

SUPREME COURT OF INDIA

Union of India & Anr.

Vs.

P.K. Choudhary & Ors.

C.A.No.3208 of 2015

(T.S.Thakur,CJI., Kurian Joseph,J.)

15.02.2016

JUDGMENT

T.S.Thakur,CJI.

1.These appeals under Section 31 of the Armed Forces Tribunal Act, 2007 are directed against a judgment and order dated 2nd March, 2015 passed by the Armed Forces Tribunal, Principal Bench, New Delhi, whereby Original Application No. 430/2012 filed by the Respondents has been allowed and policy circular dated 20 th January, 2009 issued by the Government of India quashed with a direction to the Appellant-Union of India to consider the Respondents for promotion to the rank of Colonel by creating supernumerary posts with effect from the date the said Respondents were eligible for such promotion. Facts giving rise to the proceedings before the Tribunal and the present appeals may be summarized as under:

2. The Respondents were commissioned into various Corps/streams of the Indian Army after they successfully passed out from the Indian Military Academy/Officers Training Academy. The initial allocation of the respondents to different Corps was based on parameters prescribed for that purpose depending inter alia upon the number of actual vacancies in Arms, Arms Support or Services, operational commitments and requirements arising from new raisings. Merit of the candidates, the need for an equal distribution of vacancies applying what is described as 'Black Method' and the individual choice expressed by the cadets were also some of the major factors that were taken into consideration while making allocations.

3. It is common ground that there was no challenge to the allocation of cadets to Arms, Arms Support or Services at any point of time. It is also not in dispute that four out of the five Respondents viz. Lt. Col. P.K. Choudhary, Lt. Col. G.S. Dhillon, Lt. Col. A.K. Pandey and Lt. Col. R.M.S. Pundir had opted for commission into Army Service Corps (AMC) and none of them had opted either for Combat Arms or Arms Support. Similarly, Lt. Col. Ajay Chawla-Respondent No.5 in this appeal had given Army Service Corps as one of the options of his choice. The respondents were accordingly allocated and have served in their respective

Corps and Raisings as Lt. Colonels, which rank they held at the time of filing Original Application No.430 of 2012 in the Tribunal and continue to do so at present.

4. Post-Kargil War, the Government of India constituted what was called Kargil Review Committee which was followed by a Committee headed by Shri Ajay Vikram Singh ('the AVSC', for short) with a view to explore ways and means for enhancing the operational preparedness of the Indian Army in its fighting capabilities especially in Combat Arms. The Committee comprised, apart from Shri Ajay Vikram Singh, a representative of the Ministry of Defence (Finance), Director General (MP&PS), Army Headquarters, Joint Secretary (G), Ministry of Defence and several senior officers of the Indian Army including Adjutant General, Army Headquarters, Chief of Personnel, Naval Headquarters and Air Officer-in-Charge Personnel, Air Headquarters. The Committee appears to have conducted extensive deliberations and submitted a report suggesting both short term and long term measures that were, in its opinion, necessary for restructuring of the Officers' Cadre of the Army. The Committee recommended that although the report primarily focused on the restructuring of the Officers' Cadre of the Army, the same will be applicable in an equal measure to the Navy and the Air Force who could work out their service specific requirements including additional vacancies required at various ranks on operational/functional grounds. While we shall deal with the recommendations made by the Committee in greater detail in the later part of this judgment, we may point out that one of the significant recommendations which the Committee made to the Government was about the lowering of age profile of the Officers in the Indian Army. For instance, instead of existing age profile of 41-42 years for Colonels the Committee recommended lowering of the age profile to 36-37 years. Similarly, for Brigadiers the Committee recommended an age profile of 44-45 years instead of 50-51 years at present. The age of Major Generals was profiled at 51-52 years as against 54-55 years under the existing system. The age of Lieutenant Generals was, according to the Report, profiled at 55-56 years instead of 56-57 years under the existing system. The lowering of age profile was considered by the Committee to be necessary for enhancing the optimal combat effectiveness of the Army. To achieve that objective, the Committee recommended creation of 1484 additional vacancies in the ranks of Colonel out of which 400 vacancies were to be released in the first year while the another 300 vacancies were to be released in the second year after an annual review. The implementation of the recommendations had to be progressive, coordinated and corroborated for the desired results to flow for the benefit of the Army.

5. The appellants' case is that the recommendations made by the AVS Committee were accepted by the Government and 1484 additional vacancies in the rank of Colonel were sanctioned with a view to lowering the age of Commanding Officers in combat and combat support arms resulting in an increased upward mobility of the Officers Cadre. The additional vacancies were to be released in two phases spread over a period of four years from 2004 to 2008.

6. It is common ground that in the first phase, the Government released 750 vacancies, out of the newly created 1484 vacancies, in the rank of Colonel by an order dated 21st December, 2004. These vacancies were sanctioned by upgradation of appointments in the rank of Lt.

Colonel to Colonel in a phased manner spread over a period of two years i.e. 2004-2005 and were distributed amongst Arms, Arms Support and Services on a pro-rata basis. The result was that not only did the additional vacancies become available to Arms and Arms Support but the same were allocated even to those serving in Services like ASC, AOC and EME. Thus far, there was no difficulty as officers serving in Arms, Arms Support and Services in different Corps of the Army were all equally benefitted by the fresh creation. The problem started with the release of another 734 vacancies in the second phase by an order dated 3rd November, 2008. These additional vacancies were sanctioned by effecting upgradation in a phased manner spread over a period of five years and were directed to be allocated on what is described as “Command Exit Model” which the Government of India claimed was in consonance with the functional and operational requirements of the Army.

7. Aggrieved by the denial of a pro-rata share in the 2nd tranche of the additional vacancies released by the Government, officers like the respondents who are serving in the Arms Support and Service Corps of the Army, filed Original Applications No. 430 of 2012, 77 of 2014 and 147 of 2015 before the Armed Forces Tribunal, Principal Bench, New Delhi to challenge the Government’s policy dated 29th January, 2009 on the ground that the same was discriminatory, arbitrary and violative of fundamental rights guaranteed to them. They prayed for quashing of the policy besides a direction to the Government of India to allocate vacancies in the rank of Colonel to each Corps on pro rata basis and convene Special Boards for promotion of the eligible Officers to such posts. The respondents also prayed for a direction to the Union of India to grant to them ‘Ante-Date’ seniority and arrears of pay and allowances from the date an officer immediately junior to the said respondents in the rank of Lt. Colonel serving in Arms and Arms Support Units was granted his promotion.

