

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 3264/92
T.A. No.

199

DATE OF DECISION 4.10.96

A.S. Shekhawat

Petitioner

Shri B.B. Raval

Advocate for the Petitioner(s)**Versus**

Union of India & Ors.

Respondent

Shri P.H. Ramchandani, Sr.

Advocate for the Respondent(s)~~Counsel for official respondents.~~

Shri George Paracken for Respondent-3

CORAM

The Hon'ble Mr. S.R. Adige, Member(A).

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J).

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. No. 3264/92

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New Delhi this the 4th day of October, 1996

Hon'ble Shri S.R. Adige, Member(A).

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

A.S. Shekhawat,
S/o Shri Mohar Singh,
Deputy Commandant,
Directorate General of Security,
(SFF), Project Chandni,
C/o 56 APO ... Applicant.

By Advocate Shri B.B. Raval.

Versus

1. Union of India through
The Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi.
2. The Director General of Security,
Govt. of India,
Cabinet Secretariat,
East Block 5, R.K. Puram,
New Delhi.
3. Shri M.C. Ghansiyal,
Deputy Commandant,
HQ.Estt.22,
C/o 56 APO ... Respondents

By Advocate Shri P.H. Ramchandani, Sr. Counsel
for the official respondents.

By Advocate Shri George Paracken for Respondent
No.3.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application under
Section 19 of the Administrative Tribunals Act,
1985 being aggrieved by the rejection of his appeal
dated 16.9.1992 for fixation of the correct seniority
by the respondents letter dated 7.12.1992

(b)

(Annexure 'A'). He has, therefore, sought relief in the O.A. to quash the impugned letter dated 7.12.1992 and to restore his seniority as No.1 and in any case above Respondent 3 who, according to him, was junior to the applicant in terms of the Army Service as well as in terms of confirmation and to award the costs of the application.

243. The relevant facts of the case are as follows:-

The applicant who was an Emergency Commissioned Officer, was released from the Indian Army on 1.7.1968 and after that he was selected as Assistant Company Commander (ACC) on 14.4.1969, initially on contract basis for a period of five years followed by regularisation. In 1978, he was appointed to the post of Civilian ACC with the respondents. In the letter dated 24.8.1971 issued by the respondents of the seniority roll for Company Commanders(CC)/ACC, the applicant was shown at Serial No.16 whereas Respondent 3, Shri M.C. Ghansiyal was shown at Serial No. 26. Thereafter, the applicant was confirmed in the substantive capacity as ACC w.e.f. 19.7.1984 whereas he submits that Respondent 3 was only confirmed as ACC vide Govt.of India, Cabinet Secretariat's letter dated 16.4.1990, i.e. 4½ years later. Thereafter, a Departmental Promotion Committee (DPC) was held in 1980 for promotion of ACC/CC to the post of Deputy Commandants on the basis of which the applicant as well as Respondent 3 were promoted as Deputy Commandants in the year 1981. According to the applicant, there are no

or holding the next DPC for promotion from Deputy Commandant to the Commandant (Admn.) and that he was seniormost among the Deputy Commandants. He

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recruitment rules framed by the respondents in respect of the Special Frontier Force (SFF). He submits that in 1988 when two other officers who were senior to him, were promoted to the post of next higher grade of Commandant (Admn.) on ad hoc basis, he being the next seniormost was considered and was also put at Serial No. 3 in the panel. However, since there were only two posts available, the applicant was not promoted. The other two senior officers, namely, S/Shri R.P. Singh and P.C. Vyas were promoted as Commandants (Admn.) by order dated 22.11.1988. Shri R.P. Singh retired on 31.3.1992 and there was a vacant post available w.e.f. 1.4.1992. The applicant had, therefore, submitted a representation to the respondents for notification of the seniority list. He has further submitted that though the DPC to the rank of Deputy Commandants in the year 1981 had ranked him fifth in the list, that was not correct as after his confirmation in 1985, he was placed at Serial No. 3 in the order of merit in the seniority list. In this connection, he has also stated that since he had joined the SFF organisation on 14.4.1969 and all other Deputy Commandants in the cadre had entered the department thereafter, he should be senior and final seniority list should, therefore, be notified by the respondents. According to him, the date of confirmation should be the sole criteria for deciding his seniority in respect of holding the next DPC for promotion from Deputy Commandant to the Commandant (Admn.) and that he was seniormost among the Deputy Commandants. He

