Neutral Citation Number: 2023/DHC/001414

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

Date of decision: 27th FEBRUARY, 2023

IN THE MATTER OF:

\+ **W.P.(C) 11011/2022 & CM APPL. 32617/2022**

HARSH AJAY SINGH ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 11012/2022**

RAVINDER SINGH SHEKHAWAT ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 11013/2022**

MANOHAR LAL SHARMA ..... Petitioner

versus

UNION OF INDIA ..... Respondent

\+ **W.P.(C) 11904/2022**

COL. AMIT KUMAR ..... Petitioner

versus

UNION OF INDIA ..... Respondent

\+ **W.P.(C) 14596/2022**

RAHUL R AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 10023/2022 & CM APPLs. 29204/2022, 32007/2022, 45527/2022**

ANUBHAV MISHRA AND ORS ..... Petitioners

versus

UNION OF INDIA AND ANR ..... Respondents

\+ **W.P.(C) 10231/2022 & CM APPL. 29537/2022**

RAMAVTAR JAT AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 10386/2022**

YOGESH AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 10422/2022 & CM APPLs. 30064/2022, 30065/2022**

GOPAL KRISHN & ORS ..... Petitioners

versus

UNION OF INDIA THROUGH THE DEFENCE SECRETARY, DEPARTMENT OF DEFENCE AND ORS ..... Respondents

\+ **W.P.(C) 10748/2022 & CM APPL. 31234/2022**

MAHIPAL MUND AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 10856/2022 & CM APPL. 31580/2022**

RAHUL .... Petitioner

versus

UNION OF INDIA & ORS ..... Respondents

\+ **W.P.(C) 10887/2022 & CM APPL. 31681/2022**

ASHWANI SHARMA ..... Petitioner

versus

UNION OF INDIA & ORS ..... Respondents

\+ **W.P.(C) 11014/2022 & CM APPLs. 32618/2022, 32619/2022**

YOGESH ..... Petitioner

versus

UNION OF INDIA AND ANR ..... Respondents

\+ **W.P.(C) 12034/2022 & CM APPL. 35984/2022**

NARPAT RAM AND ORS ..... Petitioners

versus

UNION OF INDIA AND ANR. ..... Respondents

\+ **W.P.(C) 13910/2022**

ASRID V. AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 13911/2022**

NANDU KRISHNAN R. AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 13912/2022**

JITHIN P.J AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 13913/2022**

HARSH H. S. AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 15171/2022**

ASILRAJ A. AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 15174/2022**

AMALDEV R.S. AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

\+ **W.P.(C) 15319/2022**

MOHAMMED SAMEER AND OTHERS ..... Petitioners

versus

UNION OF INDIA AND OTHERS ..... Respondents

\+ **W.P.(C) 17302/2022 & CM APPL. 55037/2022**

WG CDR. PRADEEP KUMAR S PILLAI (RETD.) ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

\+ **W.P.(C) 16695/2022**

ABYMON VARGHESE AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

MEMO OF APPEARANCE

For the Petitioners

Mr. Prashant Bhushan, Ms. Alice Raj, Ms. SuroorMander, Advocates in W.P.(C) 10023/2022

Mr. K N Jayasankar, Ms. Beena Nair, Advocates in W.P.(C) Nos. 13910/2022, 13911/2022, 13913/2022, 15171/2022, 15174/2022.

Mr. Ashish Mohan, Mr. Samarth Chaudhary, Advocates in W.P.(C)