8. The Appellant-Union of India contested the claim made by the respondents and argued that the recommendations made by the AVS Committee were limited to Officers serving in the Arms and Arms Support and specifically left out services from their purview. It was also argued that the Government of India had approved and accepted the recommendations made by the AVS Committee and sanctioned 1484 additional vacancies specially created for allocation on “Command Exit Model” to Arms and Arms Support Units for whose benefit such new vacancies were created. The allegation that the policy formulated by the Government or the “Command Exit Model” for allocation of vacancies was discriminatory and/or arbitrary was stoutly denied.

9. By its order dated 2nd March, 2015 the Armed Forces Tribunal, Principal Bench, New Delhi has allowed the Original Application(s) filed by the respondents and quashed Government of India policy dated 21st January, 2009 with the direction that the Government of India shall create supernumerary posts so that the additional vacancies so created are allocated to all the three streams on a pro rata basis. The present appeal under Section 31 of the Armed Forces Tribunal Act, 2007 calls in question the correctness of the judgment and order as already noticed above.

10. We have heard learned counsel for the parties at considerable length who have taken us through the judgment and order passed by the Tribunal and the documents placed on record in support of their respective versions. The following questions fall for our determination.

“1. Did the AV Singh Committee recommend lowering of age profile and consequent creation of additional vacancies for all the three streams viz. Arms, Arms Support and Services or were the recommendations limited to Arms and Arms Support only?

2. Were the recommendations made by the AV Singh Committee regarding the need for creation of additional vacancies and their allocation on “Command Exit Model” accepted by the Central Government? If so, what is the effect of allocation of the first tranche of 750 vacancies by the Army Headquarters on pro rata basis among all the three streams?

3. Whether there was any illegality, irregularity or unfairness in the matter of allocation of vacancies to Arms Support on “Command Exit Model” principle?

4. Do Officers serving in Arms, Arms Support and Services constitute a single cadre?

5. In case the answer to the question No. 4 is in negative, is there any legitimate expectation for officers commissioned into the Indian Army in a given batch that in the matters of their future promotion the Government will maintain batch parity among officers allocated to Arms, Arms Support and Services.”

Re.: Question No. 1

11. On behalf of the respondents it was argued by Ms. Meenakshi Lekhi, Advocate that the recommendations made by the AVS Committee were applicable to officers serving in all the three streams of the Army viz. Arms, Arms Support and Services and that the creation of 1484 additional vacancies of Colonels was meant to benefit all such officers regardless of the Corps in which they were commissioned. Support for that submission was largely drawn by learned counsel from the AVS Committee report and the fact that the 750 vacancies sanctioned and released in the first tranche were distributed pro-rata among all the formations. It was urged that having given to officers serving in Arms Support and Services, their share of the newly created vacancies on a pro-rata basis and denial of a similar share out of vacancies sanctioned in the second phase was unjustified and discriminatory.

12. On behalf of the Appellant-Union of India it was contended by Mr. Maninder Singh, ASG, that the recommendations made by the AVS Committee favoured creation of additional vacancies only for Arms and Arms Support leaving out ‘Services’ like ASC, AOC and EME. It was argued that the recommendations were accepted and the vacancies sanctioned for being filled-up on ‘Command Exit Model’ which model constituted the very basis of the report submitted by the Committee. The fact that 750 vacancies created in the first phase were distributed among Arms, Arms Support and Services on a pro-rata basis did not, according to Mr. Singh, by itself entitle officers serving in ‘Services’ to claim a pro-rata

share in the second tranche of vacancies created by the Government. If the pro-rata allocation to services was not in tune with the recommendations made by the Committee and the decision taken by the Government, the same could not create any right or equitable claim in favour of those who had benefitted from the mistake earlier committed argued the learned counsel.

13. The entitlement to a share in the newly created vacancies depends upon whether the Committee had recommended lowering of age profile for officers serving in the 'Services' stream of the Army that is because the creation of additional vacancies was meant to achieve a purpose - viz. lowering of age profile of the Commanding Officers.

14. The answer to the question whether the Committee recommended lowering of age profile and creation of additional vacancies for Arms, Arms Support and Services, can in turn, be answered only by reference to the report of the Committee. We have been taken through the report over and over again by learned counsel for the parties, but, we find it difficult to accept the submission made by Ms. Lekhi that the recommendations were for the benefit of all officers and streams across the board. A careful reading of the report would show that the Army Headquarters had made its presentations to the Committee followed by a series of meetings to discuss and deliberate upon each one of the issues referred for examination to the Committee. The report made a reference to the Army Headquarters Paper on Restructuring of the Officer Cadre, which, in turn, dealt with the issue of organisational imbalances arising out of steep pyramidal structure of the cadre and the issues relating to individual aspirations left unfulfilled due to inadequate career progression, disparity with Class-A civil services and harsh service conditions. The paper presented by the Army Headquarters also suggested some measures for resolving the issues which included reducing the large base in the cadre structure by making a dual-stream officer cadre one having a lean regular cadre and the other a support cadre of Short Service Commission Officers, reduction in the ages of Battalion and Brigade Commanders through early promotion by increasing the cadre strength, upgradation of Sub Unit Commanders to the rank of Lt. Colonel. The Army Headquarters also proposed grant of early promotions in the first three ranks viz. Captain, Major and Lt. Colonel, promotion to the grade of Colonel on time-scale basis after 23 years of service for superseded officers and grant of Brigadier's pay to all Colonels in the last year of their service to entitle them to Brigadier's pension. The report submitted by the committee outlined the issues raised before it and identified two inter-related issues which were, in its opinion, at the core of the whole problem viz., high age profile and cadre stagnation.

