
(2014) 09 DEL CK 0253
In the Delhi High Court
Case No : W.P.(C) 10726/2009

K.P.S. Raghuvanshi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Coast Guard Act, 1978 — Section 123(1)
Constitution of India, 1950 — Article 226

Citation : (2014) 09 DEL CK 0253

Hon'ble Judges : Reva Khetrapal, J;Pratibha Rani, J

Bench : Division Bench

Advocate : B.P. Singh and Parma Nand, Advocate for the Appellant; Maneesha Dhir, Advocate for the Respondent

Judgement

Reva Khetrapal, J.—The Petitioner, a serving Deputy Inspector General (DIG) in the Coast Guard, has challenged the recommendations of the Departmental Promotional Committee (DPC) for promotion to the rank of Inspector General (IG) held on 23.07.2009 as illegal, arbitrary and conducted on the basis of amended selection policy just a month prior to the holding of Selection Board. The Petitioner also seeks to challenge the actions of the Respondent No.2 (Director General) in endorsing an Annual Confidential Report of the Petitioner covering the period from 1st February, 2008 to 31st January, 2009 despite not having observed the performance of the Petitioner for the mandatory period of 90 days as required under the extant policy, as contained in Coast Guard Order No.4/2005 and other policy instructions regarding writing of confidential reports issued from time to time. The following prayers are made in the writ petition:

"A) To issue an appropriate writ order or direction in the nature of certiorari to Respondents and call for records pertaining to Confidential Report on the Petitioner covering the period from 01 Feb 2008 to 31 Jan 2009;

B) To issue an appropriate writ order or direction in the nature of certiorari to Respondents and quash the report especially endorsement made by RO being ex

facie contrary to the policy instructions of Respondents, as contained inter alia in Coast Guard Order No.4 of 2005 and various other policy instructions regarding writing of confidential reports issued from time to time.

C) To issue an appropriate writ order or direction in the nature of certiorari to Respondents and summon the proceedings of Promotion Board No.1 held on 23.7.09;

D) To issue an appropriate writ order or direction in the nature of certiorari to Respondents and quash the said Board proceedings being arbitrary and illegal;

E) To issue an appropriate writ order or direction in the nature of certiorari to Respondents and quash para 7 of Coast Guard Order No.2 of 2009;

F) To issue an appropriate writ order or direction in the nature of mandamus directing Respondents to consider the Petitioner for promotion to the rank of Inspector General in accordance with law.

G) Pass such and other orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The Petitioner joined the Coast Guard in the rank of Assistant Commandant in January, 1984. The career graph of the Petitioner as delineated in the petition is as follows. Ever since the date of his joining the Coast Guard and in the course of his unblemished service career spanning nearly 2 scores of years, the Petitioner had an outstanding career and maintained an ascending career graph earning promotion to various ranks at first look based on his ACR grading. The Petitioner was placed first in the merit during the DPC held in the year 2005 for promotion to the rank of DIG. He is presently holding the rank of Deputy Inspector General (DIG) to which rank he was promoted in the year 2005. The next promotion to which he is eligible to be considered is Inspector General.

3. The Petitioner is an alumni of Naval War College (USA). He was the first Coast Guard Officer to be selected for this course based on outstanding performance and his position vis-à-vis other officers in the panel. The Petitioner was awarded the Tatrakshak Medal by the President of India on 15th August, 2007 for meritorious service and was also commended on two separate occasions by the Director General for his exceptional work. In May, 2006, he was first in merit among DIGs and was shortlisted for National Command College (NCC) Korea. Subsequently, in September, 2008, he was once again first in merit amongst the 5th Batch officers for National Defence College (NDC) Course at New Delhi.

4. On 16.02.2009, post the 26/11 attack on Mumbai, the Cabinet Committee on Security (CCS) approved one post of Addl. DG, three posts of IG (GD) and one post of IG (Tech) and communicated the same to the CGHQ through the letter of the Ministry of Defence dated 24.02.2009. The sanction of these new posts necessitated holding of DPC by the Department to fill these posts. The relevant selection year being from 1st April to 31st March of the following year, a proposal dated 01.04.2009 for conducting DPC on 18.04.2009 for one post of IG (GD)

with restricted zone of consideration, i.e., 4th Batch of General Duty, was forwarded to MoD vide CGHQ Note dated 01.04.2009. The said proposal was however rejected by the MoD at the level of Director (Navy-II) on 02.04.2009. Again on 13.04.2009, a proposal for the composition of DPC reiterating the earlier proposal of 01.04.2009 along with two amendments to CGO 02/2005 was forwarded by CGHQ to MoD. The Ministry of Defence again rejected the proposal on 16.04.2009 but this time it was at the level of Defence Secretary. The MoD once again directed CGHQ to follow the CGO 02/2005 and to conduct the DPC expeditiously. The relevant portions of the notings of the Director (Navy-II) dated 15th April, 2009 and that of the Defence Secretary dated 16th April, 2009 are reproduced hereunder:-

Noting dated 15th April, 2009

"7. In view of the above, it is proposed that CGHQ may be advised to constitute Coast Guard Promotion Board No. 1 for promotion to the rank of Inspection General as per the existing provisions of SRO 133 and CGO 02/2005 to fill up the newly sanctioned posts of Inspector General, approved by CCS. The Zone of consideration may kindly be decided as per the extant guidelines mentioned at Para 7 (d) of CGO- 02/2005.

"Sd/-

V.K. Tiwary

Director (Navy II)

15th April, 2009"

Noting dated 16th April, 2009

"We may ask DGCG to go ahead with the DPC based on existing guidelines on the subject. This may also be done expeditiously.

Sd/-

Defence Secretary

16/4/2009"

5. Subsequent thereto, however, the following noting was recorded by the IG, which is dated 27th April, 2009:-

"4. The case was examined in MoD vide Note 12 recorded in MF OF/0206/IG (copy at Encl. 16A). After detailed analysis, MoD have advised that the 04 posts of IG approved for Coast Guard, which have been considered a necessity by CCS in order to strengthen maritime security. These may be filled up as per the existing provisions of amended Coast Guard (Seniority & Promotion) Rules, 1987 and CGO 02/2005. The zone of consideration may also be decided as per the existing guidelines contained in the said CGO.