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made a representation to the Principal Director, Directorate General of Security on 6.7.1992 for conducting the DPC for promotion to the rank of Commandant. At that time, the respondents circulated list of Deputy Commandants in SFF dated 21.7.1992 in which Respondent 3 was shown at Serial No. 1 and the applicant at Serial No. 2 with which the applicant is aggrieved stating that in the seniority list of CCs/ACCs in 1971, the applicant was shown at Serial No.16 whereas Respondent 3 was at Serial No. 26. His representation was rejected against which he submitted an appeal to Respondent 1 on 16.7.1992 giving the above facts. He has also submitted that Respondent 3 is also a low medical category officer at that time and he has alleged that because of that the holding of DPC was delayed to help him so that he may reach the desired standard of fitness required to be considered for the post of Commandant (Admn.) as per the promotion policy at that time. He has enclosed a letter dated 14.7.1992 (Annexure A-12), from Headquarters, Establishment No. 22, in which it has been stated that Respondent 3 is in medical category A-4 w.e.f. 18.5.1992, which means he is in hospital and his medical category will be determined by the concerned specialist after 10th August, 1992, addressed to AG's Branch, HQ SFF. The respondents finally rejected his appeal by letter dated 7.12.1992 which is the impugned letter in the O.A. (Annexure A).

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4. The respondents 1 and 2 have filed a reply in which preliminary objection has been taken regarding the jurisdiction of the Tribunal to deal with the case. However, at the time of hearing, Shri Ramchandani, learned Senior Counsel for the respondents, submitted that he is not pressing this objection. The applicant was a civilian employee with the respondents. Further, we have also seen the records and are satisfied that the applicant is a civilian employee with the respondents organisation, namely, the SFF, and he does not, therefore, come within the provisions of Section 2(a) of the Administrative Tribunals Act, 1985 as a Member of '...any other armed forces of the Union', and hence the Tribunal has jurisdiction to entertain the matter.

5. The respondents have in their reply admitted that the applicant had applied for appointment as ACC in SFF and was appointed on 14.4.1969 on ad hoc basis initially and was regularised in that post on exercising his option to do so in terms of the Cabinet Secretariat's letter No. EA/FF-Est-9/77, dated 18.1.79. They have, therefore, submitted that the orders regulating inter se seniority of ex-Army Officers recruited in the Ministry of Home Affairs organisations like BSF/CRPF have no applicability for the seniority of ACCs in the SFF. According to them, the seniority roll of CCs/ACCs appointed in SFF on contract basis was drawn on

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the basis of ^{the} date of joining the SFF in the grade. Accordingly, the applicant who had joined earlier on 14.4.1969 to Respondent 3 who joined on 30.1.1970 was shown senior at Serial No. 16 and the latter at Serial No. 26 in the seniority roll. They have also admitted that the applicant was confirmed as ACC w.e.f. 19.7.1984 by order dated 10.10.1985. In the case of Respondent No. 3, they have stated that he was also confirmed w.e.f. 19.7.1984 but under the order dated 16.4.1990, as ~~the~~ substantive post of ACC was available on that date, i.e. 19.7.1984 for him and he fulfilled all the conditions for confirmation. In the DPC meeting held in 1981 for promotion to the rank of Deputy Commandant, they have stated that since there were no recruitment rules in SFF, they had followed the rules which were applicable to the equivalent rank officers of ITBP who are in turn governed by the CRPF Act and Rules. They have denied that these promotions were on ad hoc basis and the applicant had himself been promoted on the basis of the same rules on regular basis. They have submitted that they have only two sanctioned posts of Commandant (Admn.) and only one post is vacant. As such, 5 eligible Deputy Commandants including the applicant and Respondent 3 were to be considered by the DPC in 1988. At that time S/Shri R.P. Singh and P.C. Vyas were recommended by the DPC and subsequently promoted in 1988 and the applicant's name was placed at serial No.3 but he could not be promoted as there was no further vacant post.

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Shri R.P. Singh retired on superannuation at the age of 55 years in the post of Commandant w.e.f. 31.3.1992 and this post, therefore, fell vacant w.e.f. 1.4.1992 for which action was initiated to hold the DPC. They have submitted that since the ACRs of some of the persons who are to be considered, for example Shri R.S. Raman, Deputy Commandant, who^{Y8} was on deputation to^{Y8} another department (R&AW), were not received till 5.10.1992 and in the meantime the applicant had submitted his appeal addressed to Respondent 1, the meeting of the DPC was only held on 8.12.1992.