15. The Committee also took note of the recommendation made by the Kargil Review Committee, for lowering the age profile of command elements. The Committee noted that in comparison to other Armies like those of Pakistan, China, UK, Germany and Israel, the Indian Army had a higher age profile which adversely affected their physical alertness and operational preparedness. The Committee noted that Officers beyond the age of 50 years find it difficult to sustain mental and physical alertness at high altitude and hazardous and hostile topography along the Line of Control where a Brigade Commander is required to serve for effective command and control. This was true even about Battalion Commanders who are required to move during operations with their units for effective command and control. The

Committee noted that for Battalion Commanders even a higher degree of physical fitness and alertness is required which is difficult since Indian Army Officers assume command at the age of 41-42 years and continue till 44-45 years of age in comparison to those in Pakistan and Chinese Armies where the age of the Battalion Commander, on an average, is about 35 and 40 years respectively. The Committee, therefore, took the view that the officers of Combat Arms should assume command at the age of 36-37 years by which time they would have attained the requisite experience and the ability to finish their command tenure before attaining 40 years of age. The Committee, then, took stock of the total Units commanded by Colonels in the Indian Army and the desirable tenure for each type of Unit considered necessary to maintain optimum operational effectiveness. The Committee, at the same time, noted the possibility of re-command in respect of certain Arms and Services which have some Units permanently located in peace areas or where the Unit Commanders are not physically required to operate in combat/difficult terrain. Taking note of the structures, the Committee determined that the approximate number of Colonels that would be required every year is 406. The details are set out in a chart forming part of the report which may be gainfully extracted at this stage:

Srl.No.	Arm/Service	Number of Units	Desired Tenure (Years)	Period of command (Years)	officer in re-command	Number of Colonels required per year	
(a)	Armoured Corps	62	1038	3	3	No re-command	21
(b)	Infantry	448		2.5	2.5	-do-	179
(c)	Mechanised Infantry	39		3	3	-do-	13
(d)	Artillery	210		3	3	-do-	70
(e)	AD	50		2-3	4	Possibility of re-command	13
(f)	Engineers	132		2-3	4	-do-	33
(g)	Signals	97		2-3	4	-do-	25
(h)	ASC	87	2-3	5	-do-	17	
(i)	AOC	60	2-3	5	-do-	12	
(j)	EME	114	2-3	5	-do-	23	
	Total	1299					406

16. The Committee, then, picked-up 354 Colonels for Armoured Corps, Infantry, Mechanised Infantry, Field Artillery, Air Defence Artillery, Engineers and Signals, which were described by the Committee as operational formations and which, in the opinion of the Committee, called for reduction in the age profile for the Unit Commanders. Para 20 of the report makes the Committee's intention manifest when it says:

“20. Out of the overall requirement of 406 Colonels every year as per the table above, there would be a need of 354 Colonels for Armoured Corps, Infantry, Mechanised Infantry, Field Artillery, Air Defence Artillery, Engineers and Signals, which are operational formations, keeping in view that the need to bring down age profile of unit commanders is primarily for the operational units. In the above table, for the arms listed for Ser (a) to (d) it is desirable that the officers’ have one command tenure, as a younger age profile is required in consonance with the operational needs. The rest could get more than one tenure for command in the Colonels rank.”

(Emphasis supplied)

17. The Committee, then, examined the number of vacancies required in the rank of Colonels and Brigadiers and came to the conclusion that a total of 374 Colonels and 143 Brigadiers vacancies were available every year exclusively in the Arms, whereas, there was a requirement of vacancies for 354 Colonels and 129 Brigadiers for the Arms. These vacancies were found to be adequate to keep the whole cadre structure in a state of equilibrium, but, that equilibrium will be at the current high age profile. The Committee said:

“ If we look only at the Arms, which form a subset of the whole cadre, and towards which the age reduction exercise is principally directed, we find that approximately 143 Colonels and 31 Brigadiers are promoted to the next higher rank every year and 241 and 112 respectively exit each year on retirement. Thus, a total of 374 Colonels and 143 Brigadiers’ vacancies are available every year exclusively in the Arms, whereas, there is a requirement of vacancies for 354 Colonels and 129 Brigadiers for the Arms as per table at paras 17 and 19. These vacancies are adequate to keep the whole cadre structure in a state of equilibrium, but that equilibrium will be at the current high age profile. Therefore, a mechanism needs to be found to bring the cadre structure, especially of the Arms, to the lower age profile as recommended in Para 13.”

18. The Committee, then, proposed short-term and long-term measures. Applying the parameters for short term and long term measures proposed by the Committee, the Committee, in para 36 of its report, worked out the vacancies required for Colonels in Armoured Corps, Infantry, Mechanised Infantry, Artillery, AD, Engineers and Signals and Brigadiers in the General Cadre, Field Artillery and Engineers.

“36. Based on these parameters, vacancies that would be required for Colonels in Armoured Corps, Infantry, Mechanised Infantry, Artillery, AD, Engineers and Signals and Brigadiers in the General Cadre, Field Artillery and Engineers, if age profile is to be brought down as per para 13 are given in the table below. The figures reflected in the table do not include vacancies for Colonels in ASC, AOC, EME and other Minor Corps whose age profile can be higher than that required to operate under combat conditions.

Service	Age	Colonel	Brigadier	Major General	Lieutenant General
15	37	354	-	-	-
16	38	354	-	-	-
17	39	354	-	-	-
18	40	354	-	-	-
19	41	354	-	-	--
20	42	354	-	-	-
21	43	354	-	-	-
22	44	354	-	-	-
23	45	225	129	-	-
24	46	225	129	-	-
25	47	225	129	-	-
26	48	225	129	-	-
27	49	225	129	-	-
28	50	225	129	-	-
29	51	225	77	52	-
30	52	225	77	52	-
31	53	225	77	52	-
32	54	-	77	52	-
33	55	-	77	52	-
34	56	-	-	31	21
35	57	-	-	31	21
36	58	-	-	-	21
37	59	-	-	-	21
38	60	-	-	-	-
Total in each rank		4857	1159	322	84

(Emphasis supplied)

19. The Committee finally concluded that out of the requirement of vacancies projected by Army Headquarters, the Government could release in the first two years 700 vacancies as against 1484 recommended by it. The additional vacancies recommended for creation without Peel Factor and those with Peel Factor over a period of 5 years were indicated by the Committee in the chart which is as under:

Sl.No.	Rank	Additional 'V vacancies required (without Peel Factor) to bring down age profile as recommended by AHQ	Release of vacancies over five years with Peel Factor as projected by AHQ	Vacancies recommended by the Committee for release in 1st year	Vacancies recommended by the Committee for release in the 2nd year at annual review
(a)	Lieutenant General	29	20	05	03
(b)	Major General	159	75	10	08
(c)	Brigadier	496	222	75	35
(d)	Colonel	2202	1484	400	300

20. A careful reading of the report especially paras 20 and 36 extracted above leaves no manner of doubt that the Committee emphasized the need for bringing down the age profile of Unit Commanders in Operational Units only. The Committee recognized Armoured Corps, Infantry, Mechanised Infantry, Artillery, AD, Engineers and signals as operational formations leaving out ASC, AOC, EME and other Minor Corps. The report clearly suggests that the additional creation of 1484 vacancies in the rank of Colonels did not take into account vacancies for Colonels in ASC, AOC, EME and other Minor Corps. As a matter of fact, the report very clearly states that the age profile of such Service formations for Minor Corps could be higher than that required to operate in the combat conditions. We have, in that view, no hesitation in holding that there was neither any recommendation regarding reduction in age profile of Unit Commanders in ASC, AOC and EME nor was there any recommendation for creation of additional vacancies to benefit officers serving in those formations. The argument that the Committee had recommended creation of 1484 vacancies for the benefit of Officers serving in all formations is, therefore, without any basis and is accordingly rejected. Additional vacancies were specifically recommended for the operational formations mentioned above and were meant to be allocated to those formations depending upon the recommended tenure of the Commissioning Officers in those formations and the possibility of re-command. Inasmuch as ASC, AOC, EME Officers did not benefit from the creation of additional vacancies, there was neither any violation of the recommendations made by the AV Singh Committee nor was the distribution of the additional vacancies discriminatory as alleged. Question No. 1 is answered accordingly.