5. In this connection, it is brought out that in accordance with the provisions existing in the amended Coast Guard (Seniority & Promotion) Rules, 1987 and CGO 02/2005, all vacancies existing at the time of DPC are to be considered. Restricting the release of vacancies for IG promotion may amount to deviation from the said provisions and lead to legal complications at a later stage. It is pertinent to mention here that in the writ petitions filed by Comdt SK Choudhary (Retd) in Madras High Court, the Hon''ble Court has termed the partial release of DIG vacancies for the DPC held on 18 Aug 03 as an action with malafide intentions to exclude him. The justification given to the court for partial selective release of vacancies was not accepted by them. Fortunately, the court has not quashed the DPC proceedings on account of above lacunae, which could have caused serious administrative problems and would have opened a pandora's box....

A. Rajasekhar

IG

DDG

27th April, 2009"

6. Notwithstanding the MoD directive, which, as per the noting dated 27th April, 2009, was clearly understood by the Respondents, the Respondents conducted the DPC for promotion to the rank of IG based on CGO 02/2009 that was approved on 19.06.2009, i.e., one month prior to the scheduled date of DPC (23.07.2009).

7. In the aforesaid background, the Petitioner alleges that the DPC was conducted with the following two irregularities for which the Petitioner has approached this Court:-

(i) Selective change of ACR criteria to manipulate merit.

(ii) Review of ACR for the period 2008 to 2009 by Vice Admiral Anil Chopra, the then Director General, despite not having observed the officer for a mandatory period of three months as prescribed in para 54 of CGO 04/2005.

8. In order to ascertain the weight of the Petitioner's allegations, it would be relevant at the outset to examine the specific changes made in the ACR criteria as incorporated in CGO 02/2009 as compared to the original CGO 02/2005 (which was enforced from September, 2004 till 23.06.2009) and also CGO 14/2002 which held the field prior to the promulgation of CGO 02/2005. A comparative chart of ACR criteria with reference to CGO 14/2002, CGO 02/2005 and CGO 02/2009 is reproduced hereunder:-

9. It is relevant to state here that the Coast Guard (Seniority and Promotion) Rules, 1987 framed by the Central Government in exercise of the powers conferred upon it by Section 123(1) of the Coast Guard Act, 1978, governed the field right upto September, 2004. Till then, all promotions in the Coast Guards,

which in fact was created by hiving off a wing of the Indian Navy as a distinct and separate service, were made in accordance with Rule 7(3) of the Coast Guard (Seniority and Promotion) Rules, 1987, which is to the following effect:-

"7. Promotion rules. -- (1).....

(2) ..

(3) The promotion of officers to the rank of Commandant and above shall be made on the basis of merit with due regard to seniority."

10. Directorate General Coast Guard Service, as noted above, issued an Office Order No.14/2002 prescribing the guidelines for selection and promotion of Coast Guard Officers, the relevant portion whereof reads as under:-

"Introduction

5. The procedure for selection of officers for promotion to higher ranks is given in the succeeding paragraphs. This procedure is subject to review from time to time and is to be read in conjunction with relevant Recruitment Rules for each rank and the Coast Guard (Seniority and Promotion) Rules, 1987. Foot notes below paragraphs serve the purpose of amplifying the text of the respective paragraphs.

Promotion Method

...

11. In case of selective promotion to Commandant and higher ranks, the zone of consideration vis-?-vis number of vacancies available is as follows:-

Note: (a) In the event of eligible officers being less than the zone as above, all eligible officers to be considered..."

(Emphasis Supplied)

11. On 17.09.2004, the Central Government notified the Coast Guard (Seniority and Promotion) Amendment Rules 2004 to amend certain provisions of the 1987 Rules vide SRO 133 dated 17.09.2004 whereunder Rule 7(3) of Coast Guard (Seniority and Promotion) Rules, 1987 was amended to read as follows:-

"The promotion of an officer to the rank of Commandant and above shall be made on relative merit based selection within the eligible batch of officers of his cadre and branch to which he belongs and subject to possession of requisite qualifications contained in the relevant Annexure to these rules."

12. As is evident from a conjoint reading of the 1987 Rules and the 2004 Rules, there was a marked change in the promotion criteria. As per the unamended Rule 7 as it existed in the 1987 Rules, the promotion of an officer to the post of Commandant and higher posts including the post of Inspector General, was made on the basis of merit with due regard to seniority whereas as per the amended Rule 7 (as amended by the 2004 Rules) promotions were to be made

on relative merit based selection.

13. Almost simultaneously with the amendment of the seniority and promotion rules, the process to amend CGO 14/2002 was initiated vide note dated 24.09.2004 in which it is stated that:

"It is intended to issue suitable amendments to the relevant CGO on conduct of promotion boards after approval by Ministry of Defence is accorded for the proposed features.

Sd/-

Dy. Inspector General

Director (Personnel)

24th Sep. 2004"

14. The Coast Guard Headquarters issued policy letter dated OF/0741/Policy dated 29.12.2004. The said policy letter states:-

"3. In view of the above amendments in the Coast Guard (Seniority & Promotion) Rules, 1987 the corresponding provisions of the CGO 14/2002 will be modified as follows:-

(a).....

(b) Annual Confidential Reports. Last five years Confidential Reports in the rank, failing which all reports in the current rank be considered.

(c) Selection Procedure

(i) Selection Year. All vacancies in the rank accruing from 01 Apr to 31 Mar of next year shall be considered by the respective Promotion Boards to be convened in the first quarter (Apr to Jun) of the financial year.

x x x x

4. CGO 14/2002 is being amended accordingly."

15. Accordingly CGO 02/2005 was promulgated. The existing ACR criteria in CGO 02/2005 was as under:-

"8. The suitability for promotion shall be based on relevant service records and performance as reflected in the last five years confidential reports in the rank, failing which all reports in the current rank."

16. The change in ACR criteria in CGO 02/2009 is as under:-

"7. The suitability for promotion shall be based on relevant service records and performance as reflected in the last five years confidential reports in the current rank. If sufficient ACRs are not available in current rank, consecutive 05 ACRs including those of previous rank will be considered. However, in case of

Commandant (JG) the ACR years in the current rank will only be considered."

