

(2012) 11 DEL CK 0213

In the Delhi High Court

Case No : Writ Petition (C) No. 5182 of 2012

Darshan Lal Chowdhary

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:

Armed Forces Tribunals Act, 2007 — Section 14
Constitution of India, 1950 — Article 14, 226

Citation : (2012) 11 DEL CK 0213

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Jyoti Singh, instructed by Mr. Sanjeev Chaswal, Ms. Saahila Lamba and Mr. Amandeep Joshi, in W.P. C Nos. 5182 and 5303/2012, for the Appellant; Anjana Gosain, Advocate in W.P. (C) Nos. 5182 and 5303/2012, for the Respondent

Judgement

Pradeep Nandrajog, J.—The facts leading to the filing of the above captioned petitions are that in the year 1974 the petitioners of the two writ petitions were commissioned in the Indian Army in the rank of Second Lieutenant and got promoted to the rank of Major General by the year 2008. As per the policy to promote officers to the rank of Lieutenant Colonel and above, a Selection Board assesses the officers. Each officer is entitled to be considered three times; namely, as a fresh case; if he does not make it in the list, the next year as a case of first review; and if still unsuccessful, as a case of final review. If an officer is approved for promotion in the first consideration as a fresh case, his seniority remains intact. If he is not approved as a fresh case, he is considered as a first review case with the next available batch. If on further and last consideration an officer is not found fit for promotion, he is deemed to be superseded. Between the period from May, 1987 to December, 2008 the Selection Board(s) were assessing the officers for the purposes of promotion on the basis of a policy dated May 06, 1987.

2. On December 31, 2008 the Military Secretary's Branch issued a letter stating

therein that with effect from 01.01.2009 the Selection Board(s) shall assess the officers for the purposes of promotion on the basis of a new policy (popularly known as "Quantification Policy"). The relevant portion of the letter dated December 31, 2008 reads as under:-

CONDUCT OF SELECTION BOARDS BY

QUANTIFICATION SYSTEM

Ref:-MS Branch Policy Letter No. 31525/P/MSB dated 06 May 1987

General

1. The existing promotion system governed by the provisions of ibid letter, has evolved over the years and has withstood the test of time in consistently achieving the basic aim of selecting only those officers who are competent and fit in all respects, to higher ranks. In the efforts to constantly improve the system and in bring in greater transparency and objectivity, the conduct of Selection Boards using a Quantified System is being adopted with effect from 01 Jan 2009.

Quantification Model

2. The model has quantified as many selection criteria as is feasible for greater objectivity and to enable discernment of the most deserving candidates for higher rank from amongst a batch of officers.

Terms of Reference

3. Terms of reference for conduct of Selection Boards by quantification system are as follows:-

(a) 95 percent marks will be given for quantified parameters to include confidential reports (CRs), courses and honours and awards.

(b) Five percent marks will be kept for value judgment by the Selection Board (SB) Members for aspects that cannot be quantified.

Distribution of Marks

4. Distribution of marks for various SBs are as given below:-

CR Profile

5. The allocation of marks for CR profile is based upon the following considerations:-

(c) Reckonable Profile All CRs in reckonable profile being considered under the existing policy will be quantified.

Honours and Awards (H & A)

7. Gallantry Awards will be given weightage for two SBs after the award. Awards for distinguished service will be considered for one SB after the award. Maximum

of two marks can be awarded to any officer for H & A.

Review

13. The Quantified System of Selection Boards will be evaluated and refined for a period of three years from implementation, till the system stabilizes.

(Emphasis Supplied)

3. On April 15, 2009 the Military Secretary's Branch issued another letter in relation to the Quantification Policy laying down the manner of allocation of marks pertaining to Confidential Reports (CRs).

4. In the month of December, 2009 the petitioners were considered by a Special Selection Board for promotion to the rank of Lt. General but were not selected.