Re: Question No.2

21. The aggrieved officers appear to have argued before the Tribunal that the recommendations made by AV Singh Committee regarding creation of additional vacancies for allocation on "Command Exit Model" were never accepted by the Central Government.

In support of that submission they have largely relied upon the fact that the first tranche of 750 vacancies released by the Government were allocated by the Army Headquarters to Arms, Arms Support and Services on a pro-rata basis. This, they contended, would not have been possible if the Government had actually accepted the “Command Exit Model” for allocation of the newly created additional vacancies. The inference, according to them, is that “Command Exit Model” was never accepted as a principle by the Government for allocation of additional vacancies created pursuant to the recommendations made by the AV Singh Committee.

22. On behalf of Government of India it is, per contra, contended by Mr. Maninder Singh that the Government had unequivocally accepted the recommendations of the Committee including the “Command Exit Model” for allocation of the newly created vacancies. Reliance in support of that contention was placed by Mr. Maninder Singh upon the relevant official record which was produced before us for perusal. Reliance was also placed by him upon an affidavit filed by the Government pursuant to our order dated 22 nd April, 2015 in which this Court demanded a specific answer from the Government as to whether the “Command Exit Model” for allocation suggested by AV Singh Committee had been accepted by it. We have, in light of official record produced before us and the specific assertions made by the Government in the affidavit filed on its behalf, no hesitation in holding that the recommendations of the AVS Committee regarding allocation of newly created vacancies being made on “Command Exit Model” was accepted by the Government. It is trite that the Government and the Government alone could say whether the recommendations of the Committee were accepted by it. The Government have answered that question in the affirmative not only on the basis of a statement made at the bar but also on the basis of contemporaneous official record and the affidavit filed by a responsible officer acting for and on behalf of the Government. The first part of the question viz., whether the recommendations regarding “Command Exit Model” for allocation of vacancies was accepted by the Government does not, therefore, detain us any further.

23. The second part of the question, however, calls for some examination. In the course of hearing and in our order dated 22 nd April, 2015 we had specifically invited the response of the Government as to the reasons for allocation of the vacancies on pro rata basis if the Government had accepted “Command Exit Model” as the basis for such allocation. We had also asked the Government to explain whether any action had been taken by the Government for breach of the said principle by the Army Headquarters while making the allocations. Mr. Maninder Singh fairly conceded that the allocation of 750 vacancies comprising the first tranche was made by the Army Headquarters in breach of “Command Exit Model”. But such breach did not either call for any action or withdrawal of the benefits drawn by the officers who were beneficiaries of such allocation. Mr. Maninder Singh contended that since the allocation stood made and the officers found eligible for promotion stood promoted, it was neither advisable nor feasible to withdraw the benefit so availed by the officers by reversing the process for a fresh allocation. One of the reasons which, according to Mr. Singh, made the breach inconsequential, was the fact that the imbalance, if any, could be corrected partly if not wholly when the second tranche of 734 vacancies were released for allocation on

“Command Exit Model”. It was also contended by Mr. Maninder Singh that the Government had actually set off the excess allocation made in the first tranche while allocating the second tranche of 734 vacancies on “Command Exit Model”. This adjustment/set off may have remained confined to Arms/Arms Support only but the mischief that had occurred earlier had been corrected no matter qua those two streams only. Allocation made on pro rata basis to services was not, however, withdrawn according to Mr. Maninder Singh, but no further allocations were made in the second tranche of vacancies as the recommendations made by the Committee never intended to benefit the services either in the matter of reducing the age profile of Commanding Officers or in the matter of creation of additional vacancies for them.

24. That 750 vacancies comprising the first tranche released by the Government were allocated on a pro rata basis contrary to the recommendations and the decision of the Government cannot be and has not been denied. The question is whether the said allocation would by itself undo either the recommendations made by the Committee or the decision taken by the Government to allocate the newly created vacancies on “Command Exit Model” principle. Our answer to that question is in the negative. Just because allocation of vacancies in the first tranche was made by the Army Headquarters ignoring the recommendations of the Committee and the Government decision cannot possibly result in the reversal of the Government decision nor can it negate the Command Exit Model. So also, simply because the earlier allocation was not reversed as the officers had picked up their ranks does not affect the binding nature of the Government decision that the allocation should be on “Command Exit Model”.

25. Having said that, the adjustment/set off of the vacancies so allocated against the entitlement of the arms and arms support in the second tranche does not appear to be justified. If the Army Headquarters committed a mistake in allocating vacancies on a pro rata basis contrary to the recommendations and decision of the Government, any such error cannot adversely affect officers serving in arms and arms support who may have been entitled to a higher number of vacancies in the second tranche but who were deprived of such allocation on account of the error in the previous allocation made on pro rata basis. We pointed out this aspect to Mr. Maninder Singh and asked him to take instructions whether the Government was willing to correct the mistake arising out of such adjustment/set off or justify the same on any juristic principle. To the credit of Mr. Maninder Singh we must mention that he has on instructions fairly conceded that the second tranche of 734 vacancies could and ought to have been allocated on “Command Exit Model” principle without taking into consideration the excess, if any, allocated to the arms and the arms support on pro rata basis in the first tranche. Mr. Maninder Singh on that basis also took instructions to file before us a statement showing the number of vacancies that would have ordinarily fallen to the share of arms support corps if the second tranche of 734 vacancies were allocated without making any adjustment of vacancies previously allocated. We shall turn to that statement when we take-up Question No. 3 for discussion, but, before we do so we need to conclude Question No.2 by holding that the recommendations of the AVS Committee regarding allocation of additional vacancies on “Command Exit Model” basis had been accepted by the Government and that allocation of the first tranche of 750 vacancies by the Army Headquarters on pro rata basis contrary to the Government decision and the

recommendations of the Committee did not affect the validity of the decision nor did it amount to reversal of the said decision or its dilution in any manner. Question No.2 is answered accordingly.

