

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

OA.184/2007

Lucknow, this the 22nd day of July, 2008

Coram:

Hon'ble Mr. Shankar Prasad : Member (A)
Hon'ble Mr. M. Kanthaiah : Member (J)

1. N.C.Ramola,
Aged about 46 years,
Son of Sri K.C.Ramola,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Toothibari, Area Office
Mahrajganj of Special Service Bureau,
Dist.Mahrajganj.
2. Jaideve,
Aged about 43 years,
Son of Sri Kameshwar,
Posted as Senior Field Asst.
(Medic) in Circle and Area Office,
Balrampur of Special Service Bureau,
Dist.Balmpur.
3. K.K.Ojha,
Aged about 47 years,
Son of Sri Shiodutta Ojha,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Tulsipur, Area Office
Balrampur of Special Service Bureau,
Dist.Balrampur.
4. Hari Singh,
Aged about 42 years,
Son of Sri Chamaru Ram,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Tulsipur II, Area Office
Balrampur of Special Service Bureau,
Dist.Balrampur.

5. Kailash Chand,
Aged about 41 years,
Son of Sri Chatar Singh,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Tulsipur II, Area Office
Balrampur of Special Service Bureau,
Dist.Balrampur.
6. A.K.Sarkar,
Aged about 44 years,
Son of Sri Umesh Chandra Sarkar,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Jarwa, Area Office
Balrampur of Special Service Bureau,
Dist.Balrampur.
7. K.C.Singh,
Aged about 36 years,
Son of Sri Pachu Singh,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Jarwa, Area Office
Balrampur of Special Service Bureau,
Dist.Balrampur.
8. Madan Lal Sen,
Aged about 42 years,
Son of Sri Mani Ram,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Harraiya, Area Office
Balrampur of Special Service Bureau,
Dist.Balrampur.
9. Sanjeev Kumar,
Aged about 43 years,
Son of Sri K.R.Sharma,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Trilokpur, Area Office
Balrampur of Special Service Bureau,
Dist.Balrampur.

10. Swapna Sinha,
Aged about 44 years,
Son of Sri Shankar Lal Sinha,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Jarwa, Area Office
Balrampur of Special Service Bureau,
Dist. Balrampur.
11. Jagdish Chander,
Aged about 45 years,
Son of Sri Jaint Ram,
Posted as Senior Field Asst.
(Medic) in Circle Office,
Chandanpur at Tkulsipur, Area Office
Balrampur of Special Service Bureau,
Dist. Balrampur.
12. Suresh Chand,
Aged about 54 years,
Son of Late Sri Atma Ram,
Posted as Senior Field Asst.
(Medic) in Circle Office
and Area Office
Siddharth Nagar of Special Service Bureau,
Dist. Siddhartha Nagar.
13. P.K. Sharma,
Aged about 47 years,
Son of Sri H.C. Sharma,
Posted as Senior Field Asst.
(Medic) in Circle Office
and Area Office
Siddharth Nagar of Special Service Bureau,
Dist. Siddhartha Nagar.
14. Kashmir Singh,
Aged about 37 years,
Son of Sri Chandu Lal,
Posted as Senior Field Asst.
(Medic) in Circle Office
and Area Office
Siddharth Nagar of Special Service Bureau,
Dist. Siddhartha Nagar. A

15. D.K.Biswas,
Aged about 36 years,
Son of Sri Merifendra Nath
Biswas, Posted as Senior Field Asst.
(Medic) in Circle Office
Haribanspur, Area Office
Siddharth Nagar of Special Service Bureau,
Dist.Siddhartha Nagar.

16. Naresh Kumar,
Aged about 43 years,
Son of Sri Lalikant,
Posted as Senior Field Asst.
(Medic) in Circle Office
and Area Office
Siddharth Nagar of Special Service Bureau,
Dist.Siddhartha Nagar.

17. S.K.Sharma,
Aged about 42 years,
Son of Sri Riggan Lal Sharma,
Posted as Senior Field Asst.
(Medic) in Circle Office
Aligarwa, Area Office
Siddharth Nagar of Special Service Bureau,
Dist.Siddhartha Nagar.

18. P.S.Butola,
Aged about 43 years,
Son of Sri R.S.Butola,
Posted as Senior Field Asst.
(Medic) in Circle Office
Aligarwa, Area Office
Siddharth Nagar of Special Service Bureau,
Dist.Siddhartha Nagar.

19. Jai Kumar,
Aged about 43 years,
Son of Sri Shakti Prasad,
Posted as Senior Field Assistant (Medic)
in Circle Office
Barhni-I, Area Office
Siddharth Nagar of Special Service Bureau,
Dist.Siddhartha Nagar. *As*

20. S.K.Nautiyal,
Aged about 42 years,
Son of Madan Lal Nautiyal,
Posted as Senior Field Assistant (Medic)
in Circle Office
Barhni-I, Area Office
Siddharth Nagar of Special Service Bureau,
Dist.Siddhartha Nagar.
21. Nand Kishore,
Aged about 45 years,
Son of Sri Govind Prasad,
Posted as Senior Field Assistant (Medic)
in Circle Office
Khunwa, Area Office
Siddharth Nagar of Special Service Bureau,
Dist.Siddhartha Nagar.
22. D.C.Pandey,
Aged about 43 years,
Son of Sri D.D.Pandey,
Posted as Senior Field Assistant (Medic)
in Circle Office at PCI Complex,
Gorakhpur, Area Office
Mahrajganj of Special Service Bureau,
Dist.Mahrajgang.
23. Munshi Ram,
Aged about 38 years,
Posted as Senior Field Assistant (Medic)
in Circle Office
at PCI Complex,
Gorakhpur, Area Office
Mahrajganj of Special Service Bureau,
Dist.Mahrajgang.
24. Gopa Kumar,
Aged about 39 years,
Son of Sri K.K.Raman Kutty,
Posted as Senior Field Assistant (Medic)
in Circle Office Thoothibari,
Area Office Mahrajganj of
Special Service Bureau,
Dist.Mahrajgang.

25. Shyam Singh,
Aged about 38 years,
Son of Sri Jindu Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bargadwa,
Area Office Mahrajganj of
Special Service Bureau,
Dist. Mahrajganj.
26. Rajendra Kumar,
Aged about 41 years,
Son of Sri Ranja Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Sunauli,
Area Office Mahrajganj of
Special Service Bureau,
Dist. Mahrajganj.
27. V.K.Sood,
Aged about 51 years,
Son of Sri Bard Pal Sood,
Posted as Senior Field
Assistant (Medic)
in Circle Office Kulhuintwa II,
Area Office Mahrajganj of
Special Service Bureau,
Dist. Mahrajganj.
28. R.B.Chaudhary,
Aged about 36 years,
Son of Late Sri Durga Prasad Chaudhary,
Posted as Senior Field
Assistant (Medic)
in Circle Office Nautanwa- II,
Area Office Mahrajganj of
Special Service Bureau,
Dist. Mahrajganj.
29. A.K.Diwedi,
Aged about 37 years,
Son of Late Sri Devki Nandan Shastri,
Posted as Senior Field
Assistant (Medic)

in Circle Office Nautanwa-II,
Area Office Mahrajganj of
Special Service Bureau,
Dist.Mahrajganj.

30. Tara Chand,
Aged about 37 years,
Son of Sri Bala Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Gangpur,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.
31. Swarn Singh,
Aged about 38 years,
Son of Sri Prem Lal,
Posted as Senior Field
Assistant (Medic)
in Circle Office Rupaidiha,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.
32. Jodh Raj,
Aged about 40 years,
Son of Sri Babu Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Rupaidiha,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.
33. Sri Inder Singh,
Aged about 40 years,
Son of Sri Sardar Singh,
Posted as Senior Field
Assistant (Medic)
in Circle Office Rupaidiha,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.

34. Manohar Singh Negi,
Aged about 42 years,
Son of Sri P.L.Negi,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bahraich,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.

35. Kedar Singh,
Aged about 40 years,
Son of Sri Kisan Dass Negi,
Posted as Senior Field
Assistant (Medic)
in Circle Office Loukhai,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.

36. Gita Ram,
Aged about 51 years,
Son of Late Sri Chet Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Shivpura,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.

37. R.K.Patiyal,
Aged about 40 years,
Son of Late Sri Rekha Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Rupaidiha,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.

38. Miss.Hira Devi,
Aged about 45 years,
D/o. Sri Late Sh.Jogi Ram,
Posted as Senior Field
Assistant (Medic)

in Circle Office Shivpura,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.

39. Raj Kumar,
Aged about 40 years,
Son of Sri Hari Singh,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bahraich,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.
40. Jeewan Singh,
Aged about 40 years,
Son of Sri Sarwan Singh,
Posted as Senior Field
Assistant (Medic)
in Circle Office Chakiya,
Area Office Bahraich of
Special Service Bureau,
Dist.Bahraich.
41. Sri Kamal Dev,
Aged about 53 years,
Son of Sri Syam Singh,
Posted as Senior Field
Assistant (Medic)
in Circle Office Murtiha,
at Motipur, Area Office Nanpara of
Special Service Bureau,
Dist.Bahraich.
42. Karam Chand,
Aged about 41 years,
Son of Sri Jagto Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Chitlawa
at Motipur, Area Office Nanpara of
Special Service Bureau,
Dist.Bahraich. A

43. Sri Inder Jeet Singh,
Aged about 44 years,
Son of Sri Jaswant Singh,
Posted as Senior Field
Assistant (Medic)
in Circle Office Chitlawa
at Motipur, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.
44. Surinder Kumar,
Aged about 42 years,
Son of Sri Lekh Raj,
Posted as Senior Field
Assistant (Medic)
in Circle Office Chitlawa-II
at Motipur, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.
45. Nitya Nand,
Aged about 53 years,
Son of Sri Late Devi Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Murtiha
at Motipur, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.
46. Devi Singh,
Aged about 56 years,
Son of Sri Kashi Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Nishan Gara
at Girjapuri, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.
47. M.L. Vedwal,
Aged about 38 years,
Son of Sri Phool Singh,
Posted as Senior Field

Assistant (Medic)
in Circle Office Nishan Gara
at Girjapuri, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.

48. Kamal Kumar,
Aged about 42 years,
Son of Sri Gulabu Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bardia
at Girjapuri, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.

49. A.B. Singh,
Aged about 41 years,
Son of Sri Bajrangi Singh,
Posted as Senior Field
Assistant (Medic)
in Circle Office Katernia Ghat
at Girjapuri, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.

50. Mohinder Singh,
Aged about 47 years,
Son of Sri Sant Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Katernia Ghat
at Girjapuri, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.

51. Kushal Singh,
Aged about 53 years,
Son of Sri Kalidass,
Posted as Senior Field
Assistant (Medic)
in Circle Office Chitlawa-II
at Motipur, Area Office Nanpara of
Special Service Bureau,
Dist. Bahraich.

