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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 27th October, 2026*

\# **CNR No. DLHC010347712026**

\+ W.P.(C) 10802/2026

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Farman Ali, CGSC with Ms. Usha Jamnal, Advocate along with Maj. Rahul Kumar and Maj. Himanshu Tyagi.

versus

BRIG ROHIT MEHTA VSM .....Respondent

Through: Mr. Nalin Kohli, Senior Advocate with Mr. Indra Sen, Ms. Nimisha Menon, Mr. Aditya Rathee and Ms. Ruchira Joshi, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH
HON'BLE MR. JUSTICE GURVINDER PAL SINGH

JUDGEMENT

JYOTI SINGH, J.

CAVEAT 360/2026

1. Since the Respondent/caveator has already entered appearance, the caveat stands discharged.

CM APPL. 50100/2026 (*Exemption*)

2. Allowed, subject to all just exceptions.

3. Application stands disposed of.

CM APPL. 50101/2026 (*Exemptions*)

4. This application is filed on behalf of the Petitioners under Section 151 CPC seeking permission to file lengthy list of dates.

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5. For the reasons stated in the application, the same is allowed. List of dates is taken on record.

6. Application stands disposed of.

W.P.(C) 10802/2026 and CM APPL. 50099/2026 (*for stay*)

7. This writ petition is filed on behalf of the Petitioners under Article 226 of the Constitution of India laying a challenge to the impugned judgment dated 02.04.2026 passed by learned Armed Forces Tribunal ('Tribunal') in O.A. No.2557/2025 filed by the Respondent as also order dated 15.05.2026 in R.A. No.31/2026, filed by the Petitioners.

8. Case of the Petitioners, as pleaded is that Respondent was commissioned in Indian Army on 13.06.1992 as General Cadre Officer and was promoted to the rank of Colonel in September, 2009 and on being promoted to the rank of Brigadier in March, 2018, commanded 62 Armoured Brigade from 31.03.2018 to 05.07.2020 and earned 5 Confidential Reports ('CRs') during this period.

9. It is averred that Respondent preferred Statutory Complaint dated 05.02.2022, aggrieved by his CRs for the periods 07/2019-02/2020 and 02/2020-06/2020, which was rejected vide order dated 22.06.2022 by the Central Government. Respondent filed O.A. No.288/2022 before the Tribunal, Jaipur Bench, which was subsequently transferred to Principal Bench, Delhi and renumbered as O.A. No.06/2023, wherein Respondent challenged both the CRs. During the pendency of the O.A., Respondent was considered for promotion to the rank of Major General by No. 1 Selection Board ('SB') in April, 2023 along with his 1992 Batch, but was not empanelled. By order dated 08.08.2023, Tribunal granted partial relief by expunging CR for the period 07/2019-02/2020.

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10. It is stated that Respondent challenged Tribunal's judgment dated 08.08.2023 to the extent it did not interfere with the second CR, but the writ petition being W.P. (C) No.15167/2023 was dismissed on 13.03.2024 and SLP(C) No.9350/2024 filed by the Respondent was dismissed vide order dated 29.04.2024. Judgment of the Tribunal dated 08.08.2023 was implemented by the Petitioners by expunging CR for the period 07/2019-02/2020 and basis the redressal, Respondent was considered by No.1 SB in April, 2024 as a Special Review (Fresh) case with 1993 Batch but was not empanelled. Respondent filed Statutory Complaint dated 14.11.2024 against non-empanelment to the rank of Major General and CR 02/2020-06/2020. The complaint was examined in light of Respondent's overall reckonable profile, comments of Reporting Officers and other relevant documents and the Competent Authority was of the view that assessments by all Reporting Officers in all CRs in the reckonable profile i.e. in the ranks of Colonel and Brigadier considered by No.1 SB, including impugned CR 02/2020-06/2020 were consistent, well corroborated, technically valid and in tune with the overall profile of the Respondent and only the entire assessment of SRO in CR 12/2009-07/2010 and assessment of SRO in Para 24(a) to (e)–'QsAP' in CR 09/2017-03/2018, which were not part of the Statutory Complaint, merited interference and accordingly, these were expunged.

11. It is averred that pursuant to redressal granted to the Respondent and on account of change in his profile, Respondent was considered by No.1 SB in April, 2025 as Special Review (Fresh) case in terms of Comprehensive Promotion Policy, 2023 ('CPP-2023'), promulgated vide MS Branch Policy Letter dated 06.12.2023, along with 1994 Batch, being the next physically available fresh batch, however, Respondent was again not empanelled.

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Being aggrieved, Respondent filed O.A. 2557/2025 challenging his non-empanelment and CR for the period 02/2020-06/2020 with consequential reliefs. By impugned judgment dated 02.04.2026, Tribunal allowed the OA partially and directed the Petitioners to consider the Respondent for promotion to the rank of Major General along with his batch i.e. 1992 Batch, owing to the redressal granted in the Statutory Complaint, within a period of three months from the date of judgment but did not interfere with the CR 02/2020-06/2020 on the ground that this issue stood adjudicated upto the Apex Court and had attained finality. Petitioners preferred Review Application No.31/2026, which was dismissed vide impugned order dated 15.05.2026.

CONTENTIONS ON BEHALF OF THE PETITIONERS:

12. Respondent was considered as a Fresh case by No.1 SB convened in April, 2023 along with his original 1992 Batch in the General Cadre, in accordance with MS Branch Promotion Policy dated 23.12.2017 ('2017 Policy'). Consideration of officers for promotion to the select rank of Major General is by No.1 SB and Para 10 of 2017 Policy ordains batchwise consideration and stipulates that the Selection Board shall be convened only when fresh batch is physically available for consideration as also the vacancies accruing to the said batch. In implementation of judgment dated 08.08.2023, Respondent was considered as Special Review (Fresh) case by No.1 SB in April, 2024 in accordance with CPP-2023 dated 06.12.2023, which superseded the 2017 Policy, but was not empanelled on merit. Paras 21 and 22 of 2017 Policy and Para 14 of CPP-2023 are *para materia.* Para 21 stipulates that all Deferred and Withdrawn cases shall be considered only with the next physically available fresh batch of their respective

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Arm/Service, applying the same cut-off CRs as applicable to such fresh batch and compared with the fresh batch and if found within merit, shall be empanelled against vacancies accruing to that batch and upon empanelment they will be given seniority of their original batch. This principle applies to Special Review cases also, as specifically provided under Para 22 of the Policy. Para 14 of CPP-2023 echoes this principle and envisages additional CR input and hence, there is no provision in either of the two policies which permits consideration of Special Review cases with original batches and the direction of the Tribunal to consider the Respondent with his original 1992 Batch is in the teeth of the promotion policies.