Re: Question No.3

26. A two-fold argument was advanced on behalf of the respondents on the question of unfairness in the matter of allocation of vacancies. In the first place, it was contended that while allocating vacancies to arms support, the Government had set off/adjusted the vacancies which were allocated no matter erroneously to arms support on a pro rata basis. This adjustment was uncalled for as the excess allocated to arms support on pro rata principle was because of an error committed by the Government or the Army Headquarters which could not prejudice the officers who are otherwise eligible for promotion against the vacancies, due on Command Exit principle. In other words, allocation of 734 vacancies comprising the 2nd tranche should have been made without any adjustment based on the earlier pro rata allotment, meaning thereby that the deficit proportionate to the number that has been set off/adjusted should be made up by fresh creation.

27. The second limb of the challenge is whether the Government was justified in prescribing a command tenure of four years for Arms Support officers. The argument was that if the command tenure is reduced to two years as in the case of 'arms', the number of vacancies required by arms support would increase. We shall deal with the two aspects ad seriatim.

28. The allocation of 734 vacancies, comprising the second tranche, when made on standalone basis, (without any adjustment of the excess allocated in the first tranche) is the only right method for allocation in our opinion. The excess allocated in the first tranche, against which officers who may not have otherwise picked up the higher rank were promoted, cannot possibly deny the rightful due to those who would be entitled to claim promotion against the vacancies in the second tranche. The respondents are, therefore, right in arguing that the second tranche should be allocated on a standalone basis. This exercise has been done by the appellant and the result thereof filed by Mr. Maninder Singh in the form of a statement to which we shall presently advert. But before we do so, we may as well deal with the second aspect of the matter, namely whether the stipulation of a command tenure of four years for Arms Support officers can be said to be so arbitrary as to call for interference by a court or tribunal in exercise of their power of judicial review. We must, at the outset, say that command tenure is a policy matter on which the scope of judicial review is extremely limited. What should be the tenure of a commanding officer for Arms or Arms Support is for defence experts or for the Government to determine on expert advice having regard to a variety of factors. It is neither necessary nor proper for any court or tribunal to sit in judgment over any such decision leave alone, substitute the same by its own decision. If the Government has upon consideration of the nature of duties and the need for battle preparedness of the force has taken a decision to prescribe a tenure of upto four years for officers serving in Arms Support, it will be difficult to fault the same in the absence of any patent perversity in any such decision especially when no breach of any fundamental or other right of any one complaining against the prescription of such a tenure is demonstrated. No

such infirmity has been pointed out to us in the case at hand. Having said that, we must add to the credit of the appellant and their counsel that the question of a shorter tenure was considered by them favourably at our suggestion only to avoid any frustration or disgruntlement among officers serving in arms support. Mr. Maninder Singh, on instructions, submitted that the tenure of commanding officers in arms support shall for purpose of creation/allocation of vacancies, be taken as three years instead of four years. The Government has on that basis calculated the number of vacancies that would be additionally due to arms support on Command Exit Model as under:

	Number of vacancies due to 1. AAD, 2. Engineers, 3. Signals out of II tranche of 734 posts taking the tenure to be 3 years instead of 4 years	Actual distribution made in 2009 with tenure taken to be 4 years	
AAD	31	7	24
Engineers	79	17	62
Signal	66	11	55
Total			141

29. It follows from the above that to the extent of a deficit of 141 vacancies in the cadres of Colonel to Arms Support (Artillery, AAD, Engineers and signals) an unfair distribution of the vacancies from out of the second tranche were released by the Government. It is, at the same time, heartening to note that the Government have not taken an adversial stand nor have the Government opposed the undoing of the injustice caused to officers who were eligible for promotion in the year 2009 but were not promoted on account of lesser number of vacancies allocated to Arms Support. On the contrary Mr. Maninder Singh appearing for the Union submitted that the Government would do anything to prevent any frustration or disenchantment among the officers serving in the army by creating 141 additional posts in the cadre of Colonel for allocation to Arms Support so that the same are utilized appropriately for promoting officers eligible for such promotion. Mr. Singh, however, suggested a method of utilization of the posts so created over a period of ten years to avoid an inequitable distribution and also to minimize the scope of any of the batches getting any undue benefit at the cost of other batches. Mr. Maninder Singh has also highlighted problems of implementation like managing of the cadre in case the utilization of the additional vacancies is to be done within a shorter time frame of say five years. Having given our anxious consideration to the submissions made at the bar, we are of the view that the additional 141 vacancies which ought to have been allocated to Arms Support in the year 2009 were unfairly denied to them. It has taken the aggrieved officers and legal process considerable time to have the said unfairness and injustice reversed by creation of additional vacancies. These vacancies shall, therefore, be taken to have been created as in the year 2009 and promotions against the same made from out of officers who were eligible for such promotion as in that year. It is not in dispute that the Selection Board that deals with such promotions has empanelled officers based on their inter se merit and suitability. All that is,

therefore, required is to operate the said merit list for utilization of the additional vacancies now being created. In other words, the additional creation shall, for all intents and purposes, be deemed to have been available for being filled-up as in the year 2009 but to be actually filled-up in 5 years between 2009-2014. Those who pick-up the next rank against the said vacancies shall have the benefit of retrospective seniority as is the practice in the Army but such seniority on appointment shall not entitle them to the benefit of higher pay-scale or arrears against the post to which they are promoted. In other words, financial benefits shall accrue to officers promoted pursuant to the creation of additional vacancies only with effect from the date they are actually promoted. Question No.3 is answered accordingly.

