SUPREME COURT OF INDIA

Union of India (UOI)

Vs.

Col. G.S. Grewal

C.A.No.3879 of 2013

(Balbir Singh Chauhan and Arjan Kumar Sikri JJ.)

28.05.2014

JUDGMENT

ARJAN KUMAR SIKRI, J.

1. This is a statutory appeal, preferred by Union of India, as provided Under Section 31 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the 'AFT Act'). The appeal is filed against the Judgment and order dated April 15, 2011 passed by the Armed Forces Tribunal (hereinafter referred to as the 'Tribunal), Regional Bench Chandigarh, whereby the Tribunal has partly allowed the Original Application (OA) which was preferred by the Respondent herein. The Appellants have not only challenged the order on merits, but have even questioned the jurisdiction of the Tribunal to deal with the subject matter which was brought before it by the Respondent in the said OA.

2. In order to understand the nature of challenge laid to the jurisdiction of the Tribunal and the direction given while partly allowing the OA of the Respondent, it would be necessary to understand the nature of relief which was sought by the Respondent in the said OA as well as the background facts in which the OA seeking such a relief was filed.

3. The Respondent joined the Indian Army as a Major. Indubitably, in that capacity he was subject to the discipline of the Army Act, 1950. It is a normal practice that the personnel belonging to the Armed Forces, namely, Army, Air Force or Naval Force, are Seconded to the other offices under the Ministry of Defence, which include Department of Defence Production, Department of

Defence Research and Development and Department of Ex-Servicemen Welfare. We are concerned here with Department of Defence Production, which has Director General of Quality Assurances (DGQA for short) as well as Defence Public Sector Undertaking (DPSU). The Respondent was Seconded to DGQA on November 06, 2004 in the rank of Major. At that time, it was temporary Secondment.

> It is also relevant to mention here that while the Respondent was in the rank of Major in the Army, he was considered for promotion to the next higher grade, namely, Lieutenant Colonel. However, he could not be promoted because of certain reasons. There is a provision that if an officer is not able to secure promotion to the higher rank after particular number of specified attempts, it is termed as Final Supersession, which means that the said officer would not be considered for promotion to the higher status thereafter. Insofar as promotion from the rank of Major to Lieutenant Colonel is concerned, three chances can be availed by the officer. The Respondent was finally superseded in the Army, in the rank of Major in December 2003. It is also pertinent to point out at this stage that when the Respondent was Seconded to DGQA organisation, there was a provision in DGQA, in the form of OM dated May 04, 1993, that an officer who is finally superseded in the Army will not be entitled to permanent Secondment and can stay at DGQA temporarily only, which means, after some time, he would have to go back to the Army.

4. As pointed out above, the Respondent had already been finally superseded in December 2003 in the rank of Major when he had joined DGQA on November 06, 2004.

5. After considering the case of an Army personnel for promotion to the higher rank, there can be supersession on merits. However, some times even if the officer is found to be meritorious and fit for promotion, he would still be not able to get the promotion only because he is lower in the seniority and the number of posts available in the higher position are less, which would be filled/occupied by the persons above him in the seniority. Non-promotion for this reason is also counted as 'Supersession'. Therefore, after availing three chances in the rank of Major for

promotion to the rank of Lieutenant Colonel, if an officer is superseded even for want of sufficient number of vacancies in the higher rank, such an officer would still be labelled, what is termed as, 'Finally Superseded'. According to the Respondent, the reason for which he was superseded in the Army was the aforesaid one and not that he lacked merit.

6. Since many officers were not getting promotions to the higher rank after they were finally superseded for no fault of theirs and with intent to make the Army profile younger, A.V. Singh Committee was constituted, which submitted its report known as 'A.V. Singh Committee Report'. This Report recommended, which recommendation was even accepted, that all officers in the Army holding the rank of Major, who had completed 13 years of service, were to be promoted to the rank of Lieutenant Colonel, irrespective of whether such personnel were finally superseded or not. Acting on the recommendation of this Report, the Respondent, along with many others, was promoted as Lieutenant Colonel on December 16, 2004, when he was in DGQA organisation, which he had joined barely a month ago, i.e. on November 06, 2004.