5. A Special Selection Board was scheduled to be held in the month of October, 2010 for consideration of General Cadre Officers of 1975 Batch and first review cases of 1974 Batch, which included the petitioners, for promotion to the rank of Lt. General, but the same was deferred and rescheduled to be held on November 26, 2012, on which date again the Board was deferred.

6. In the meantime, the Army Headquarters decided to review the quantification policy dated December 31, 2008 and sent the revised Quantification Policy to the Ministry of Defence for obtaining its approval. In response thereto, on December 23, 2010 the Ministry of Defence sent a note bearing No. MoD ID No. 8(52)/2006-D(MS) to the Army Headquarters, which reads as under:-

Subject: Review of Quantified System for Selection Boards.

Reference Army HQs Note No. 1 dated 22.10.2010, 26.10.2010 and 10.12.2010 recorded on File No. A/21501/QM-SD/MS-5, on the above subject.

2. The Competent Authority has broadly agreed to Army HQ's proposal to effect certain changes to the existing Quantification based Promotion Policy including the following:-

(i) changes proposed for modifying marks to Criteria and Non-Criteria reports and "Look Down Three" reports for promotion to the rank of Lt. Gen.

(ii) modifying weightage for various courses

(iii) doing away with the marks for distinguished awards and modification of weightage to certain gallantry awards.

(iv) laying down timelines for declassification of results for various Selection Boards as per the Schedule below:-

The recommendations of the Selection Boards shall be forwarded to the Ministry within one week from the date of conduct of Boards.

3. The "Value Judgment" marks awarded by the Selection Boards will be kept at

5 as recommended by the Army HQ. However, in case the award of Value Judgment mark alters the comparative overall merit of an officer resulting in changing promotion prospects, the Selection Board should record the reasons for awarding low/high Value Judgment marks which would help Competent Authority appreciate the rationale and also facilitate in defending the decision should it be contested in a judicial forum.

4. As regards extrapolation of marks for Non-Criteria reports, Army HQ may furnish details of how the proportionate weightage will be provided.

5. On the issue of Selection Board for single officer, the AHQ recommendation for delinking the issue has been agreed to.

6. The vacancies to be declassified at least 15 days before the conduct of Selection Boards.

7. The changes in Quantification Policy should be widely disseminated to the environment/posted on the Army intranet.

8. The revised Policy to be implemented with effect from April 1, 2011.

(Emphasis Supplied)

This clearly meant that the proposal as and when rectified would apply to the Selection Boards which were to be held after 1.4.11 and for which vacancies were to arise in next year.

7. On January 04, 2011 the Military Secretary's Branch issued the letter bearing No. 04502/MS Policy stating therein that the Quantification Policy dated December 31, 2008 has been revised and that the Selection Board(s) shall assess the officers on the basis of revised Quantification Policy. The relevant portion of the letter dated January 04, 2011 reads as under:-

CONDUCT OF SELECTION BOARDS BY

QUANTIFICATION SYSTEM

1 Refs:-

(a) MS Branch Policy Letter No 31525/P/MS/5B dated 06 May 1987.

(b) MS Branch Policy Letters No 04502/MS Policy dated 31 Dec 2008.

(c) MS Branch Policy Letters No 04502/MS Policy dated 15 Apr 2009.

General

2. The Quantified System for Selection Boards was adopted with effect from 01 Jan 2009. The policy envisaged evaluation and refinement of the system over a period of three years from implementation, till the system stabilizes. A detailed review of the existing Quantified Model was carried out based on feedback from the environment. The revised weightage have been approved by the competent

authority. The revised policy on conduct of Selection Boards (SBs) by Quantification System is contained in succeeding paras.

Overall Distribution of Marks in the Quantified Model.

3. The overall distribution of marks of the Quantified System will remain the same as earlier and are as follows:-

(a) 95 percent marks will be given for quantified parameters to include confidential reports (CRs), courses and honours and awards.

(b) Five percent marks will be kept for value judgment by the Selection Board (SB) Members for aspects that cannot be quantified.