6. The respondents have also submitted that since the post of Deputy Commandant is a Group 'A' post, the seniority in the grade of ACC has no relevance and in this post it has been fixed as per the merit position on the basis of the recommendation of the DPC. While not denying the fact that Respondent 3 was junior to the applicant as ACC in SFF, they have stated that Respondent 3 was also confirmed from the same date although by a later order w.e.f. 19.7.1984. They have also stated that it is wrong to say that the applicant was placed at Serial No. 3 of the merit when the DPC for the post of Commandant was held in 1988, as at that time only two posts are sanctioned in SFF and against these two posts, two officers, namely, S/Shri R.P. Singh and P.C. Vyas, Deputy Commandants, who had better service records, were recommended for promotion as Commandants

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by the DPC. They have also submitted that the applicant was aware of the seniority list of the Deputy Commandants from the issue of promotion orders in 1981 of the Deputy Commandants and he had represented against the seniority earlier also which had also been rejected. Therefore, they have submitted that the applicant has been erroneously contesting seniority in the rank of Deputy Commandants on the basis of his seniority in the lower post of ACC and bringing in extraneous and irrelevant grounds like confirmation in the lower grade and the fact that he was senior in the previous service in the Army and alleging false malpractices or acts on the part of Respondent 3 which they have submitted are not relevant with regard to his seniority as Deputy Commandant.

7. In view of the above submissions, they have submitted that the application may, therefore, be dismissed with costs. They have further submitted that the applicant himself is not clear as to what relief he seeks as in the appeal dated 16.7.1992 and application dated 16.9.1992, he had urged the Department to hold the DPC urgently but in the O.A. he has mentioned that the DPC should not be held. They have submitted that the DPC was, in fact, held on 8.12.1992 when the applicant as well as Respondent 3 along with three other eligible Deputy Commandants were considered for one post.

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8. In the rejoinder filed by the applicant, he has more or less reiterated the averments made in the O.A. He has emphasised that even though the SFF may not be an organisation under the Ministry of Home Affairs, his seniority as an ex-Army Officer has still to be maintained. He has also submitted that since Respondent 3 was confirmed after 'six' years of his confirmation i.e. on 16.4.1990 though from the same date i.e. w.e.f. 19.7.1984, if the DPC had been held before 1.4.1988 and after 10.10.1985, probably the only candidate who was qualified was the applicant at that time. This argument can be straightway rejected because admittedly before 1.4.1988, there was no vacant post of Commandant and even the applicant's case is that he should be considered ^{appointment against} for the vacant post arising ~~xxx~~ after the retirement of Shri R.P. Singh, who retired on 31.3.1992. The applicant has also submitted that in the absence of recruitment rules, the promotion must be made on ad hoc basis and, therefore, directly on the basis of seniority and they cannot choose an officer in the name of so-called Selection. The applicant has also ^{and impugned} referred to the circular dated 29.12.1992 dealing with the Assessment of Performance/Confidential Reports which he states has been done so as to justify the preference in respect of the lower medical category officer, presumably Respondent 3, in preference to the applicant. In this circular, it has been stated that assessment of performance

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in the confidential reports of SFF cadre officers is being presently done figuratively in a similar manner as is done for the Army Officers. In accordance with the CRPF/ITBP cadre rules, since performance assessment in civil Confidential Reports are descriptive and not figurative, it has been/decided to follow the same norms in SFF cadre officers CR forms also. Accordingly, IOs and ROs were/to indicate the ~~following~~ descriptive gradings for figurative gradings as shown therein. The main thrust in the rejoinder is that the DPC of 1992 had been delayed on one or the other pretext with the motive to promote Respondent 3 who was not in A-1 category at that time, and according to the applicant, even now.

9. A mere perusal of the circular/shows that this was a general circular regarding writing of Confidential Reports of SFF officers who are civilians and the submission made by the applicant that this was done to justify their preference for a lower category officer is irrelevant because all that the circular does is to change the so called figurative grading applicable to Army Officers to descriptive grading applicable to Civilian Officers. Therefore, we find no instance in applicant's claim on this.

10. Later, Respondent 3 has also filed the reply in which he has more or less taken the same stand as that of Respondents 1 and 2 refuting the above claims put forward by the applicant.

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11. The applicant has also filed a number of Misc. Applications which will be necessary to refer to. In MP 2182/93, he has mentioned that the Tribunal had permitted the applicant to file a representation to bring it to the notice of Respondent 2 so that the matter can be placed before the DPC for appropriate decision in accordance with law. The applicant has also filed rejoinder to replies filed by the respondents.

12. The Tribunal by order dated 12.5.1995 has, in the other M.A. filed by the applicant, i.e. MA 429/95, ordered as follows:

"...In any case there is no hinderance in the way of the respondents to give promotion according to the extent rules but any promotion made thereafter shall be subject to the outcome of the O.A. The M.A. is, therefore, totally misconceived and is dismissed".