7. Policy letter dated January 16, 2005 was issued by M.S. Branch whereby Special Merit Board (SMB) was introduced to give effect to the A.V. Singh Committee Report's recommendation. However, within two and a half years, i.e. on July 18, 2007, M.S. Branch intimated stoppage of SMB Policy with immediate effect. Letter to this effect was issued by the M.S. Branch discontinuing SMB on the orders of the Government on October 12, 2007.

8. A new Permanent Secondment and Promotion Policy, which was issued by the DGQA on November 16, 2007. Highlights of this Policy are as follows:

(a) Permanent Secondment will be restricted to the rank of Lieutenant Colonel.

(b) Upper cut off age for consideration for permanent Secondment will be 44 years, on 1st April of the year in which the officer is being considered, after completion of two years of tenure.

(c) Officers once permanently Seconded will continue in the organisation till they retire and will be considered for promotion to higher grades against their vacancies.

9. The effect of the aforesaid Policy was that officers once permanently Seconded to DGQA had right to continue in the said organisation till their retirement. They were also made eligible for promotion to higher grades against their vacancies. These promotions, they were to earn in DGQA as per the aforesaid Promotion Policy dated November 16, 2007. Since supersession clause contained in the earlier Policy dated December 22, 1993 was also removed in this Policy, the effect there of was that there was no bar for permanent Secondment in respect of those officers who had earlier incurred the disqualification for such permanent Secondment by virtue of their being finally superseded. Benefit thereof was given to the Respondent as well. He was permanently Seconded to DGQA in the rank of Lieutenant Colonel on April 10, 2008. Not only this, in terms of Permanent Secondment and Promotion Policy dated November 16, 2007, the Respondent earned next promotion, i.e. to the rank of Colonel on October 22, 2008.

10. While things stood thus and the Respondent had been working in the capacity of Colonel on permanent Secondment to DGQA, Ministry of Defence, Department of Department Production, issued Order dated April 23, 2010. It is this Order which is the bone of contention and was the subject matter of challenge before the Tribunal. In this Order, it was stated that since SMB had been discontinued by the Army since 2006, the effect thereof was the restoration of earlier Policy of 1993 which contained bar for permanent Secondment in respect of those officers who had incurred disqualification because of their final supersession. In essence, it was conveyed that those who were permanently seconded even after discontinuation of SMB in the year 2006 in DGQA, it was a wrong move. However, at the same time, in respect of those officers where it had already been done, it was decided that the same will not be withdrawn. Likewise, further promotions which were given were also not required to be withdrawn. However, it was decided that no further promotions would be given to such officers. This was so stated in the Order dated April 23, 2010 in the following terms:

(a) On the orders of Central Govt., Special Merit Board has been discontinued by the Army since 2006. Consequently, tenure Officers finally non-empanelled (superseded) will not be considered for grant of permanent secondment in DGQA.

(b) Non-empanelled Officers (Lt. Cols.), who have been granted permanent secondment in the DGQA in the past will be granted only one promotion to the next higher rank of Col. (TS) on completion of 26 years of service. However, such officers in DGQA can retire as per norms applicable to Permanent Secondment Service Officers in DGQA. An option will be given to such officers, if so desirous, for reversion to the Army for their further management. This clause shall also be applicable to those non-empanelled officers who have been granted the rank of Colonel in DGQA.

(c) OM No. F6(1)/2007/D(QA) dated 16 Nov 2007, will be made applicable prospectively for officers inducted on tenure after 16 Nov 07.

(d) QASB for permanent secondment hereafter (with effect from 2011) will be held taking 01st Oct of the year as the cut off date.

11. The Respondent, naturally, felt aggrieved by this Order, which meant that he would not earn any further promotion in DGQA even when the Appellants did not disturb his permanent Secondment in DGQA. The Respondent, accordingly, approached the Tribunal by filing an OA.