CR Profile

4. The allocation of marks for CR profile is based upon the following considerations:-

(c) Reckonable Profile All CRs in reckonable profile being considered will be quantified. "Look-Two-Down" principle, by taking into consideration all CRs earned in the present and previous rank, will continue for No. 3SB, No 2 SB, and No 1 SB as hitherto fore. "Look-Three-Down" principle by taking into consideration all CRs previous to previous rank (i.e. Cols rk) will be adopted for SSB only.

Distribution of Marks

4. The revised distribution of marks for various SBs are as given below:-

Honours and Awards (H & A)

9. Gallantry Awards (Mention-in-Despatches and above) have been given maximum of two marks, which will be applicable for two SBs after the award. Thereafter the Gallantry awards shall be value judged by subsequent SBs. The Distinguished Service awards will be Value Judged for all SBs.

Review

19. The revised Quantified Model for Selection Boards will be reviewed after a period of five years from implementation. This policy supersedes all earlier policies on the Conduct of Selection Boards by Quantification System.

(Emphasis Supplied)

8. Before proceeding further, we note that two significant differences between the Quantification Policy dated December 31, 2008 and revised Quantification Policy dated January 04, 2011 are as follows:-

(i) Under the Quantification Policy dated December 31, 2008, the CRs earned by an officer in two ranks viz. Brigadier and Major-General were required to be considered for the purposes of promotion to the rank of Lt. General; under the

revised Quantification Policy dated January 04, 2011 the CRs earned by an officer in three ranks viz. Colonel, Brigadier and Major-General were required to be considered for the purposes of promotion to the rank of Lt. General.

(ii) Under the Quantification Policy dated December 31, 2008, a maximum of two marks could be awarded by the Selection Board for the distinguished service awards received by an officer under the head "Honours & Awards"; under the revised Quantification Policy dated January 04, 2011 no marks could be awarded by the Selection Board for the distinguished service awards received by an officer under the head "Honours & Awards" and an officer was only to be value judged by the Board for distinguished service awards received by him.

9. Thereafter the Army Headquarters again sent the revised Quantification Policy to the Ministry of Defence for obtaining its approval. In response thereto, on January 06, 2011 the Ministry of Defence sent a note to the Army Headquarters, which reads as under:-

Subject: Conduct of Selection Boards by Quantification System

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

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

(i) Army HQ propose to follow the existing method for extrapolation of Criteria reports for Non Criteria reports in the present rank, despite the fact that the same has not been approved by MoD. In this context, it would be pertinent to invite attention to para 4 of this Ministry's ID Note under reference in terms of which AHQ were requested to furnish details of the proportionate weightage proposed to be assigned, before the proposal could be considered further. It may also be pointed that the existing method being followed by MS Branch does not have approval of the Competent Authority.

(ii) In terms of para 4(d) of MS Note under reference, CRs relating to war reports/operational reports earned outside reckonable profile will not be quantified if "out of" reckonable profile. The word "out of" should be substituted by "outside".

(iii) Para 13 captioned "Potential" of MS's Note under reference needs to be elaborated in that "the potential for being employed for higher ranks will be judged based on qualification attained, experience and important appointment held."

(iv) The Criteria "Service under strict/liberal raters, inflated/deflated reports and reports under other than Army Officers" which was part of the proposal does not find mention, in so far as adjusting value judgment marks is concerned in MS's Note under reference.

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

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

3. MS may kindly see for necessary action.

10. Finally, on January 07, 2011, a Special Selection Board was held to consider General Cadre Officers of 1975 Batch and first review cases of 1974 Batch, which included the petitioners, for promotion to the rank of Lt. General. It is most relevant to note here that the Special Selection Board held on January 07, 2011 assessed the officers on the basis of the revised Quantification proposal dated January 04, 2011. We further note that the petitioners were not selected for promotion to the rank of Lt. General by the Special Selection Board on January 07, 2011.