13. On filing Statutory Complaint dated 14.11.2024 against non-empanelment as also CR 02/2020-06/2020, partial redressal was granted to the extent of expunging entire assessment of SRO in CR 12/2009-07/2010 and assessment of SRO in Para 24(a) to (e)–'QsAP' in CR 09/2017-03/2018. The impugned CR was found to be consistent and well corroborated with Respondent's profile. Owing to the redressal and consequent change in profile, Respondent was considered by No.1 SB held in April, 2025 as Special Review (Fresh) case with the next physically available 1994 Batch, in consonance with CPP-2023 but was not empanelled on comparative merit, for which Petitioners cannot be blamed.

14. Respondent did not challenge the promotion policies providing for consideration of Special Review cases with the next physically available batches against vacancies accruing to those batches at any stage prior to his consideration by No.1 SB in April, 2024 and April, 2025 and only after he was not empanelled, he questioned his non-consideration with his original 1992 Batch, but without challenging the policies even then. It is trite that

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having participated in a selection process, it is not open to a candidate to challenge the applicable rules/policies, else no selection process will attain finality. Judgments of the Supreme Court in ***Union of India and Others v. Air Commodore NK Sharma, 2023 SCC OnLine SC 1673*** and ***Air Commodore Naveen Jain v. Union of India and Others, (2019) 10 SCC 34***, affirm this legal position. In ***Deepak Agarwal and Another v. State of Uttar Pradesh and Others, (2011) 6 SCC 725,*** the Supreme Court held that a candidate only has a right to be considered for promotion in light of the existing rules/policies and cannot claim that he must be promoted *dehors* the rules/policies. Respondent was accorded due consideration in consonance with the applicable promotion policy CPP-2023, but was not recommended for promotion based on comparative batch-merit.

15. It is equally settled that exercising power of judicial review, Courts cannot interfere in the recommendations of duly constituted Selection Boards and substitute their own views, unless there is arbitrariness, *mala fides* or violation of policies, warranting interference, which is not the case here. ***[Ref.: Air Vice Marshal S.L. Chhabra v. Union of India and Another, 1993 Supp (4) SCC 441]***. In any event, Respondent has not suffered any prejudice as he was considered as Special Review (Fresh) case post-grant of redressal with the next fresh batch with an additional CR input as applicable for the said batch.

16. Learned Tribunal's observation that grant of partial redressal vide order dated 20.03.2025 establishes that Petitioners themselves found that Respondent's earlier profile was tainted by inconsistent and subjective assessments and accordingly, expunged entire SRO's assessment in CR 12/2009-07/2010 and SRO's QsAP assessment in CR 09/2017-03/2018 and

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thus due to material alteration in Respondent's profile, he must first be tested in the same legal and factual frame in which his earlier empanelment arose, namely, in comparison with his original 1992 batch and not with the later batch, overlooks that there is no policy which permits such consideration and secondly, Respondent had only challenged his CRs for the periods 07/2019-02/2020 and 02/2020-06/2020 in Statutory Complaint dated 05.02.2022 and there was no reason or occasion to consider the earlier CRs at that stage, prior to his consideration by No.1 SB in April, 2023. It was only when the Respondent filed Statutory Complaint dated 14.11.2024 against non-empanelment by No.1 SB held in April, 2024 and requested for review of his entire profile, that the earlier CRs were examined for inconsistency/subjectivity in terms of Part VII of Army Order 05/2024/MS dealing with representations against CRs and non-empanelment. Once the inconsistencies came to light, redressal was fairly granted to the Respondent.

17. Tribunal has gravely erred in placing reliance on the decisions rendered in ***Maj Gen V.K. Singh, VSM v. Union of India and Others, 2018 SCC OnLine AFT 8980,*** and of this Court in ***Maj Gen Vinayak Saini v. Union of India and Others, 2024 SCC OnLine Del 5562***, to hold that Respondent is entitled to be considered with his original 1992 Batch, inasmuch as both these judgments deal with material change in the policy by the time the officers came up for consideration as Special Review cases, which is not the case here. Maj Gen V.K. Singh was originally considered as a fresh case in October, 2017, as per policy then in vogue. Upon grant of redressal in the Statutory Complaint, he was considered as a Special Review (Fresh) case in December, 2018 by which time 2017 Policy was promulgated and he was considered under this policy. Relief was granted to

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the officer on the ground that the intervening policy altered the parameters of comparison and transition to a materially different policy regime retrospectively, adversely effected Applicant's right of consideration under the policy applied at the time of consideration of his original batch.

18. Similarly, case of Maj Gen Vinayak Saini is also distinguishable from the instant case. In the said case, the officer filed Statutory Complaint dated 27.02.2023 against CR for the period 07/2021-05/2022 and while complaint was pending, he was considered by SSB in February, 2023, with his own 1987 Batch under 2017 Policy but was not empanelled. Complaint was disposed of on 09.10.2023 expunging IO's Box Grading and consequently, the officer was considered as a Special Review (Fresh) case in respect of NGSC stream along with 1989 Fresh batch, with an additional CR input but was not recommended. For promotion to the rank of Lt. General in the Corps of Engineers, the officer was declared ineligible for consideration in the SSB scheduled in the year 2025 with fresh 1988 Batch, owing to the fact that he was superannuating on 31.10.2024 i.e. prior to occurrence of next vacancy on 01.09.2025, in terms of Para 17 of CPP-2023, despite redressal. In this backdrop, Court interfered and directed the Respondents therein to reconsider Maj Gen Vinayak Saini's case against vacancies in the Corps of Engineers, applying the parameters of SSB held on 09.02.2023 for his original batch and taking into account vacancies that existed on the said date. The factors that weighed with the Court were that the officer could not be denied relief despite redressal only because no vacancy was arising prior to his superannuation as also that there was an interim order granted by the Tribunal at the initial stage that his promotion will be subject to the outcome of the Original Application he had filed. The Tribunal in the instant case has

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overlooked these distinctions and passed a direction for consideration of the Respondent with his original 1992 Batch, which directly contravenes CPP-2023.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

19. Respondent is an officer of General Cadre (Armoured Corps) 1992 Batch. In April, 2023, he was considered by No.1 SB along with his original 1992 Batch but was not empanelled due to two CRs 07/2019-02/2020 and 02/2020-06/2020, which he assailed in O.A. 06/2023 and vide judgment dated 08.08.2023, CR 07/2019-02/2020 was expunged in entirety but the second was not interfered with. The judgment has attained finality and therefore, Respondent at this stage is not questioning the CR for the period 02/2020-06/2020, however, the direction of the Tribunal to frame a policy on treatment of deflated reports has not been framed till date and this grievance survives.

20. Consequent to expunction of CR 07/2019-02/2020, Respondent was considered by No.1 SB in April, 2024, as Special Review (Fresh) case under CPP-2023 but wrongly compared with the subsequent 1993 Batch and not empanelled. Respondent was granted redressal in the Statutory Complaint against non-empanelment by expunging entire assessment of SRO in CR 12/2009-07/2010 and SRO's 'QsAP' assessment in CR 09/2017-03/2018, both of which were part of reckonable profile when Respondent was first considered in April, 2023. Petitioners ought to have taken corrective steps before the first consideration itself instead of considering the Respondent with a tainted profile. After redressal, Respondent was again considered as Special Review (Fresh) case in April, 2025 but was erroneously compared with 1994 Batch and declared 'not empanelled'. In this backdrop, no legal

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infirmity can be found in the observation of the Tribunal that due to material change in Respondent's profile, he must be first tested in the same legal and factual frame in which he was not empanelled i.e. comparison with his original batch and/or consequent direction to consider him with his 1992 batch. In fact, the Tribunal has only redressed the wrong done to the Respondent at each successive stage of consideration for promotion.