10887/2022
Ms. Chhavi Yadav, Mr. Ajit Kakkar, Advocate
Mr. Arunava Mukherjee, Advocate in W.P.(C)10422/2022
Ms. Kumud Lata Das, Mr. Manoj Singh, Mr. Manoj Mahaur, Mr. Harsh Ajay Singh, Advocates in W.P.(C) 11011/2022 & W.P.(C) 11014/2022
Mr. Ankur Chhibber, Mr. H S Tiwari, Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Advocates in W.P.(C) 10231/2022 & W.P.(C) 10748/2022
Mr. Dinesh Kr. Goswami, Senior Advocate with Mr. Rohit Pandey, Mr.Vaibhav Maheshwari, Mr. Varad Dwivedi, Ms. Munisha Anand, Mr.Adhyam Gupta, Ms. Nisha Thakur, Advocates in W.P.(C) 11012/2022
Mr. Manohar Lal Sharma, Ms. Suman, Advocates in W.P.(C) 11013/2022
Mr. D.K. Garg, Mr. Abhishek Garg, Mr. Dhananjay Garg, Mr. Ishaan Tiwari, Advocates in W.P.(C) 12034/2022
Mr. Ram Naresh Yadav, Advocate in W.P.(C) 11364/2022
Mr. Kamal Kapoor, Advocate in W.P.(C) 14509/2022.
Mr. Gautam Dhamija, Ms. Dania Nayyar, Mr. Tejaswi Bhanu, Advocates
Mr. Virendra Rawat, Advocate in W.P.(C) 14596/2022
Mr. Krishnamohan Menon, Ms. Dania Nayyar, Mr. Gautam Dhamija, Mr. Chaitanyashil Priyadarshi, Ms. Tejaswi Bhanu, Ms. Parul Sachdeva, Ms. Saloni Sharma and Mr. Sumit Kulkarni, Advocates
Mr. Vijay Singh, Mr. Pawan Kumar Nadia, Mr. Suman Saharan, Mr. Anuj Sharma and Mr. Divesh Gupta, Advocates for the Petitioners in W.P.(C) No. 10856/2022.
Wg. Cdr. Pradeep Kumar S Pillai (Retd.) - in person in W.P.(C) 17302/2022
Mr. B. Aloor and Mr. Sathesh K. R., Advocates in W.P.(C) 16695/2022

For the Respondents.

Ms. Aishwarya Bhati, Additional Solicitor General and Mr. Chetan Sharma, Additional Solicitor General with Mr. Anurag Ahluwalia, CGSC, Mr. Harish Vaidyanathan, CGSC, Mr. Kirtiman Singh, CGSC, Mr. Amit Gupta, Mr. Srish Kumar Mishra, Mr. Chaitanya Puri, Ms. Sanjana Nangia, Mr. Saurabh Tripathi, Ms. Kunjala Bhardwaj, Mr. Saurabh Tripathi, Mr. Madhav Bajaj, Mr. Waize Ali, Mr. Rishav Dubey, Mr. Danish Faraz Khan, Mr. Sagar Mehlawat, Mr. Manvendra Singh, Mr. Abhijeet Singh, Mr. Aman Sharma, Mr. Rustam Singh Chauhan, Ms. Shivika Mehra, Ms. B. L. N. Shivani, Ms. Vidhi Jain, Ms. Durgeshnadini, Mr. Rahul Sharma, Mr. Prashant Singh, Mr. Alexander Mathai Paikaday, Ms. Aishwary Mishra and Mr. Aditya Singh

Chauhan, Mr. Nitinjya Chaudhary, Mr. Sagar Mehlawat and Mr. Aman Sharma, Advocates along with Colonel Gurpreet Kaur Dayal, Major Partho Katyayan, Major Steve Barreto, Lt. Commander Vikrant Singh, Wing Commander Vishal Chopra and Captain Sirdhar Jayasankar in all the matters.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. A batch of twenty-one Writ Petitions being, W.P.(C) Nos. 10023/2022, 10231/2022, 10386/2022, 10422/2022, 10748/2022, 10856/2022, 10887/2022, 11011/2022, 11012/2022, 11013/2022, 11014/2022, 11904/2022, 12034/2022, 13910/2022, 13911/2022, 13912/2022, 13913/2022, 14596/2022, 15171/2022, 15174/2022 and 15319/2022 were heard analogously and were reserved on 15.12.2022. Thereafter, W.P.(C) 17302/2022 came up for hearing on 19.12.2022 and was heard and reserved for judgment. W.P.(C) 16695/2022 was received on transfer from the High Court of Kerala at Ernakulum and came up for hearing on 19.12.2022 on which date there was no appearance on behalf of the Petitioner and the matter was adjourned to 17.02.2023. On 17.02.2023 the matter was heard and reserved for judgment.