12. Contention of the Respondent was that the above Policy dated April 23, 2010, though looked innocuous, was conceptually flawed and downright illegal because of the reason that persons like the Respondent and other similarly situated, who had been granted permanent secondment under the Policy dated November 16, 2007, were affected thereby. Further, the effect thereof was to operate retrospectively by snatching the rights accrued to them, which amounted to violation of Article 14 of the Constitution of India. It was argued that as per the settled law the said Policy dated April 23, 2010 could not be applied retrospectively in respect of those who had already been permanently Seconded under the Policy dated November 16, 2007, which alone determined their conditions of service, including further promotions.

13. The Appellants' refutation to the aforesaid plea of the Respondent was not only on merits but contest was also laid to the jurisdiction of the Tribunal to entertain the OA with such a relief. It was argued that the Tribunal had no jurisdiction to entertain the said OA as the impugned order dated April 23, 2010 was passed by the Department of Defence Production, Ministry of Defence and the Tribunal could not deal with the validity of such orders, which was outside its scope. The Appellants had also referred to the Judgment passed by the Principal Bench of the Tribunal in Major General S.B. Akali etc. v. Union of India and Ors. (TA Nos. 125 and 221 of 2010, decided on April 09, 2010), where similar OA, albeit by an officer who was Seconded to DRDO, had been dismissed for want of jurisdiction.

14. The Tribunal, after hearing the parties, rendered the impugned Judgment dated April 15, 2011. It brushed aside the objection of the Appellants to the maintainability of the OA. While doing so, the Tribunal differed with the view expressed by the Principal Bench in the case of Major General S.B. Akali (supra) in somewhat curious manner, as would be noted later.

15. On merits, it accepted the contention of the Respondent herein that revised Government Policy dated April 23, 2010, which fundamentally changes the prospects of promotion of the Respondent, was discriminatory. It also amounted to retrospective amendment to the promotion policy, which could not be to the detriment of an employee thereby taking the rights accrued to him by virtue of the Policy governing his terms and conditions of service as earlier applicable to him. Thus, allowing the OA partially, the Tribunal has directed the Appellant authorities that the Respondent shall be governed by the provisions of DGQA Policy dated November 16, 2007 without incorporating the provisions of the impugned Policy dated April 23, 2010 and he would be considered for further promotions in terms of earlier Policy dated November 16, 2007.

16. The Appellants filed appeal against this Judgment Under Section 31 of the AFT Act. However, the said appeal was dismissed on April 16, 2012 on the ground that no civil appeal would be maintainable unless leave to appeal was obtained Under Section 31 of the AFT Act. The Appellants, accordingly, filed applications for leave to appeal before the Tribunal. Leave was granted by the Tribunal vide orders dated August 24, 2012. Armed with the said leave, present

appeal has been filed by the Appellants questioning the validity of the impugned Judgment, both on jurisdiction as well as on merits.

17. First and foremost submission of Mr. K. Radhakrishnan, learned senior Counsel appearing for the Appellants, was that in view of the Judgment of the Principal Bench in Major General S.B. Akali (supra), it was not open to the Tribunal to have taken a different view, ignoring the said Judgment and proceeding to consider the case on merits. He argued that even if the concerned Bench was of the opinion that the view taken by the Principal Bench in Major General S.B. Akali (supra) was not correct, a coordinate Bench could, at the most, refer the matter to the larger Bench. Even otherwise, argued Mr. Radhakrishnan, the view taken by the Tribunal was totally perfunctory and without any cogent reasons. Further, reasons which were given by the Principal Bench in the case of Major General S.B. Akali (supra) were not even dealt with by the Tribunal in the impugned Judgment.