52. Puran Chand Upreti,
Aged about 41 years,
Son of Sri Hari Ballabh Upreti,
Posted as Senior Field
Assistant (Medic)
in Circle Office Palia Kala Kheri,
Area Office Kheri of
Special Service Bureau,
Dist. Kheri.
53. Khazana Ram,
Aged about 42 years,
Son of Sri Phaganu Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Mirchia,
Area Office Kheri of
Special Service Bureau,
Dist. Kheri.
54. Roop Lal,
Aged about 39 years,
Son of Sri Ramu,
Posted as Senior Field
Assistant (Medic)
in Circle Office Sardarpuri,
Area Office Kheri of
Special Service Bureau,
Dist. Kheri.
55. Ashok Kumar,
Aged about 40 years,
Son of Sri Ganpat Ram Kashv,
Posted as Senior Field
Assistant (Medic)
in Circle Office Sardarpuri,
Area Office Kheri of
Special Service Bureau,
Dist. Kheri.
56. Hans Raj,
Aged about 41 years,
Son of Sri Govind Ram,
Posted as Senior Field
Assistant (Medic) A

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in Circle Office Sumer Nagar,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

57. Ramesh Kumar,
Aged about 40 years,
Son of Sri Manohar Lal,
Posted as Senior Field
Assistant (Medic)
in Circle Office Sumer Nagar,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

58. Kirat Ram,
Aged about 51 years,
Son of Sri Inder Jeet,
Posted as Senior Field
Assistant (Medic)
in Circle Office Gouri Phanta,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

59. Krishan Lal,
Aged about 39 years,
Son of Sri Devi Ram Tanwar,
Posted as Senior Field
Assistant (Medic)
in Circle Office Gouri Phanta,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

60. Kartar Singh,
Aged about 39 years,
Son of Sri Dalip Chand,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bankati-I,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri. 11

61. Yog Raj,
Aged about 42 years,
Son of Sri Chura Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bankati-I,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

62. Kaul Ram Verma,
Aged about 41 years,
Son of Late Sri Joginder Singh,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bankati-II,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

63. Gurdas Ram,
Aged about 40 years,
Son of Late Sri Seru Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Bankati-II,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

64. G.S.Panwar,
Aged about 40 years,
Son of Sri Miharawan Singh Thakur,
Posted as Senior Field
Assistant (Medic)
in Circle Office Lakhimpur Kheri,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

65. S.P. Barman,
Aged about 39 years,
Son of Late Sri Dhanesh Chandra Barman,
Posted as Senior Field
Assistant (Medic) ^A

in Circle Office Tikunia
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

66. Dileep Singh Thakur,
Aged about 42 years,
Son of Late Sri Dhyan Chand Thakur,
Posted as Senior Field
Assistant (Medic)
in Circle Office Najhauta,
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.
67. Bishnu Pada Sarkar,
Aged about 36 years,
Son of Sri Megha Lal Sarkar,
Posted as Senior Field
Assistant (Medic)
in Circle Office Belapersua
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.
68. Debashis Dass,
Aged about 42 years,
Son of Late Sri Rohini Kanto Dass,
Posted as Senior Field
Assistant (Medic)
in Circle Office Belapersua
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.
69. Murari Lal,
Aged about 45 years,
Son of Sri Mansa Ram,
Posted as Senior Field
Assistant (Medic)
in Circle Office Tikunia-II
Area Office Kheri of
Special Service Bureau,
Dist.Kheri.

70. Manohar Chand,
Aged about 43 years,
Son of Sri Baldev Chand,
Posted as Senior Field
Assistant (Medic)
in Circle Office Danga at Tikunia,
Area Office Kheri of
Special Service Bureau,
Dist. Kheri.

71. Roshan Lal,
Aged about 45 years,
Son of Sri Bhal Chand,
Posted as Senior Field
Assistant (Medic)
in Circle Office Danga at Tikunia,
Area Office Kheri of
Special Service Bureau,
Dist. Kheri.

72. V.S. Rawat,
Aged about 49 years,
Son of Late Sri G.S. Rawat
Posted as Senior Field
Assistant (Medic)
in Circle Office Najheuta at Chandan
Chowki of Special Service Bureau,
Dist. Kheri.

73. Sri Gopal Sharma,
Aged about 44 years,
Son of Sri Tota Ram Pankaj,
Posted as Senior Field
Assistant (Medic)
in Circle Office Malhipur of
Special Service Bureau,
Dist. Kheri.

74. Sri Drub Singh
Aged about 42 years,
Son of Sri Hams Raj,
Posted as Senior Field
Assistant (Medic)
Area Office Bhinga, of
Special Service Bureau, A

Dist. Shrawasti.

75. Maharaj Singh,
Aged about 37 years,
Son of Sri Kunwar Singh,
Posted as Senior Field
Assistant (Medic)
Area Office Bhinga, of
Special Service Bureau,
Dist. Shrawasti.
76. Ashok Kumar,
Aged about 35 years,
Son of Sri Bala Ram Thakur,
Posted as Senior Field
Assistant (Medic) in Circle office Bhinga,
Area Office Bhinga, of
Special Service Bureau,
Dist. Shrawasti.
77. Sri N.S. Chib,
Aged about 36 years,
Son of Sri Suram Singh,
Posted as Senior Field
Assistant (Medic) in Circle office Bhinga,
Area Office Bhinga, of
Special Service Bureau,
Dist. Shrawasti.
78. Satish Kumar Nautiyal,
Aged about 37 years,
Son of Sri Sachidanand,
Posted as Senior Field
Assistant (Medic) in Circle office Sirsia,
Area Office Sirsia, of
Special Service Bureau,
Dist. Shrawasti.
79. Varinder Singh,
Aged about 38 years,
Son of Sri Chanda Singh,,
Posted as Senior Field
Assistant (Medic) in Circle office Suriya,
Area Office Suriya, of
Special Service Bureau,

Dist. Shrawasti.

80. R.L.Azad,
Aged about 41 years,
Son of Sri Lagnu Ram,
Posted as Senior Field
Assistant (Medic) in
Area Office Bhinga, of
Special Service Bureau,
Dist. Shrawasti.

81. Ved Prakash Sharma,
Aged about 41 years,
Son of Sri Babu Ram Sharma,
Posted as Senior Field
Assistant (Medic) in
Circle Office Gulrahempur, of
Special Service Bureau. : Applicants

(By Advocate: Mr.R.C.Singh)

Versus

1. Union of India,
Through: the Secretary,
Ministry of Home Affairs, New Delhi.

2. Director General,
Special Service Bureau,
Govt. of India, Ministry of
Home Affairs, New Delhi.

3. Inspector General,
Special Service Bureau,
Govt. of India, Ministry of
Home Affairs and FTR Headquarters,
Lucknow.

(By Advocate : Mr.S.P.Singh)

ORDER

Hon'ble Mr. Shankar Prasad : Member (A)

In this OA, the applicants are challenging the A

decision of the Central Govt. to place the Senior Wing Assistant (Medic), who belonged to non-combatised Wing of SSB and work under Area Organiser/Sub Area Organiser/Circle Organiser, under the administrative and operational control of commandants of the Combatant Wing. The grievance of the applicant is that this change of nature of duties from the Civilian to the Combatant Wing cannot be made. They seek the following reliefs:-

"(a) issuing/passing of an order or direction setting aside the impugned re-allocation order dated 11.04.07 issued by the Respondent No.2 and its consequential transfer order dated 24.04.07, issued by the Respondent No.3 (as contained in Annexure Nos.A-1 and A-2 to this application), after summoning the original record.

(b) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(c) allowing this Original Application with cost."

2. It is stated in para 4.04 and 4.06 of the OA that the SSB was set up in early 1963 in the wake of India China conflict of 1962 to build people's Morale and inculcate a spirit of resistance. They have been deployed on I.N.B. for collecting intelligence and to undertake counter subversive role and responsibilities in carrying out pacificatory civic action, psychological warfare and counter propaganda, welfare, developmental and motivational (perception management) programme in their area of operation. Some combatant Battalions had also been raised in 1968 and the SSB is functioning in two wings Combatised Wing (Battalions) and Non Combatised Wing (Area). *Dr*

The respondents issued an order dated 26.03.03 (Annexure A/4) on the subject of Command Structure and officering in SSB. (This is pursuant to transfer of administrative control of SSB to Ministry of Home Affairs and assigning to it the mandate of guarding the Indo Nepal Border.) The DG also issued a circular dated 28.07.03 to clear perceptions arising out of the use of word "Dying Cadre" in respect of SFA (Medicos). The DG had thereafter issued an order dated 11.04.07 reallocating posts of SFA (Medic) along with incumbents from Area Office to Battalions (Annexure A/1). Pursuant thereto the IG, SSB FTR, HQRS, Lucknow has issued the orders dated 24.04.07 (Annexure A/2).

3. These applicants have fixed duty hours with weekly off. They can stay with their family. They joined their service accordingly. The further case of the applicants is that such transfer of administrative and operational control is against all rules and regulations and against all principles of natural justice. In the second OPS Conference from 19.12.06 to 20.12.06 the matter relating to placing of circle office in BOP was considered and it was observed that such a step will expose their identity. The DG had clarified that circle Organisation Office should not be placed in the BOPs at present. To the knowledge of the applicant staff component of BOP does not have any civilian staff. In any case DG SSB has no statutory right or authority for creation of posts and to change the cadre of the ⁴

applicants from non-combatised (civilian) to combatised. These applicants have submitted representations, which have not been considered. It is contended that the offer of appointment never stated that they will be required to work as combatised cadre and that they cannot be converted into a combatised staff without ascertaining their willingness or otherwise. The staffing pattern of BOP as per international norms/standards does not include any post of civilian. DG has no statutory power to create or sanction any post of SFA (Medic) or to reallocate them to Battalions.

4. The applicants in their rejoinder have raised a preliminary objection that as the officer signing the reply has not produced the authorisation, the counter reply is not in conformity with rules. On merits it is stated that neither the date of policy decision of Group of Ministers is indicated nor is the policy decision brought on record. Once the non combatised wing has been declared as a dying cadre, their service conditions cannot be changed and their services merged with uniformed wing. If such was the intention, the policy decision would have itself provided for it. The uniformed wing could have become the "Border Guarding Force". The role of "Area Wing Staff" could not have been changed without seeking their options and consent. It is not understood from the reply as to under what statutory provisions the applicants can be brought within the purview of CRPF Act and CRPF Force Rule *1*.

1955. Mere transfer of administrative control of SSB to MHA will not change the nature of duties nor make them amenable to CRPF Act/CRPF Rules. It is wrong to say that old circle offices have been closed and new offices opened along Indo Nepal & Indo Bhutan Border. It is not understood why the applicants are being transferred to Combat Wing when there is a medical wing headed by IG (Medical). These applicants have only got elementary training of providing first aid and besides this they have been trained for various other roles and duties, which have nothing to do with medical treatment. The crux of the matter is that the object and reason of creating two separate wings have not been altered through any legally valid statutory provision. SSB headquarters on one hand talks of perception management by winning hearts and minds of border populace and on the other has entrusted them with the task of collecting intelligence. A person engaged in medical treatment can hardly collect intelligence. SFA (Medics) would not be able to collect intelligence as they would be exposed by being part of combatised Battalion. Unless there is a separate wing Intelligence can never be collected. Similarly perception management would also be affected as hearts and minds cannot be won by Battalion personnel.

The impugned orders contemplate that SFA (Medic) are to be posted to inaccessible battalion. There is no basis for categorisation of BOPs regarding inaccessibility and hence the orders are vague. It is ~~is~~

reiterated that their nature of duty and place of work cannot be changed with changed role of SSB. The decision of second operational conference are referred to without bringing anything on record. No decision is taken on representation. The decision dated 23.01.07 is in respect of staff working under the control of Patna Office. It is not possible to change the service conditions on the basis of recommendations of Group of Ministers.

The learned counsel for the applicant has at the time of hearing made available a copy of the Memorandum dated 17.05.06 issued by DG SSB.

5. The reply has been filed by Shri Anil Agrawal DIG posted in the office of respondent NO.3. Para 2 of the reply which provides the perspective, is as under:-

"It is submitted that initially, SSB was raised in the year 1963, pursuant to the philosophy that security of the borders was not the responsibility of the armed forces alone and that it also requires a well-motivated and trained border population. The organisation was initially functioning in the regions of the then NE Frontiers, North Assam, North Bengal, Hills of the then UP, HP, parts of Punjab, Ladakh area of J & K and subsequently its activities were extended to other border areas in Manipur, Tripura, Meghalaya, Sikkim, Rajasthan, Gujarat, Mizoram, South Bengal, Nagaland and some areas of J & K. The role of SSB in its earlier set up was to inculcate a sense of security, consciousness among the people of border areas generating mass support in the border areas through NIP programmes and welfare activities, organizing and preparing border population to resist enemy and perform 'Stay Behind' role during invasion/occupation and countering enemy propaganda through Psychological war operations and awareness campaigns."

The SSB consists of two wings viz. Area Wing (non uniformed) who are governed by the Central Civil (Classification, Control and Appeal) Rules, 1965, and Battalion Wing (Uniformed) whose personnel upto the rank of Inspector are governed under Central Reserve Police Force Act, 1949 and the Central Reserve Police Force Rules, 1955, whereas officers of the rank of Assistant Commandant and above for disciplinary matters are covered by the CCS(CCA) Rules, 1965.

On 15th January, 2001, the Administrative Control of SSB was transferred to the Ministry of Home Affairs, in pursuance of the recommendations of the Group of Ministers (Group of Ministers (GOM) on reforming the National Security System. The Group of Ministers (GOM) recommended the principle of one border, one force for better accountability and also recommended the necessity of comprehensive border management including management of Indo-Nepal Border. Accordingly, the Ministry of Home Affairs entrusted to the SSB the role of guarding Indo-Nepal Border w.e.f. June, 2001 and Indo-Bhutan Border w.e.f. March, 2004.