2. While some Writ Petitions challenge the constitutional validity of the Agnipath Scheme (hereinafter referred to as '*the Impugned Scheme*'), in others, the grievance of the Petitioners is that they went through the recruitment process for the Armed Forces that was prevalent prior to the Impugned Scheme. It is stated that they have been shortlisted but have not been appointed because of the Impugned Scheme and, thereby, have been

prejudiced. Some Writ Petitioners have challenged both - the Scheme and the prejudice caused to them by the introduction of the Impugned Scheme. This judgment is, therefore, divided into two parts - Part A deals with the validity of the Impugned Scheme and Part B deals with the grievances of the Petitioners that the Impugned Scheme has taken away their rights insofar as they have participated in the recruitment process and many of them have been shortlisted but have not been appointed due to the Impugned Scheme.

PART-A : CONSTITUTIONAL VALIDITY OF THE SCHEME

FACTS

3. The Ministry of Defence, Union of India came up with a scheme for recruitment of personnel below the rank of commissioned officers for the Indian Army, Indian Air Force and Indian Navy (*hereinafter referred to as the* "Indian Armed Forces") for a period of four years. The recruited soldiers have been titled as 'Agniveers'. As per the scheme, individuals aged between 17.5 years to 21 years are eligible to apply for recruitment as Agniveers. Upon being recruited, such individuals would get trained for a period of 6 months and will be in active service for a period of 3.5 years and post that 25% of such Agniveers will be retained as soldiers under the permanent commission and the rest of the Agniveers will be permitted to return to the civilian life. As per the scheme, Agniveers are given a salary of about Rs. 4.76 lacs per year to begin with, which can be increased to about Rs. 6.92 lacs by their fourth year in service. The Agniveers, in case of a mishappening or an accident, are liable to receive a non-contributory life insurance cover of about Rs. 48 lacs, additional ex-gratia of Rs. 44 Lacs for death attributable to service, and salary for the unserved portion of the four year service. At the end of the four year tenure, each Agniveer will leave the

service with a corpus of about Rs. 11 lacs. Many of the Agniveers who are not retained in the army will be absorbed in the paramilitary forces. The Agniveers who are not retained will also be given certificates of experience of the nature of work rendered by them which will facilitate them to get jobs in private sector.

ARGUMENTS ADVANCED BY THE PETITIONERS

4. Ms. Kumud Lata Das, learned Counsel appearing for the Petitioner in W.P.(C)110011/2022, contends that the period of 3.5 years may be too short in the Indian milieu to gain the physical and psychosocial experience of having served in the Armed Forces. She submits that as per the Scheme, no pension will be provided to Agniveers which is contrary to schemes of other countries after which the Impugned Scheme has been modelled. Further, it has been submitted that the life insurance cover, as envisaged under the Impugned Scheme, is less than that of a regular soldier.

5. Ms. Das has also made detailed submissions comparing the Impugned Scheme with other comparable schemes floated by Armed Forces of other nations to highlight that although the Impugned Scheme has been built upon such schemes, it does not extend the same benefits to the soldiers. In light of these submissions, it is prayed that directions be issued to the Union to reconsider the Impugned Scheme.

6. The learned Counsel for the Petitioner in W.P.(C) 11012/2022 has stated that the Impugned Scheme is discriminatory and arbitrary, and it ought to be set aside. Apart from the grounds raised by Ms. Das, an additional ground with regards to the lack of provisions for employment of Agniveers after the period of 4 years, has been raised. She contends that the feeling of camaraderie motivates a soldier to put one's life in danger to save

other's life and it is the hall-mark of a good Army. She contends that a period of four years is not sufficient to inculcate such a feeling of camaraderie amongst the soldiers. It is stated that the Agniveers who are recruited will be posted in frontline and without a feeling of camaraderie or the motivation to put one's life in danger to save life of the other soldier, the morale and the character of the Indian Army will be affected. It is further contended that 75% of the Agniveers, who would not be recruited in the regular army, would not be in a position to get alternate employment and there is a major possibility that these young persons, who are trained in arms, can go astray and can create law and order problems in the country. Petitioners in W.P.(C) 11013/2022, W.P.(C) 11904/2022, and W.P.(C) 14596/2022 have not raised any additional grounds to assail the validity of the Impugned Scheme.