11. Thereafter on February 03, 2011 the Military Secretary Branch sent the proceedings of the Special Selection Board held on January 07, 2011 to the Ministry of Defence for obtaining its approval.

12. On February 17, 2011 SS (M), Ministry of Defence prepared a note with regard to the approval of the proceedings of the Special Screening Board held on January 07, 2011, the relevant portion whereof reads as under:-

Notes Vante onwards refer with regard to approval of proceedings of the Boards forwarded by MS Branch on 3.2.2011 for promotion in general cadre from Brigadier to Major General and Major General to Lt General. The Boards were held on 7.1.2011.

2. As brought out, examination of proceedings of these two Boards indicate the following issues:

(i) These Boards were not held as schedule along with other Boards which were held in October, 2010, though a policy was in position and the Boards could have been held.

(ii) There has been a delay of almost one month by the MS Branch in forwarding the proceedings of the Boards to MoD. (iii) The Boards have made following deviations from the extant policy.

? Quantified Model proposed to be introduced with effect from 1st April, 2011 has been used.

...

3. The above mentioned issue have been pointed out to MS as well as COAS, both by JS (G) and the undersigned. A note recorded by the undersigned in this regard may be seen vide Note 86 of the Linked File. Presumably, based on these discussions, MS has sent certain clarifications in a note dated 11.2.2011. However, AHQ has not agreed to revise their stand on any of the issues mentioned in para 2 above.

5. The AHQ had given two separate proposals for amendment of policy. One proposal for amendment of Quantified Model was submitted in October, 2010. This proposal was approved with certain amendments on 23rd December, 2010 to be effective from 1.4.2011. The other policy submitted on 3rd December, 2010 related to reversion to single stream. This is presently under discussion. AHQ's amended proposal as per discussion has been received on 14th February, 2011. Consequently, it appears that there is no justification for AHQ to deviate from the extant policy for these two Boards.

6. However, the Boards have since been held. The options are either to advise AHQ to hold the Boards again as per the extant policy or to examine how the present situation can be retrieved. More so, since these issues have already created dissatisfaction. RTI applications have been received seeking information on these aspects.

7. It has to be stated that cancellation of the Board proceeding and advising AHQ to hold it again would be an unprecedented stand. The delay that shall be caused due to his decision may also result in retirement of several Brigadier level officers who would have otherwise got promotions as Maj General. Besides, even presently 11 vacancies exist at Major General level, which needs to be filled immediately. These delays are creating dissatisfaction and possible legal complications. There is thus a need for urgent decisions on these decisions.

8. The judgment of merit of officers involves use of Quantified Model. If the revised Quantified Model is not accepted, the Boards shall have to be held again. However, following the revised Quantified Model for these two Boards may not create a legal complication since all officers would be treated equally.

10. Under the circumstances, the following course of action is suggested for approval:

(i) The Board proceedings may be examined on merits, with application of revised Quantified Model.

(ii) The remaining elements of the extant policy viz. filling up of remainder vacancies, two streaming etc. may be recommended afresh by AHQ by convening the two Boards at short notice or by circulation. The recommendations may be sent to MoD on an urgent basis.

(iii) Major General level vacancies may be filled up as they arise now, while Lt General level be filled up from 1.4.2011 onwards.

(Emphasis Supplied)

13. On February 22, 2011, the Defence Secretary prepared a note with regard to the approval of the proceedings of the Special Screening Board held on January 07, 2011, the relevant portion whereof reads as under:-

RM may kindly see the preceding notes in respect of Promotion Board 1 SB for promotion to the rank of Major General and of Special Selection Board for the

promotion to the rank of Lt. General held on 7.1.2011 by the Army Hqrs.

2. The Boards were scheduled to be held in October 2010 by the Army Hqrs but have been held late. The proceedings of the Board have also been sent to the Ministry only in the first week of February, nearly a month after the holding of the Boards. Further, the Selection Boards while making recommendations have deviated from the extant policy regulating promotions to Major General/Lt. Generals. There are deviations in calculating the number of available vacancies, in applying the extant Command & Staff Stream Policy and in using the revised Quantified Model for assessing the suitability of candidates which was to come in effect from 1.4.2011. (please refer to Para 2 of SS(M)'s Note 10).