21. Indian Army has followed quantification system of selection from 2009 *albeit* with some changes every 5 years and in this system each officer of a particular batch is adjudged on scale of 100 marks, of which 95 are allotted on the basis of quantifiable parameters such as numerical gradings in CRs, gradings in military courses, honours and awards etc. and balance 5 marks are allotted by the Selection Board on the basis of 'non-quantifiable parameters' such as posting profile, weak/adverse remarks in the dossier etc. The benchmark of a particular batch depends on number of vacancies and merit of the officers under consideration etc. and varies from batch to batch. Therefore, if owing to the redressal granted to an officer in his CR(s), he is assessed as a Special Review (Fresh) case with the next junior batch with different benchmark/parameters, the purpose of granting redressal is defeated. Grant of redressal means and implies that *status quo ante* has been restored and rules of the game have to be the same as applied at the time of original consideration. The Supreme Court in ***Union of India and Others v. Major General Manomoy Ganguly, (2018) 1 SCC 552***, has held that a Review Selection Board is nothing but an extension of original Board and therefore, the officer must be considered on same parameters as applied to the original batch in the original Board with the same comparative field.

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22. Following the binding dictum in ***Major General Manomoy Ganguly (supra)***, Division Bench of this Court in ***Maj Gen Vinayak Saini (Supra),*** held that denying an officer a review consideration with reference to the very Board in which he was wronged, merely because a later vacancy or a later batch has intervened, would defeat the very purpose of the redress granted to him and therefore, the officer must be compared applying parameters applicable to his peers/original batch. The judgment was upheld by the Supreme Court on 24.09.2024 in SLP(C) No.20898/2024 and subsequently implemented and in the status report filed by the Army in the contempt petition filed by Maj Gen Vinayak Saini, it was categorically stated that Petitioner was considered as a Special Review (Fresh) case with his amended profile in the SSB held on 10.10.2024 and compared with the benchmark of SSB held in February, 2023 *albeit* he was not empanelled. A Special Review (Fresh) case by its very definition is not review with a later batch but restoration of an officer's position after redressal and comparative field cannot change to his detriment.

23. Tribunal has simply applied the ratio of these judgments and reiterated that once an officer is granted redress which materially corrects and alters his profile, he acquires a right to be considered afresh on the same parameters as were applied at the time of original consideration and this reasoning is firmly rooted in the ethos that corrective action must be 'real and effective' and not illusionary. Hence, the impugned judgement deserves to be upheld and present petition dismissed with a direction to the Petitioners to implement the judgement at the earliest and consider the Respondent for promotion to the rank of Major General by No.1 SB along with his original 1992 Batch applying the same parameters/benchmark, so

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that Respondent is able to enjoy the fruits of the redressal granted by the Central Government and the Tribunal on two occasions.

24. Heard learned counsel for the Petitioners and learned Senior Counsel for the Respondent.

25. Indisputably, Respondent is a 1992 Batch General Cadre officer and was promoted to the rank of Brigadier in March, 2018 and commanded 62 Armoured Brigade from 31.03.2018 to 05.07.2020. Being unsuccessful in challenge to his CRs for the periods 07/2019-02/2020 and 02/2020-06/2020 in Statutory Complaint dated 22.06.2022, Respondent filed O.A. 288/2022 before the Tribunal, which was allowed vide judgment dated 08.08.2023 and partial relief was granted to the Respondent by expunging his CR for the period 07/2019-02/2020. Aggrieved by partial redressal, Respondent filed W.P. (C) 15167/2023, which was dismissed by this Court, agreeing with the Tribunal that the impugned CR 02/2020-06/2020 was in sync with his overall profile and SLP(C) No.9350/2024 was also dismissed. In the meantime, Respondent was considered by No.1 SB for promotion as Major General in April, 2023 with his original 1992 Batch under the 2017 Policy, but was not empanelled.

26. Petitioners implemented the judgment of the Tribunal and expunged the CR for the period 07/2019-02/2020. Owing to the redressal granted, Respondent was considered by No.1 SB in April, 2024, as Special Review (Fresh) case under CPP-2023 along with 1993 Batch, which was the next physically available fresh batch, but was not empanelled. Respondent submitted Statutory Complaint dated 14.11.2024 against his non-empanelment as also against CR 02/2020-06/2020 and upon examination of Respondent's overall reckonable profile alongside the comments of the

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Reporting Officers and other documents, Competent Authority in the Central Government was of the view that assessments by all Reporting Officers in all CRs in the ranks of Colonel and Brigadier (reckonable profile) considered by No.1 SB including impugned CR 02/2020-06/2020 were consistent, well corroborated and technically valid, save and except, entire assessment of SRO in CR 12/2009-07/2010 and assessment of SRO in Para 24(a) to (e)–'QsAP' in CR 09/2017-03/2018, which were accordingly expunged vide order dated 20.03.2025 and consequent to the redressal granted and resultant change in profile of the Respondent, he was considered by No.1 SB in April, 2025, as a Special Review (Fresh) case in terms of CPP-2023 promulgated on 06.12.2023 but with 1995 Batch and was not empanelled again and this triggered the filing of O.A. 2557/2025, which was decided by impugned judgment dated 02.04.2026 and Petitioners were directed to consider the Respondent for promotion to the rank of Major General by No.1 SB along with his original batch and complete the process within three months from the date of the judgement. Petitioners filed Review Application being RA 31/2026, re-agitating the entire issue on merits, which was dismissed vide order dated 15.05.2026. Aggrieved by the judgment as also the order in the review application, Petitioners have filed this writ petition.

27. For the sake of completeness, we may note that the reliefs sought by the Respondent before the Tribunal were: (a) to set aside the proceedings/results of No.1 SBs held in April, 2024 and April, 2025 *qua* the Respondent, wherein his upgraded quantified-merit was ignored and the benchmark/parameters applied by No.1 SB held in April, 2023 while considering the 1992 batch, were not applied; and (b) to re-consider his case

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for promotion without taking cognizance of his deflated CR for the period 02/2020-06/2020, since no policy was framed in respect of deflated CRs, despite direction of the Tribunal in the first round of litigation. Tribunal declined to interfere with CR 02/2020-06/2020 so far as the challenge was laid on ground of bias of the SRO, on the ground that validity of the CR had been adjudicated and tested in the first round of litigation up to the highest judicial forum and the doctrine of finality of litigation, founded on consideration of judicial discipline and certainty in law, precluded the Tribunal from reopening the issue *albeit* to the extent of deflation of CR and the dispute pertaining to which promotion policy will apply, there was no *res judicata* as these were fresh causes of action. Neither party questions the CR 02/2020-06/2020 before us and parties are *ad idem* that the only question falling for consideration before this Court is whether the Tribunal is right in directing the Petitioners to consider the Respondent for promotion to the rank of Major General with his original 1992 Batch applying the benchmark/parameters applied in No.1 SB held in April, 2023 and thus the controversy is in a narrow compass.