ARGUMENTS ADVANCED BY THE RESPONDENT

7. *Per contra,* Ms. Aishwarya Bhati, learned ASG, states that the recruitment process is essentially a policy decision taken by the Central Government in exercise of its sovereign functions and, hence, is not amenable to judicial review. Ms. Bhati states that the Impugned Scheme was enacted taking into account the peculiar border situation and incessant threats made by hostile neighbouring nations to infiltrate the border of India. Attention has also been drawn to the terrain of our nation, which includes mountain ranges, swampy marshes, jungles, deserts, riverine, and glaciated regions, as well as isolated island territories. The terrain, hence, is unpredictable and non-linear, making the task of a solider with the Armed Forces all the more difficult. In light of this, the government felt the need to establish a more youthful, agile, and physically fit Armed Forces, which is

well equipped to deal with such terrains. Learned ASG has also placed on record figures to substantiate this need. She states that upon an analysis, it emerged that the average age of officers of the Armed Forces was 32 years, as opposed to the global average of 26 years. Hence, the object sought to be achieved by the Impugned Scheme is to have a force of young Jawans, Sailors or Airmen between the age of 18-25 years as Agniveers, supervised by the experienced regular cadre personnel.

8. Ms. Bhati has also contended that the Impugned Scheme is the result of various studies and deliberations such as the Kargil Review Committee, which proposed the retention of soldiers for a shorter duration of time, as opposed to the existing structure of 15 to 20 years. Due to this, the military intake and retention models of the United States, United Kingdom, Canada and France were considered by experts to analyse the efficiency and organizational benefits of short term military engagement.

9. Heard the learned Counsel for the Petitioners and Respondent, and perused the material on record.

ANALYSIS

10. The short question before this Court pertains to the constitutional validity of the Agnipath Scheme, with the Petitioners having prayed for directions to either reconsider the Impugned Scheme or to declare it wholly unconstitutional.

11. Material on record indicates that the Impugned Scheme was announced by the Government of India on 15th June 2022 to enable the Indian youth to join Indian Armed Forces for a term of four years. It is stated that Agniveers form a distinct rank in the Indian Armed Forces,

different from any other existing rank and, on completing their engagement period, the Agniveers will go through a selection process and 25% Agniveers of each batch will be enrolled in regular cadre and remaining 75% will exit into the civil domain.

12. Material on record further shows that after completion of four years, the Agniveers will be provided with skill certificates as per their trade in the Indian Army to apply for various jobs in the Government Sector as well as in Private Sectors. For example, a person working as a Driver in the Armoured Corps and driving fighting vehicles or mechanical transport vehicles will be given driver-cum-mechanic certificates; a person working as Operator Fire Controller or a person working as a General Duty in the infantry would be provided with certificates of Gym Assistant, Warehouse Packer, CCTV Video Footage Auditor, Front Office Assistant, Data Entry Operator, Fireman, etc.; similarly, a person working as a Gunner in Artillery would be provided with a certificate of Fire Tech and Safety Manager, Fireman, Surveyor, Data Entry Operator, etc.

13. Material on record also indicates that the Impugned Scheme has been prepared after studying the military 'intake and retention' model of several countries. It is stated that most of the countries in the world have their own military and the method used for enrolment in Armed Forces vary from one country to another. The various types of recruitment are voluntary enlistment where citizens choose the military as their employer and serve their country as their job or career, and mandatory service where citizens of certain age must serve their country compulsorily for a minimum amount of time ranging from one year to five years. The material on record further shows that based on detailed deliberations, a model comprising well

experienced permanent cadre with operational and technical skills supported by youthful and a well-equipped support cadre, the Impugned Scheme has been envisaged by the Government of India.

14. Much has been said about this Court's power to review policy decisions, especially those that relate to issues of national security. Without adding to burgeoning jurisprudence in this regard, this Court will advert to the pre-existing standards laid down by the Apex Court, as well as this Court.