13. Apart from the prayers taken in the O.A., it would also be relevant to refer to certain other M.As. M.A. 1232/95 was filed on 18.5.1995 in which he has stated that during the pendency of the O.A. one of the senior functionaries in the hierarchy of the respondents, namely, Shri S.K. Sarda, Major General (Retired) now re-employed as Inspector General (SFF), has been evincing keen undue interest and behaving in a manner in his official capacity directly affecting adversely the service interest of the applicant. He avers that Shri S.K. Sarda is not favourably disposed towards the applicant, particularly on account of his audacity of having taken recourse to this Hon'ble Tribunal and that he is seeking to perpetuate

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the culture of inducting retired soldiers at the cost of direct recruit officers. He has submitted that in a meeting held in the office of Shri Sarda on 14.11.1994, he was asked to withdraw his case from the Tribunal if he wanted his promotion, to which he replied that he was not able to do as per the letter dated 26.11.1994. He has, therefore, prayed that the Inspector General, Shri Sarda as well as one Brigadier A.V. Talwalkar, Commandant, Estt.22, Chakrata may be impleaded as Respondents 4 and 5 and they may be restrained from having any role with his ACRs as well as holding of the DPC for promotion to the rank of Commandant. This M.A. was dismissed for non-prosecution and another M.A. 1711/95 was filed praying for revival of M.A. 1232/95. Meanwhile, the applicant has also filed another M.A. 2038/95 on 11.8.1995 praying that he be permitted to amend the O.A. so as to impugn the order transferring him from Sarsawa to Chahbatta in Orissa State. A prayer was also made for interim relief to restrain the respondents from implementing the order of transfer by way of an ad interim injunction ex-parte and confirm the same after putting the respondents to notice. In this M.A., it has been alleged that the applicant is being transferred to Chahabatta with vindictive intent at the instance of ^{IS} Shri Shri Sarda and Brig. Talwarkar. In this connection, the applicant has also filed a copy of his representation dated 28.7.1995, addressed to The Principal

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Director, DG(S), Cabinet Secretariat, requesting him to cancel his transfer to Chahbatta. It was noted in the Tribunal's order dated 24.8.1995 that this representation had not been disposed of by the respondents. In the same order, the Tribunal allowed the M.A. and directed that the O.A. be amended to impugn the transfer order dated 28.7.1995. By way of an interim order, transfer order dated 28.7.1995 was also kept in abeyance and was continued from time to time. Although M.A. 2038/95 for impleadment of Respondents 4 and 5 has been listed, the same has not been disposed of and is, therefore, being taken up along with the O.A. However, in the reply to M.A. 2038/95, the respondents have, inter alia, submitted that the approval of the Appointments Committee of the Cabinet (ACC) vide letter dated 29.12.1995 on the recommendation of the DPC promoting Shri M.C. Ghansiyal as Commandant in SFF from the date of assumption of the charge of the post until further orders subject to the final outcome of this O.A. has been received. They have also submitted that ^{as} the applicant has less than nine months of service before his retirement ^{is} and they have decided to cancel the transfer order from Sarsawa to Charbatta. In the circumstances, M.A. 2038/95 has become infructuous and need not be considered here.

14. Respondent No. 3 has also filed M.A. 429/95 on 8.2.1995 praying for a direction to Respondents 1 and 2 to promote Respondent 3 as Commandant

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on ad hoc/provisional basis, on the basis of the DPC held on 8.12.1992 in accordance with D.P.&A.R. O.M. dated 30.3.1988 in which he has also mentioned that in any case the promotion order made would lay down the stipulations, as directed by the Tribunal that it will be subject to the outcome of the O.A. This M.A. has also not been finally disposed of.

15. It would be relevant to mention here that after the case had been heard and reserved for orders, Shri B.B. Raval, learned counsel submitted in the court on 27.9.1996 that the applicant was to retire on 30.9.1996, but in case the O.A. is allowed, his services should be extended as Commandant beyond the age of 55 years. He, therefore, prayed for an ad interim order to allow the applicant to continue in service beyond 30.9.96 which was rejected. However, we note from the reply filed by the respondents that in the case of Shri R.P. Singh, Commandant, he had retired on superannuation at the age of 55 years. We do not wish to make any further comment on this, as the age of superannuation for the Commandant will be in accordance with the rules.