17. The allegation of the Petitioner is that the Coast Guard Headquarters conducted the DPC on 23.07.2009 in violation of the MoD directives of 16.04.2009, referred to hereinabove, wherein 03 DIGs of General Duty branch and 01 DIG of Technical Branch were promoted to IG. The Petitioner was placed at 4th position amongst the General Duty branch and thereby left out as there were only 03 vacancies available.

18. The Petitioner alleges that the DPC proceedings on 23.07.2009 were conducted on the basis of selection policy illegally amended just a month prior to the holding of the Selection Board with the sole intention to prejudice the claim of the Petitioner who was otherwise in the merit list but got excluded only due to such change of policy. This change in the ACR criteria was brought in clandestinely even without examination of such change by the Directorate of Personnel. The sole intention was to facilitate promotion of DIG K.C. Pande, the Respondent No.3 herein, at any cost. The fact that the change in the ACR criteria was not discussed/deliberated both in the CGHQ and MoD and introduced clandestinely is borne out by the relevant notings on CGHQ/MoD files concerning amendment to CGO 02/2005, inter alia, being the notings made on 01.04.2009, 13.04.2009, 15.04.2009 & 16.04.2009, 27.04.2009, 30.04.2009, 04.05.2009, 14.05.2009, 18.05.2009, 26.05.2009, 16.06.2009 and final Note 19 dated 17.06.2009 and Note 20 dated 18.06.2009 and 19.06.2009 and promulgation order dated 23.06.2009.

19. The Petitioner alleges that the Coast Guard Headquarters submitted the amended CGO 02/2009 on 18.05.2009 for information to MoD. Even though the proposal was forwarded only for information, surprisingly, it was accorded "post facto" approval by the Joint Secretary (Navy)/MoD on 19.06.2009. It is further submitted that since the said proposal was originally rejected at the level of Defence Secretary vide noting dated 16.04.2009, the post facto approval of the same case at two levels below was contrary to Government guidelines as Joint Secretary (Navy) did not have the authority to override an order passed by the Defence Secretary.

20. For the sake of facility, we deem it appropriate at this juncture to reproduce the relevant portion of the notings dated 18th June and 19th June granting post facto approval by the Joint Secretary (Navy):-

"3. CGHQ has already revised the Coast Guard Order (CGO) 02/2005 and issued a new/revised CGO/2/2009 on their own. The earlier CGO/2/2005 was issued after the approval of then JS(O/N). Kindly see P/A in this regard.

4. CGHQ was requested vide note 13 ante with the approval of Defence Secretary to convene the promotion board to fill up the newly created vacancies in the rank of IG in the back-drop of the revised security situation after 26 Nov 2008. CCS has approved the above mentioned post on 16th Feb 2009.

5. The amendments carried out by the CGHQ in their new/revised CGO/2/2009 are shown in the tabular form at encl.16A. The new/revised CGO is placed at F/X. The CGO/2/2009 has increased no. of looks, zone of consideration and the distribution of vacancies between fresh look and relook officer. The composition of promotion board for various ranks has also been amended.

6. In view of above, kind approval (Post facto) of JS(O/N) is solicited to CGO/2/09 (F/X), we may ask CGHQ to convene the promotion board for filling up all the important post created by CCS on 16th Feb 2009 at the earliest.

s/d

18/6/2009

21. On the basis of the aforesaid notings, the Petitioner submits that malafides are clearly established. At first instance, the Coast Guard Headquarters with a view to ensuring that the Respondent No.3, DIG K.C. Pande was promoted forwarded a proposal, vide Note dated 01.04.2009 proposing to conduct DPC for one vacancy within the 4th batch only, to MoD. This was again repeated vide Notes dated 13.04.2009, 27.04.2009 and 30.04.2009. Having failed in this design, the process of amendment of ACR criteria was initiated clandestinely and CGO 2/09 was promulgated for the first time on 23.06.2009. That this was done only to facilitate the promotion of DIG K.C. Pande can be clearly seen from his ACR grading for the years 2006 to 2009 which average around 14.73 for the said years, whereas his Commander rank ACR for 2003-04 is 15.29. As per CGO 02/2005, this Commandant rank ACR could not have been taken into consideration by the DPC. Hence, the amendment introduced clandestinely which was accorded post facto approval at the level of JS(Navy)/MoD disregarding even the authority of the Defence Secretary/MoD. The clandestine nature of the amendment is evident from the MoD Note No.20 dated 18th June, 2009 wherein there is no reference to any change in the ACR criteria and from which it clearly emerges that such change in the ACR criteria was neither deliberated upon nor discussed. The Petitioner alleges that the documents on record clearly indicate that between 20.05.2009 and 27.05.2009 the then Director General Vice Admiral Anil Chopra, Shri Binoy Kumar, the then JS(O/Navy)/MoD and DIG K.C. Pande had departed together for a tour to Europe. On their return from the said tour, Shri Binoy Kumar, the then JS(O/Navy)/MoD accorded post facto approval to Coast Guard Headquarters proposal disregarding even the authority of the Defence Secretary.

22. The second limb of the Petitioner's case is as follows. The Respondent No.2, Vice Admiral Anil Chopra, the then DG, Coast Guard reviewed (as Reviewing Officer) the Annual Confidential Report of the Petitioner for the period from 1st February, 2008 to 31st January, 2009, despite not having observed the performance of the Petitioner for the mandatory minimum period of three months as required by the Coast Guard Order 04/2005 and contrary to the direction given by MoD in their Note dated 23.04.2009. According to the

Petitioner, notwithstanding the change in ACR criteria by promulgation of CGO 02/2009 the Petitioner was still making it to the rank of IG post on his ACR grading. The Coast Guard Headquarters, therefore, devised another illegal means wherein Director General Vice Admiral Anil Chopra resorted to review of ACR for the period 2008-09 despite his not being eligible to review such ACR as he had not completed the mandatory three months in office required for the same. Further, he not only reviewed the Petitioner's ACR but also manipulated his ACR numerical grading so as to give benefit to DIG K.C. Pande by resorting to unauthorisedly reducing the numerical grading of the Petitioner.