Re: Question No.4

30. We have while dealing with question No.1 already held that AV Singh's Committee did not have officers serving in the "services stream" namely (ASC, AOC & EME) in view while it recommended lowering of the age profile of Commanding Officers and creation of additional vacancies. The recommendations were limited to Arms and Arms Support only. Even so the question is whether the creation of such additional vacancies would ensure the benefit for officers serving in the services on account of what such officers claim to be 'one cadre' principle. The contention urged on behalf of the respondents was that no matter some of the respondents belong to services, they are a part of the same cadre and were, therefore, entitled to a pro rata share out of the newly created vacancies at par with those serving in Arms and Arms Support. Reliance in support of that contention was placed upon a circular dated 12 th November, 1987 issued by the Military Secretary's Branch. There is, in our view, no merit in the submission urged on behalf of the respondents that officers allocated to Arms and Arms Support and Services comprise a single cadre for purposes of promotion. We say so because transferability which is one of the essential attributes of posts comprising a single cadre is absent in the case of service officers on the one hand and those serving in Arms and Arms Support on the other. This Court has in several decisions examined what would constitute a common cadre, and held that merely because the incumbents of two posts are placed in the same scale of pay does not determine whether such posts constitute a cadre (see) *K. S. Srinivasan vs. Union of India (UOI)*¹. In *Chakradhar Paswan vs. State of Bihar & Ors*², this Court declared that the term cadre has a definite legal connotation in service jurisprudence and that interchangeability of the incumbents is one of the attributes of a cadre just as similarity of the responsibilities and pay may be indicative of all posts being in the same cadre. This Court observed:

"8 In service jurisprudence, the term "cadre" has a definite legal connotation In the legal sense, the word "cadre" is not synonymous with 'service'. Fundamental Rule 9(4) defines 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....”

(Emphasis supplied)

31. So also in *M. Hara Bhupal vs. Union of India and Others*³, this Court found that interchangeability is a necessary element of the posts being in the same cadre. In *S. I. Rooplal and Another vs. Lt. Governor through Chief Secretary, Delhi and others*⁴, this Court was dealing with “equivalence of posts” and held that equivalence of two posts is not judged by the sole factor of equal pay and identified four factors in that regard namely (i) the nature and duties of the post, (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. In *State of U.P. & Ors. vs. Bha.rat Singh & Ors.*⁵, this Court speaking through one of us (Thakur, J.) held that transferability or interchangeability of one incumbent to another in the cadre are essential attributes of a common cadre.

32. Applying the above test to the case at hand we have no hesitation in holding that officers serving in the Service stream of the Army do not constitute a single cadre with officers serving in Arms and Arms Support, no matter they may all be drawing the same salary, holding the same rank, wearing the same uniform and serving the same employer with similar service benefits. The true position is that allocation of officers to different Arms and Services puts them in distinct cadres, with the result that those comprising a particular cadre will have his or her promotional avenues available against the posts comprising that cadre alone notwithstanding the fact that the Government of India may, as a policy, attempt to ensure as far as possible that officers of a given batch pick up their ranks around the same time or within a reasonable span of their counterparts in other cadres or that the disparity in the time frame for promotion is removed by making promotions retrospective from the dates officers in the other cadre have been promoted. Reliance by the respondents upon Circular dated 12th November, 1987, is in our view misplaced. That circular, it is evident, from a reading of the same was issued in connection with the implementation of the Fourth Pay Commission to remove a certain doubt regarding the interpretation of the term “cadre” as applicable to army officers. It was in that context that the expression “cadre” has been explained in the circular by reference to the method of allocation to Arms and Services, and similarity of other conditions of service. The circular, it is evident, does not constitute a statement of law much less can the exposition of the term ‘cadre’ as given therein operate as estoppel against the union. The circular it is evident is an internal communication and has been issued in a totally different context. We, therefore, have no difficulty in answering question No.4 in the negative and holding that officers in service streams do not constitute a single cadre with those serving in Arms and Arms Support for purposes of allocation of additional vacancies created pursuant to the recommendations made to the Government by AV Singh Committee.

Re: question No. 5

33. We have, while answering question No. 4 above, already held that officers in different streams constitute different cadres. Since however, the argument based on legitimate expectation is pitched on a broader principle, we need to recapitulate on the risk of repetition that the Indian Army comprises the following 11 major streams: (1) Armoured Corps, (2) Infantry, (3) Mechanised Infantry, (4) Artillery (5) Air Defence (AD) (6) Engineers, (7) Signals (8) Army Service Corps (9) Army Ordnance Corps (10) Electronical and Mechanical Engineers and (11) Other Corps including Intelligence, Aviation and other Minor Corps. The first of these three streams namely Armoured Corps, Infantry, Mechanised Infantry are called as 'Combat Arms' which participate in direct tactical land combat in a war with requisite weaponry. The next four namely Artillery, Air Defence (AD), Engineers, and Signals are commonly known as 'Combat Support Arms' while Army Service Corps (ASC), Army Ordnance Corps (AOC), Electronical and Mechanical Engineers (EME) and other minor corps are known as 'Services'. As noticed in the beginning of the judgment, the newly selected Gentlemen Cadets get inducted as Commissioned Officers on successful completion of their training from the training academy. The Defence Service Regulations, Regulations for the Army govern the first appointment of the Commissioned Officers. Para 63 of the said Regulations reads:

“.... 63. First Appointment - (a) On first appointment to a permanent commission in the Regular Army, officers will be allocated to different corps. They will be required to do such basic training or attachment as may be prescribed from time to time for each corps, by Army HQ. An officer has no claim to a particular corps or to a particular unit of the corps. However, an officer may submit an application in writing to serve with a particular corps or a unit, which will be given due consideration subject to the requirements of the service ”

34. The choice of the cadet plays an important role in his allocation and induction in the 11 streams mentioned above. That is precisely why towards the completion of pre-commission training each cadet is required to submit his/her choice of induction into any of the abovementioned 11 streams. Policy guidelines in this regard have been issued from time to time by the Adjutant General's Branch which lay down the procedure by which cadets are allocated to different Arms, Combat Support Arms and Services. The broad allocation policy as stipulated in Adjutant General's Branch Circular dated 4th August, 2006 issued to the Indian Military Academy, Dehradun lays down the working parameters to ensure equitable distribution of GCs/LCs to Arms/Services through consideration of several factors stipulated in the same. Merit and caliber spread is one of the factors taken into consideration. The policy envisages that first 1% GCs (in order of merit) would constitute the "Super Block" and will be allotted to the Army/Service of their choice irrespective of other factors. It also provides for dividing GCs into blocks consisting of 25 to 35 GCs to ensure an even distribution of caliber to all Arms and Services. Parental claims are also taken into consideration while making such allocation just as the choice of General Cadet is one such

factor that is taken into consideration. The policy envisages the following factors to be kept in mind while exercising the choice by the cadets:

“(a) Super Block GCs opting for Arms will be permitted to give choice of a particular Regiment/Battalion.

(b) GCs/LCs exercising Parental Claims will be permitted to give choice of particular Regt/Bn/Gp.

(c) GCs can offer three choices in their order of preference.

(d) GCs can opt for Arms only or Arms/Services in their three choices.