After transfer of SSB to MHA, both the uninformed and non-uniformed wings of the Force are existing and functioning, however, as per the policy decision of the Ministry of Home Affairs, the Area Wing (non-uniformed) component of the SSB has been declared as a dying cadre which shall be phased out systematically on account of promotion or retirement etc. and vacancies arising thereof shall be filled up by the corresponding combatized personnel on the base posts. For the purposes of governance of the non-uniformed civilian component the same shall continue to be dealt with under the relevant Central Government Rules till they are phased out. However, due to this decision, there will be an adverse impact on promotions/pay/privileges of the non-uniformed component.

After the administrative control of the Force was transferred to MHA the old Areas of Operation were closed and new offices were opened along the Indo-Nepal and Indo-Bhutan borders. The role of the Force was transformed from the 'Stay Behind' role to that of a 'Border Guarding Force'. With the change in role of the organisation BOPs were created all along the borders which are still in the process of establishment and various other changes are affected in the Force. A dog squad was also sanctioned in each Bn. For operational

and security effectiveness. Both the combatised as well as civilian personnel are actively involved in the border guarding duties.

Further, the Group of Ministers on National Security had recommended for keeping a provision for posting of one medical Assistant in each BOP and one Medical Officer in each Coy inaccessible areas and accordingly as per the directive above D.G. SSB in his capacity as the Head of the Force on the recommendation to the Group of Ministers (GoM) in the over all welfare of the Force personnel reallocated the present applicants to the BOP for providing immediate and necessary medical aid to the Force personnel deployed on the border.

It is pertinent to mention here that SSB has a professionally trained medical cadre which is headed by the officer of the rank of IG (Medical). The present applicants are also trained in providing medical aid. It is clarified herewith that neither applicants cadre has been changed nor they have been converted to the combatized set up. They have only been posted to the Bns./BOP. They will be drawing the same pay which they were drawing earlier. The SFA (M) is one of the lowest most medical functionary in SSB. They belong to the civilian cadre and will also be promoted to the next higher civilian posts as per the hierarchy available in the cadre. Though there is a proposal to combatize the civilian cadres in a passed manner but the same is still under process of implementation. This combatization will be effected only w.r.f. Willing individuals as per their option. Hence, this is not a case when the applicants have been combatised."

6. It is further stated that SFA (M) were responsible to render First Aid and elementary medical treatment and related duties to volunteers as well Villagers of border areas under Medical Civic Action Scheme (copy not on record). The role of SSB, has, however, been changed from stay behind role to Border Guarding Force and a Lead Intelligence Agency on Indo Nepal & Indo Bhutan Border. The applicants were earlier also duty ~~to~~

bound to discharge their duties on border areas. They were discharging duties under Commandants where the single chain of Command was in operation. (Copy of the orders not on record). Even in the Areas and Circle Offices only 2nd Saturday and Sunday are observed as holidays and that these norms of duties will not be changed on their posting in BOPs.

It has been decided to place these officials at Coy as per requirements of the force. The DG, SSB is competent to reallocate any post to any location in operational area.

Their representations are under examination. However, in a similar case of Frontier Hqrs. SSB Patna order dated 23.01.07 have been issued. These orders have been passed on the recommendations of GOM on National Security. They had recommended providing of one medical Assistant in each Border out post and one Medical Officer in each company as per operational requirements, administrative exigencies and in the overall welfare of the Force Personnel posted on the BOP.

7. It is reiterated in the reply to the rejoinder that initially the Civilian Wing of SSB had been declared as a dying cadre but their service conditions were to remain the same. There is no plan to merge the non combatised wing with the combatised wing without the option of individual. As they will continue to

perform only the duties they have been hitherto performing the question of seeking consent or option does not arise. MHA have since issued a corrigendum dated 12.06.07 directing deletion of the word Dying Cadre for Civilian Cadres. (Copy not on record.). The applicants will be continued to be governed under CCS (CCA) Rules and not CRPF Rules. It is further restated:-

"The two wings in SSB were created to suit its earlier role i.e. stay behind role. Consequent upon shifting of the force on the INB and IBB, the force has been assigned the task of guarding the INB and IBB and in order to achieve the goals, a decision has been taken to post these SFA(M) on the BOPs. The question of obtaining the willingness of these SFA(M) does not arise, as the service condition of these SFA(M) will remain the same when they are posted in BOP or in Areas."

It is further submitted that the applicants will observe normal duty hours (i.e. the duty hours they use to follow) ^{during} ~~while~~ their posting in BOPs.

8. We have heard the learned counsels.

9. It would be appropriate to refer to various decisions of Apex Court regarding matters falling in the domain of executive policy, the changes to such policy, the grounds on which such policy can be challenged, how such policy is modified, the nature of relationships of employees to Govt., the concept of vested rights before we consider the issues raised in the preset OA.

10. The Constitution Bench in Roshan Lal Tandon vs. A

UOI AIR 1967 SC 1189 has held:-

"6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B' laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows: *S*

"So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status" (Salmond and Williams on Contracts, 2nd edition, p.12).

7. We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case."

(emphasis added)

11. The Constitution Bench in State of J & K vs. T.N.Khosa AIR 1974 SC 1 has held:

"22. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and scheme of compulsory retirement in public interest ought to have floundered on the rock of retroactivity. But such is not implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well settled that though employment under the Government like that under any other master may have a contractual origin, the *or*

Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre condition of the validity of rules of service, the contractual origin of the service notwithstanding."

(emphasis added)

12. The Constitution Bench in the State of Mysore vs. H. Papanna Gowda & Ors AIR 1971 SC 191 was considering an appeal from a common judgment of the High Court at Bangalore holding void the compulsory transfer of respondents to the Agriculture University constituted under the University of Agriculture Sciences Act 1963. The Apex Court held:

"There can be no dispute that - as indeed the learned Solicitor General was constrained to admit- that the respondent and others who had filed Writ Petitions in the High Court challenging the notification ceased to hold the civil posts which they held under the State of Mysore at the time when the notification was issued if it was to have full force and effect."

13. The applicants in Jawahar Lal Sazawal vs. State of J & K 2002 SCC (L & S) 381 were permanent Govt. servants appointed under the J & K CCS(CCA) Rules 1956 and were serving in different capacities in Industrial Units run by the Department of Commerce and Industry. A Board of Directors was set up in 1963 for administration of these units. Jammu & Kashmir Industries Limited was incorporated as a private limited company under the Companies Act. Some

industrial units including those in which the applicant was working were notified to be entrusted to the company. The Company framed its own service rules but the applicants continued to be given benefits of pay revision/dearness allowance to State Govt. Employees. Three orders issued in 1980 denied the employees like the applicants parity of service conditions with government employees. The Writ Petition filed by appellants was dismissed. On appeal the Apex Court amongst others held:

"No statute or statutory rules have been shown by which the permanent posts held by the appellants were abolished. The High Court's conclusion that the appellants' status had been determined under Article 207 of the Regulations is based on an erroneous interpretation of the Article.

(Roshan Lal Tandon v. Union of India AIR 1967 SC 1889 I LLJ 576, affirmed).

Keeping in view Article 1(a) of the Regulations and that Article 207 is contained in Chapter XVII of the Regulations which deals with the conditions of grant of pension, it has to be held that Article 207 deals with pension and its computation. It does not purport to determine status at all.

Article 207 does not itself provide for the procedure for abolition of a permanent post nor the mode of appointment to another post nor for the manner in which the employee has to exercise the option. It only provides for the consequences of abolition of a permanent post. Since there was in fact no abolition of the government posts under Article 207, there was no question of the appellants exercising any option or surrendering their status under that article at all."

(emphasis added)

14. The Apex Court in BHEL & Another vs. B.K.Vijay & Others 2006 SCC (L & S) 411 has held: A

"15. In P.Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn. Vol.4, at p.4469, the expression 'status' has been defined as under:

"Status is a much discussed term which, according to the best modern expositions, includes the sum total of a man's personal rights and duties (Salmond, Jurisprudence 253,257), or, to be verbally accurate, of his capacity for rights and duties (Holland, Jurisprudence 88).

The status of a person means his personal legal condition only so far as his personal rights and burdens are concerned. Duggamama v.Ganeshayya, AIR at p.101 (Indian Evidence Act (1 of 1872) Section 411.)

In the language of Jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. (Roshan Lal Tandon v.Union of India).

16. The said expression has been defined in Black's Law Dictionary meaning:

"Standing; state or condition; social position. The legal relation of individual to rest of the community. The rights, duties, capacities and incapacities which determine a person to a given class. A legal personal relationship, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the State are concerned."

17. Only because of a person is given a particular status, the same would not mean that his other terms and conditions of service would not be governed by the contract of employment or other statute(s) operating in the field. We may notice that a three-Judge Bench of this Court in Indian Petrochemicals Corp. Ltd. v. Shramik Sena observed as under:

"[W]e hold that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the Factories Act only and not for all other purposes."

15. The following principles can be discerned from the above judgments.

(i) The origin of Govt. service is contractual but once appointed to a post the relationship is of status.

(ii) The status can be altered unilaterally. While consensus in public service is sought to be achieved, consent is not a precondition of validity of rules in service.

(iii) The transfer along with post to Agricultural University, where protection of Article 311 is not available, has been held to be bad in law.

(iv) Unless the permanent posts on which lien is held are abolished a Govt. servant working with a company is entitled to conditions of service as ~~available~~ under Government.

16. The Constitution Bench of Apex Court in Chairman Railway Board vs. C.R.Rangadhamaiyah AIR 1997 SC 3228 has held as under :

"24. In many of these documents the expressions 'vested rights' or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (AIR 1967 SC 1989) (supra) ; B.S.Yadav (AIR 1981 SC 561) (supra) and Raman Lal Keshav Lal Soni (AIR 1984 SC 161) (supra)."

(emphasis added)

17. The Apex Court in P.U.Joshi vs. Accountant General 2003 SCC (L & S) 191 has held:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

18. The Apex Court in K.B.Shukla vs. UOI AIR 1979 SC 1136 held:-

"24. The material part of sub-rule (3) of Rule 5 of DHANICS Rules, 1965, as amended by Government Notification No.1/13-66-DS(S), Ministry of Home Affairs, dated November 3, 1966, reads as under:-

"Notwithstanding anything contained in sub-rule 4

(1) during the period beginning with the commencement of the Delhi Himachal Pradesh and Andaman and Nicobar Islands Civil Service (Third Amendment) Rules 1966, and ending with the 1st December, 1967, if in the opinion of the Central Government the exigencies of the service so required, the Central Government may, in consultation with the commission, appoint to the service by transfer, members of a State Civil Service."

(underlined in the judgment itself)

25. The crucial words in the above provision are those that have been underlined.

26. From an analysis of sub-rule (3), extracted above, it is clear that the exercise of the power conferred on the Central Government to appoint to DA-NICS, persons by transfer, is neither unfettered, nor unguided. It is conditional as well as hedged around by safeguards. It is conditional because the existence of 'exigencies of the service' is a sine qua non for the exercise of the power. It is not absolute or uncontrolled because in exercising it, the Central Government is bound to consult and seek the advice of the Union Public Service Commission. As a further check against capricious exercise of the power, the field of choice is restricted to the members of State civil services. Furthermore, the exercise of this power is limited to the period ending with the 1st December, 1967.

27. It is true that formation of opinion by the Central Government as to the existence of 'exigencies of the service' requiring appointment by such method, is a pre-requisite for the exercise of the power. But the formation of such opinion is a matter which, in view of the peculiar nature of the function and the language of the provision, has primarily been left to the subjective satisfaction of the Government. Indeed it is as it ought to be. The responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the Government alone is best suited to judge as to the existence of exigencies of such a service, requiring appointments by transfer. The term 'exigency' being understood in its widest and pragmatic sense as a rule, the court would not judge the propriety or sufficiency of such opinion by objective standards, save where the subjective

process of forming it, is vitiated by malafides, dishonesty, extraneous purpose, or transgression of the limits circumscribed by the legislation."