23. In order to substantiate the aforesaid limb of his argument, the Petitioner has referred to paras 54 and 55 of CGO 04/2005, which read as under:-

"54. Section VI and VII. Authorities who are required to endorse these sections are given in Appendix "A" to this Order. These sections have been provided for the remarks of the reviewing officers and senior reviewing officers. They are also to enter their assessment of the promotion potential of the officer in the box provided. In the event present RO/SRO has not observed an officer for a minimum period of three months such reports be reviewed by previous incumbent RO/SRO provided he is still in service. In case where previous RO/SRO may have retired or is otherwise not available for reviewing the report, a notation to that effect be made by IO/RO in the relevant column to enable the present RO/SRO review such reports.

55. The Reviewing and the Senior Reviewing Officer sometime endorse remarks of the following nature in Section VI and VII, but do not endorse the numerical assessment, in Section II and III or the promotion potential in Section VI and VII.

Example:- (a) to (c) x x x x x

(d) I do not know him well, but I have consulted.... It is essential that such comments by the Reviewing and the Senior Reviewing Officers are matched by appropriate numerical assessment. However, in the event of insufficient knowledge of the officer, the numerical assessment may be left unfilled."

24. Vice Admiral Anil Chopra took over as Director General on 1st December, 2008. As such, he had completed only 60 days in office as on 31st January, 2009, when ACRs of DIGs were due for rendition on 1st February, 2009 as per CGO 04/2005, and as is borne out by the Coast Guard Headquarters Note dated 13.04.2009 addressed to MoD. Therefore, he had not completed the mandatory three months in office to be eligible for reviewing the ACRs of Coast Guard Officers. Furthermore, while reviewing the ACRs, Vice Admiral Anil Chopra had also violated 55(d) read with para 38 of CGO 04/2005 as per which the Reviewing Officer (RO) and Senior Reviewing Officer (SRO) are to enter their assessment in the boxes only if they have sufficient knowledge. However, in the event of insufficient knowledge of the officer, the numerical assessment must be left unfilled. Para 38 of CGO 04/2005 reads as under:-

"38. The reviewing officer (RO) and the senior reviewing officer (SRO) are to enter their assessments in the boxes provided except when they have insufficient knowledge. Numerical marking in the promotion potential box shall invariably be supported by marking in Section II and III. In case RO/SRO do not concur with the IO or change the assessment of the IO by 0.5 or more points they should give their clear remarks regarding the non-concurrence or change with adequate justification."

25. Another striking feature of this aspect of the matter brought out by the Petitioner is that on 13.04.2009 CGHQ forwarded a proposal to MoD for dispensation of the aforesaid mandatory time period for review of the ACR (as set out in para 54 of CGO 04/2008) as a special case to enable review of ACRs by Vice Admiral Anil Chopra. This is borne out by the noting dated 13.04.2009 in the relevant file, which reads as under:-

"Coast Guard Headquarters

Review of ACRs-Coast Guard Officers

1. Vice Admiral Anil Chopra AVSM has taken over as DGICG on 1st Dec. 08 and has not completed the mandatory three months period for review of the ACRs of Coast Guard Officers due on 1 Feb. 09.

2. It is requested that dispensation to review ACRs by the Officer who has not observed the CG Officers for three months may be granted as a special case.

Sd/-

(A. Rajasekhar)

Inspector General

Deputy Director General"

26. File Note 3 of MoD dated 16.04.2009 also states as under:-

"Vice Admiral Anil Chopra AVSM has taken over as DGICG on 1st December 2008 Vice Admiral RF Contractor, retired on superannuation. The review of ACRs of Coast Guard Officers from whom the report is due as on 1st February, 2009 need not be carried out by the incumbent DGICG as has not rendered 3 months of service to observe their workings on the date of the report due."

27. File noting dated 21.04.2009 by Shri R.K. Sharma, Deputy Director (Personnel), OA&R, Coast Guard Headquarters at para 2 is also significant, which reads as under:-

"In this connection it is intimated that there has been no precedent where special dispensation has been sought from MOD on the subject matter".

28. The Under Secretary (CG)/MoD in his note dated 22.04.2009 states that:-

"In view of the above, we may inform CGHQ to follow the instructions contained

in CGO 04/2005".

29. JS(Navy) accordingly approved the recommendations of Director (N-II) directing CGHQ to follow the CGO 04/2005 on 22.04.2009. Thus, MoD rejected the proposal for special dispensation and directed CGHQ vide MoD ID No.472/D(CG-R)/09 dated 23.04.2009 to review the ACRs as per provisions of CGO 04/2005. The relevant document which is dated 23.04.2009 reads as under:-

"Ministry of Defence

D (CG-R)

Subject: Review of ACRs-Coast Guard Officers

CGHQ may kindly refer to their Note No. OF/0303/ACR dated 13th April, 2009 on the subject mentioned above.

2. Review of ACRs by the Officer who has not observed the CG Officers for three months may be completed as per provisions of the CGO 04/2005.

(V.K. Tiwary))

Director (N-II)

DDG/CGHQ

M of D ID No. 472/D(CG-R)09 dated 23rd April, 2009".

30. Learned counsel for the Petitioner has taken us through the relevant ACRs of the Petitioner to contend further that the review of the ACR of the Petitioner for the aforesaid period by Vice Admiral Anil Chopra, then Director General was clearly malafide and colourable and an arbitrary exercise of power. It was vehemently contended that the malafides are obvious from the fact that as per paras 12 and 21 of CGO 04/2005 the review of the ACR of the Petitioner should have been completed by 20.02.2009, whereas the process of dispensation itself was initiated only on 13.04.2009, as set out hereinabove. For the sake of facility, we extract hereunder paras 12 and 21 of CGO 04/2005:-

"12. Annual Confidential Reports (ACRs): A Confidential Report is to be rendered annually on every officer as under provided he has served for a minimum period of three months under the Initiating Officer:-

(a) All officers up to the rank of Commandant (JG) -- 01 November

(b) Officers of the rank of Commandant & above -- 01 February

21. Initiating/Reviewing officers are to ensure that reports are submitted as and when the same become due. COMCGs are to ensure that annual reports reach Coast Guard Headquarters within 20 days of the due date mentioned in paragraph 12 of this order."