3. There is a general disquiet in the environment at the delayed holding of the Promotion Boards and in making deviations from the extant policy which is reflected in the representations and RTI applications received in the Ministry in this regard. Under the circumstance one option could be to cancel the Board proceedings and direct the Army Hqrs to hold the Boards again at a short notice and submit fresh recommendations as per the extant policy. As has rightly been pointed out by SS(M) in his Note 10 at Para 7, this would be an unprecedented step. The Promotion Boards for Major Generals and Lt. Generals are presided over by the Chief of Army Staff and has senior Commanders of the Army as its members. It would be extremely detrimental to the discipline of the Armed Forces and the credibility of the system if the Government cancels the entire proceedings of the Selection Boards comprising the top most Generals of the Indian Army. Moreover it would lead to further delay in finalizing the promotions of senior officers. Some of the Brigadiers, who are awaiting promotions of may not get their promotion on time and may retire which is likely to lead to legal complications and heart burn. Therefore, it would be administratively desirable to find a solution which is devoid of arbitrariness and meets the criteria of fairness while processing the recommendations made by these Promotion Boards rather than rejecting their recommendations outright. In this context, I am inclined to agree with the suggestions made by SS(M) in Para 10 of his Note which provide a sensible way forward in handling this matter.

4. The revised Quantified Model has already been approved by the RM as an improvement over the earlier quantified model. It was to be made applicable from 1.4.2011. However we may have no objection to Army Hqrs applying the revised Quantified Model in these Boards to assess the suitability of all the candidates for promotion as it is only a method to bring about objectivity and reduce arbitrariness in the selection process....

5. Therefore, as proposed by SS(M) in Para 10 of Note 12, the names of officers recommended by the Promotion Board 1 SSB and SSB held on 7.1.2011 should be cleared for promotion after due scrutiny on the basis of the revised Quantified Model....

RM may kindly consider and approve the above course of action.

14. On February 24, 2011, the Defence Minister took the decision that "the names of officers recommended by No. 1 SB and SSB held on 7th Jan., 2011 shall be cleared for promotion after due scrutiny on the basis of revised Quantification Model."

15. Pursuant to aforesaid decision of the Defence Minister, the officers who were approved for promotion to the rank of Lt. General by the Special Selection Board held on January 07, 2011 were promoted to the rank of Lt. General.

16. Aggrieved by the action of the Special Selection Board held on January 07, 2011; of assessing the officers for promotion to the rank of Lt. General on the basis of the revised Quantified Policy dated January 04, 2011 the petitioners filed application(s) u/s 14 of the Armed Forces Tribunal Act, 2007 before the Armed Forces Tribunal, Principal Bench, New Delhi.

17. In the application(s) filed, it was contended by the petitioners that the:- action of the Special Selection Board held on January 07, 2011 to assess the officers, including the petitioners, for promotion to the rank of Lt. General not on the basis of Quantification Policy dated December 31, 2008 but on the basis of revised Quantification Policy dated January 04, 2011 had caused huge detriment to the petitioners, in that, had they been assessed on the basis of Quantification Policy dated December 31, 2008, they would have obtained marks for the distinguished service awards received by them (1.35 marks in case of the petitioner in W.P.(C) No. 5182/2012 and 2 marks in case of the petitioner in W.P. (C) No. 5303/2012) and the two would have been selected for promotion to the rank of Lt. General due to award of such marks; (ii) action of the Army Headquarters of not holding the Special Selection Board for the general cadre officers of 1975 batch and first review cases of 1974 batch in the month of October 2010 as originally scheduled or at least on November 26, 2012 has greatly prejudiced the petitioners and is illegal in view of the fact that there was no justifiable reason for not holding the Boards on said dates, which fact is revealed from the official documents; (iii) the Special Selection Board held on January 07, 2011 committed an illegality in assessing the officers on the basis of the revised Quantification Policy dated January 04, 2011 when while considering said policy i.e. revised Quantification Policy the Ministry of Defence had categorically stated that the said policy shall be applied to the Boards scheduled after April 01, 2011; (iv) the Special Selection Board held on January 07, 2011 committed an illegality in assessing the officers on the basis of the revised Quantification Policy dated January 04, 2011 for the reason on January 07, 2011 the Ministry of Defence had not even approved the revised Quantification Policy dated January 04, 2011, which fact can be gauged from the circumstance that only one day prior to holding of the Board in question i.e. January 06, 2011 the Ministry of Defence had written to the Army Headquarters pointing out some defects in the revised Quantification Policy dated January 04, 2011; and (v) as per past practice, selection in the Army is done in such manner that there is one year time differential between the holding of the Boards for General cadre and