18. Mr. Radhakrishnan is perfectly justified in his argument that the only course open to the Chandigarh Bench, which passed the impugned order, was to refer the matter to the larger Bench when it wanted to charter a different course than the one adopted by the Principal Bench in Major General S.B. Akali's case (supra). In Sub-Inspector Rooplal and Anr. v. Lt. Governor through Chief Secretary (2000) 1 SCC 644, this Court had settled this very issue in the following manner:

> 12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier Judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the Judgment of the earlier Bench but knowingly it proceeded to disagree with the said Judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our

system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce Judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel AIR 1968 SC 372, while dealing with a case in which a Judge of the High Court had failed to follow the earlier Judgment of a larger Bench of the same Court observed thus:

The Judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai case (1962) 3 Guj LR 529 and of Macleod, C.J., in Haridas case AIR 1922 Bom 149 (2) did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in Bhagwan v. Ram Chand AIR 1965 SC 1767:

It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with

such matters and it is founded on healthy principles of judicial decorum and propriety.

13. We are indeed sorry to note the attitude of the Tribunal in this case which, after noticing the earlier Judgment of a Coordinate Bench and after noticing the Judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier Judgment thereby creating a judicial uncertainty in regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the Tribunal in this case, a lot of valuable time of the Court is wasted and the parties to this case have been put to considerable hardship.

19. We are conscious of the fact that in Rooplal's case (supra), the Court itself chose to decide the controversy therein, because there were weighty reasons to do so, as mentioned in para 14 of the said Judgment. However, after hearing the parties at length, we prefer to refer the matter back to the Tribunal to decide this issue by constituting a larger Bench. Reason is that the parties intend to rely upon documents which were not placed before the Tribunal. Even matter has not been thrashed out in a proper perspective. Therefore, some discussion is needed on this aspect, which is detailed hereinafter.

20. We note from the Judgment of the Principal Bench in the case of Major General S.B. Akali (supra) that the main reason for holding that the Tribunal did not have jurisdiction to deal with the matter was that the Petitioner in that case, after he was Seconded to DRDO, was governed by the service conditions regulated by the provisions of Office Memorandum dated November 23, 1979 of the Government of India, Ministry of Defence and the controlling authority was the DRDO. That was a case where the Petitioner, who was Seconded to DRDO in the rank of Major on February 21, 1981 and rose to the rank of Major General with effect from March 06, 2002, was not given further promotion to the post of Lieutenant General. It is, thus, non-promotion in DRDO which was the subject matter of challenge. Though he had filed the writ petition in the Delhi High Court challenging his non-selection and promotion, after the constitution of Armed Forces Tribunal, the matter was transferred to the Tribunal. The Tribunal noted that since the Petitioner was permanently seconded to DRDO and he was claiming

promotion to the post of Lieutenant General in DRDO, which was governed by the Office Memorandum dated November 23, 1979 containing the provisions relating to promotions in DRDO and it had nothing to do with the Army Act, the Tribunal lacked the jurisdiction to entertain the matter. Relevant portion of the order passed by the Tribunal reads as under:

> 12. We have bestowed our best of consideration and we are of the opinion that as per Section 2 read with Section 3(o) of the Armed Forces Tribunal Act, 2007, this Tribunal has limited jurisdiction to deal with the service conditions of the Army Act and Rules, but, the present case, which relates to non-selection of the Petitioner by the DRDO for the rank of Lt. General and it is not supersession under the Army Act or Rules, it is under the DRDO Rules of the Office Memorandum dated 23rd November, 1989. As such, this Tribunal cannot sit over the selection by DRDO to decide the issue whether Petitioner has been correctly superseded or not, since the service conditions of the seconded officers under the DRDO is regulated by Office Memorandum dated 23rd November, 1979 and it is not under the Army Act and Rules. Therefore, this Tribunal will have no jurisdiction to decide this case of supersession of Petitioner for promotion to the rank of Lt. General.
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> 13. In this view of the matter, we uphold the preliminary objection of the learned Counsel for the Respondent and direct the Principal Registrar to remit this case back to Hon'ble Delhi High Court to decide the matter in accordance with law.
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> 14. On the same lines is the case of Brig P.J.S. Rangar & Brig Anand Solanki (TA No. 221 of 2010). In this case the incumbents were permanently seconded to Director General of Quality Assurance. It is also governed by OM dated 28th October, 1978, as amended from time to time. In this case also the Petitioners prayer is to quash the OM dated 18th February, 2008, letter dated 15th May, 2008 and empanelment order dated 16th June, 2008 and direct the Respondents to give effect to the empanelment order dated 31st January 2008 and promote them to the rank of Major General in accordance with their seniority in the panel.