31. Learned counsel for the Petitioner contended that apart from the fact that the

ACR review of the Petitioner was undertaken after the due date, the assessment by the Reviewing Officer was also illegal and malafide being for a period beyond the period of review. Elaborating on this aspect, he contended that para 2 and para 27(e) of CGO 04/2005 prescribed that assessment must be for the period of review (in this case 01.02.2008 to 31.01.2009). The said paragraphs read as under:-

"2. The assessment should be based on an officer's performance during the period of report and not be influenced by previous knowledge of the officer reported upon."

"27(e) Appraisal should be confined to the appraisee's performance during the period of report only. While making assessments, appraisers should not be influenced by incidents and happenings outside the period of report as well as by their previous knowledge of the appraisee."

32. Ignoring the aforesaid prescriptions in the CGO, the Respondent No.2, Vice Admiral Anil Chopra in the pen picture of the Petitioner made the following endorsements:-

"His ship's accomplishments have been a trifle diluted by a few accidents and incidents.....Somewhat over assessed by IO. I have maintained the numerical grading of my predecessor."

33. Relevant would it be to note that the accident/incident referred to by the Respondent No.2 in the aforesaid pen picture relates to the year 2007-08 and not to the period 2008-09 that was reviewed by Vice Admiral Anil Chopra. Thus, Vice Admiral Anil Chopra not only referred to the earlier reports and the grade awarded by his predecessor, but made a mention of the incident which related to 2007-08 though his review of the Petitioner's ACR was to be undertaken only for the period 01.02.2008 to 31.01.2009. Learned counsel for the Petitioner points out that in fact IG S.P.S. Basra (IO) who had observed the Petitioner for complete 12 months (i.e. from 01.02.2008 to 31.01.2009) had graded the Petitioner outstanding in the ACR for the period 2008-09 rendered by him as IO. Furthermore, the IO has not mentioned any incident/accident in the ACR for the period 2008-09. Thus, quite evidently, the review was undertaken with the malafide intent to sideline the Petitioner maliciously.

34. Learned counsel contends that as a necessary consequence of the Reviewing Officer, Vice Admiral Anil Chopra referring to the accident/incident relating to 2007-08 and taking the same into account, the Petitioner has been punished twice for the same accident/incident. Firstly, the ACR for 2007-08 was affected by the accident/incident and thereafter the very same accident/incident has been made the basis for reducing the grading in the ACR of 2008-09 at the time of review. Learned counsel has pointed out that the ACR for the period 2006-07 has been rendered as "outstanding" by Vice Admiral R.F. Contractor (RO) while for the period 2007-08 the same RO has reduced the grading to "above average" because of the incident/accident. Thus, in view of the aforesaid, the review of

ACR by Vice Admiral Anil Chopra is reflective of the malafides, bias and arbitrariness of the Respondent, which has resulted in prejudicing the Petitioner's case and led to the denial of promotion to the Petitioner to the rank of Inspector General (IG).

35. Ms. Manisha Dhir, learned counsel for the Respondents sought to rebut the Petitioner's case by contending at the outset that the question which arises for consideration is as to whether the High Court can exercise its discretionary jurisdiction under Article 226 of the Constitution of India for granting the relief prayed for by the Petitioner. She contended that if the DPC did not recommend the name of Petitioner for promotion to the rank of Inspector General, it is not for the Court exercising power of judicial review to enter into the merit of the decision. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such [see *Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another*, *Surinder Shukla Vs. Union of India (UOI) and Others*, *Maj. Gen. S. Bindra v. UOI and Ors. W.P.(C) 6297/2003* decided on 21.10.2008, *Major S.P. Bhardwaj Vs. Union of India (UOI) and Another*, *Lt. Col. (Time Scale) D.S. Pandey Vs. Union of India (UOI) and Others*, *Amrik Singh Vs. Union of India (UOI) and Others*, and *Krishan Chand Vs. Union of India and Others*,].

36. On facts, Ms. Dhir raised the following contentions:-

(i) The process for amendment of Coast Guard Order (hereinafter referred to as "CGO") No. 02/2005 had begun way back in 2007, pertaining to composition of Promotion Board, release of vacancies, increase of number of looks, criteria for consideration of ACR etc., and after due deliberations the CGO 02/2009 was promulgated superseding CGO 02/2005. The CGO 02/2009 approved by the DGICG was forwarded to the Ministry by the Department on 18.05.2009 for conducting the DPC for the 04 posts of Inspector General in June/July 2009 as per the revised guidelines notified vide CGO 02/2009.

(ii) The Annual Confidential Report (hereinafter referred to as "ACR") criteria was revised in accordance with government instructions (DOP&T guidelines) which provide that ACRs of last 5 years including ACRs in the lower rank, if necessary, are to be taken into consideration for the purpose of promotion. The CGO 02/2009 was issued by revising the provisions of CGO 02/2005 with a view to enhance promotion prospects, morale and efficiency of Coast Guard officers and no way contravenes any provisions contained in the statutory rules. The aforementioned revised criteria is applicable across the board to all ranks of Coast Guard officers and is not restricted to any particular rank.

(iii) The approval to the CGO 02/2009 was accorded by the MoD on 18.06.2009 while the MoD had sanctioned one post of Commander, Coast Guard Region (North West) in the rank of Inspector General on 22.05.2009 and sanctioned three posts of Dy Director General (Acquisition, Technical and Coastal Security) in the rank of Inspector General in Coast Guard Headquarters on 23.06.2009.

The Promotion Board convened on 23rd July 2009 was conducted as per the revised guidelines contained in CGO 02/2009.

(iv) The instructions for rendering Confidential Reports on Coast Guard officers are contained in CGO 4/2005. As per Para 12 of this CGO, the ACR of officers holding the rank of Commandant and above are to be annually rendered on 01 February every year. The administrative guidelines/procedures for promotion of officers to various ranks are provided in CGO 2/2009. The CGO stipulates that these instructions are to be read in conjunction with the provisions contained in Statutory Rules namely, the Coast Guard (Seniority & Promotion) Rules, 1987 as amended from time to time. Para 7 of this CGO provides that suitability for promotion shall be based on relevant service records and performance as reflected in the last 5 years Confidential Reports in the current rank. In case, sufficient ACRs in the current rank are not available consecutive 5 ACRs including those of previous rank will be considered.