(e) GCs can however opt for only one Service in their three choices.

(f) Optees for the Parachute Regiment can indicate choice of five PARA (SF), units (1,2,3,4,9, 10 & 21) in order of preference. Volunteer for Para (SF) will be deemed to have volunteered for Para Battalion also.

(g) GCs opting for Artillery will be permitted to specify choice of Fd/Med/SATA/Msl Gps.

(h) GC opting for AD Arty will be deemed to have opted for Artillery.

(j) Science Stream GCs will be preferred for allocation to AAD. If however, such GCs are not available, non-science GCs, preferably those who have studied Maths and Physics at 10+2 stage will also be inducted. Parental claims of non-science GCs in AAD will however, be honoured.

((k) GCs opting for Armd Regt/Mech Inf will be permitted to specify choice of Armd Regt/Mech Inf/Guards Bns.

(l) GCs opting for Armoured Corps or Mechanised Infantry will be deemed to have opted for Infantry.

(m) GCs opting for Inf will give choice of three Regts (in order of preference)

(n) GCs/LCs opting for Corps of Engrs will give the preference of Gps: Madras/Bengal/Bombay.”

35. Para 19(e) of the policy guidelines, inter alia, provides that as far as possible, efforts shall be made not to allot Arms/Services to any GC who has not opted for it as one of his choices. It is noteworthy that out of a total of 30 officers who had filed three original applications before the Tribunal, 26 officers were allotted to the streams of their first choice, 2 were allotted to the streams of their second choice while only one got allotted to the stream of his

3rd choice. One can, therefore, visualize that choice made by the officers prevails as has happened in the case at hand where an overwhelming number of 26 out of 30 officers have been given their first option while 2 out of 30 only were given their 2 nd choice. There is no denying the fact that GCs who made their choices are presumed to be fully aware of the functional and operational requirements of the obligations of the streams for which they had opted as also their future career prospects for the same.

36. It was argued on behalf of the respondents that the officers although allotted to different streams had a legitimate expectation in the matter of their promotion to higher ranks that the Government shall maintain parity among officers who passed out in the same batch but who were allotted to different streams like Arms, Arms Support and Services. On behalf of the appellant, Union of India, it was per contra contended that 'batch parity' simply refers to the time frame for the conduct of same level of selection by the selection board for the same batch officers allocated to different Arms/Services. It was also contended that having regard to Deprivation Risk (DRI) factor Arms were getting additional posts because of surrender of such vacancies from Services. This surrender was to the extent of 20%. That position was, according to the appellant, accepted by the respondents before the Tribunal and so also before this Court. That apart, various committees constituted over a period of time had according to the appellants, acknowledged a higher requirement of Combat Arms which over a period of time resulted in a disparity in the time frame for consideration of same batch officers allocated to Arms and Services. It was submitted that the time lag came to be known as 0-1-2 scenario. This differential scenario is according to the appellants necessitated by the operational role of Arms and the resultant requirement of a lower age profile of COs unlike their counterparts in Combat Arms Support and Services. The Appellants contended that officers are at any rate considered for promotion within their own verticals in terms of para 70 of DSR RA which reads as under:

“ 70. Claims for Promotion - Officers will normally be considered for promotion in the order of seniority in their Corps but an officer whose early advancement is in the interest of service may be specially selected for promotion to fill a vacancy whatever his seniority in the rank at the time. The cases of officers who are superseded for promotion will be kept under review in accordance with the existing instructions....”

37. It was submitted that recommendations made by the Kargil War Committee and AVS Committee have favoured an upward revision of 20% extra for Combat Arms to a level where the objective of inducting a Col. of Combat Arms for commanding a battalion is at the age of 37 years is achieved and the officer exits from command after 2% to 3 years to be adjusted in another available position before he is considered/selected for a higher rank. The recommendations of AVS committee, it was argued, were only with a view to enhancing and increasing the number of posts at the level of Col. for the streams constituting the broad classification of Combat Arms and Arms Support.

38. It was further submitted that the time edge of 0-1-2 was always in existence which in essence only meant that officers of combat arms of 1990 batch were considered by the Selection Board along with officers of the 1989 batch of 'Combat Arms Support' and

officers of 1988 batch of 'Services'. This was on facts demonstrated by reference to the case of respondent Lt. Col. P K Chaudhary of the 1994 batch of the ASC who was for the first time considered by Selection Board No. 3 for promotion to the rank in 2012 by which time officers belonging to Infantry and Artillery of 1994 had already been considered by Selection Board 3 in the year 2009 i.e., 2% years prior to the consideration of the Respondent - Lt. Col. P K Choudhary. No grievance was, however made by Lt. Col. P K Chaudhary in December 2012 as to why he was not considered for such promotion in the year 2009 itself when officers from his batch allocated to Artillery and Infantry were considered for such promotion. This implied that the Respondent Lt. Col. P K Chaudhary and others similarly situate clearly understood that batch parity did not mean consideration of commissioned army officers of the same batch at the same point of time nor was any grievance against their non-consideration ever made at any time when their batch mates serving in other streams were considered for promotion. It was submitted that Para 68 of DSR RA protected officers in the matter of their seniority by relating back their promotion to the date when officers in the same batch working in other streams were promoted. Para 68 reads as under:

“...68. Effective Date of Substantive Promotion - Substantive promotion to the rank of Colonel and above, and of Lt Col by selection, will be from the date an officer was passed fit in all respects for such promotion, provided a vacancy existed in the substantive cadre of that rank on that date. Should the date of assumption of the higher appointment be later than the former date of actual assumption of appointment will reckon for pay, pension and tenures But for purposes of seniority the date will be as notified in the Gazette...”

39. It was contended that the policy decision taken by Government of India was in the larger interest of national security and for making the Army more efficient and that the same did not violate any right of the respondents much less any fundamental right. The plea of legitimate expectation raised on their behalf was in that view futile for there was neither any basis for such a plea in the pleadings nor was the plea tenable in law especially when the policy change was in public interest.

40. Halsbury's Laws of England, Fourth Edition, Volume I(I) 151 explains the meaning of "Legitimate Expectation" in the following words:

“81. Legitimate expectations.— A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications,

applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant.”