28. Parties are not at variance that an officer in the rank of Brigadier is considered for promotion to the rank of Major General by No.1 SB. The first consideration of an officer to a select rank is termed as 'Fresh' consideration and is with the eligible officers of his own batch of the Arm/Service to which he belongs and if empanelled, he reckons seniority of his batch. Second consideration is granted to an officer, who is not empanelled in Fresh consideration and is called Fresh Review consideration, where the officer is considered along with the next physically available fresh batch and if empanelled, he gets seniority of the next batch, which means that the

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seniority is depressed. Third and final consideration called Final Review consideration is granted to an officer who is not empanelled in either the Fresh or First Review consideration and the officer is then considered along with the next physically available fresh batch and if empanelled, the seniority is reckoned with the junior batch with whom he is considered. After three considerations, if the officer is not empanelled, he is deemed to be finally superseded. However, as an exception when post-consideration for promotion, an officer's overall profile undergoes a material change, owing to redressal granted by expunging or modifying his CR(s), which may be through the mechanism of non-statutory/statutory complaint or judicial order, the officer is considered as a Special Review (Fresh) case and if empanelled, seniority is restored accordingly.

29. Coming back to the narrative of the instant case, Respondent was granted redressal on two occasions. First, when the Tribunal expunged his CR for the period 07/2019-02/2020 vide judgement dated 08.08.2023 and second, when the Central Government granted redressal vide order dated 20.03.2025 and expunged the entire assessment of SRO in CR 12/2009-07/2010 and assessment of SRO in Para 24(a) to (e)–'QsAP' in CR 09/2017-03/2018. Due to change in Respondent's profile under reckoning, Respondent was considered as Special Review (Fresh) case in April, 2024 by No.1 SB after first redressal and again in April, 2025 after the second redressal, but he was accorded consideration with next physically available 1993 and 1994 Batches, respectively and not with Respondent's original 1992 Batch and it is here that the rival parties join issue.

30. Broadly understood, contention of the Petitioners is that Respondent was rightly considered in April, 2024 and April, 2025 as per CPP-2023,

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Para 14 whereof provides that Special Review/Deferred/Withdrawn cases will be considered with the next physically available fresh batch of their own Arm/Service with the same cut-off CR as that of the fresh batch under consideration and will be compared with the fresh batch with which they are being considered and will be empanelled, if in merit, against the vacancies accruing for that fresh batch and if empanelled for promotion, they will reckon seniority of their original batch and that the said policy is applicable to all Selection Boards scheduled on or after 01.01.2024. As per the Petitioners even if the Respondent was considered under 2017 Policy, as per which his original batch was considered, the result would not have been otherwise, since Paras 21 and 22 of 2017 Policy are *para materia* with Para 14 of CPP-2023 and do not envisage consideration of a Special Review case with original batch or against vacancies accruing to the said batch. After promulgation of these policies, Respondent cannot claim consideration with his original 1992 Batch as that will run counter to the promotion policies.

31. Respondent, on the other hand, strongly refutes this position and contends that as a Special Review (Fresh) case, he is entitled to be considered with his original 1992 Batch and on the yardstick applied in No.1 SB held in April, 2023, when his original batch came up for consideration for promotion to the rank of Major General for the first time, else the whole purpose of granting him redressal will be defeated as also that the direction of the Tribunal to consider the Respondent with his original batch is not unprecedented and to buttress the latter plea, reliance was placed on the judgments in ***Major General Manomoy Ganguly (supra), Maj Gen Vinayak Saini (supra)*** and ***Maj Gen V.K. Singh (supra).***

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32. Having given our thoughtful consideration to the rival submissions of the parties, we are of the view that there is merit in the submissions of the Respondent and consequently, no infirmity in the impugned judgment of the Tribunal for the reasons, we shall advert to hereinafter. Before proceeding further, it is imperative to look at the relevant Paras of the two policies, which are the bone of contention between the parties and thus we extract them hereunder for ease of reference:-

Promotion Policy dated 23.12.2017

"Deferred/ Withdrawn/ Special Review Case

21. ***Deferred/Withdrawn Cases.*** *All Deferred/Withdrawn cases will only be considered with the next physically available Fresh Batch of their own Arm/Service with the same cut-off CR as that for the Fresh Batch. In such cases, the officers will be compared with the Fresh Batch with which they are being considered and will be empanelled if in merit, against the vacancies accruing for that Fresh Batch. If empanelled for promotion, they will reckon the seniority of their original Batch.*

22. ***Special Review Cases.***

(a) All Special Review cases will be considered in a manner similar to Deferred/Withdrawn cases as given at Para 21 above.

(b) Special Review will be granted to the officer against Non empanelment in the impugned Selection Board only and not for previous ranks/boards, notwithstanding the point of time at which th redress has been granted in the officers' profile.

(c) If an officer already approved for promotion as First Review or Final Review is granted Special Review, then he will be eligible for consideration for Restoration of Seniority (ROS). If approved, his Batch Year of Seniority (BYOS) will be adjusted accordingly.

23. ***Promotion of Deferred/Withdrawn/Special Review Cases.***

Deferred/Withdrawn/Special Review cases, if empanelled, will be promoted as per their seniority vis-a-viz the existing panel against the vacancies of the Selection Board in which they are being considered."

CPP-2023

"14. *Special Review/ Deferred/ Withdrawn Cases. Such cases will only be considered with the next physically available Fresh Batch of their own Arm/Service with the same cut-off CR as that of the Fresh Batch under consideration. Such cases will be compared with the Fresh Batch with*

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which they are being considered and will be empanelled, if in merit, against the vacancies accruing for that Fresh Batch. If empanelled for promotion, they will reckon the seniority of their original batch."

33. Coming to the impugned judgment of the Tribunal dated 02.04.2025, we find that the decision is largely premised on the law laid down by the Supreme Court in ***Major General Manomoy Ganguly (Supra),*** that Review Selection Board in nothing but an extension of original Selection Board and hence, the officer must be considered on the same parameters as if he was participating in the promotion process undertaken in the original Board. Tribunal also referred to and relied on the judgement of this Court in ***Maj Gen Vinayak Saini (Supra),*** upheld by the Supreme Court in SLP(C) No.20898/2024; judgment of the Tribunal in ***Maj Gen V.K. Singh (Supra)*** and an earlier judgment of the Tribunal in ***Col V S Kahlon v. Union of India and Ors., O.A. 3354/2024***, decided on 25.07.2025, where the law laid down in ***Major General Manomoy Ganguly (Supra),*** was followed and in our view, the neat legal nodus arising in the present case stands crystallized in these judgements and thus we may briefly advert to these judgements.