> 15. The service conditions are governed by the OM dated 28th October, 1978 and the non-selection of the Petitioners are by Director General Quality Assurance of Ministry of Defence. There is no breach of any service conditions under the Army Act and Rules. The non-selection of the Petitioner is on account of the service conditions as mentioned in OM dated 28th October, 1978, as amended from time to time. Therefore, the objection raised by the learned Counsel for the Respondent, in this case is also upheld and consequently it is held that this Tribunal has no jurisdiction to interfere in this matter and direct the Principal Registrar to remit this case back to Hon'ble Delhi High Court to decide the matter in accordance with law.

21. When we traverse through the impugned order passed by the Tribunal in the instant case, we find that the aforesaid Judgment in Major General S.B. Akali (supra) has been specifically taken note of. However, the Tribunal felt it appropriate not to rely upon on the said Judgment, which it could not do so, having regard to the ratio in Rooplal's case (supra). What is intriguing is the reasons for coming to a different conclusion. It is stated:

> We have perused the evidence on record and heard the learned Counsels of both sides. At the very outset we proceed to resolve the matter with regard to jurisdiction over the case. Notwithstanding the fact that terms and conditions of service of DGQA officers are inherently different from those of the officers in their parent service, the subject matter in the instant case bears an intricate connection between the two. In fact, the policy changes brought about vide Government letter dated 23-04-2010 are virtually a mirror image of the changes brought about in the Army sequel to the system of Selection Merit Board being revoked by the Government. This policy also gives option to the officers to revert back to the Army in the event of the changes not being found acceptable by them. Further, Regulations for the Army, 1987 (Revised Edition) lay down at Pars 67 and 76 certain aspects of terms and conditions of service with regard to permanently seconded officers in Inspection Organisations, the former designation of DGQA, suggesting a degree of duality of jurisdiction on certain matters. As such, with due deference to the cited Judgment of the Hon'ble Principal

Bench and without setting any precedence, we are inclined to admit this case for adjudication by this Tribunal.

22. The aforesaid approach cannot be countenanced. First of all, the reasons given by the Principal Bench in the case of Major General S.B. Akali (supra) are not dealt with at all. It is strange on the part of the Tribunal to proceed with the matter on merits by observing that it was so done 'without setting any precedence'. If a Tribunal lacks jurisdiction then there is no question of proceeding with the matter in a given case taking umbrage under the facade of not treating it as a precedence. In a matter of jurisdiction, there are only two alternatives. Either the Tribunal has the jurisdiction or it has no jurisdiction. There is no third alternative to proceed with the matter with the statement that it will not be treated as precedent.

23. We would like to mention here that Gp. Capt. Karan Sing Bhati, learned Counsel who appeared for the Respondent, had argued at length that such an OA was maintainable and the Tribunal had the necessary jurisdiction. In support, he referred to statutory provisions, namely, Section 2 of the Act, as per which AFT Act applies to all persons subject to the Army Act, 1950 and argued that since the Respondent was subject to the Army Act, AFT Act was applicable to him. He also submitted that the Respondent was still subject to the Army Act insofar as matter relating to court martial, etc. were concerned. He also referred to the definition of Section 3(o), which defines 'Service Matters' and submitted that it was couched in a very wide language and would include the subject matter of the instant proceedings. He also took support from the provisions contained in Section 3(n) of the AFT Act, which defines 'Service' to mean the service within or outside India and submitted that even if the Respondent was Seconded to DGQA, that would not make any difference. Some provisions of the Army Act as well as certain Regulations framed under the Army Act were also relied upon. Mr. Bhati also referred to various official documents in support.