15. It has been settled in a catena of cases that the scope of judicial review accorded to this Court does not extend to excessively questioning the policy decisions of the government, unless they are arbitrary, discriminatory or are based on irrelevant considerations. In State of Orissa v. Gopinath Dash**, (2005) 13 SCC 495,** the Apex Court has held as under **:-**

> *"***7***. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.*
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> *5. While exercising the power of judicial review of administrative action, the Court is not the Appellate Authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the*

> *legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Asif Hameed v. State of J&K [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] and Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223 : AIR 1990 SC 1277] .) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere."*

16. The Apex Court in Centre for Public Interest Litigation v. Union of India**, (2016) 6 SCC 408**, wherein the Petitioner had challenged the decision of the Government of India to allow voice telephony to Reliance Jio Infocomm Ltd., has summarised the principles in this regard as under:-

> ***"22.** Minimal interference is called for by the courts, in exercise of judicial review of a government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in Narmada BachaoAndolan v. Union of India [Narmada BachaoAndolan v. Union of India, (2000) 10 SCC 664] and reiterated in Federation of Railway Officers Assn. v. Union of India [Federation of Railway Officers Assn. v. Union of India, (2003) 4 SCC 289] in the following words: (SCC p. 289, para 12)*
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> > *"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which*

or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."

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26. *It cannot be doubted that the primary and central purpose of judicial review of the administrative action is to promote good administration. It is to ensure that administrative bodies act efficiently and honestly to promote the public good. They should operate in a fair, transparent, and unbiased fashion, keeping in forefront the public interest. To ensure that the aforesaid dominant objectives are achieved, this Court has added new dimension to the contours of judicial review and it has undergone tremendous change in recent years. The scope of judicial review has expanded radically and it now extends well beyond the sphere of statutory powers to include diverse forms of "public" power in response to the changing architecture of the Government [[See: Administrative Law: Text and Materials (4th Edn., Oxford University Press, New York, 2011) by Beatson, Matthews, and Elliott.]] . Thus, not only has judicial review grown wider in scope; its intensity has also increased. Notwithstanding the same,*

"it is, however, central to received perceptions of judicial review that courts may not interfere with exercise of discretion merely because they disagree with the decision or action in question; instead, courts intervene only if some specific fault can be established—for example, if the decision reached was procedurally unfair [Ibid.] ".

> ***27.*** *The raison d'être of discretionary power is that it promotes the decision-maker to respond appropriately to the demands of a particular situation. When the decision-making is policy-based, judicial approach to interfere with such decision-making becomes narrower. In such cases, in the first instance, it is to be examined as to whether the policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy."*

17. Recently, the law related to judicial review in policy decisions has been reiterated in State of Maharashtra v. Bhagwan**, (2022) 4 SCC 193,** in the following manner:-

> *"**28**. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences."*

18. It emerges that there is a catena of cases which have reiterated the basic principle: that unless a policy decision taken by the Government is demonstrably capricious or arbitrary or if it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, this Court is not to question the propriety of such a policy decision. This Court

does not concern itself with whether a more comprehensive decision could have been taken by the Government, as this Court must show deference to the decision reached by experts [Refer to: Krishnan Kakkanth v. Govt. of Kerala**, (1997) 9 SCC 495**; Food Corpn. of India v. Bhanu Lodh**, (2005) 3 SCC 618;** Govt. of Orissa v. Haraprasad Das**, (1998) 1 SCC 487;** State of Orissa v. Bhikari Charan Khuntia**, (2003) 10 SCC 144;** Delhi Pradesh Registered Medical Practioners v. Director of Health Services**, (1997) 11 SCC 687)]**.

19. This scope for judicial interference is further constrained when the Scheme or policy decision pertains to the national security of our nation. The Apex Court in Ex-Armymen's Protection Services (P) Ltd. v. Union of India**, (2014) 5 SCC 409,** has even stated that what qualifies as national security is not a question of law, but is rather a question of policy, to be determined by the executive which is entrusted with such matters. Having stated the above, it goes without saying that the present issue, i.e. the recruitment of soldiers in the Armed Forces, most definitely qualifies as one falling under the ambit of 'national security'.