41. Legitimate expectation as a concept has engaged the attention of this Court in several earlier decisions to which we shall presently refer. But before we do so we need only to say that the concept arises out of what may be described as a reasonable expectation of being treated in a certain way by an administrative authority even though the person who has such an expectation has no right in law to receive the benefit expected by him. Any such expectation can arise from an “express promise” or a “consistent course of practice or procedure” which the person claiming the benefit may reasonably expect to continue. The question of redress which the person in whom the legitimate expectation arises can seek and the approach to be adopted while resolving a conflict between any such expectation, on the one hand, and a public policy in general public interest on the other, present distinct dimensions every time the plea of legitimate expectation is raised in a case.

42. In *Food Corporation of India v. Kamdhenu Cattle Feed Industries*⁶ one of the earlier cases on the subject this Court considered the question whether Legitimate Expectation of a citizen can by itself create a distinct enforceable right. Rejecting the argument that a mere reasonable and legitimate expectation can give rise to a distinct and enforceable right, this Court observed:

“8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant’s perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona_fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

(emphasis supplied)

43. To the same effect is the decision of this Court in *Union of India v. Hindustan Development Corporation and Ors*⁷. where this Court summed up the legal position as under:

“28 For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on

the ground of a right. However earnest and sincere a wish a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.”

33. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person’s legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.”

(emphasis supplied)

44. Reference may also be made to the decision of this Court in *Punjab Communications Ltd. v. Union of India and Ors*⁸, where this Court held that a change in policy can defeat a substantive legitimate expectation if it can be justified on “Wednesbury reasonableness.” The choice of policy is for the decision-maker and not the Court. The legitimate substantive expectation merely permits the Court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based merely on legitimate expectation without anything more cannot ipso facto give a right. Similarly in *Dr. Chanchal Goyal (Mrs.) v. State of Rajasthan*⁹, this Court declined relief on the plea of legitimate expectation on the ground that the appellants had not shown as to how any act was done by the authorities which created an impression that the conditions attached to the original appointment order were waived. No legitimate expectation could be, declared this Court, claimed on such unfounded impression especially when it was not clear as to who and what authority had created any such impression. The decisions of this Court in *Ram Pravesh Singh v. State of Bihar*¹⁰ *Sethi Auto Service Station and Anr. v. Delhi Development Authority and Ors*¹¹, *Confederation of Ex-servicemen Association v. Union of India*¹² and *State of Bihar and Ors. v. Ka.lya.npur Cements Ltd.*¹³, reiterate the legal position stated in the decisions earlier mentioned. In *Monnet Ispat and Energy Ltd. v. Union of India and Ors*¹⁴, (this Court reviewed the case law on the subject and quoted with approval the following passage in *Attorney General for New South Wales*¹⁵

“To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords law.”

45. This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice the same can be questioned on the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

46. Coming to the case in hand, the plea of legitimate expectation does not appear to be of any assistance to the respondents for two precise reasons. Firstly, there is no real basis for the respondents to argue that the Government of India had either by representation or by any sustained course of conduct created an impression in the minds of the respondents that any additional vacancies created to the lower age profile of commanding officers serving in Combat Arms or Combat Arms Support shall also benefit those serving in the Service Streams of the Army. There is no factual basis laid by the respondents in the pleadings before the tribunal to suggest that any such impression was gathered by officers serving in the Service Streams. There is also no basis for the contention that a legitimate expectation arose in the minds of the respondents that they shall be promoted to the next rank simultaneously with the officers serving in Combat Arms or Combat Arms Support. As a

matter of fact, the provisions of para (68) of the Regulations for the Army extracted earlier itself envisages the grant of promotion to officers from different streams at different points of time depending upon several factors which bring about the time lag for such considerations. Conscious of the fact that such officers serving in different streams may pick up the next rank at different points of time, the Regulations provide for grant of retrospectivity to the promotions so granted to restore inter se batch parity to such officers. There is no denying the fact that the said Regulation continues to be operative and regardless of the date when the officer is promoted, his promotion is so related back as to protect his seniority vis-a-vis his colleagues from the batch serving in other streams. Far from creating any impression or any expectation that promotions shall be simultaneous, the Regulations clearly provide for grant of retrospective effect to the promotions only with a view to restore seniority. This clearly implies that in the very nature of things the promotions could be granted to officers at different points of time and time lag could additionally be in the 0-1-2 scenario. We have, therefore, no hesitation in rejecting the contention that the legitimate expectation did arise in the factual situation before us.

47. That apart, legitimate expectation as an argument cannot prevail over a policy introduced by the Government which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondents. In the case in hand, the Government has, as a matter of policy, decided to lower the age profile of officers serving in Combat Arms and Combat Arms Support pursuant to the recommendations made by the Expert Committees. We have in the earlier part of the judgment dealt with the recommendations made by the Committees and the objectives sought to be achieved by the policy decisions of the Government. There is nothing perverse, unreasonable or unfair about the policy that the age of officers serving in Combat Arms and Combat Arms Support will be lowered by creating additional vacancies to be allotted on Command Exit Model. In the absence of any perversity, unreasonableness or unfairness in the policy so introduced, we see no reason to allow the argument based on legitimate expectation to unsettle or undo the policy which is otherwise laudable and intended to render the Indian Army more efficient and better equipped for combat situations. It also is not a case where no reasonable person could have taken the decision which the Government have taken as regards the need for lowering the age profile of the Commanding Officers or their exit after 2-1/2 to 3 years to occupy positions which the Government have created for the officers to occupy till they are considered for promotion to the next higher rank. All told, the arguments based on legitimate expectation has not appealed to us. We have, therefore, no difficulty in rejecting the contention based on that principle. Question No. 5 is accordingly answered in the negative.

48. In the result, we partly allow these appeals and while setting aside the order passed by the Tribunal direct that the appellants shall create 141 additional posts of Colonel to be allocated to 'Combat Support' stream for being utilized by appointing officers who are eligible for promotions against the same as in the year 2009 over a period of 5 years till 2014.

49. In the peculiar facts and circumstances of the case, we leave the parties to bear their own costs.

Judgment Referred.

¹*AIR 1958 SC 0419*

²*(1988) 2 SCC 0214*

³*(1997) 3 SCC 0561*

⁴*(2000) 1 SCC 0644*

⁵*(2011) 4 SCC 0120*

⁶*(1993) 1 SCC 0071*

⁷*(1993) 3 SCC 0499*

⁸*(1999) 4 SCC 0727*

⁹*(2003) 3 SCC 0485*

¹⁰*(2006) 8 SCC 0381*

¹¹*(2009) 1 SCC 0180*

¹²*(2006) 8 SCC 0399*

¹³*(2010) 3 SCC 0274*

¹⁴*(2012) 11 SCC 0001*

¹⁵*(1990) 64 Aus LJR 327*