34. In ***Col V S Kahlon (Supra),*** the Tribunal discussed the intersection of 2017 Policy and CPP-2023 and after referring to the judgment in ***Maj Gen V.K. Singh (Supra)*** at length, observed that from the said judgement it was clear that while Deferred/Withdrawn and Special Review cases under the new policy may be evaluated alongside the upcoming batch using a revised standard and policy framework, however, it shall only apply to First and Second Review cases and should not extend to a situation as in the case of the Applicant before the Tribunal, where he was considered as a Special Review case, classified as 'Fresh'. It was also observed that in essence, the

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observations in ***Maj Gen V.K. Singh (Supra),*** lay down a fundamental rule that a 'Fresh' candidate should not be grouped with the next junior batch, where the officer has been wronged for no fault of his and the injustice is rectified through a legal process and the officer should be considered as a Fresh case in line with his own cohort from the original batch and this status should not be altered by any new policy. Subjecting the Applicant to such a disadvantage due to implication of a new policy, would constitute discrimination and violate Articles 14 and 16 of the Constitution of India.

35. In ***Maj Gen V.K. Singh (Supra),*** Tribunal was called upon to adjudicate whether on grant of redressal and consequent change of his reckonable profile, the officer becomes entitled to be considered afresh as a Special Review (Fresh) case vis-à-vis the last empanelled officer of his original batch and under the same policy guidelines, which were in vogue when the Selection Board, wherein he was wronged was held and in which he was not empanelled, owing to the wrong done and/or whether his consideration with the next available batch, which may have intervened by then on different parameters, is justified. It is true that in the said case a different policy regime had come into play at the time of Special Review consideration, but the moot point under consideration was change of yardstick at the time of consideration as a Special Review (Fresh) case on grant of redressal. It was articulated on behalf of the Applicant that consideration under the new 2017 Policy would change the parameters/benchmark for selection, making it virtually a changed goalpost and this would violate Articles 14 and 16 of the Constitution as also that Paras 21 and 22 of the 2017 Policy providing for consideration of Special Review cases at par with Deferred/Withdrawn cases, along with the next

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physically available fresh batch, were contrary to the very ethos of consideration for promotion after the wrong done to an officer is corrected. Reliance was essentially placed on the judgment in ***Major General Manomoy Ganguly (Supra)*****,** to support the legal plea raised.

36. Holding in favour of the Applicant and allowing the Original Application, Tribunal directed the Respondents to consider the case of the Applicant for promotion to the rank of Lt. General as a Special Review (Fresh) case in accordance with the policy that was applied by the Selection Board when Applicant was considered with his original batch, meaning thereby that consideration was to be accorded on the same parameters and benchmark, as applied at the time of original consideration. Tribunal held that based on the non-statutory complaint filed by the Applicant, once the Competent Authority detected a 'wrong' in his CR record and 'corrected' the same by expunging it, Applicant deserved consideration as a fresh case with his original batch on same parameters/benchmark and adopting any other path would amount to undoing the redress granted.

37. This judgment was challenged by Union of India in the Supreme Court in Civil Appeal Diary No.44838/2018, titled ***Union of India & Ors. v. Maj. Gen. V.K. Singh.*** When the appeal came up for consideration on 04.01.2019, the Supreme Court expressed an opinion that the Respondent should be considered for the post of Lt. General by Review Promotion Board on the basis of policy in existence in 2017 and that the Board should hold a sitting and undertake the process as soon as possible, preferably within three weeks. The appeal was adjourned to enable the Appellants to undertake this exercise. When the matter came up on 25.01.2019, the Supreme Court was informed that SSB had met on 19.01.2019 and

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considered the Respondent but he was not recommended for promotion. In light of this, the appeal was disposed of, leaving it open to the Respondent to make a representation against his non-empanelment. However, upshot of this decision is that the Supreme Court did not interfere with the judgment of the Tribunal on law and in fact, Appellants had held the Board applying the same yardstick as of the original batch, in consonance with the directions of the Tribunal.

38. This very issue came up for consideration before the Division Bench of this Court in ***Maj Gen Vinayak Saini (Supra)***. We may refer to a few facts of this case as a prelude for better appreciation of the judgment. Petitioner in the said case was commissioned in the Corps of Engineers on 19.12.1987 and was promoted to various ranks from time to time. The problem started when after grading him 'Outstanding' in his two CRs in the rank of Major General, the same IO downgraded the numerical grading in the subsequent CR and this was endorsed by the RO. Officer was considered by Special Selection Board (SSB) for promotion to the rank of Lieutenant General as a fresh case of 1987 Batch against two Corps vacancies and as a Review case for Non-General Cadet Staff ('NGCS') stream and both the SSBs were held on the same date. It is at this stage that Petitioner learnt of the downgrading in his CR for the period 15.07.2021 to 07.05.2022 and submitted a Statutory Complaint dated 27.02.2023, however, no action was taken and apprehending that results of the SSBs will be declassified to his detriment, Petitioner filed O.A. 1559/2023 before the Tribunal. By order dated 31.05.2023, Tribunal directed that Petitioner's promotion will be subject to outcome of the O.A.

39. Statutory Complaint of the Petitioner was forwarded through proper

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channel only after both the Corps vacancies were filled. Petitioner was, however, granted redressal by the Central Government and IO's Box Grading was expunged. Due to change in profile, Petitioner was considered as a Special Review (Fresh) case for NGCS stream along with fresh batch of 1989 by the Selection Board held in December, 2023, but was not empanelled. Owing to non-consideration for the Corps vacancies after grant of redressal, Petitioner sought a direction from the Tribunal to the Respondents to hold a Special Review Board, which direction was issued by the Tribunal, however, Respondents did not comply and justified their inaction by taking a stand that Petitioner was not eligible for consideration since the next vacancy was arising only on 01.09.2025, which was after the superannuation of the Petitioner on 31.10.2024.

40. In this backdrop, agreeing with the Respondents, Tribunal held that since no vacancy was available before superannuation of the Petitioner, he could not be considered for promotion, despite the redressal granted to him. Tribunal disagreed with the Petitioner on his plea that while considering the Petitioner in the NGSC stream, the cut-off CR of 31.12.2022 i.e. of the original batch ought to have been taken. The judgment of the Tribunal dated 19.04.2024 was challenged before this Court in W.P. (C) No.7181/2024 and the main plank of the argument of the Petitioner was that in view of the redressal granted by the Central Government by expunging IO's Box Grading in the impugned CR, which was the sole reason for his non-empanelment, Respondents were required to conduct a review of the Board held in February, 2023 and consider the Petitioner on the same parameters and against the vacancies of the said batch. It was urged that Respondents' plea that no review consideration can be given till a fresh vacancy arises in

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the Corps of Engineers, overlooks the fact that Petitioner's profile that was taken into account on 09.02.2023 had radically changed due to expunction of the IO's Box Grading in the CR in question and he cannot be denied the benefits of the redressal granted by comparing him with the subsequent batch on a different comparative field.