(emphasis added)

19. The Apex Court in Col.A.S.Sangwan vs. UOI & Ors.. AIR 1981 SC 1545 held:

"4. The policy statement of 1964 was, as we have earlier stated, not issued under any rules or regulations or statute. The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive area of Defence, courts should be cautious although Courts are not powerless. The Union of India having framed a policy relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy. Probably, the principle of equality which interdicts arbitrariness prompted the Central Govt. to formulate its policy in 1964. A policy once formulated is not good for ever; it is perfectly within the competency of Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and imperatives of national considerations. We cannot, as Court, give directives as to how the Defence Ministry should function except to state that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because it functions under the Constitution and not over it. In this view, we agree with the submission of 'the Union of India that there is no bar to its changing the policy formulated in 1964 if there are good and weighty reasons for doing so. We are far from suggesting that a new policy should be made merely because of the lapse of time, nor are we inclined to suggest the manner in which such a policy should be shaped. It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Art.14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. This object is achieved if the new policy, assuming Government wants to frame a new policy, is made the same way in which the 1964 policy

was made and not only made but made known. After all, what is done in secret is often suspected of being capricious or malafide. So, whatever policy is made should be done fairly and made known to those concerned. So, we make it clear that while the Central Government is beyond the forbiddance of the Court from making or changing its policy in regard to the Directorate of Military Farms or in the choice or promotion of Brigadiers, it has to act fairly as every administrative act must be done."

(emphasis added)

20. A 3 judge Bench of the Apex Court in R.S.Makashi vs. I.M.Menon AIR 1982 SC 101 held:

"34. When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The Courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the Court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government. In the instant case, we have already indicated our opinion that an equating the post of Supply Inspector in the CFD with that of Clerk with two years regular service in the other Government departments, no arbitrary or unreasonable treatment was involved."

21. The Apex Court in UOI vs. S.L.Dutta AIR 1991 SC 363 has held:

"18. It was next submitted by learned counsel that no minutes of what transpired at the meeting of the Air Marshals which approved the change of policy, were produced before the court and hence, the court was not in a position to decide whether the change of policy was justified, he contended that it was significant that one Air Marshal from the Navigation Branch had opposed the change in the policy. It was also pointed out by him that, at one stage, the Government of India was not willing to adopt the change of policy but had changed its mind later on and the reasons for this 4

change were not on record. It was submitted by him that these circumstances showed that the change of policy was arbitrary. It was urged by him that the impugned judgment of the High Court was correct, as it was based on these considerations. He, however, made it clear that he was not pressing any allegation of malafide which might be contained in the petition. In our opinion, the High Court was in error in making the impugned order. As has been laid down more than once by this Court, the Court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and the lawyers of courts can hardly be expected to have much knowledge by reason of their training and experience. In the present case there is no question of arbitrary departure from the policy duly adopted because before the decision not to promote respondent No.1 was taken, the policy had already been changed. The question is, therefore, whether this change can be said to be arbitrary or mala fide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing. As the matter was considered at some length by as many as 12 Air Marshals and the Chief of Air Staff of Indian Air Force, it is not possible to say that the question of change of policy was not duly considered. Mere non-availability of the minutes setting out the discussion, is of no relevance. In fact, it would perhaps be detrimental to the interest of the country if these matters were not kept confidential. We cannot assume that what was discussed at this meeting was not relevant to the decision regarding the change of policy. It may be that at one time the Ministry of Defence was not agreeable to accept the proposal for this change of policy but on further consideration accepted it. However, this could well show that before accepting the change of policy the Ministry of Defence

and the experts attached to it give full consideration to the requirements of the change. We cannot on the basis of this circumstance alone hold that the change of policy was arbitrary."

(emphasis added)

22. A 3 judge Bench of the Apex Court in State of Punjab vs. Ram Lubhaya Bagga AIR 1998 SC 1703 has held:

"25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of Government policy is concerned in our view it is not normally within the domain of any Court. To weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional statutory or any other provision of law. When Government forms, its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous, if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

23. The Apex Court in Indian Airlines Officers Association vs. Indian Airlines Ltd. & Ors. with other Civil Applications 2008 (1) SCC (L & S) 135 was considering the dispute relating to service matter on account of merger of Vayudoot (P) Ltd. with Indian

Airlines Ltd. The Apex Court held:

" The matter of integration or as the case may be, fusion of the erstwhile Vayudoot employees was a matter of policy which had become necessary in order to contain the grievances of substantial number of Vayudoot employees. Any such policy decision, unless the said decision was arbitrary, unreasonable or capricious, could not have been challenged by the employees.

The managerial duties in Indian Airlines as well as Vayudoot would involve the technical questions as to the nature of duties, training required and desirable qualifications. Further, the Court cannot ignore the lengthy deliberations in various meetings to arrive at a proper decision taken by the responsible persons like senior officers of Ministry of Civil Aviation, senior officers including CMD of Indian Airlines as also the ex-Director of SHOD and the Director (HRD) of Indian Airlines. In the wake of these personalities spending their valuable time to frame the policy regarding the fusion, the Supreme Court would be slow to interfere with such policy.

This is not the case where the principles of natural justice could be brought in so as to hold that if the appellant Association was not made a party to the discussions for policy making, such decision-making policy would be hit by the principles of natural justice.

The employees of Indian Airlines did not and could not have any say in policy making. It is one thing to consult an association or as the case may be a union for considering its views and quite another to recognize a right of such union while taking the policy decision.

Further, where it is seen that the authorities were alive to the service conditions of the Indian Airlines employees and had their future in mind also, the authorities were not bound to negotiate with the appellant Association before formulating the policy. Such policy which is framed without active negotiations with the appellant Association would not (for that reason alone) be rendered non est and would suffer from A

the vice of arbitrariness. After all in ultimate policy which as been culled out, there was no arbitrariness.
On the other hand, the equities in between the Indian Airlines employees and SHOD employees have been properly balanced and counterbalanced.

Thus, the non-participation of the appellant Association in the policy decision, under the peculiar facts and circumstances of this case, would not be fatal to the policy decision. Where the ultimate policy decision as also the principles on the basis of which the said decision is taken is blemishless, the said decision and the principles cannot be annihilated on the sole ground that the appellant union was not heard.

24. The following principles can be discerned from these judgments.

(a) P.U.Joshi (supra) explains Executive Policy. It provides that amalgamation or bifurcation of departments falls within the domain of Executive Policy. There is no right in Govt. servant to claim that his conditions of service should remain the same.

(b) The Executive power is wide when it is not trammelled by any statute or rule. Policy once formulated can be changed according to compulsion of circumstances and imperatives of national considerations.

(c) It would be dangerous if the Courts were to test the utility, beneficial aspects of policy on the basis of affidavits.

(d) Govt. is the best judge of "exigencies of service" and it ought to be so as it has the responsibility for good administration.

(e) The matter of integration of cadres is a matter of policy. The equations of posts for purposes of integration is a matter of policy.

(f) It was held in Indian Air ~~Liens~~ Officer

Association (supra) that this is not a case where principles of natural justice can be brought into play. It was further held that where the decision is blemishless it cannot be annihilated on the sole ground that Union was not heard.

25. Article 73 of the Constitution contains provisions regarding Executive Power of the Union. D.D.Basu in his Shorter Constitution of India (13th edition, 2002 reprint, page 488) writes as under:-

"Power to change executive order or policy

1. Where the Constitution does not require an action to be taken only by legislation or there is no existing law to fetter the executive power of the Union (or a State, as the case may be), the Governments would be not only free to take such action by an executive order or to lay down a policy for the making of such executive orders as occasion arises, but also to change such orders or the policy itself, as often as the Governments so requires³³, subject to the following conditions:-

(a) Such change must be made in the exercise of a reasonable discretion, and not arbitrarily³⁴.

(b) The making or changing of such order is made known to those concerned³⁵.

(c) It complies with Art.14, so that persons equally circumstanced are not treated unequally³⁶.

(d) It would be subject to judicial review.³⁷"

(Notes 33 to 37 refer to para 4 of Apex Court decision in Col.A.S.Sangwan vs. Union of India (Para 19 above)).

26. Article 77(3) of the Constitution provides that President shall make Rules for convenient transaction of business. DD Basu in his Shorter Constitution of India

India (13th edition, 2002 reprint, page 500) writes as under:

"2. What is to be noted, in this context, is that while the Council of Ministers is responsible for each act done by the President (or the Governor) or by the Government of India (or the State Government), and that business of the Council of Ministers may be distributed among the several Ministers, under the present Clause, while the entire Council of Ministers is responsible to the legislature for all such acts (Ar.75(3)), it does not mean that each and every decision must be taken by the Council of Ministers or by each Minister, personally³⁵.

3. Article 77(3) says that, apart from allocating business among the Ministers, the President on the advice of the Council of Ministers, can also make rules for 'the more convenient transaction of the business'. Hence, the Minister is not expected to burden himself with the day-to-day administration. By the Rules of Business framed under Art.77(3) a particular official of a Ministry (say, the Secretary, Joint Secretary or the like) may be authorised to take any particular decision or to discharge any particular function. When such authorised official does any act, so authorised, he does so, not as a delegate of the Minister, but on behalf of the Government³⁶. Subject to the overall control of the Minister and his right to call for any file or to give directions, the validity of any decision made by an authorised official cannot be challenged on the ground that the decision was taken by an official and not the Minister concerned³⁷.

4. In short, the act of the Minister or official who is authorised by the Rules of Business, is the act of the President (or the Governor) or of the Govt. of India (or the State Governments) in whom the function or power is vested by the Constitution or by any statute."³⁸

(Notes 35 to 38 refer to the decision of Apex Court in Asanjeevi Naidu vs. State of Madras AIR 1970 SC 1102. Note 38 also refers to Shamsher Singh vs. State of Punjab AIR 1974 SC 2192). *8*

27. After referring to the decisions in Roshan Lal Tandon (supra), T.Cajee vs.U.Jormanik Siem (1961) ISCR 750 and B.N.Nag Rajan vs. State of Mysore (1966) 3 SLR 682 the Hon'ble Delhi High Court in K.M.Bindra vs. UOI & Another 1973 (1) SLR 928 held as under:-

"9. Learned counsel for the petitioner strongly contended that changes in service conditions could be brought about only by legislation or by statutory rules but not by mere administrative instructions. This contention is met as follows: The answer to this contention depends on the nature of the service conditions which are being changed. If such service condition are formed by a statute, then they can be changed only by a statue. If they are formed by statutory rules, then they can be changed only by statutory rules. Administrative instructions cannot contradict or modify conditions of service which are formed by a statute or statutory rules. But what about conditions of service which rest only on administrative instructions? Can it be contended that even they cannot be changed by subsequent administrative instructions and they also must be changed by statute or statutory rules? The answer has to be in the negative. It is only if the conditions of service are purely contractual that they cannot be changed without the consent of the contracting parties. It is not petitioner's case that his service is only a contract. Had it been so, then the breach of contract occurred on 27.12.1962 when the contract was varied unilaterally by the Government. The petitioner has neither sued for a specific performance of the contract nor for damages for a breach of the contract. The reason is that his service is not a mere contract but consists mainly of status. The power of the Government to frame the conditions of service without recourse to legislation or statutory rules is derived from two sources, namely:-

(1) Article 310 and 73 of the constitution, and

(2) The peculiar nature of the service contract which implies the power in the government to frame the service conditions not only once but from time to time.

The whole power of administration of service is derived by the Government from Articles 310 and 73. Administration itself has to facets namely:-

- (1) Regulating the rights of persons other then the employees of the Government, and
- (2) Internal regulation of the service conditions of the civil servants.

The vital distinction between these two aspects of Administration was brought out by the Supreme Court in T.Cajee's case referred to above at page 763 of the report as follows:

"It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law: but where executive power is concerned only with the personnel of the administration it is not necessary-even though it may be desirable-that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council."

The point specifically made by the Court is that the regulation of the conditions of civil services can be made by the Government entirely in exercise of the power of administration. It is not necessary to do so either by making laws or statutory rules.

10. The administrative instructions framing the conditions of service have a statutory flair inasmuch as Articles 310 and 73 contemplate and authorise the Government to administer the services in exercise of the executive power. This is also true to our experience. Most of the service conditions originally existed in administrative instructions and only gradually some of them have been embodied in statutory rules. Administration would be unworkable if every change in the conditions of service has to be brought about by a law or a statutory rule. It is elementary that the instrument of change should be of the same kind as the thing to be change. Symmetry therefore, requires that:-

- (1) Law may be changed by law,
- (2) A statutory rule by a statutory rule;
- (3) Administrative instructions by administrative *law*

instructions.

The service conditions of the petitioner himself were entirely administrative till they were changed in 1962 also by administrative action. His previous service conditions were themselves based on administrative instructions. These instructions themselves were evolved over a course of time. It is well known that conditions of service are not the result of one single instrument which lasts for all the time. Service conditions are always made, adjusted, changed, amended, etc. from time to time to suit different services and differently situated persons in the same service. The process of change of service conditions is constantly going on. There is nothing surprising, therefore, if in December 1962 the service conditions of the petitioner were further changed by the Government.