16. Although initially the respondents had submitted affidavits claiming privilege in respect of disclosure of the relevant files to which Shri B.B. Raval, learned counsel for the applicant, had objected, but later on the learned counsel had submitted that in order ~~to~~ not to delay the case further, he would be satisfied if the court

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would see these documents and dispose of the matter.

17. The respondents have produced the relevant records, including the minutes of DPC held in December, 1980 for promotion to the posts of Deputy Commandants, minutes of DPC held on 30.8.1988 for promotion to the post of Commandant, minutes of DPC held on 8.12.1992 for promotion to the post of Commandant and connected papers, folder containing orders/instructions and rules on promotion and seniority, etc. in respect of ACCs, Deputy Commandants and Commandants, D.O.P.T O.M dated 13.6.1994 and reply of SFF UO dated 11.7.1994, review DPC proceedings from Deputy Commandants to Commandants held on 28.3.1994 and the DPC held on 11.9.1995 for our perusal.

18. We have carefully considered the pleadings, the other relevant documents on record and the lengthy arguments advanced by the learned counsel for the applicant as well as the submissions made by the learned counsel for the respondents as also the relevant records submitted by the respondents.

19. As already mentioned above, having regard to the provisions of Section 2(a) of the Administrative Tribunals Act, 1985 and the fact that the applicant is a civilian employee with the SFF organisation of the respondents, and the other materials on record, we are of the view that this Tribunal has jurisdiction in this matter.

J.S.

20. One of the issues raised by the applicant is regarding the seniority as Deputy Commandant vis-a-vis Respondent 3. It has not been denied by either Respondents 1 and 2 or Respondent 3 that at the entry point of the service, the applicant was senior to Respondent 3 as the applicant had entered service earlier to the latter. The applicant has submitted that his seniority in the Army over Respondent 3 should be maintained for the subsequent promotions in SFF for which there appears to be no basis. The orders sought to be relied upon by the applicant are those of the Army Officers who are appointed in the other armed forces, like ITBP and CRPF which are under the Ministry of Home Affairs and nothing has been placed on record to show that his seniority in the Army can be carried forward in the SFF, with which we are concerned. The claim for seniority based on confirmation also does not hold good in this case as, admittedly, Respondent 3 has also been confirmed although from a later date on 16.4.1990, with effect from the same date on which the applicant has been confirmed, namely, 19.7.1984. The submission made by the learned counsel for the applicant that in case any DPC for promotion was to be held between 1980 and 1988, then Respondent 3 could not have been considered, is again not applicable in this case as the dispute is regarding filling up the vacancy of Commandant which has arisen w.e.f. 1.4.1992. Therefore, while considering the eligible candidates for the vacancy of Commandant

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in 1992, both the applicant and Respondent 3 have to be taken as having been confirmed w.e.f. 19.7.1984. In the post of Deputy Commandant, both the applicant and Respondent 3 have been promoted in 1981. Even at that time, the respondents have submitted that there were no recruitment rules framed by the respondents for the post of ACC/DCs and Commandants in SFF, and they have been following the rules of officers of equivalent rank of ITBP offices who are governed by the CRPF Act and Rules. In the post of Deputy Commandant, while Respondent 3 was promoted w.e.f. 27.1.1981, the applicant was promoted w.e.f. 1.6.1981 by the notifications No. 14/3/80 of 10.3.1981 and 31.7.1981^{respectively. 19}.

The applicant was, therefore, junior to Respondent 3 in the rank of Deputy Comandant from 1981. The mere fact that he was senior to Respondent 3 in the lower feeder grade of ACC will not assist him^{to retain his seniority in the higher grade of DC.} In the absence of the rules framed by the SFF, the respondents cannot also be faulted if the rules applicable to equivalent rank ITBP officers governed by the CRPF Act and Rules have been followed in various ranks^{as} approved by Respondent 1. The promotions to these posts are also not on ad hoc basis as the regular DPCs have been held, as seen from the records, and the submissions made by Shri Raval, learned counsel, to the contrary are without merit and therefore, rejected.