(v) Para 54 of CGO 04/2005, the instructions for rendering ACRs of Coast Guard Officers, contains a specific provision that in case the previous RO/SRO i.e. Reviewing Officer has retired, the present RO/SRO can review such ACRs, even if he has not observed the assessee officer for a minimum period of three months. Notwithstanding the said provision in the CGO 04/2005, a reference was made to the Ministry of Defence on 13.04.2009 requesting for grant of dispensation to Vice Admiral Chopra i.e. Respondent No.2 to review ACRs of the officers who he had not observed for three months. The Ministry of Defence vide its letter dated 23.04.2009 directed the Department that review of ACRs by the Officer who had not observed the CG Officers for three months may be completed as per the provisions of the CGO 04/2005. Thus, there was no irregularity in the Respondent No. 2 reviewing the ACRs of the officers including the Petitioner, who have not been observed for a minimum period of three months by the Respondent No.2.

(vi) In addition, same Para 54 refers to Appendix "A" which stipulates that reports of "Officers of the rank of Comdt(JG) and above initiated or reviewed by COMCG in the rank of IG shall be reviewed by the Director General Indian Coast Guard as RO/SRO." Thus, the Director General has reviewed all the ACRs of officers during the relevant period, including that of the Petitioner, all without any notations.

(vii) The contention of the Petitioner that the numerical grading given by the Respondent No. 2 is contrary to Para 38 read with Para 55 of CGO 04/2005 has no merit. Para 38 provides that "In case RO/SRO do not concur with IO or change the assessment of the IO by 0.5 or more points they should give their clear remarks regarding the non-concurrence or change with adequate justification. " The reduction of IO grading by the Respondent No.2 in the instant case is less than 0.5 and the reason is duly supported by the fact that the incidents of the ships under the command of the Petitioner were within his knowledge. In any event, para 55 of the said CGO is merely illustrative and not

exhaustive.

(viii) The Respondent No.2 reviewed the ACRs of 36 officers in the rank of Deputy Inspector General (hereinafter referred to as "DIG"), including the Petitioner, and 155 officers in the rank of Commandant, for the period 2008 all of whom the Respondent No. 2 had not observed for a minimum period of three months. No other officer, apart from the Petitioner herein, has challenged the grading by the Respondent No. 2. Subsequently out of the said officers reviewed by the Respondent No.2, 05 officers have been promoted from DIG to IG and 38 officers have been promoted from Commandant to DIG, in the period 2009-2013.

(ix) That the Petitioner filed a Representation dated 02.05.2011 impugning the grading given by the RO in the Petitioner's ACR for the period from February 2008 to January 2009. That the Ministry of Defence on 23.03.2012 disposed off the said Representation concluding that there is not enough ground to intervene with the grading given by the RO in the Petitioner's ACR for the aforesaid period. The disposal of the said Representation has not been challenged by the Petitioner.

(x) That the DPC considered all DIGs with the rank seniority upto 31 October 2005. These were a total of 15 officers out of which 9 officers were of senior batches than of Petitioner and all had 5 Annual Confidential Reports in the current rank of DIG. The Petitioner's batch comprised of 5 officers including him and all did not have 5 ACRs in the current rank of DIG. The Respondent No.3, IG KC Pande had only 4 Reports i.e. for the years 2004 to 2006 and 2008 in the rank of DIG. Thus, for all the 5 officers of the Petitioner's batch Commandant Reports for the years 2004 and 2005 and IG KC Pande's ACR for 2003 in the rank of Commandant, were considered in accordance with para 7 of CGO 2/2009.

(xi) During the period November 2007 to January 2008, 02 incidents took place of the ships commanded by the Petitioner and 01 incident while the Petitioner was Principal Director (Policy and Plans) at Coast Guard Headquarters. Show Cause Notices of these incidents were issued by the Director General Coast Guard to the Petitioner on 14.06.2008, 07.08.2008 and 19.08.2008. Despite the said notices the RO i.e. Respondent No. 2 while reviewing the Petitioner for the year 2008 maintained the numerical grading of his predecessor. Further, the contention of the Respondents that the Pen picture contents referring to the incidents are outside the purview being contrary to Para 27(e) of CGO 04/2005 is incorrect.

(xii) That the Petitioner has been subsequently considered twice for promotion to the rank of IG in the Promotion Boards convened in October 2011 and December 2012. The officers that have been promoted in the aforesaid Boards are more meritorious than the Petitioner having more/equal medals, commendations and relatively better ACRs than the Petitioner. Till date, no officer from a junior Batch than that of the Petitioner has been promoted to IG.

37. We have carefully considered the respective submissions of the parties and gone through the records including the Annual Confidential Reports relevant for

the present case. The records unambiguously support the case of the Petitioner that the existing ACR criteria as set out in CGO 02/2005 was amended clandestinely. For the first time, the Coast Guard Headquarters submitted the amended CGO 02/2009 on 18.05.2009 for information to MoD. Surprisingly, though the proposal was forwarded only for information, it was accorded post facto approval by the Joint Secretary (Navy)/MoD on 19.06.2009. Indubitably, the proposal for amendment of CGO 02/2005 was originally rejected at the level of Defence Secretary, i.e., on 16.04.2009 (notings reproduced hereinabove). Indubitably also, the MoD had then directed the CGHQ to follow the CGO 02/2005 and conduct the DPC expeditiously. Since the said proposal was originally rejected at the level of Defence Secretary, the "post facto" approval granted by the Joint Secretary (Navy)/MoD on 19th June, 2009 was without any authority and an attempt to ride rough shod over the orders passed by the Defence Secretary. No reason has been assigned by the Respondents as to why the Defence Secretary was not made part of the decision making process to amend the CGO 02/2005.