28. A division bench of the Mumbai High Court in State of Maharashtra vs. Dilip Anant Surve 2006
(2) ATJ 62 held:-

"8. It is in this background, we have to now consider the effect of G.Rs. As noted earlier, if the G.R. Is an executive instruction, it will only be applicable in the absence of legislation or rules made under the proviso to Article 309 or in the event rules are made under Article 309 then to the extent which they seek to provide for matters which are not provided in the rules. Only such instructions will be applicable which are not in conflict with the rules. The true impact of Article 309 and 162 was noted by the Apex Court in the case of R.N. Nanjundappa vs. Thimmaiah and another, (1972) 1 SCC 409. The Apex Court considering the power was pleased to observe as under:-

"The contention on behalf of the State that a Rule under Article 309 for regularization of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint. That power may have its source in Article 162. In the rule which regularized the appointment of the respondent with effect from February 15, 1958 notwithstanding any rules cannot be said to be in exercise of power."

under Article 162. First, Article 162 does not speak of rules whereas Article 309 speaks of rules. Therefore, the present case touches the power of the State to make rules under Article 309 of the nature impeached here. Secondly when the Government acted under Article 309 the Government cannot be said to have acted also under Article 162 in the same breath. The two Articles operate in different areas."

In other words from the above observations, it would be clear that Article 309 is rule making power. That power must be exercised by the Governor, on the advice of the cabinet or rules made for that exercise of power. On the other hand Article 162 does not provide for making any rules. It provides for issuing administrative instructions which are normally done in the form of Government Resolutions. Secondly the exercise of executive power has to be done in the manner contemplated under Article 166. The position therefore, would be clear that the exercise of power under Article 162 and 308 is distinct. Power under Article 309 must be specifically exercised to make rules under Article 309. It cannot be confused with the exercise of executive power of the state. Though the learned tribunal has relied on the Full Bench judgment of this Court in the case of Chandrakant Karkhains (supra) considering the judgment in the case of Nanjundappa (supra), we really need to advert to it. Before we proceed further, we may also advert to the judgment in the case of Sham Tripathi v.U.P. State Public services Tribunal and Others (1997) 2 SCC251 . In that case the petitioner before the Apex Court was removed pursuant to enquiry held against him. Various challenges were made to the order of dismissal upto the High Court. Before the Apex Court it was contended that there was flagrant violation of departmental instructions in conducting the enquiry against the petitioner. In that case instruction had been issued by the Corporation for conduct of departmental inquiry by an independent agency. While the enquiry was pending before the impartial officer, contrary to the instructions, it was transferred to the departmental officer. It was therefore, contended that this is violation of departmental rules and natural justice and fair play. The Apex Court negatived the said contention.

In passing we may also point out that insofar as subordinate legislation is concerned, it can be ~~not~~

retrospective so also the exercise of power under Article 309. It was so held by the Apex Court in the case of G.Nagendra vs. State of Karnataka and Ors. (1998) 9 SCC 439. The Apex Court observed as under:-

"It is seen that the rules are framed under Article 309 of the Constitution and it is too late in the day to dispute that such Rules cannot be given retrospective effect."

9. From the above, we may now come to the facts of the present case. Admittedly there were GRs. and guidelines by the State. We cannot agree that these G.R. is or guidelines are Rules made under Article 309. In the instant case, as noted earlier, the power under Article 309 is only pending legislation by the competent legislature. On the facts of the present case, we have competent legislation by the competent legislature. On the facts of the present case, we have competent legislation which has been made. It is pursuant to the power of the delegation, conferred under the Act that the rules have been framed. In the instant case, as we have seen the Disciplinary Authority has been notified. The Disciplinary Authority cannot impose punishment unless the enquiry is held. It is therefore, clear that the power to hold enquiry is incidental to the holdings of disciplinary proceedings to impose punishment or to take disciplinary action against the delinquent employee. It flows (sic) that the power conferred upon him to impose the punishment. At the highest it is only in the matter of procedure that some instructions can be issued. At any rate such instructions can never have an effect of taking away the powers conferred on the Disciplinary Authority. Guidelines or even administrative instruction does not divest the Disciplinary Authority from holding the enquiry himself or appoint another person to hold enquiry. We are clearly of the opinion therefore, that there has been no violation of rules or for that matter violation of principles of natural justice and or fair play. We therefore, find that there is no infirmity in the ultimate conclusion arrived at by the Full Bench judgment. Having said so clearly the impugned order will have to be set aside."

29. These lead to the following conclusions:

(i) The Executive Power of the Stated unless controlled by legislation or rules framed under Art.309 A

of the Constitution is coterminous with the Legislative power.

(ii) An officer exercising the power of State under the Rules of Executive Business acts a State and not as a delegate of the political executive.

(iii) It is not necessary to make laws or statutory order to change the conditions of service in all cases.

(iv) Symmetry demands that law, statutory rule and administrative instructions be changed by law, statutory rule and administrative instructions respectively.

30. The statement of objects and reasons; Sections, Section 2 (1)(j) (p), Section 6, Section 153 and Section 157 of the ITBP Act are as under:-

(a) "Statement of Objects and Reasons

The Indo-Tibetan Border Police was raised in October, 1962. It is since then under operation. The Force has been charged with the responsibility of ensuring the security of northern borders, instilling a sense of security among the people living in the border areas and preventing trans-border crimes, smuggling and unauthorized entry into or exit from Indian territory in coordination with other security forces. In addition, the Force has been assigned bank security duties and other sensitive duties in terrorist afflicted States. However, considering the nature and purpose of the Force and experience gained during the last three decades it has been felt that the Force should be regulated by a separate self-contained statute which will provide for its special needs, especially the needs of efficiency and discipline. The present Bill seeks to achieve this object.

(b) Section 2(1) In this Act, unless the context otherwise requires-

(j) "enrolled person" means an under-officer or other person enrolled under this Act;

(p) "member of the Force" means an officer, a

subordinate officer, an under-officer or other enrolled person;

- (c) 6. Enrolment:- The person to be enrolled to the Force, the mode of enrolment, and the procedure for enrolment shall be such as may be prescribed.
- (d) 153. Rank structure- (1) The officers and other members of the Force shall be classified in accordance with their ranks in the following categories, namely:-
 - (a) Officers-
 - (i) Director General
 - ..
 - ..
 - (ix) Deputy Commandant.
 - (b) Subordinate officers-
 - (i) Subedar-Major
 - ..
 - ..
 - (iii) Sub-Inspector
 - (c) Under-officers-
 - (i) Head Constable.
 - ..
 - ..
 - (iii) Lance Naik
 - (d) Enrolled persons other than under officers-constable.
- (e) 157. Provisions as to existing Indo-Tibetan Border Police Force- (1) The Indo-Tibetan Border Police Force in existence at the commencement of this Act shall be deemed to be the Force constituted under this Act.
 - (2) The members of the Indo-Tibetan Border Police Force in existence at the commencement of this Act shall be deemed to have been appointed or, as the case may be, enrolled as such under this Act.
 - (3) Anything done or any action taken before the commencement of this Act in relation to the constitution of the Indo-Tibetan Boarder Police Force referred to in sub-section (1), in relation to any person appointed, or enrolled, as the case may be, thereto, shall be a valid and as effective in law as if such thing or action was done or taken under this Act:
 - Provided that nothing in this sub-section shall render any person guilty of any offence in respect of

anything done or omitted to be done by him before the commencement of this Act."

31. The applicants in N.D.Beshtoo vs. UOI and B.P.Dobhal vs. UOI AIR 1995 SC 1154 were lower divisional clerks in ITBP. The question that had arisen in this Writ Petition under Article 32 of the Constitution was as to whether they were members of the armed forces of the Union. Reliance had been placed on Section 2(i) (p), 6 & 153 of the Act. The Apex Court held:

"5. We find no merit in the aforesaid submission because Section 6 itself deals with the person to be enrolled to the Force. As such the person concerned has to be "enrolled person" within the meaning of clause (i) of sub-section (1) of Section 2 of the Act. Such a person is only a constable as already held: Lower Division Clerk is not such a person. We agree with Shri Vaje that what has been stated in the aforesaid Manual is to find out equivalence of the Ministerial posts with that of Executive posts (Head Constable being a holder of such a post as mentioned in the status finding provision) for some administrative and financial purposes; and the holder of the Ministerial post cannot be treated like that of the corresponding holder of Executive post for all purposes, so much so, as to obviate the difference between the two altogether. Despite what has been mentioned in the Manual in this regard, the two posts remain different, according to us; and so, even if what has been stated in the Manual were to apply to the employees like the petitioners after coming into force of the Act, on which aspect we express no view, the same cannot assist the petitioners.

6. This is not all. We find that the aforesaid Rules do not at all deal with the mode of enrollment of Lower Division Clerks. The same is governed by what has been provided in Indo-Tibetan Border Police Force (Lower Division Clerk) Recruitment Rules, 1973 which were made by the President of India in exercise of the powers conferred by the provision to Article 309 of the Constitution. These rules continue to apply because of *h*

what has been stated in rule 187 of the Indo-Tibetan Border Police Force Rules, 1994.

7. In view of the aforesaid, we hold that the two petitioners cannot be regarded as member of the armed forces of the Union and as such their service matters would not be beyond the jurisdiction of the Tribunal inasmuch as they have to be treated as "civilians" which would bring into operation Section 14 of the Tribunal's Act because of which the Tribunal would have jurisdiction concerning their service matters."

32. It further appears from supplementary rejoinder dated 27.01.08 filed by these applicants that some of the senior Field Assistants posted in Pithoragash and some other districts had filed WP 500 of 2007 (s/s) before the Hon'ble High Court of Uttarakhand at Nainital. The order dated 31.10.07 reads as under:-

"5. Therefore in view of the provisions contained in sub clause (iii) of Clause (b) & Clause (c) of Sub-Section (1) of Section 14 of A.T.Act read with L.Chandra Kumar's case (supra) and ...illegible... it has been stated on oath that petitioners are civilians, this Court is not inclined to interfere with the impugned order of transfers. Accordingly the Writ Petition is dismissed with the observation that the petitioners may seek their remedy by filing OA before the Central Administrative Tribunal."

33. Neither the applicant nor the respondents have brought on record the orders constituting the SSB in 1963 and the subsequent order of 1968 constituting the combatised wing. The policy decision regarding revised role of SSB is not on record. They have brought on record the order dated 26.03.03 addressed to DG,SSB which reads as under:-

-53-

"Subject:-Command structure and officering in SSB
-Rationalisation of higher posts.

Sir,

Consequent upon the transfer of the administrative control of SSB to this Ministry and assigning it the mandate of guarding Indo Nepal Boarder, rationalisation of command structure of SSB has been considered in this Ministry and the undersigned is directed to convey approval of the competent authority to the rationalization of command structure and officering in SSB as under:-

SINo.	Designation /Post	Existing strength	Revised strength
1	DG (formerly Principal Director)	1	1
2	Addl.DC (formerly Director,SSB)	1	1
3	IG (formerly Director/Divisional Organiser)	Joint SSB Hqrs -3 10Divisions -10	13 8* 1.IG(Trg & Ops) 2.IG(Pers.Hqr. & Welfare) 3.IG(Prov) 4.IG(G) 5.IG,FHQ,Patna 6.IG,FHQ, Lucknow 7.Principal,FA Gwladam 8.IG,Indo Bhutan Border* *Subject to the force being assigned the duty of guarding the Indo Bhutan Border by the Govt.

SNo.	Designation /Post	Existing strength	Revised strength
4	DIG	21 SSB Hqr. -5 10Divisions -10 One addl.Post for Kohima in M & N division.-1 5Trg.Centres, -5	19** Sector Dis G-6 DIG (Indo Bhutan Border)- 2** DisG, Training Centres-7 SSB DG Hqrs.-4 ** Subject to the force being assigned the duty of guarding the Indo Bhutan Border by the Govt.

2. The following guidelines may also be strictly followed while rationalizing the revised command structure:-

(i) As a result of rationalisation, some posts of IsG and DisG will become surplus in SSB. Such excess posts which are vacant at present should not be filled in and those which are occupied, should be surrendered as and when the present incumbent relinquishes office.

(ii) One post of IG and two posts of DIG approved for Indo Bhutan Border will be subject to the force being assigned the task of guarding the Indo Bhutan Border by the Govt.