21. From the minutes of the DPC meeting held on 3.12.1980 for consideration of promotion to the post of nine Deputy Commandants in SFF, it is seen that both the applicant and Respondent 3 have been considered. The panel of the officers was drawn up by placing the names of outstanding persons followed by the officers classified as 'Very Good' and thereafter 'Good' on the basis of classifications as assessed by the DPC in terms of para 4. A panel of officers as given below was drawn up:

	<u>Seniority in the</u> <u>lower grade</u>
(a) CC Shri R.P. Singh	1
(b) CC " P.C. Vyas	2
(c) ACC " Jarnail Singh	4
(d) ACC " M.C. Ghansiyal	6
(e) ACC " A.S. Shekhawat	3
(f) ACC " R.S.B. Singh	5
(g) ACC " S.K. Sharma	7
(h) ACC " M.C. Rawat	8
(j) ACC " R.S. Raman	9

The DPC had recommended that the officers be promoted in the order as listed above, against vacancies as and when they arise. It is clear from the above that Respondent 3 was placed above the applicant as Deputy Commandant. It is also seen from the notifications dated 10.3.1981 and 31.7.1981 that while Respondent 3 was promoted on 27.1.1981, the applicant was promoted on 1.6.1981 and, therefore, as DCs, Respondent 3 is senior to the applicant. It is settled position that seniority lists finalised a decade back should not be unsettled belatedly as it will be against the public interest. The applicant cannot, therefore, challenge the seniority in this O.A. filed in December, 1992 which, as

stated above is otherwise also valid. (A2)

22. In the DPC for promotion from Deputy Commandants to the post of Commandants held on 30.8.1988, a seniority list of seven Deputy Commandants, including Respondent 3 at serial No. 3 and the applicant at serial No. 4 was submitted for consideration. After evaluation of the ACRs of the Deputy Commandants for the last five years from 1984 to 1988, Shri R.P. Singh was placed at serial No.1, Shri P.C. Vyas at serial No.2, the applicant at serial No.3 and Respondent 3 at serial No.5, after one Shri R.S. Raman. The Committee finally recommended a panel of the following two Deputy Commandants for approval for officiating promotion as Commandants:

1. Shri R.P. Singh,
2. Shri P.C. Vyas

It can be seen from the above recommendations that although the applicant was at serial No.3 after evaluation of the ACRs, the Committee recommended a panel of only two Deputy Commandants for officiating promotion as Commandants. Therefore, the averment made by the applicant that he was third on the panel of the Deputy Commandants approved for promotion as Commandant is not correct. Besides, the DPC of 1988 had also been informed that there were only two posts of Commandants (Group 'A' Class-I) in the SFF which are to be filled up. Again, even if it is considered that the applicant was placed at serial No.3 in the merit list by this DPC, it cannot be

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stated that this will hold valid till the next vacancy arises and that too four years later, the life of a panel being normally for one year, unless it is specifically provided to the contrary. Nothing has been placed on record to show that this is so. Therefore, the applicant had to be considered again along with the other eligible candidates in the next selection which was held on 8.12.1992 in which he has been so considered along with others who were eligible. It is also worthwhile to mention here that the controversy in this O.A. has been raised regarding that post which has become vacant after the retirement of Commandant Shri R.P. Singh who was selected in the 1988 panel w.e.f. 31.3.1992, namely, for a vacancy arising from 1.4.1992 and the applicant's claim that he should be appointed on the basis of the 1988 panel is rejected.

23. From a careful perusal of the facts and records, we are satisfied that there is no substance in the allegations made by the applicant that although the post of Commandant fell vacant on 1.4.1992, the respondents have deliberately delayed the holding of the DPC so as to favour the candidature of Respondent 3 who admittedly had met with an accident in between and, therefore, was not in medical category A-1. Taking into account the reasons for the delay, including the representations of the applicant and also the reliefs claimed in the MAs filed here that till the seniority list is finalised, the respondents should not hold the DPC, the action of the respondents cannot be held to be either deliberate, illegal or arbitrary in the circumstances of the case which calls for interference on this account.

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24. In the DPC held on 8.12.1992, the DPC consisted of the Principal Director, Major Gen S.K. Sarda, IG, SFF and the Joint Director (P&C). In para 4 of the minutes, it has been noted that the DPC ~~was~~ held earlier in August, 1988 for promotion of Administrative Commandants from Deputy Commandants had also followed the CRPF Act, 1949 and CRPF Rules, 1955 for promotion since no promotion rules have been framed for SFF. Proceedings of the DPC were approved by the appointing authority and officers were promoted. Therefore, this DPC had also taken recourse to the same procedure. The DPC had examined the relevant orders for promotion of Administrative Commandants from Deputy Commandants and appointments which can be held by Administrative Commandants. Since the relevant Force Orders had not been approved by Govt. of India, the DPC had used them as guidelines to determine fitness of the candidates. A reference has been made to the case of Respondent 3 who is the seniormost Deputy Commandant whose overall CR rating is 'Very Good' / ^{who had} suffered a fracture of the right leg on 18.5.1992 while doing Para jumps. A medical board was held on 16.11.1992 which has opined that the officer is fit for all duties except Para jumping. The DPC considered the question of fitness of this officer as an Administrative Commandant keeping in mind recommendations of the medical board and nature of duties for Administrative Commandants as per the Force Orders. The DPC