41. *Per contra,* Respondents contended that Special Selection Board is in the nature of review consideration and can be held only when the next physically available fresh batch is considered against the available vacancies accruing for that batch and that this policy is applied uniformly to all officers across the board. It was sought to be justified that since the next vacancy was arising only after superannuation of the Petitioner, he could not be considered by the Selection Board. Before coming to the findings and decision of the Division Bench in the writ petition, it will be useful and relevant to see how the Tribunal dealt with the rival submissions and relevant passages are as follows:-

> *"24. Having thus examined contents of all of the above quoted letters relevant to examination of case at hand we do not find any ambiguity with relation to consideration of the applicant as per both the letters in question whenever be the letter applicable to the case even if it is argued on behalf of the applicant that he was to be governed by policy letter of December 2017 and not December 2023. It is clearly spelt out that there has to be a vacancy to be availed of by the applicant and also there has to be presence of a fresh batch to consider the applicant alongside as there is no provision anywhere to consider a candidate as a lone case based on a redressal thus received or for any other reasons as the case may be.*
>
> *25. From the facts and the records placed before us it is observed that there are three Lt. Gens authorized in the Corps of Engineers in the applicants of Engineer-in-Chief, Director General, Border Roads and Commandant of College of Military Engineering of which all the vacancies are presently occupied by incumbents.*
>
> *26. On a perusal of records, We find that the first vacancy that would come up for utilization will be that of Lt. Gen Arvind Walia, Engineer-in-Chief when he retires on 31.08.2025 and subsequently, the remainder vacancies will come up on superannuation of respective officers holding*

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the appointment. It is our observation therefore that hypothetically even if the applicant is to be considered by boards as a lone candidate and he is found empanelled for promotion there will be no vacancy available to promote him to rank of Lt. Gen before his superannuation in the present rank on 31.10.2024. Thus, the extant conditions do not help the case of the applicant.

27. Moreover, it is settled jurisprudence that the exercise of power of judicial review in the selection process and the policy matters of the executive is limited and, therefore, we do not consider it appropriate to exercise the power of judicial review in the instant case, in absence of any express mala fide."

42. Testing the correctness of the impugned judgement on the touchstone of the 2017 Policy and CPP-2023 as also the judicial precedents before it, the Division Bench first captured the rival submissions of the parties in paragraph 24 of its judgment and thereafter formulated the question arising for consideration in paragraph 26, both of which are extracted hereunder for ready reference:-

*"**24.** From the factual position noted herein above, what emerges is that while the respondents do not deny that there has been a change in the petitioner's CR profile with retrospective effect, their sole contention to deny a review consideration to the petitioner viz a viz the Corps specific vacancy is that as per their applicable policies, no such consideration can be granted till a fresh vacancy of Lt. General arises in the said Corps. Their plea being that where redressal is granted to an officer by way of a statutory/non-statutory complaint, he does not automatically become entitled to a special review consideration with respect to the earlier Corps specific vacancy; this review consideration, it is contended is required to be granted only when the next batch is to be considered for the next available vacancy. The learned Tribunal accepted this contention of the respondents and has, therefore, held that the petitioner is entitled for a review consideration only when the next available vacancy of Lt. General in the Corps of Engineers accrues on 01.09.2025, when Lt. General Arvind Walia superannuates. Consequently, the Tribunal concluded that despite a radical improvement in his profile, the petitioner cannot be granted any consideration by way of special review and would have to retire in the present rank without being considered for promotion.*

xxx xxx xxx

***26.** From the aforesaid submissions of the parties, we find that the factum about the redressal being granted to the petitioner being undisputed, the*

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question for our consideration now lies in a very narrow compass. Should the petitioner, who has been granted redressal by the Central Government itself, thereby vindicating his stand that his IO had wrongly downgraded his Box Grading in his CR which was considered by the SSB held on 09.02.2023, be told that he cannot be granted any consequential relief, by accepting the respondents' stand that since the vacancies of Lt. General, as available on 09.02.2023, already stand filled, no special review consideration can be granted to him. The issue, thus, would be whether the respondents' contention that despite it being conclusively found that the petitioner was considered in the SSB on 09.02.2023 on the basis of his faulty CR, he cannot be granted a special review as he will retire before the next vacancy arises on 01.09.2025."

43. The question posed for consideration was answered in favour of the Petitioner by the Division Bench, observing that if the Petitioner was not granted review consideration with respect to SSB held on 09.02.2023, despite redressal granted to him and his stand being vindicated that he had been wrongly downgraded by his IO, the very purpose of redressal would stand defeated. This may lead to a situation like the present case, where despite being meritorious an officer may be denied promotion only because his IO/RO, as the case may be, arbitrarily downgrade his CR. Such an officer cannot be told that even though the downgrading in his CR was illegal and the wrong has been corrected, he would continue to be deprived of his rightful promotion only because his junior has been promoted in the meantime and will have to wait for the next vacancy and next batch.

44. Another observation in the said judgment, which is extremely significant jurisprudentially on the legal issue involved and directly applies to the present case before us is that if the Respondents' plea that a review consideration can be given only against the next available vacancy and not with reference to the Selection Board where the officer is wronged, was to be accepted, it would lead to a situation where in order to harm the promotional aspects of an officer, disposal of the Statutory Complaint may

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itself be delayed deliberately, as was done in the said case. It was held that Respondents' refusal to grant review consideration to the Petitioner vis-à-vis vacancies of Lieutenant General in Corps of Engineers as on 09.02.2023 was arbitrary and illegal. Significantly, both the policies i.e. 2017 Policy and CPP-2023, were before the Court and after examining them, Petitioner was granted relief on the principle of fairness and justice *albeit* it be noted that Court also considered the additional fact that there was an interim order in favour of the Petitioner by the Tribunal making his promotion subject to the outcome of the O.A. We also note that the Division Bench also placed reliance on the decision of the Supreme Court in ***Major General Manomoy Ganguly (Supra),*** on which the Tribunal has also relied in the judgement impugned before us, wherein the Supreme Court held that review SPB is nothing but an extension of original SPB, wherein Respondent was supposed to be considered on the same parameters as if he was participating in promotion process undertaken in original SPB.