(iii) The number of officers at the level of Commandant and below also will be rationalized keeping in view the command structure of the CPMFs and staff requirements. Any excess in these levels will be phased out as and when till incumbents vacate such posts.

(iv) All the civilian cadres in the Force is declared as dying cadre. No recruitment will be made in the Force against any civilian post(s) in any cadre. The civilian cadres will be phased out in due course of time as and when the present incumbents vacate such posts and the vacancies in these cadres will be filled in by the combatised personnel at the initial recruitment level.

(v) The existing practice of promotion from the Area Organisers to the rank of DIG will continue in the Force, however, the ratio among the Area Organisers and Commandants to be promoted to the grade of DIG will be

2:3.

(vi) 40% of posts in the rank of DIG should be reserved for IPS and the remaining for the cadre officers i.e. 5 posts out of 8 should be reserved for the IPS and 3 for those who have been promoted to the rank of DIG from the two streams of the cadre i.e. combatised and the civilian.

(vii) At the level of IG, 66.7% should be reserved for IPS and the remaining for the cadre officers i.e. 5 posts out of 8 should be reserved for the IPS and 3 for those who have been promoted to the rank of DIG from the two streams of the cadre i.e. combatised and the civilian.

(viii) SSB will conduct an exercise to work out the future recruitment plans in such a way, that, as and when the vacancies arise among the Civilian posts because of superannuation, resignation or otherwise the same must be filled in on the combatised side, in such a way and on such a rank of that in a stipulated time frame, the Force would get the requisite number of personnel of different ranks and grades to man the sanctioned posts for 25 Battalions of the Force.

3. SSB is requested to restructure the existing command structure on the basis of above guidelines and intimate compliance to this Ministry in a time bound manner.

4. This issues with the approval of Home Secretary."

34. (a) It appears that the DG SSB issued an order dated 28.07.03 correcting the perception on the use of the word "Dying Cadre". It reads as under:-

"After taking over as Director General, SSB, it has come to my notice that the words "Dying Cadre" has been unfortunately used for the civilian wing of SSB in many communications, which has naturally demoralised the people on the Area side. I have gone through the details and find that this is not a Dying Cadre at all. ON the contrary, this Wing has done excellent work over the years and will continue to do so in future also in the new role of SSB. We are proud of this wing".

and will remain so always. Without their help, the SSB cannot progress at all. Please assure everybody that this is a very useful cadre and not a dying cadre. Inadvertently, these words have been used in some communications in the past. I have directed the officers at the Force Hqrs. Not to use these words in future. Similarly, I have advised officers in the field also to be careful. My advice to all of you is the same, i.e. please do not use these unfortunate words at all either verbally or in writing in any communication. Please convey these sentiments to all and ensure the needful.

(b) (i) The respondents in their reply have stated that pursuant to the directions of Patna Bench in OA.646/06 the issue regarding the nature of duties to be performed on their attachment with Company Headquarters, etc. have been considered by the Group of Ministers and following clarifications have been issued thereafter vide letter dated 23.01.07:-

" In compliance to the order of the Hon'ble CAT, Patna Bench, Patna dated 29.11.06 in OA No.664/2006 titled Ashok Sarkar & Others vs. UOI & Others, the representations made by the applicants dated 11.10.06 and 13.10.06 in connection with deployment/attachment of SFA(M) to Coys, on INB have been examined carefully and the issues agitated are narrated here as under:

2. That the applicants are working under the Area Organiser, SSB, Birpur/Nathnaha, Bihar and have represented against the FHQ Memorandum No.1/SSB?Med/2005(4)-3849-52 dated 31/7/06 vide which it has been ordered that at least one Para Medical staff should be attached/posted at each Coy. Hqrs. In order to provide medical assistance to BOP/Coy. Personnel as well as Civil population. Applicants have agitated that as they are already discharging the same duties from their Area offices, they may be allowed to continue to discharge their duties from the existing Area and Circle Offices.

3. The applicants have further agitated that they may be clarified the nature of duties to be performed if they are attached with Coy. Hqrs. A

4. The above issues have been examined in detail and it is clarified hereunder:-

After transfer of SSB from Cabinet Secretariat to MHA and its deployment on the Indo-Nepal and Indo-Bhutan border for discharging Border Guarding duties, the battalion personnel posted on the Borders alongwith the Civilian population in such areas are facing extreme health hardship due to non-availability of proper medical facilities. It has, therefore, been felt necessary to provide medical assistance to BOP/Coy personnel as well as to Civil population with the view to instill a sense of security and brotherhood among the border population which will also earn goodwill for the Force.

It is also to mention here that MHA, in compliance of the recommendations of Group of Ministers on 'National Security' has also proposed vide their UO NO.II-27012/57/2001-PF-1 dated August 2006 for keeping one Medical Assistant in each BOP and one Medical Officer in each Coy in inaccessible areas to provide proper medical aid to the personnel.

5. It has, therefore, be administratively decided that the posts of SFA(M) are required to be reallocated to various Battalions whereafter they will be posted to the respective BOLPs for overall functioning of the Force and health and well being of the personnel posted on the Boarders and optimum utilisation of the professional services of the Applicants.

6. This has the approval of Director General, SSB."

(ii) The representation submitted by these persons have been obtained from Patna Bench. It reads as under:-

"Sub: Representation prayer for consideration on discrimination order of attachment Posting of Para-Medical staff from Area to BN unit."

With due respect and humble submission, I would like to state that, from a reliable source I have come to know that DG, SSB has desired that at least one Medic-para-Medical staff should be attached/posted at each Coy's in order to provide Medical Assistance to BOP/Coy personnel as well as civil population as the S

object of SSB to inject the sense of goodwill for the organisation and to engage them in MCA & MDMC etc. and to develop sources.

In this context, I would like to express the following few points for your kind consideration please.

It is relevant to point out here that the para-Medical staff have been already doing the same duties etc. mentioned above from our respective Area side offices. As these officers are not located in the distance places from BOP's and Coy HQRs. Hence, the assigned tasks may be covered by the para-Medical staff from the existing Area and Circle offices of the field.

So it is not understood why the above attachment/posting is required, when the same duties can be done from the existing Area side offices situated in the field.

I would like to request you that you will be kind enough to clarify the nature of duty. We have to perform if we go to the Coy/HQR and whether our nature of duty may be altered or not. I however will again request you to allow us to remain in the present set up, where we are permanent staff and carry on with the job which we are performing. Needless to say that we are performing the job of injecting sense of security and feeling of brotherhood remaining in the present set up also as pointed out in your circulars.

Therefore, Sir it is my utmost request to you to consider sympathetically and take needful action. So that para-Medical staff could comply their duties from the existing Area side only."

(c) The respondents in their reply to rejoinder have stated the MHA have issued a corrigendum on 12.06.07 deleting the word "Dying Cadres" in respect of Civilian Cadres. This order is not brought on record.

35. The DG SSBs order dated 11.04.07 on the subject of deployment of SFA(M) to BOP reads as under:-

"Subject: Deployment of SFA(M) to (BOP)"

Director General SSB has approved the re-allocation of posts of Senior Field Assistant (Medic) along with incumbent from Area/Circle Offices in INB/IBB in the Battalions as per Appendix-A for further deployment with nearby BOP of Battalions on INB, IBB in public interest All the SFAs(Medic) will be placed under the administrative Operational cadre of the concerned Commandants of Battalions for all purpose.

Order be implemented by 15th May, 2007 under instruction to the concerned."

36. (a) At the time of hearing our attention had specifically been drawn to representation of Shri Samran Singh & Shri Ashok Kumar Singh .

(b) Shri Ashok Kumar in his representation to order dated 11.04.07 has raised the following points:-

(i) As per the appointment letter he has to work in the civilian wing but it was not stated that he may have to join combatised wing.

(ii) The Commandants are governed by CRPF rules and the SFAs are under CCS(CCA) Rules. How can they then be placed under operational and administrative control of commandants of Battalions?

(iii) The Civil Wing was working smoothly and decision to have unified command has been taken without taking their age into account and is a bitter humiliation towards them and their families.

(iv) The combatised staff are fully trained in armament and fully equipped with defensive mechanism. Such different service conditions are likely to add tension in our mind as SFA(M) have worked under CO/SAO/AO in peace zone and the word combatant did not exist in peace zone. The SFA(M) will have to render MCAW as they do now but living in BOP areas will create infrastructural problem as paramedical staff in combatised wing have different allowances and leave.

(v) The family members are prone to humiliation more than the SFA(M) on account of deployment on INB/IBB.

The representation ends with the following request:

" 6. Having regard to my request, it is anticipated that your good self would definitely look into the matter seriously and adjudicate kind prediction (sic) with reasonable justice on the part of whole SFAs(M), because unless the department be with them, their toil is in vain. In case, department does not deem over the matter rationally, SFAs(M) have left nothing except to knock the door of court for want of justice. Hence, it is reiterated that order of SFAs(M) regarding re-allocation from civil wing to Battalions may be expunged and their duties in field and Area Offices may also be restored so that they could feel at home and could reinstate their profession with great zeal and fervour."

(c) Shri Samran Singh in his representation has stated as under:-

(i) I had accepted the offer of appointment as apart from discharging my duties I could attend to the duties and responsibilities of my family.

(ii) When new duties were assigned to SSB in 2001 and its role was changed to Border Guarding Force my consent was not obtained. I complied with the order in national interest as while working in Civil Wing, I could attend to my family dies.

(iii) However, we are now being sent to Border Posts. The Commandant will be governed by CRP/SSB Act and he may not impart justice as per CCS(CCA) Rules. Neither any prior information was given regarding such transfers nor have details of conditions of service been furnished. It is accordingly difficult to work under BOP. It reflects a desire not to make such conditions explicit.

(iv) Only SFA(M)s amongst the Civilian Wing have been singled out.

(v) The SFA(M)s may not be able to adjust to the

working of uniformed force. They may be directly or indirectly associated in arrests of undesirable element and it may create problems of their security in future.

(vi) If the department does not have proper work for us then we may be declared surplus more so when the Civilian Wing has been declared as a dying cadre.

The representation ends with the following request:

"The order dated 11.04.07 may be annulled so that our interests are protected so that we can continue to discharge our duties. In case justice is not given we may be forced to approach the judicial forum."

(Translated from Hindi)

37(a) The applicants have themselves brought on record OM dated 17.05.06. This is with reference to the earlier OM dated 06.05.05 regarding augmentation and modernisation of Sashastra Seema Bal.

(b) Para 2 , 3 & 5 of this letter are as under:

"2. This office has been receiving reference from the units about the rankwise details of 1172 posts sanctioned by the MHA vide their letter No.11-27012/21/2004-PF-III dated 12.4.2005. MHA vide their even letter dated 12.4.2005 have sanctioned two SHQs and 20 Bns. Out of 20 Bns, 13 Bns have been ordered to be raised during the year 2005-06 and 7 Bns during the year 2006-07.

3. The existing 25 Bns will maintain the strength actually sanctioned in these Bns from time to time including posts transferred from other Bns/establishments. These units will not maintain strength of 1172 posts sanctioned by the MHA vide their letter dated 12.04.2005 referred to above as these posts have been sanctioned in the existing Bns prepared by this Hqrs. is enclosed herewith which may be reconciled with the figures maintained in the Unit. *Ab*

5. In order to know the number of such additional posts allocated and available in the existing 1st to 25th Bn over and above sanctioned strength after adjustment against the existing vacancies, the same have been desired to be shown separately against the new 7 coy pattern Bns. The idea is to watch that the over all sanctioned strength of SSB does not exceed in any post and such posts in the near future either may ebb transferred to the new Bns raised/under raising or adjusted in the existing Bn itself after one additional coy is actually sanctioned by the Govt. consequent upon the approval of the re-structuring proposal under submission to Govt.

(c) Para 6 of this letter refers to MHA OM dated 12.04.05. It indicates that a copy of the said letter along with the chart is enclosed. This chart shows the organisation of SSB Battalion and how the 1172 posts have been allocated. It lists posts under service companies, support company and BN Hqrs. Under the BN HQ elements we have amongst others the entry under the Medical Personnel:

DC (MO)	
AC (MO)	
ASI (Pharma)	1
CT (Lab Astt.)	1
CT(Nur Orderly)	<u>1</u>
Total	5

The chart shows that there are posts of followers doing the job of Cook/Washerman/Safaiwala/W Carrier/Barber in services Company, Battalion headquarters. There are six posts of follower tradesman in Battalion headquarters.

applicant can be summarised as under:-

(a) The Government could not have changed the service conditions unilaterally without calling for option. As per their service conditions they had an all India transfer liability but they could not have been asked to work in a combatised wing on border. Nothing is stated about the area organisers in the impugned orders.