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fit for promotion and can undertake responsibilities of the higher rank as stipulated in the Force Orders of 7/88 and 13/91. They had also evaluated the ACRs for the last five years from 1987-88 to 1991-92, including those of Respondent 3 and ~~that~~^{is} that of the applicant. On the basis of their assesment, the DPC recommended Respondent 3 for officiating promotion as Commandant. One of the members in this DPC was Maj Gen S.K. Sarda, IG, SFF, against whom the applicant has for the first time, after filing this O.A. on 15.12.1992, in M.A. 1232/95 alleged that he was not favourably disposed of towards him as he was a direct recruit. As mentioned above, this M.A. has been filed on 18.5.1995. In the previous DPCs held in 1988 also Maj Gen S.K. Sarda, IG, SFF, was a member of the DPC and in the DPC held on 3.12.1980 the then IG, SFF Maj Gen H.K. Bhardwaj was a member of the DPC. Therefore, the composition of the DPC ^{appears} including the IG, SFF/~~to be~~ in accordance with the rules which the respondents have been following in all those cases.

25. However, the approval for appointment of Respondent 3 to the post of Commadnant was withdrawn as stated in the letter dated 20.2.1996 of Respondent

1. A review DPC for promotion to the post of Commandant was held ^{again} on 28.3.1994 in which reference has been made to the order of the Tribunal dated 24.5.1993 and 16.8.1993. They have also considered the representation of the applicant dated 28.5.1993 in pursuance of the directions of the Tribunal. The review DPC took note of the fact that Respondent 3 has been declared medical category A-1 by medical

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(Xb)

board of Military Hospital Establishment No. 22 on 7.7.1993 and he is now fit in all respects including para jumping. After examining the relevant ACRs for five years of the officers, they have stated that Respondent 3 has an overall grading of 'Very Good' and the applicant has an overall grading of 'Good' and hence is not fit for promotion. In view of the fact that the proceedings of the DPC held on 8.12.1992 were quashed as Respondent 3 was not medical category A-1 at that time, the review DPC recommended that Respondent 3 be promoted from the date of holding of this DPC i.e. 28.3.1994 as he is now medical category A-1 and has also cleared bench mark grading of 'Very Good'. In this DPC also, IG, SFF Maj Gen S.K. Sarda against whom the applicant has alleged bias was a member of the DPC. The DOP&T to whom the papers were sent raised certain queries in their O.M. dated 13.6.1994 and they had drawn attention to the O.M. dated 10.4.1989 which laid down that the review DPC cannot change the grading already assigned by the original DPC. The DOP&T had observed that the review DPC held on 28.3.1994 has not only changed the grading but has also considered CRs for the year 92-93 and 93-94 which were not considered by the original DPC, to which Respondent 1 had furnished the replies.

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a further
26. Accordingly DPC was held on 11.9.1995 which consisted of the Principal Director, IF, SFF Maj Gen S.K. Sarda and Joint Director (P&C). This DPC was informed that one post of Commandant (Group 'A') had fallen vacant on 1.4.1992 on the retirement of Shri R.P. Singh on 31.3.92. After taking into account the facts narrated above and the fact that the ACC had quashed both the DPCs held on 8.12.1992 as well as 28.3.1994, this DPC was held with vacancy as on 3.2.1995. It is stated in these minutes that the DPC held on 24.2.1995 was not approved by the ACC. From these notings, it appears that the DPC held on 11.9.1995 had treated the vacancy as if on 3.2.1995 which is contrary to the facts in the case as admitted also by the respondents, since the post of Commandant in the SFF had ~~actually~~ fallen vacant w.e.f. 1.4.1992. It is, therefore, not understood how the respondents can now treat the vacancy as if on 3.2.1995.

27. In the above circumstances of the case, the DPC held on 11.9.1995 treating the vacancy as on 3.2.1995 is contrary to the rules and facts of the case cannot, therefore, be upheld.