24. No doubt, it is open to Mr. Bhati to refer to the statutory provisions in the AFT Act or even the Army Act in support of his submission. But many other documents of which the learned Counsel is relying upon were not part of the record before the Tribunal. Secondly, as already pointed out above, no such aspects are considered either by the Chandigarh Bench in the impugned Judgment or by the Principal

Bench in Major General S.B. Akali's case (supra). We may point out that merely because the Respondent is subject to Army Act would not by itself be sufficient to conclude that the Tribunal has the jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject matter which is brought before the Tribunal and the Tribunal is also required to determine as to whether such a subject matter falls within the definition of 'Service Matters', as contained in Section 3(o) of the AFT Act. In Major General S.B. Akali's case (supra), the Principal Bench primarily went by this consideration. The subject matter was promotion to the rank of Lieutenant General and this promotion was governed by the Rules contained in the Policy of DRDO and not under the Army Act. Therefore, in the instant case, it is required to be examined as to whether the relief claimed is entirely within the domain of DGQA or for that matter, the Ministry of Defence or it can still be treated as Service Matter Under Section 3(o) of the AFT Act and two aspects are intertwined and inextricably mixed with each other. Such an exercise is to be taken on the basis of documents produced by both the sides. That has not been done. For this reason, we deem it proper to remit the case back to the Tribunal to decide the question of jurisdiction keeping in view these parameters.

25. If the Tribunal holds that it is vested with the necessary jurisdiction to entertain the OA, the Tribunal will obviously go into the merits of the case as well. For that purpose, some aspects which shall require determination also need to be spelled out, inasmuch as, in the impugned order the focus of the Tribunal was limited and the material and relevant aspects of the issue have not been gone into.

26. As pointed out above, the Tribunal has partly allowed the OA of the Respondent primarily on the ground that the decision contained in the Government order dated April 23, 2010 amends the promotion policy retrospectively thereby taking away the rights already accrued to the Respondent in terms of the earlier policy. It is also mentioned that the revised policy fundamentally changes the applicant's prospects of promotion. What is ignored is that the promotions already granted to the Respondent have not been taken away. Insofar as future chances of promotions are concerned, no vested right accrues as chance of promotion is not a condition of service. Therefore, in the first instance, the Tribunal will have to spell out as to what was the vested right which had already accrued to the Respondent

and that is taken away by the Policy decision dated April 23, 2010. In this process, other thing which becomes relevant is to consider that once the Respondent is permanently seconded in DGQA and he is allowed to remain there, can there be a change in his service conditions vis-à-vis others who are his counterparts in DGQA, but whose permanent Secondment is not in cloud? To put it otherwise, the sole reason for issuing Government Policy dated April 23, 2010 was to take care of those cases where permanent Secondment to DGQA was wrongly given. As per the Appellants, since the Respondent had suffered Final Supersession, he was not entitled to be Seconded permanently to DGQA. This is disputed by the Respondent. That aspect will have to be decided first. That apart, even it be so, as contended by the Appellants, the Appellants have not recalled the permanent Secondment order. They have allowed the Respondent to stay in DGQA maintaining his promotion as Colonel as well, which was given pursuant to this Secondment. The question, in such circumstances, that would arise is whether the Respondent can be treated differently even if he is allowed to remain in DGQA, viz. whether not allowing him to take further promotions, which benefit is still available to others whose permanent Secondment is not in dispute, would amount to discrimination or arbitrariness thereby offending Articles 14 and 16 of the Constitution of India. In our opinion, these, and other related issues, will have to be argued and thrashed out for coming to a proper conclusion.

27. As a result, this appeal is allowed. The impugned order passed by the Tribunal is set aside. The matter is remitted to the Tribunal for deciding the OA by a larger Bench by having proper perspective in mind, as discussed in this Judgment. Both the sides shall have right to file further documents they want to rely upon.

There shall, however, be no order as to costs.