45. The judgment of the Division Bench in ***Maj Gen Vinayak Saini (Supra),*** was challenged by the Respondents therein and SLP(C) No.20898/2024 was dismissed by the Supreme Court on 24.09.2024. It is relevant to note that the Supreme Court observed that the High Court interfered with the decision of the Tribunal holding that it was a case of wrongful downgrading of CR and injustice to the officer, in light of the order passed by the Central Government granting redressal, which is extracted in paragraph 4 of the order of the Supreme Court. The SLP was dismissed as being devoid of merit after due deliberation and consideration and hence, the judgement of this Court stands affirmed. Relevant passages from the judgement of the High Court are as follows:-

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*"**27.** Having given our thoughtful consideration to this question, we are of the opinion that if the petitioner is not granted review consideration for promotion with respect to the SSB held on 09.02.2023, despite the redressal granted to him and his stand being vindicated that he had been wrongly downgraded by his IO, the very purpose of redressal being granted to an officer would stand defeated. This may lead to a situation like the present case, where despite being meritorious, an officer may still be denied promotion only because his IO/RO, as the case may be, arbitrarily downgrade his CR. Such an officer, in our view, cannot be told that even though the downgrading of his CR by his IO/RO was illegal and has been subsequently, set aside by the Central Government/the Chief of Army Staff by accepting his statutory/non-statutory complaint, he would still continue to be deprived of his rightful promotion as his junior has already been promoted in the meanwhile and he will be required to wait for accrual of the next vacancy.*

***28.** There is yet another angle from which this issue can be examined. In case, the respondents' plea that a review consideration can be given only against the next available vacancy and not with reference to the Board where he was wronged, was to be accepted, it would lead to a situation where in order to harm the promotional prospects of an officer, the disposal of the statutory complaint preferred by him may itself be delayed deliberately. In the present case, the record in itself shows that though the petitioner had submitted a statutory complaint on 27.02.2023, the same was not forwarded to the competent authority/respondent no. 1 till as late as July 2023 by which time the result of the Board held on 19.02.2023 was de-classified. Further we also wonder as to why the statutory complaint was not decided before the second vacancy of Lt. General in the Corps of Engineers was filled on 01.10.2023 but was instead decided just nine days thereafter.*

***29.** In our view, the respondents' refusal to grant a review consideration to the petitioner vis-a-vis the vacancies of Lt. General in the Corps of Engineers as on 09.02.2023 is in itself arbitrary and illegal. However, even if we were to accept their plea that such a review consideration is not in consonance with the existing promotion policy, the petitioner, in our view, would still be entitled to relief. We say so as we find that the promotions pursuant to the Board held in February 2023 were itself directed to be made subject to the outcome of the OA. The Tribunal specifically directed on 31.05.2023 that the petitioner's promotion would remain subject to outcome of the OA and therefore, it was evident that the promotion of the two officers as Lt. General in the Corps of Engineers recommended by the Board on 09.02.2023 in itself was subject to outcome of the OA. This necessarily implied that these two officers, who were promoted pursuant to the Board held in 2023, were to be put to notice qua their promotion being subject to outcome of the OA.*

xxx *xxx* *xxx*

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32. *In the light of this factual position, when the Tribunal, by way of its interim order dated 31.05.2023, had already protected the rights of the petitioner, he cannot now be told that the Tribunal's order was of no consequence. In our view, it would be a travesty of justice if the petitioner were to be told that, despite it having been conclusively established that his IO had wrongly downgraded him in the assessment of one of his CRs, which was considered by the Selection Board held in February 2023, he cannot now be considered for promotion as his batchmates, including a person junior to him, have already been promoted and that too by ignoring the interim order passed by the Tribunal. The learned Tribunal, we find, has simply overlooked this aspect of the matter and has accepted the respondents' plea that now that the vacancy against which the petitioner could have been considered has already been allocated to his junior, he must retire in his present rank itself, despite being meritorious. We are, therefore, of the considered view that the impugned order is unsustainable and is liable to be set aside with directions to the respondents to grant a special review consideration to the petitioner with reference to the SSB held on 09.02.2023 for the Corps of Engineers by applying the same parameters as applied to the Board.*

33. *In this regard, we may refer to the following extracts from the decision of the Apex Court in Union of India v. Major General Manomor Ganguly, (2018) 1 SCC 552:*

> *"In the original SPB meeting, Major General Sanjeev Chopra was awarded 1.70 out of 2 marks whereas the respondent was awarded 1.50 marks. Lesser marks given to the respondent were because of the reason that marks awarded to him out of 93 were lesser than Mr. Sanjeev Chopra. Result of the redressal was that the marks of the respondent became higher than Mr. Sanjeev Chopra which necessitated Review SPB. This Review SPB meeting has to be on the same standards which were adopted in original SPB meeting. It has to be on the assumption as if case of the respondent is considered in the original SPB, but with revised profile. In SPB held on 20-1-2016, had the revised marks of the respondent been available, which were more than the quantified marks of Sanjeev Chopra, the respondent would have certainly got 1.70 out of 2 marks by the Board. It is stated at the cost of repetition that that was the criteria adopted by the Members of the Board itself viz. awarding the marks (out of 2) in line with the quantified marks. Having not undertaken the independent exercise of looking into the "overall profile" in SPB held on 20-1-2016 and instead assigning the marks to all the officers out of 2 marks, on the basis of quantified marks of the candidates which they had received out of 93 marks by treating the same as "overall profile", when it comes to Review SPB the appellant is supposed to stick to the same criteria. Only that would show fairness in approach, which would also be in conformity with the principles of equality enshrined in Article 14*

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of the Constitution. It is because of the reason that Review SPB is nothing but extension of original SPB, wherein the respondent was supposed to be considered on the same parameters as if he was participating in promotion process undertaken in original SPB."

xxx *xxx* *xxx*

35. *In the light of the aforesaid, we allow the writ petition by setting aside the impugned order and directing the respondents to re-consider the petitioner's case for promotion as a Lt. General in the Corps of Engineers with respect to the SSB held on 09.02.2023 by taking into account the vacancies as existing on the said date and applying the same benchmark criteria as was applied for consideration of the other officers by the said SSB.*

36. *It is further directed that in case the petitioner is recommended for promotion, on the basis of the same parameters as applied by the SSB for the Corps of Engineers held on 09.02.2023, he will be granted promotion as a Lt. General with retrospective seniority and notional fixation of pay, without any arrears of wages. However, since the Officers empanelled pursuant to the recommendations made by the SSB for the Corps of Engineers held on 09.02.2023 are not before us, we are consciously not issuing any directions qua them, leaving it open for the respondents to pass appropriate orders in this regard. Taking into account that if the petitioner is not promoted to the next rank of Lt. General, he will superannuate on 31.10.2024, we direct that the exercise in terms of this order be carried out within four weeks."*

46. On perusal of the aforementioned judgements in ***Major General Manomoy Ganguly (Supra), Maj Gen V.K. Singh (Supra)*** and ***Maj Gen Vinayak Saini (Supra),*** we are of the view that the legal issue stands settled that a special review consideration, occasioned due to a wrong being redressed subsequently, has to be on the same parameters and benchmark as applied at the time of original consideration with the original batch and this is the common thread that runs in these judgements. Significantly, while all these three cases started their journey from the Tribunal, they were finally decided by the Supreme Court and applying the doctrine of merger, these are decisions of the Supreme Court and hence, a binding dictum for us. It would indeed be travesty of justice if the officer, even after grant of redressal, is

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told that he will be considered with another batch applying a different yardstick though his initial consideration was with a tainted profile, owing to a wrong done to him. This unwarranted change of goalpost causes prejudice to the officer and virtually takes away the redressal granted and hence, we re-iterate that Special Review (Fresh) consideration on grant of redressal and resultant change in officer's profile must be done on parameters applied at the time of original consideration and with the original batch, else there will be a change of the comparative field, against the settled law.