(b) As the Government have declared these posts as dying cadre they were required to continue in Civilian Wing. The DG could not have issued a clarification beyond the policy decision.

The subsequent recommendations of Group of Ministers cannot modify the earlier policy decision.

(c) The words "or otherwise" in sub clause (viii) does not envisage creating vacancies by transfer/allocation. There is no rank in Civilian structure. There was a need to abolish posts in the Civilian Wing and create posts in Combatised Wing. This has not been done. In any case the DG is not competent to reallocate posts.

(d) The orders contained in CAI, assigning duties to these persons on BOP, has no legal basis.

(e) The orders have the effect of sending them ⁴

outside their cadre.

(f) It is well settled that an order has to be examined with reference to the reasons assigned in the order and that the same cannot be defended by bringing additional arguments on record.

(g) In case the Government wanted to create a combatised wing then they ought to have declared these cadres surplus and deployed them through surplus cell.

Reliance is placed on the decision of Hon'ble Allahabad High Court in the case of Avaneesh Kumar & Ors. vs. Director, IVRI 1999(17) LCD 414(see para 37 below).

39. The learned counsel for the respondents on the other hand stated that the Central Govt. have taken a policy decision to change the role of SSB in the altered security situation. It has now been assigned the role of border guarding force. This has necessitated a change in the Command Structure of the existing Battalions. The administrative department was changed from Cabinet Secretariat to Ministry of Home Affairs. There is limited scope of judicial review of such policy decision. He has defended the decision and requested for dismissal of the OA.

40. We find that the applicant have not specifically challenged either the policy decision laying down a new

role for the SSB or the order dated 26.03.03 conveying the decision of the Central Govt. regarding the new command structure in respect of existing Battalions. Some new battalions with a different staff structure have also been set up. They have only challenged the subsequent order of 2007 reallocating these posts to Battalions and their posting to BOPs.

41. The following questions arise in the present OA.:

- (a) Can the Central Government change the duties and responsibilities assigned to this organisation?
- (b) Can the Central Government create a unified command structure by merging the combatised and non combatised wings?
- (c) Can it be done by an executive order?
- (d) Were the applicants required to be given an option or their consent was required to be taken before this change in command structure?
- (e) Are the apprehensions regarding change of other service conditions well founded?
- (f) Are these orders otherwise bad in law?

42. The Hon'ble Allahabad High Court in Dr. Avaneesh Kumar & Ors. vs. Director, IVRI 1999 (17) LCD 419 has held: *Ans*

"29. In Mohinder Singh Gill and another vs. The Chief Election Commissioner and others, AIR 19789 SC 815, it was observed:

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

30. In C.B.Gautam v.Union of India, JT 1992 (6) SC 78, Hon'ble Supreme Court in a matter of compulsory purchase of a property, where the state was deprived of the income tax, as the sale consideration was below the market price, observed:

"Recording of reasons which lead to the passing of the order is basically intended to serve a two-fold purpose:

(i) that the "party aggrieved" in the proceedings before acquires knowledge of the reasons and, in a proceedings before the High Court or the Supreme Court (since there is no right of appeal of revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and

(2) that the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi judicial or the executive authority invested with judicial powers."

31. In Olga Telis and others vs.Bombay Municipal Corporation and Others, (1985) Suppl.2 SCR 51 as well as in C.B.Gautam v.Union of India (supra), Hon'ble Supreme Court read the principles of natural justice into the provisions which did not provide such a principle in the statutory rules, because in its absence the rule would become ultra-vires.

32. In view of the aforesaid reasons, we are of the view that any order passed, which is non-speaking in nature, even if administrative in nature, is arbitrary and violative of Article 14 of the Constitution of ~~India~~

India. As in the instant case the impugned order passed by the Director dated 16.7.1996 is non-speaking, indicating no reason, hence such an order cannot be sustained on account of arbitrariness, which is the sworn enemy of equality clause contained in Article 14 of the Constitution of India.

35. The scope of judicial review has been well defined in (1947) 2 All ER 680, which is known as Wednesbury Principles, and Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, 154. Lord Greene in Associated Provincial Picture House Ltd. v. Wednesbury Corporation (1947) 2 All ER 680 laid down the following principles:

"....It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law.

He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.... In another, it is taking into consideration extraneous matter. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

41. No doubt the courts have always imposed judicial restraint in administrative action and never sit as a Court of appeal, it merely reviews the illegality, irrationality or procedural impropriety made in the decision making process. The powers of review vested with the courts, would be tested by the application of Wednesbury principle of unreasonableness as well as irrationality and procedural impropriety as indicated in Chief Constable of the North Wales police vs. Evans (supra) that such state action should be free from arbitrariness."

43. A 3 judge Bench of the Apex Court in *Liberty Oil Mills & Ors. vs. UOI & Ors AIR 1984 SC 1271* was considering the scope of Rule 8B of Import Control Order which empowered to keep in abeyance application for licences or allotment of imported goods. The Apex Court amongst other held:-

"22. The next question for consideration is whether the decision to keep in 'abeyance' should be communicated to the person concerned. There can be no two opinions on this. Ours is a Constitutional Governments, an open democracy founded upto the rule of law and not a cloak and dagger regimen. It is inconceivable that under our constitutional scheme a decision of the kind contemplated by Clause 8B which may have the effect of bringing to a standstill the entire business activity of the person affected and which may even spell ruin to him, should be made and implemented without being communicated to that person. Intertwined is the question of observance of natural justice and how can natural justice be satisfied if the decision is not even communicated? It would be most arbitrary and quite clearly violative of Arts.14 and 19(i) (g) of the Constitution of Clause 8-B is to be interpreted as excluding communication of the decision taken. There is nothing in Clause 8-B to suggest that the decision is not to be communicated. On the other hand, the expression "without assigning any reason" implies that the decision has to be communicated, but reasons for the decision have not to be stated. Reasons of course, must exist for the decision since the decision may only be taken if the authority is satisfied that the grant of licence or allotment of imported goods will not be in the public interest. We must make it clear that 'without assigning reasons' only means that there is no obligation to formulate reasons and nothing more. Formal reasons may lead to complications when the matter is still tender investigation. So the authority may not give formal reasons, but the skeletal allegations must be mentioned in order to provide an opportunity to the person affected to make his representation. Chapter and verse need not be quoted. Details may not be mentioned and an outline of the allegation should be sufficient."

(emphasis added) *4*

44. The Apex Court in Bakshi Sardar Lal vs. UOI AIR 1987 SC 2106 has held:-

"8. Now coming to the third contention of Mr. Nariman, the matter appears to have been concluded by the judgment of this Court in the case of Union of India vs. Tulsiram Patel (1985) 3 SCC 398: (AIR 1985 SC 111416) . Those were also cases of striking railwaymen against whom orders of dismissal had been made after dispensing with the inquiry by exercise of powers under the same proviso. Four learned Judges representing the majority spoke through Madon. J and this Court held that there was a constitutional obligation to record in writing the reason for the satisfaction that one of the sub-clauses was applicable and if such reason was not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. The Court further stated that communication of the reason to the aggrieved Government servant was not obligatory but perhaps advisable. The record of the case produced before us clearly indicates that the reason has been recorded though not communicated. That would satisfy the requirements of the law as indicated in Tulsiram Patel's case."

(emphasis added)

45. The applicant and respondent in Neelima Misra vs. Harinder Kaur Paintal AIR 1990 SC 1402 were No.1 & 3 in order of merit of the four candidates found suitable by the Selection Committee. The Executive Council recommended the case of No.2. When the matter was placed before the Chancellor in accordance with the statute he accepted the recommendation of Selection Committee. The private respondent filed a Writ Petition. It was allowed in terms of an earlier Full Bench decision that Chancellor must explicitly state the reasons. The Apex Court held:-

"The power of the Chancellor under S.31(8)(a) is purely of administrative character and is not in the nature of judicial or quasi-judicial power. No judicial or quasi-judicial duty is imposed on the Chancellor and any reference to judicial duty, seems to be irrelevant in the exercise of his function. The function of the Chancellor is to consider and direct appointment of a candidate on the basis of the relative performance assessed by the Expert Selection Committee and in the light of the opinion, if any, expressed by the Executive Council. His decision nonetheless is a decision on the recommendation of the Selection Committee. Such a power cannot be considered as a quasi-judicial power. It need not conform to the principles of natural justice. The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Art.14 of the Constitution."

It allowed the appeal.

(emphasis added)

46. The Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S.Gandhi & Ors. (1991) 2 SCC 716 has held:

"The reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. When an order affects the right of a citizen or a person, irrespective of the fact whether it is a quasi-judicial or administrative order, and unless the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of natural justice or fair play require recording of germane and precise relevant reasons as a part of fair procedure. In an administrative decision,

its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. It may not be like a judgment. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons. If the appellate or revisional authority disagrees, the reasons must be contained in the order under challenge. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisional authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of the Supreme Court under Article 226 or the appellate jurisdiction of the Supreme Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person.

The omnipresence and omniscience of the principle of natural justice act as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the persons and attendant circumstances."

(emphasis added)

47. Justice C.K.Thakkar and Mrs.M.C.Thakkar have recently revised V.G.Ramchandran's Law of Writs. In Chapter 8 Natural Justice N.16(o) General propositions they records as under:

"The law relating to 'speaking orders' may be summed up thus:

(12) The validity of the order passed by the statutory authority must be judged by the reasons recorded therein and cannot be construed in the light of ~~§~~

subsequent explanation given by the authority concerned²³ or by filing an affidavit. "Orders are not like old wine becoming better as they grow older²⁴.

(13) If the reasons are not recorded in support of the order it does not always vitiate the action.²⁵

23. Commissioner of Police, Bombay, v.Gordhandas Bhanji, AIR 1952 SC 16: 1952 SCR 135; Union of India v.H.P.Chothia, (1978) 2 SCC 586; AIR 1978 SC 1214; (1978) 3 SCR 652; 1978 Lab IC 1093; Mohinder Singh Gill v.Chief Election Commissioner, (1978) 1 SCC 405, 417: AIR 1978 SC 851, 858: 1978) 2 SCR 272

24. Per Krishna Iyer, J. in Mohinder Singh Gill v.Chief Election Commissioner, (1978) 1 SCC 405, 417: AIR 1978 SC 851, 858 (1978) 2 SCR 272.

25. Mahabir Jute Mills v.Shibban Lal Saxena, (1975) 2 SC 818, 822: AIR 1975 SC 2057: (1976) 1 SCR 168: Rangnath vs.Daulatrao (1975) 1 SCC 686: AIR 1975 SC 2146: (1975) 3 SCR 99; Nandram v. Union of India, AIR 1966 SC 1922; Express News paper (P) Ltd. vs.Union of India, AIR 1958 SC 578, 636: 1959 SCR 12; Neelima Misra vs.Harinder Kaur, (1990) 2 SCC 746: AIR 1990 SC 1402 Maharashtra State Board of Education vs.K.S.Gandhi, (1991) 2 SCC 716.

48. It would appear from the foregoing discussions that (a) principles of natural justice are not a straight jacket formula and have to be applied having regard to nature of enquiry, effect of order and facts and circumstances of the orders and (b) Existence of reasons on record even if not communicated may suffice in certain cases.

49. A 4 judge Bench of Apex Court in Anant Oil Mills vs.State of Gujarat, AIR 1975 SC 1234, has held:

"There is a presumption of the Constitutional validity of a statutory provision. In case any party assails the validity of any provision on the ground that it is violative of Art.14 of the Constitution, it is for that party to make the necessary averments and adduce material to show discrimination violative of Article 14." A

50(a). It is evident from one of the representations that the policy decision regarding the change of role has been taken in 2001. The 2003 order is regarding reconstituting the command structure by merging the two wings. This appears to be with reference to the earlier policy decision. Para (iii), (v), (vi) (vii) lay down the policy in respect of officers at the level of commandant and below, manning of the posts of DIG including promotions of area organisers and commandants in the ratio of 2:3 and manning of posts of I.G. Including promotion of DIGs promoted from two streams. Para (iii) made it clear that excess at the level of officers will be phased out as and when the officers will vacate the posts.