Non-General cadre officers. In view of such past practice, the board for Non-General cadre officers of 1974 batch had to be held with the board for General cadre officers of 1975 batch, which practice was not adhered to in the present case inasmuch as the Board for Non-General cadre officers of 1974 batch was held on October 28, 2010 while the Board for General cadre officers of 1975 batch was held on January 07, 2011. (For the purposes of record, we note that in addition to challenge to the proceedings of the Special Selection Board held on January 07, 2011 the petitioner in W.P.(C) No. 5303/2012 had challenged the proceedings of the Special Selection Board held in the month of December, 2009, which challenge was met with success).

18. Per contra, it was contended by the respondents before the Tribunal that the:- (i) action of the Special Selection Board held on January 07, 2011 of assessing the officers on the basis of revised Quantification Policy dated January 04, 2011 cannot be termed as illegal in view of the fact that the Defence Minister, by deciding on February 24, 2011, that "the names of officers recommended by No. 1 SB and SSB held on 7th Jan., 2011 shall be cleared for promotion after due scrutiny on the basis of revised Quantification Model" had ratified the said action of the Board; (ii) a perusal of the note dated December 23, 2010 quoted hereinabove would bring out that the Ministry of Defence had in principle approved the revised Quantification Policy on December 23, 2010; and (iii) the Board could not be held on scheduled dates (October, 2010 and November 26, 2012) due to administrative reasons.

19. In rejoinder, it was contended by the petitioners before the Tribunal that the action which is void ab initio cannot be ratified at a subsequent stage. In support of said contention, strong reliance was placed by the petitioners upon the following passage of the opinion given by the Solicitor General of India in respect of revised Quantification Policy dated January 04, 2011:-

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

20. Vide two separate judgment(s) dated April 23, 2012, the Tribunal had negated the challenge laid by the petitioners to the proceedings of the Special Selection Board held on January 07, 2011. (As already noted hereinabove, the challenge laid by the petitioner in W.P.(C) No. 5303/2012 to the proceedings of the Special Selection Board held in the month of December, 2009 was upheld by the Tribunal). In so concluding, it has been held by the Tribunal that:- (i) it was well within the power of the Ministry of Defence to have approved the revised Quantification Policy dated January 04, 2011 in view of the provisions of the

Constitution of India which authorizes the Ministry of Defence to make the rules regarding the terms and conditions of services of Army personnel; (ii) the Defence Minister had "consciously" approved the decision of the Special Selection Board held on January 07, 2011 of assessing the officers on the basis of revised Quantification Policy dated January 04, 2011 despite being aware of the fact that the Ministry of Defence had required the Army Headquarters to apply said policy with effect from April 01, 2011; and (iii) in view of the decision of the Supreme Court reported as *Goa Shipyard Ltd. Vs. Babu Thomas*, , the action of the Special Selection Board held on January 07, 2011 of assessing the officers on the basis of revised Quantification Policy dated January 04, 2011 cannot be termed as illegal when the Defence Minister had ratified the said action of the Board.

