respondent towards selection of the CNS, as evident from the record, that

(a) though seniority within the panel of VCNS & C-in-Cs should be, and remains, the primary consideration for selection of the CNS, but it cannot be

the sole consideration for selection for this most important and crucial appointment at the helm of affairs of the Indian Navy. Thus, if there were

justifiable reasons for not clearing the senior most, viz, the applicant in this case, the respondents did not err in moving down to the next in the line of

seniority and put him through similar checks to confirm his suitability; (b) in the aforesaid context, the first respondent was justified in superseding the

applicant, when it was found after detailed examination, which is clearly recorded on file, that the applicant had a number of infirmities in his record,

based on which, they found him unsuitable for selection for the appointment of CNS. It is our considered opinion that the reasons cited on file by the

respondents are neither irrelevant nor extraneous, as alleged by the applicant in his case. It is clearly established that the fourth respondent, who was

next in seniority, was fully fit and not affected by any factors coming in his way for appointment as CNS.

46. In view of the aforesaid discussion, an irresistible conclusion can comfortably be drawn that the applicant has not been able to make out a case

involving mala fide or bias against him. On the other hand, the respondents have been able to prove that the applicant was given a fair consideration

and he has been superseded due to justifiable reasons on their part, which are available on record.

47. We thus answer the questions formulated herein above at Para 25 as under:

(a) Seniority in the panel of VCNS/ Cs-in-C is the primary consideration, but cannot be the sole criterion for selection of important appointments like

the CNSâ?? Negative traits or records, which come to the notice of the respondents, can be taken note of by them, while considering those in the zone

of consideration for the post;

(b) The respondents were justified in their action in superseding the applicant when they, as per their discretion, which is clearly recorded on the file,

found that the applicant, though the senior most, was not fit for selection as CNS, thereby appointing the fourth respondent, who was the next senior

most and found fit for selection.

48. We hope and trust that our decision in this matter would set at rest any apprehension of mala fide or bias against him and favour towards the

fourth respondent that the applicant might have harboured when he approached this Tribunal.

49. The net result is that the appointment of the fourth respondent as Chief of the Naval Staff by the first respondent is hereby affirmed, thus the

instant O.A deserves to be dismissed, being devoid of any merit in it, at this stage itself. Ordered accordingly.

50. No order as to costs.

51. The records kept by us for our perusal shall be returned to the concerned official today itself by the Tribunal Officer against proper receipt, which

shall form part of the records.

Pronounced in open Court today, the 16th day of September, 2019.