50(b). Sub para (iv) & (viii) of the 2003 order are regarding posts in Civilian cadre and filling up of such Civilian posts because of superannuation resignation or otherwise by suitable posts on the combatant side so that the Force could get requisite number of personnel and different ranks. DG issued an order clarifying the perception about 'dying cadre'. The respondents have issued an order on 12.06.07 dropping the reference to dying cadre but the orders have not been brought on record. The respondents have pursuant to directions of Patna Bench issued an order clarifying the role of SFAs (CA-I). This refers to decision of Group of Ministers on National Security.

51. A perusal of the 2003 order regarding

reconstitution of command structure of exiting battalions and the May 2006 order brought on record by the applicant shows that the SSB will consist of 20 earlier Battalions and 25 new Battalions. These new Battalions consist of 7 Service Companies, 1 support company and Battalion Headquarter. The Battalion Headquarters element has a sub component of medical, relied upon by the applicant. The newly raised Battalions do not have a post of SFA(M) . The Battalion Headquarters/ each of service company have the posts of followers accounting for 90 posts of the sanctioned strength of Battalion. The Battalion headquarters has posts of six tradesman.

52. It had been contended by the learned counsel for the applicant that the expression "or otherwise" cannot be construed to mean creating vacancies in Civilian cadres by transfer/allocation. This sub-clause (viii) has to be read with sub-clause (iv). The context makes it clear that this is referring to coming to an end of relationship. This may also by voluntary retirement, imposition of punishment of dismissal, removal or compulsory retirement. It may refer to compulsory retirement under FR 56(j) or analogous provision.

53(a) A perusal of the impugned orders would show that these orders transfer these applicants along with their post from the Area Office to the Commandant posted at the same headquarters for posting to BOPs. Prior to this, the respondents had issued the order

dated 23.01.07 (Annexure CAI).

53(b) The respondents in para 2 of the reply have categorically stated that apart from Civilian employees officers of the rank of Assistant Commandant and above are governed by CCS(CCA) Rules . Personnel upto the rank of Inspector in comabtised wing are governed by CRPF Act/CRPF Rules. This assertion is not controverted in the rejoinder affidavit.

54. We have extracted the statement of objects and reasons of the ITBP Act and relevant sections in para 30 above. The said Act was enacted to provide for its special needs, specially the efficiency and discipline. The Act provides for setting up of courts etc. to inflict punishment. Even under that act it has been held that civilian employees are not members of armed forces of the Union. The dismissal of the Writ petition filed by Uttarakhand High Court and a direction to SFA (M) to approach CAT shows that Hon'ble High Court was satisfied that they are civilian employees and not part of the armed forces of the Union.

55. These discussions on the factual aspect show that the changes in policy have taken place having regard to overall security considerations. The command structure has also been changed having regard to the above objective. A further clarification of policy having regard to deployment of these persons have taken place. Thus reasons exist though they may not have been ~~in~~

explicitly stated in the order dated 11.04.07.

56. The arguments advanced by the learned counsel for the applicant based on the decision in M.S.Gill vs.CEC has accordingly to be rejected.

57. The principles of law on the subject of changes in Executive Policy, the manner of such change, the position regarding status, vested right have been summarised in para 24, para 29, para 15, para 16 above. When we apply these principles to the facts of the present case we find that the earlier executive policy has been modified and further clarified. Nothing has been brought on record to suggest that law or statutory rule has been changed by an executive order. The change in conditions of service can take place by an executive order and the applicants are not required to be heard before the changes in service conditions . The questions raised in sub-para (a) to (d) of para 41 have to be answered in favour of respondents.

58. It has been contended that as they are part of dying cadre, they were not required to be sent to another wing. It is further argued that posting in BOP would mean posting outside the cadre.

59. The question before the Apex Court in Chakradhar vs. State of Bihar AIR 1988 SC 959 was as to whether the posts of Director and three Deputy Directors in Directorate of Indigenous Medicine Constituted a cadre ⁸

and hence whether reservation applied. The Apex Court amongst others held:-

"In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental R.9 (4) defies the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. The post of the Director which is the highest post in the Directorate, is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service."

60. Dying cadre in service jurisprudence only means that cadre where there will be no fresh recruitment when an employee leaves the cadre by way of promotion, retirement, etc.

61. The location of posts of a cadre at the area office level or company level or BOP does not mean that posts have gone out of cadre. Where should the posts be located to further the implementation of policy has to be a decision of the Executing. Putting the posts at BOP does not mean that they have gone out of the cadre. "Dying cadre" has been used in the context of all civilian cadres. When the plea that the two wings can ¹

be amalgamated to create a unified structure has been upheld the contention that they should be allowed to continue in civil wing has to fail.

62. There is an apprehension that the commandants may not follow CCS(CCA) Rules as they are not governed by these rules. We have noted in para 53(b) above that the officers of the rank of Assistant Commandant and above in these 25 Battalions will be governed by CCS (CCA) Rules. That may be because officers holding the post of Area Office, etc. are holding these posts. The orders relating to command structure make specific provisions in this regard. The fear or misuse cannot be a ground for challenging the merger.

63. This plea too has to be rejected.

64. The next set of arguments are that the Govt. was required to create and abolish posts in Civilian Wing and to recreate equal number of posts in the combatised wings and in the alternative to declare these employees surplus, and redeploy them through surplus cell. The D.G. ~~is~~ not competent to reallocate the posts. Reliance is placed on words or otherwise appearing in para 2 (viii) of the 2003 order.

65. The scope of this word "or otherwise" in this order has been explained in para 45 above.

66. The Constitution Bench in M.Ramnathān Pillai vs. ~~A~~

State of Kerala AIR 1973 SC 2641 held that power to abolish posts is not derived from doctrine of pleasure but is an inherent power of the Government, ⁱⁿ the resulting termination of service does not attract ^{and} Art.311]. Whether such an employee should be offered any other employment is a matter of policy.

67. The Central Govt. have framed the CCS (Redeployment of Surplus Staff) Rules, 1990 in exercise of powers conferred by provision to Art.309 of the Constitution. Rule 2(g)thereof defines Surplus staff and Surplus employees as under:-

"'Surplus staff" and 'surplus employee or employees' means the Central Civil Servants (other than those employed on ad hoc, casual, work-charged or contract basis) who-

(a) are permanent or, if temporary, have rendered not less than five years' regular continuous service; and

(b) have been rendered surplus along with their posts from the Ministries, Departments, Offices of the Government of India, as a result of-

(1) administrative and financial reforms, including *inter alia*, restructuring of an organization, zero base budgeting, transfer of an activity to a State Government, Public Sector Undertaking or other autonomous organization, discontinuation of an ongoing activity, and introduction of changes in technology;

(2) studies of work measurement undertaken by the Staff Inspection Unit of the Ministry of Finance or any other body set up by the Central Government or the Ministry/Department concerned; or

(3) abolition or winding up either in whole or in part of an organization of the Central Government;"

The GOI have also framed a revised scheme for disposal of personnel rendered surplus. Para 12 of the scheme makes it clear that if a surplus employee does not join the offered post or wilfully fails to join the said post without proper explanation his surplus post will be abolished. Swamy's Compete Manual on Establishment and Administration also refers to a letter dated 16.10.90 to the extent that it has been decided that at the time of abolishing a post and declaring an employee surplus and transferring him to surplus cell he will be served with a notice inter alia that in the event of his failure to join the new post arranged by or in consultation with surplus cell, his services will be deemed to have been terminated from the date of his relief from the surplus cell.

68. The Bihar Board of Homeopathic Medicines set up under the Bihar Development of Homeopathic System of Medicine Act had abolished 8 posts of Homeopathic Chikitsaks. 6 of such doctors had preferred a Writ Petition that the Board could not have abolished the posts. The Writ Petition was allowed on the ground that Board was not properly constituted. The LPA failed. The Apex Court in Bihar State Board of Homeopathic Medicine vs. State of Bihar 1996 SCC (L & S) 37 allowed the appeal. The Apex Court held:

"18.The seven elected members, therefore, continued to be the members of the Board and were entitled to attend the meeting of the Board held on 14.5.1988. Since six members constitute a quorum, the Board meeting had the requisite quorum and, ^{As}

therefore, it had validly passed a Resolution abolishing the eight posts in question. The High Court, therefore, was not right in coming to the conclusion that the Board Resolution of 14.5.1988 was not passed by a duly constituted Board, and, therefore, should not be given effect to."

19. In the premises, the appeals are allowed and the judgment and order of the High Court is set aside. The original writ petitions are accordingly dismissed. Nevertheless, in the event of the said posts being revived or similar posts being created in future the Board may consider appointing the six original petitioners or any one or more of them to such posts in view of their past service by giving a suitable waiver of age bar, if required. In the circumstances there will be no order as to costs."

69. Barrister Samarditya Pal in his "The Law Relating to Public Service" refers to a full Bench decision of the Allahabad High Court in State of UP vs. Dr Prem Behari Lal Saxena (1969) I LLJ 247. He writes:

"The fundamentals relating to creation and abolition of posts were expounded by R.S.PATHAK, j.in a Full Bench judgment of the Allahabad High Court."

He said:

"I think it is beyond dispute that the creation of an office must be attributed to the exercise of the sovereign power of the State. And so it has been said that,

"every sovereign Government has within its own jurisdiction the right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration and to abolish such offices as it may deem superfluous". [42 Am.Jur.902, para 31]

"The power to create an office generally includes the power to modify or abolish it. The two powers have been described as essentially the same. These are principles well settled and are valid whether the question arises in India, the United Kingdom or the United States or indeed wherever organised Government recognising the

sovereignty of the State holds sway. The creation of a post and its abolition are essentially matters of administrative policy and expediency related to the needs of government administration. They are matters which properly fall within the exclusive domain of State Policy. Public offices are created for the purpose of effecting the end for which Government has been instituted, which is the common good, and not for the profit, honour or private interest of any one man, family or class of men [42 Am. Jr. 881, para 3] . The creation of a post is not to be decided by considerations personal to an individual aspiring to employment as a civil servant. So also, the question of abolishing a post falls to be decided by considerations of governmental need rather than the private interest of the incumbent in employment.....

.....Unless a post is created there can be no appointment to it. A post must exist before a civil servant can occupy it. And upon the abolition of the post the appointment must necessarily terminate. The rights of a civil servant to a post envisage necessity of the existence of the post. If the post is abolished the entire envelope of the civil servant's rights is dissolved. It is necessary to bear in mind when considering problems such as the one before us that the creation of a post and its abolition re events distinct from the appointment of an incumbent to the office and the termination of his services.

"I have already observed that the creation of a post and its abolition fall within the duration of governmental policy, and I deem it impossible to accept that a civil servant appointed to a post is entitled to participate in governmental policy making on the question whether the post should be continued or abolished."

70. The Full Bench decision of Allahabad High Court shows that posts have to be abolished on the consideration of Government need rather than private interest of the incumbent in employment. It is only after the posts are abolished that the employee becomes surplus and can be redeployed in accordance with the ¹⁴

1990 rules along with all the attendant consequences. The decision in Bihar State Board of Medicine shows that the appointment is not automatic with the revival of the post.

71. This plea that these posts had to be abolished as they had to be deployed through surplus cell has to be rejected. The order of DG reallocating posts is a necessary corollary to the decision to have a unified command structure.

72. It has finally been contended that the order is bad in law as it singles out SFA (M)'s only. Neither the applicant nor the respondents have brought on record the staffing pattern of the civilian wing. It is relevant to note that the 2003 order relating to command structure applies to officers of non combatized wing also. Para 49 above refers. Each employee is required to do his duty according to role assigned to him. The officers may have to be posted at Company headquarters as per the command structure.

73. We have noted in para 22 the decision of a 3 judge Bench of the Apex Court in Ram Lubhaya Bayza (supra). The Apex Court has held that Govt. policy cannot be struck down unless it is shown to be arbitrary, or against the Constitution/Law. The onus to prove that the policy is arbitrary is on the applicant. This they have to fail to discharge. This plea has also to be rejected.

74. The learned counsel for the applicant had also raised a plea that the reply may not be taken on record as the officer has not produced the authority. The Central Govt. have framed Government of India (Authorization of officers for verification of pleadings and other documents to be filed in the Central Administrative Tribunal)1993 rules replacing the earlier rules. As per this rule, any Group 'A' officer can file the reply. Nothing is brought on record by the applicants to show that DIG is not a Group 'A' Officer. He is a Group 'A' officer. This plea has to be rejected.

75. The OA is fit to be dismissed and is dismissed. Interim relief stands vacated. No costs.


(M. Kanthaiah)
Member (J)

22-07-02


(Shankar Prasad)
Member (A)

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