21. It would be useful to note the following passage contained in the impugned judgment dated April 23, 2012 passed by the Tribunal in the application filed by the petitioner in W.P.(C) No. 5182/2012:-

57. It is our conclusion that where the competent authority specifically accords sanction for the revised Quantification System to be used in the SSB held on January 07, 2011, even though retrospectively, is final. The revised Quantification System, therefore, has been validated on the approval given by the Competent Authority vide MOD letter of February 24, 2011. The citations relied upon by the learned counsel for the respondents also support our conclusion wherein it has been observed the circumstances under which an action can be justified retrospectively.

22. Aggrieved by the impugned judgment(s) dated April 23, 2012 passed by the Tribunal the petitioner has filed the present petition under Article 226 of the Constitution of India.

23. The Special Selection Board in question was originally scheduled to be held in the month of October, 2010 but was deferred on said date and rescheduled to be held on November 26, 2012. Again, on November 26, 2012 the Board came to be deferred and was ultimately held on January 07, 2011. The respondents claim that the Board was deferred due to administrative reasons. But the notings of the Ministry of Defence, the contents whereof have been noted in the foregoing paras, point to the contrary. We highlight here that the note dated February 17, 2011 of the Ministry of Defence records that "these Boards were not held as schedule along with other Boards which were held in October, 2010, though a policy was in position and the Boards could have been held". Furthermore, we note that the "administrative reasons" which led to the deferment of the Board have not been spelt by the respondents. From the aforesaid, it can safely be concluded that there was no justifiable reason for deferment of the Board on two dates. Had the Board in question held on the scheduled date(s) i.e. in the month of October, 2010 and November 26, 2012 there would have been no controversy for the revised Quantification Policy dated January 04, 2011 had not seen the light of day on said dates and the officers including the petitioner would have

been assessed on the basis of the Quantification Policy dated December 31, 2008.

24. Let us recap the events preceding the holding of the Special Selection Board on January 07, 2011.

25. The Special Selection Board was scheduled to be held in the month of October, 2010 and November 26, 2012 but the same was deferred on said dates without there being any justifiable reason for deferment.

26. In the month of October, 2010 the Army Headquarters decided to review the Quantified Policy dated December 31, 2008 and sent the revised Quantification Policy to the Ministry of Defence for obtaining its approval. The Ministry of Defence examined the revised Quantification Policy and wrote back to the Army Headquarters on December 23, 2010 that it i.e. Ministry of Defence broadly agrees with the revised Quantification Policy, but, at the same time the Ministry of Defence pointed out that provisions relating to Value Judgment marks contained in the revised Quantification Policy need slight modification as also sought details from the Army Headquarters regarding the provisions relating to extrapolation of marks for non-criteria CRs of the officers. The Ministry of Defence further directed the Army Headquarters that the revised Quantification Policy should be implemented with effect from January 04, 2011.

27. On January 04, 2011 the Army Headquarters notified the revised Quantification Policy despite the fact that said policy was yet to be approved by the Ministry of Defence. (We highlight here that the letter dated January 04, 2011 records that the revised Quantification Policy had received the approval of the competent authority i.e. the Ministry of Defence while the truth of the matter was that the said policy was yet to be approved by the Ministry of Defence on January 04, 2011). At the same time, the Army Headquarters again sent the revised Quantification Policy to the Ministry of Defence for its approval.

28. On January 06, 2011 the Ministry of Defence wrote back to the Army Headquarters informing that the Army Headquarters had not made the changes in the revised Quantified Policy as desired by the Ministry of Defence vide its letter dated December 23, 2010 and that there are certain other defects in the policy which requires rectification. Most importantly, the Ministry of Defence again directed the Army Headquarters to implement the revised Quantification Policy with effect from April 01, 2011. In essence, the Ministry of Defence did not approve the revised Quantification Policy.