47. Matter can be seen from another angle. Army follows a quantification system of selection, which was introduced in 2009 with the objective of bringing transparency in the selection process and to do away with unfettered discretion vested in the members of the Selection Board. Each officer under consideration is judged on a scale of 100 marks, of which 95 are quantifiable parameters such as numerical gradings in CRs, gradings obtained in military course, honours and awards etc. and 5 marks are awarded by the Selection Board on non-quantifiable parameters such as posting profile, performance in war reports, weak or adverse remarks in the CRs etc. It is established that batch-merit/benchmark of a particular batch is sacrosanct to that batch and depends on number of vacancies of each batch as also the merit of the officers in a particular batch etc. and thus varies from batch to batch. Therefore, consideration with a different batch will be on different parameters and rules of the game will inevitably change.

48. In this backdrop, Respondent is right in contending that a Special Review (Fresh) case implies restoration of the status of the officer to his original batch and he cannot be considered with the next junior batch, pitching his case on the judgement in ***Maj Gen Vinayak Saini (Supra)***.

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Respondent is also right in contending that such an officer cannot be confronted with non-availability of vacancy accruing to his original batch, as held in above mentioned case. We cannot be unmindful of the fact the when the Respondent was accorded first consideration with his 1992 batch in April,2023, his profile was tainted as two of his CRs were admittedly, deserving of interference. Paras 145-148 of Army Order 02/2016 and Policy dated 19.08.2015 mandate that CRs received in the MS Branch shall be subjected to intense internal scrutiny to identify and expunge any inconsistency or subjectivity or technical invalidity in the CRs and had the MS Branch carried out this exercise in discharge of its obligations at the relevant time, Respondent would have been considered with modified/ upgraded merit with the original batch in April, 2023 itself and this would have obviated the entire litigation that he was compelled to undertake and strangely, even today the contest by the Petitioners seems to be unending.

49. The Tribunal, in our view, in the impugned judgment has rightly observed that it is not striking down CPP-2023 but instead reads an exception for Special Review cases on the touchstone of principles of fairness, non-arbitrariness and protection against retrospective prejudice, in line with the reasoning in ***Maj Gen V.K. Singh (Supra), Maj Gen Vinayak Saini (Supra)*** and ***Major General Manomoy Ganguly (Supra).*** The observation of the Tribunal that the judicial concern is not with marks or benchmarks in abstract but with the timing and frame of comparison viz. placing the Respondent against the fresh batch instead of re-running him against the original batch, from which his earlier non-empanelment arose, which would convert the statutory redress into a pure cosmetic exercise, is absolutely correct. Tribunal rightly posed the question whether the

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Respondent is restored to the position he would have been in but for the wrong CRs and answers it by holding that CPP based comparison with the later batch fails that test.

50. Contention of the counsel for the Petitioners that the judgments relied upon by the Tribunal are distinguishable, is without merit. No doubt the decision in ***Col V S Kahlon (Supra)*** was confined to selection policies governing promotions up to the rank of Brigadier, however, what is relevant to the instant case is the analysis on the intersection of 2017 Policy and CPP-2023 that an officer who is a Special Review (Fresh) case should be considered with his own cohort from the original batch, once the wrong done to him has been rectified through a legal process.

51. In ***Maj Gen V.K. Singh (Supra)*** case, the question was whether the Applicant who had been granted redressal could be considered as a Special Review (Fresh) case under the new 2017 Policy or should be considered with the policy in vogue when his original batch was considered in October, 2017. The question was answered by the Tribunal holding in favour of the Applicant that the parameters of consideration cannot change and the Applicant should be considered in accordance with the same policy which was in vogue when the first SSB took place in October, 2017 and this direction was upheld by the Supreme Court. On reading of the operative direction in the said case, one may get an impression in the first blush that the case was simply one of application of two different policies, however, close reading of the judgment would show the Applicant therein was asserting a right for consideration with his original batch and on the same parameters/benchmark as applied to the said batch as that would be the only way meaningful redressal would come to him, after the wrong committed

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against him is corrected. Attempt of counsel for the Petitioners to distinguish the two judgments, basis an argument that these cases involved material change in the policies, is futile for the simple reason that it is not their case that different parameters have not been applied while considering the Respondent in the No.1 SBs held in April, 2024 and April, 2025 and this in the teeth of the law laid down by the Supreme Court.

52. Mr. Farman Ali attempted to distinguish the judgment in ***Maj Gen Vinayak Saini (Supra)*** on facts, urging *inter alia* that in the said case, Petitioner was considered by two SSBs for two different streams and one of the issues was of non-existence of Corps vacancy prior to superannuation of the Petitioner as also that his promotion was made subject to outcome of the OA. To our mind, these alleged distinctions are irrelevant as what is applicable is the ratio that review consideration, occasioned by redressal of a wrong cannot be with different batch and on different parameters. Equally the argument that the Petitioner in the said case had an interim protection is of no aid since the doctrine of *lis pendens* applies with full force in the instant case. Many times, Courts do not stay the selection process in the interest of administration, but make the rights of the applicants subject to outcome of the pending litigation, but mere absence of such an order cannot be construed to mean that pendency of the case before the judicial forum, wherein rights are asserted by parties, has no meaning and even on getting redressal, party must meet *fate accompli.*

53. For all the aforesaid reasons, we find no error or infirmity in the impugned judgment of the Tribunal directing the Petitioners to re-consider the case of the Respondent for promotion to the rank of Major General with his original 1992 Batch as a Special Review (Fresh) case and on the same

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parameters/benchmark as applied to the said batch by No.1 SB and taking into account the vacancies that existed when the Board was held in April, 2023. This writ petition is accordingly dismissed and the impugned judgment dated 02.04.2026 passed by the Tribunal as also order dated 15.05.2026 in R.A. 31/2026 are upheld.

54. Petitioners are directed to make an endeavour to hold the No.1 Selection Board prior to the superannuation of the Respondent on 31.10.2026, however, if for any reason the same cannot be done, the needful shall be done within 6 weeks from today and it is made clear that the superannuation of the Respondent will not come in the way of his consideration for promotion to the rank of Major General by No.1 SB and we say this because Respondent had taken recourse to legal remedies well in time in 2023 and unlike in the civil sector, in the Army promotion leads to extension of service and date of retirement is consequently deferred, an important observation made by the Supreme Court in ***Union of India & Ors. v. Maj. Gen. V.K. Singh (Supra).***

55. There is also no infirmity in the order dismissing the Review Application as the Petitioners were seeking to reargue and reagitate the matter on merits, which is impermissible in review jurisdiction where only errors apparent on the face can be looked into.

56. Pending applications also stand disposed of.

JYOTI SINGH, J.

GURVINDER PAL SINGH, J.

OCTOBER 27, 2026/*YA*

Signature Not Verified
Digitally Signed
By:KAMAL KUMAR
Signing Date:28.10.2026
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