28. Regarding the allegations of bias alleged by the applicant against Maj Gen S.K. Sarda, we find no substance in the same as it seems to be an after thought. Further, we find that Shri Sarda had sat in the various DPCs in view of his official position as had been the practice in the previous DPCs also. The applicant had not made any

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such allegations at the initial stage but only at the time of arguments Shri Raval, learned counsel, had submitted that Shri Sarda should not be associated with the DPC in which the applicant's case has to be considered. In this regard, the following observations of the Sikkim High Court in a recent decision Brig. Kanwar Kuldip Singh Vs. Union of India & Ors. (SLJ 1996(2) 72 at page 86) are relevant:

"From the very initial stage of this writ proceeding participation of Respondent No. 3 in the selection process has been criticised. In fact, this Court passed an order asking the Central Government to see if Respondent No. 3 could be dissociated from the process of selection but it could not be so done. The main reason is that the No. 1 Selection Board which is to deal with matter of officers of petitioner's cadre comprises senior generals from every corner of India. That is the reason the Board cannot sit more than once a year. Another reason for the Government being unable to exclude any of the members from the Board is that the Board is like a statutory committee. Again, the Board while sitting for the selection is to take into consideration the officers from different commands and sectors. Hence, exclusion of a commander of any of the commands would mean creating a vacuum in the selection process. We must not be unmindful of the doctrine of necessity in such a case. Some trust must be placed on somebody worthy of entrustment. In the instant case the Board comprises very senior responsible members on whom not only security of an individual rests but the security of the nation itself is dependent on the cumulative wisdom of

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such personalities. There cannot be any full proof check to everything. In J. Mahapatra's case (1984) 4 Supreme Court Cases 103 (at para 18), the Court observed, this must necessarily depend upon the social consciousness and moral fibre of the members of the Committee. Similarly, no judgement of a court can eliminate the evil of behind the scene influence. Here, one must perforce trust the sense of responsibility of the members of the committee in the discharge of the important duty with which they are entrusted".

(emphasis added)

In the present case also the doctrine of necessity will apply, otherwise any allegation against the members of the Selection Committee based on suspicion and surmises and not founded on any facts or evidence will result in scuttling the proceedings of the DPC which are otherwise legal and in order. The Selection Committee in this case is also in the nature of a statutory body or Committee and to say that Maj Gen Sarda IG, SFF who was only one member of the Selection Committee and that too not the Chairman or the seniormost member could exercise influence over all other members of the Committee cannot be accepted in the facts of this case. The principle of natural justice, namely, Nemo judex in causa sua' is one of the fundamental principles of our jurisprudence. However, in Ashok Kumar Yadav and Ors. Vs. State of Haryana and Ors. (1985 (4) SCC 417), the Supreme Court has held that if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the selection committee is closely related to a candidate appearing for the selection,

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it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the selection committee made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. However, the Court further held that if the selection is by the PSC, a constitutional authority then the related member need not withdraw from the entire selection process. In this case, the court has also held that suspicion cannot take the place of proof and it is not possible to strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva voce examination might be arbitrary. The general allegations of casteism made against the Chairman and the Members of the Haryana Public Service Commission were held as not substantiated by producing any relevant before the court. In the circumstances, the Supreme Court held that the High Court was not right in striking down the selection made on the ground there was no arbitrariness or reasonable likelihood of bias proved.

29. The Sikkim High Court in Brig. Kanwan Kuldip Kumar's case (supra) has also referred to the aforesaid / judgement and other judgements of the Supreme Court.

In this case also the petitioner had contended that Respondent 3 had bad feeling towards him and he must have influenced the other memers of the Selection Board. In the background of the facts of the case, however, the High Court held that it

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was of the view that it cannot hold that it was easy for an individual member to exercise influence on all other 7 members or on majority of the members of the Board and that too on three occasions. Therefore, the contention of the petitioner was rejected.

30. In the present case, as already mentioned, the applicant has alleged bias against Maj Gen S.K. Sarda, IG, SFF, much after the O.A. was filed. He was only one Member of the Selection Board and on more than one occasion, the DPC had selected Respondent 3. In the facts and circumstances of the case, the allegations of bias against Maj Gen S.K. Sarda have also not been supported by any relevant evidence and it is accordingly rejected.

31. In the facts and circumstances of the case, we find that we now have the recommendations of the DPC held on 11.9.1995 which was put as a fresh DPC treating the vacancy as on 3.2.1995. We are unable to agree that the vacancy can be treated as on 3.2.1995 when admitted^Bly the vacancy is the one arising after the retirement of Commandant Shri R.P. Singh on 31.3.1992.

32. In the facts and circumstances of the case, this O.A. is disposed of with the following directions:

- (a) The respondents are directed to hold a review DPC in the post of Commandant in SFF for the vacancy arising w.e.f. 1.4.1992 in accordance with the rules and instructions within a period of


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two months from the date of receipt of a copy of this order.

(b) In the event the applicant is selected, he shall be entitled to all consequential benefits in accordance with law.

(c) No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


(S.R. Adige)
Member(A)

'SRD'