29. On the very next day i.e. January 07, 2011 the Special Selection Board assesses the officers on the basis of the revised Quantification Policy, notwithstanding the facts that the Ministry of Defence had not yet approved revised Quantified Policy and directed that said policy should be implemented with effect from April 01, 2011.

30. The action of the Special Selection Board held on January 07, 2011 of assessing the officers on the basis of the revised Quantification Policy, which was

yet to receive approval of the Ministry of Defence, is patently illegal.

31. The next question which has arisen for consideration in the present case is whether the Defence Minister by approving the promotion of the officers recommended by the Special Selection Board held on January 07, 2011 had ratified/validated the action of the Board of assessing the officers on the basis of revised Quantified Policy.

32. To find an answer to the above question we have to look to the notings dated February 17, 2011 and February 22, 2011 of the Ministry of Defence.

33. A perusal of the notings dated February 17, 2011 and February 22, 2011 of the Ministry of Defence brings out that the sum and substance of the said notings is that the Special Selection Board held on January 07, 2011 had committed a "wrong" by assessing officers on the basis of revised Quantification Policy in view of the fact that the said policy had not been approved by the Ministry of Defence on January 07, 2011 and Ministry of Defence had specifically directed the Army Headquarters to implement said policy with effect from April 01, 2011; however it was opined that the cancellation of proceedings of said Board would be an unprecedented stand which would be extremely detrimental to the discipline of the Armed Forces and credibility of the senior officers of the Army.

34. Thereafter on February 24, 2011 the Defence Minister approved the promotion of the officers recommended by the Special Selection Board held on January 07, 2011. At this juncture, what is most important to note here that even on February 24, 2011 what was approved by the Defence Minister was not the revised Quantification Policy but the promotion of the officers who were selected by the Board held on January 07, 2011.

35. A Promotion Board cannot assess officers for promotion on the basis of the promotion policy which is not approved by the competent authority. If it does so, such decision of the Promotion Board would be illegal. "Ratification" means the making valid of an act already done. The principle of "ratification" is derived from the Latin maxim "Ratihabitio Mandato Aequiparatur", which means, "a subsequent ratification of an act is equivalent to a prior authority to perform such act. It is settled legal position that there can be no ratification of an illegal act. (See the decision of the Constitutional Bench of the Supreme Court reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others,).

36. In view of aforesaid, we conclude that the answer to the question formulated in para 32 above is "No".

37. We cannot but resist noting that the note dated February 22, 2011 penned by the Defence Secretary notes (refer para 3 of the note) that the Board proceedings were required to be cancelled, but thereafter proceeds to note that if this is so done the credibility of the system would be detrimentally affected. It is obvious that the Defence Secretary was more influenced by the credibility of the Promotion Board being adversely affected and not by the merits of the matter.

He forgot that to commit an error is to do no wrong, but to perpetuate an error is to do a wrong. Having once opined that the Board could not have applied the criteria of a proposed revised policy, which was expressly made applicable, (upon its being finalized) with effect from April 01, 2011, in all fairness, the Defence Secretary ought to have recommended the cancellation of the Board proceedings with a direction that matter be considered afresh as per the existing policy.

38. In view of above discussion, the impugned judgment(s) dated April 23, 2012 passed by the Tribunal are set aside. The proceedings of the Special Selection Board held on January 07, 2011 are quashed. As a necessary corollary to the aforesaid, the respondents are directed to hold a fresh Special Selection Board for assessing the officers who were assessed by the Board held on January 07, 2011 including the petitioners. Needless to state, the fresh Special Selection Board shall assess the officers on the basis of the Quantified Policy dated December 31, 2008.

39. We are conscious of the fact that the officers who were promoted pursuant to the recommendations of the Special Selection Board held on January 07, 2011 have not been impleaded as the parties in the present case. In said regards, suffice would it be to note the decisions of the Supreme Court reported as *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhanthi and Others*, and *A. Janardhana Vs. Union of India (UOI) and Others*, where it was held that in cases where policies are misapplied, persons affected need not be impleaded as parties. No costs.