38. The contention of the Respondents that the process for amendment of the Coast Guard Order No.02/2005 had begun way back in 2007 holds no water. The change of criteria for consideration of ACRs with which the Petitioner is aggrieved nowhere finds mention nor any due deliberation is reflected in the context of promulgation of CGO 02/2009 superseding CGO 02/2005. The CGO 02/2009 was forwarded by the DGI, CG to the Ministry on 18.05.2009 for conducting the DPC for the 4 posts of Inspector General in June/July, 2009 as per the revised guidelines notified vide CGO 02/2009. The Ex-Post facto approval to CGO 02/2009 was accorded by the MoD on 18.06.2009 and the Promotion Board convened on 23rd July, 2009 was conducted as per the revised guidelines contained in CGO 02/2009.

39. There is no manner of doubt that the vacancies for the 4 posts of Inspector General had occurred prior to the amendment of CGO 02/2005 and as noted hereinabove, the said vacancies were sanctioned on 16.02.2009. The settled legal position is that the vacancies which occur prior to the amendment of the Recruitment Rules have to be filled up as per the Rules in force as on the date of the vacancy. In the decision reported as Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , the Supreme Court observed as follows:-

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub- Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

40. The aforesaid law laid down in Rangaiah's case (supra) was followed by the

Supreme Court in the decisions reported in P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, , N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, , A.A. Calton Vs. Director of Education and Another, , State of Rajasthan Vs. R. Dayal and Others, .

41. In a decision rendered by a Coordinate Bench of this Court in W.P.(C) 2310/2005 and W.P.(C) 12179/2006 Commandant Shamsheer Singh Malik v. UOI & Ors. on September 19, 2011, relying upon the aforesaid decisions the Division Bench held that the legal principle which emerges therefrom is that the normal rule is that the vacancy which had arisen prior to the amendment of the rules would be governed by the unamended rules and not by the amended rules. Referring to the decisions of the Supreme Court reported as Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, and State of Punjab and Others Vs. Arun Kumar Aggarwal and Others, , however, the Division Bench added a caveat by stating that though this was the normal rule it would be otherwise if the amending rule is made retrospective in operation or a conscious decision is taken to fill up the existing vacancies as per the amended rule. In Ramulu case (supra), it was held that the vacancies which had arisen before the amendment of the Recruitment Rules would be governed by the amended Rules and not by the unamended Rules for the reason that a conscious decision had been taken by the Government not to fill up the vacancies in terms of the existing Recruitment Rules and till the amendment of the existing Rules was effected. The relevant observations in Ramulu case are as under:-

"12. The same ratio was reiterated in Union of India v. K.V. Vijeesh (SCC paras 5 and 7). Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. Shri H. S. Gururaja Rao, contends that this Court in Y.V. Rangaiah v. J. Sreenivasa Rao had held that the existing vacancies were required to be filled up as per the law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who were eligible prior to the date of amendment. It is seen that the case related to the amendment of the Rules. Prior to the amendment of the Rules two sources were available for appointment as Sub-Registrar, namely, UDCs and LDCs. Subsequently, Rules came to be amended taking away the right of the LDCs for appointment as Sub- Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the

new Rules came into force. It is true, as contended by Mr H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are P. Ganeshwar Rao v. State of A.P., P. Mahendran v. State of Karnataka, A.A. Calton v. Director of Education, N.T. Devin Katti v. Karnataka Public Service Commission, Ramesh Kumar Choudha v. State of M.P. In none of these decisions, a situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules."

42. In Arun Kumar Aggarwal case (supra), the facts were identical in that it was held that the Government had taken a conscious decision not to fill the vacancy under the old rules keeping in view the facts and circumstances of the case, and hence the Supreme Court observed that though there is no quarrel with the proposition of law that the normal rule is that the vacancies which occur prior to the new rules would be governed by the old rules and not by the new rules, this proposition of law would not apply in cases where the Government had taken a conscious decision to amend the rules for the purpose of filling up the vacancies.

43. In the instant case, it is not even the case of the Respondents that the Government had taken a conscious decision not to fill the vacancies under the old rules. There is not a whisper in the counter- affidavit filed by the Respondents with regard to any conscious decision having been taken by the Government not to fill up the vacancies in terms of the existing Recruitment Rules and as a matter of fact as reflected in the noting of the Defence Secretary dated 16th April, 2009 the Government was of the view that the 4 posts be filled up under the unrevised rules. The contention of the Respondents that the CGO 02/2009 was promulgated after the approval of the Joint Secretary (Navy)/MoD is also belied by the record which shows that CGO 02/2009 which superseded CGO 02/2005 was promulgated by CGHQ prior to the CGHQ seeking approval from the MoD. This is clearly borne out by the notings in the records of the MoD dated 17.06.2009, 18.06.2009 and 19.06.2009, the relevant portions whereof read as under:-

"3. CGHQ vide note 13/ante were earlier advised with the approval of Defence Secretary to go ahead with the DPC based on existing guidelines for making promotion to the Post of IGs. CGHQ have now submitted vide note 17/ante that the approval may be accorded for conduct of DPC for the 04 posts of IG in Jun/ July as per the revised guidelines notified vide CGO 02/2009.

x x x x x x

5. As may be seen from the comparative statement placed at Encl. 16-A, the changes made in the CGO mainly relate to composition of DPCs, promotion method and procedure for making selections including Looks, zone of considerations etc.

x x x x x x

8. In view of above and taking into consideration that vacancies in the rank of IG are to be filled up expeditiously in view of CCS decision, the proposal of CGHQ may kindly be considered favourably. Since the proposed guidelines contained in CGO 02/2009 has already been promulgated by CGHQ the same may kindly be considered for ratification.

Sd/-

(T.C. Sharma)

Under Secretary (CG)

17 June 2009

Dir(N-II)

Reference previous note.

2. JS(O/N) may kindly see note 13 ante and

3. CGHQ has already revised the Coast Guard Order (CGO) 02/2005 and issued a new/revised CGO/2/2009 on their own. The earlier CGO/2/2005 was issued after the approval of then JS(O/N). Kindly see P/A in this regard.

x x x x x

6. In view of above, kind approval (Post facto) of JS(O/N) is solicited to CGO/2/09 (F/X), we may ask CGHQ to convene the promotion board for filling up all the important posts created by CCS on 16th Feb 2009 at the earliest.

s/d

18/6/2009

44. Thus clearly the amendments were effected without due deliberation with the concerned Ministry, and even the notings do not reflect that any change was to be made in the ACR criteria.

45. The further contention of the Respondents that one post of Commander, Coast Guard Region (North-West) in the rank of Inspector General was sanctioned by the MoD on 22.05.2009 and three posts of Deputy Director General (Acquisition, Technical and Coastal Security) in the rank of Inspector General in Coast Guard Headquarters on 23.06.2009, is also falsified by the records which clearly show that the said posts were sanctioned on 16th February, 2009. The communications dated 22.05.2009 and 23.06.2009 are merely formal in nature and reflect the financial sanction granted for the aforesaid posts.

46. The stand of the Respondents that a request was made to the Ministry of Defence on 13.04.2009 requesting for grant of dispensation to Vice Admiral Chopra, i.e., Respondent No.2, to review ACRs of the officers who he had not observed for three months and that the Ministry of Defence vide its letter dated 23.04.2009 acceded to the request and directed the Department that

review of ACRs by the officer who had not observed the CG Officers for three months may be completed as per the provisions of CGO 04/2005, is again bereft of merit and contrary to the record. The record shows that though such dispensation was sought by the CGHQ on 13th April, 2009, it was categorically refused by the Ministry of Defence vide its communication dated 23rd April, 2009 and the directions issued by the Ministry of Defence in this regard were that:-

"Review of ACRs by the officer who has not observed the CG Officers for three months may be completed as per provisions of CGO 04/2005." (MoD ID No.472/D (CG-R)/09 dated 23rd April, 2009).

47. Para 54 of CGO 04/2005 reproduced hereinabove is unambiguous in this regard, in that it clearly states that in case the present RO/SRO has not completed three months, such reports would be reviewed by the previous incumbent RO/SRO provided he is still in service. In case where the previous RO/SRO may have retired or is otherwise not available for reviewing the report, a notation to that effect be made by the IO/RO in the relevant column to enable the present RO/SRO to review such reports. The Respondents in the present case are not only in breach of para 54 of CGO 04/2009 which still holds the field, but as noticed above have also violated para 55(d) read with para 38 of CGO 04/2005 inasmuch as the Respondent No.2 has entered his numerical assessment in the concerned ACR of the Petitioner despite his insufficient knowledge. Not only this, in the pen picture of the Petitioner, the Respondent No.2 has referred to accidents/incidents which form part and parcel of the earlier reports, in direct contravention to para 2 and para 27(e) of CGO 04/2005 which prescribe that the assessment must be for the period of review (in this case 01.02.2008 to 31.01.2009). The result of the Respondents violating para 27(e) of the said CGO quite evidently is that the aforesaid incident/accident though transpired once has been taken into consideration in two consecutive ACRs of the Petitioner and the Petitioner has been punished twice over for the same offence. The argument of the Respondents that the Respondent No.2 reviewed the ACRs of 36 officers in the rank of Deputy Inspector General (DIG), including the Petitioner, and 155 officers in the rank of Commandant for the period 2008 all of whom the Respondent No.2 had not observed for a minimum period of three months does not cut any ice with us as there cannot possibly be any parity between the Petitioner and the said officers nor it is stated so. The further contention of the Respondents that the representation dated 02.05.2011 of the Petitioner impugning the grading given by the RO in the Petitioner's ACR for the period February 2008 to January 2009 went unheeded is also of no avail to the Respondents. Likewise, the contention that IG K.C. Pande's ACR for 2003 in the rank of Commandant was considered in accordance with para 7 of CGO 02/2009 is noted for the purpose of being rejected. A number of other contentions have been raised by the Respondents with regard to the professional failures on the part of the Petitioner and the consideration of other officers as more meritorious than the Petitioner, which too, in our opinion, are of no avail to the Respondents since this Court is not sitting in appeal over the findings of the Selection Board

but is merely concerned with the decision making process of the Respondents and as to whether the same is in consonance with the Recruitment Rules and the settled principles of law.

48. In view of the above discussion, we find that the Petitioner has succeeded in establishing his case of selective change of ACR criteria to manipulate merit by the Respondents smacking of arbitrariness. The Petitioner has also succeeded in establishing that the review of his ACR for the period 2008-09 by the Respondent No.2, then Director General in violation of para 54 of CGO 04/2005 to his detriment and resulting in his being punished twice over for the same incident, in the teeth of the refusal of the MoD to accede to the request of the Respondents for grant of dispensation from the working of the aforesaid rule smacks of illegality and arbitrariness. That being the position, we have no hesitation in holding that the vacancies which had occurred for the post of Inspector General on 06.02.2009 were governed by the unamended rules, i.e., CGO 02/2005 read with Rule 7(3) of the Coast Guard (Seniority and Promotion) Rules, 1987 as amended in 2004 vide SRO 133 dated 17.09.2004. We have also no hesitation in holding that the ACR review of the Petitioner by the Respondent No.2 in violation of para 54 of CGO 04/2005 read with para 55(d), para 38 and para 27(e) of the said CGO was both illegal and arbitrary and deserves to be ignored.

49. This leaves us with the question of moulding the relief to be made available to the Petitioner keeping in view the overall facts and circumstances. In view of Rule 7(3) of the Coast Guard (Seniority and Promotion) Rules, 1987 as amended vide SRO 133 dated 17.09.2004, the promotion to the rank of Inspector General shall be made on "Relative Merit Based Selection" within the eligible batch of officers. This being so, we dispose of the present writ petition by directing that a review DPC be held within a period of six weeks from today to make recommendations for the three posts, the vacancies in respect of which had occurred on 16.02.2009. The Selection Board would consider all such officers who are in the zone of consideration and within the eligible batch of officers as of 23rd July, 2009 and thereafter make a recommendation by applying the criteria for promotion as per CGO 02/2005. If the Petitioner is selected for promotion, he shall be accorded the benefit of promotion from the same date on which the three persons were promoted pursuant to the recommendation of the DPC which met on 23rd July, 2009, i.e., 6th August, 2009 and for which promotion the Petitioner would be entitled to all notional benefits including seniority. The Respondent Nos. 1 and 2 shall be at liberty to pass an appropriate order in respect of the Respondent Nos.3, 4 and 5 and if a decision is taken not to revert any of them, the Department shall be free to create a supernumerary post to accommodate the Petitioner. There will be no order as to costs.