20. This Court has first looked at Council of Civil Service Union and Others. v. Minister for the Civil Service**, 1984 3 WLR 1174**, wherein the House of Lords had the occasion to adjudge the propriety of the Government of the United Kingdom's decision to ban the employees of the Government Communications Headquarters from joining any trade union due to issues of 'national security'. While generally allowing for judicial review of royal prerogatives, the House of Lords carved an exception for matters of national security, stating that Courts are inadequate to sit over appeal on the

Government's views on issues pertaining to national security. The following has been observed in this regard:-

> *"The question is one of evidence. The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any event the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based ongrounds of national security. Authority for both these points is found in The Zamora (1916] 2 A.C.77. The former point is dealt with in the well-known passage from the advice of the Judicial Committee delivered by Lord Parker of Waddington, at p. 107:"Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public."*

21. Closer to home too, there have been several authoritative pronouncements with respect to judicial review in matters of national security. In Indian Rly. Construction Co. Ltd. v. Ajay Kumar**, (2003) 4 SCC 579,** the Apex Court has referred to the 'doctrine of immunity' applicable to classes of cases which relate to *inter alia* deployment of troops. The following observations of the Apex Court in this regard are being reproduced as under:-

> *"**14**. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties etc. The distinctive*

*features of some of these recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised…**The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice thus:***

"There is a general presumption against ousting the jurisdiction of the courts so that statutory provisions which purport to exclude judicial review are construed restrictively. ***There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide.In this kind of non-justiciable area judicial review is not entirely excluded, but very limited.*** *It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] this is doubtful. Lords Diplock, Scarman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security.* ***Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved****. Another non-justiciable power is the Attorney-General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."*

> *(Also see Padfield v. Minister of Agriculture, Fisheries and Food [1968 AC 997 : (1968) 1 All ER 694 : (1968) 2 WLR 924] .)"* (emphasis supplied)

22. Recently, in Manohar Lal Sharma v. Narendra Damodardas Modi, **(2019) 3 SCC 25**, which pertained to the procurement of aircrafts by the Indian Government, in common parlance referred to as the Rafale deal, the Apex Court stated that the parameters of judicial review in cases which deal with defence procurement is narrow, due to the sensitive nature of the work undertaken by the State. The following has been observed by the Apex Court:-

> *"**6**. Keeping in view the above, it would be appropriate, at the outset, to set out the parameters of judicial scrutiny of governmental decisions relating to defence procurement and to indicate whether such parameters are more constricted than what the jurisprudence of judicial scrutiny of award of tenders and contracts, that has emerged till date, would legitimately permit.*
>
> *xxx*
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> ***9**. We also cannot lose sight of the tender in issue. The tender is not for construction of roads, bridges, etc. It is a defence tender for procurement of aircrafts. The parameter of scrutiny would give far more leeway to the Government, keeping in mind the nature of the procurement itself. This aspect was even emphasised in Siemens Public Communication Networks (P) Ltd. v. Union of India [Siemens Public Communication Networks (P) Ltd. v. Union of India, (2008) 16 SCC 215] . The triple ground on which such judicial scrutiny is permissible has been consistently held to be "illegality", "irrationality" and "procedural impropriety".*

10. *In Reliance Airport Developers (P) Ltd. v. Airports Authority of India [Reliance Airport Developers (P) Ltd. v. Airports Authority of India, (2006) 10 SCC 1] the policy of privatisation of strategic national assets qua two airports came under scrutiny. A reference was made in the said case (at SCC p. 49, para 57) to the commentary by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice:*

> *"57. ... 'There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 (HL)] this is doubtful. Lords Diplock, Scaman and Roskili (sic.) [To be read as "Roskill".] appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to*

> *institute legal proceedings on behalf of the public interest."*
>
> ***11**. It is our considered opinion/view that the extent of permissible judicial review in matters of contracts, procurement, etc. would vary with the subject-matter of the contract and there cannot be any uniform standard or depth of judicial review which could be understood as an across the board principle to apply to all cases of award of work or procurement of goods/material. The scrutiny of the challenges before us, therefore, will have to be made keeping in mind the confines of national security, the subject of the procurement being crucial to the nation's sovereignty."*

23. In Esab India Ltd. v. Special Director of Enforcement**, (2011) 178 DLT 569,** this Court adjudged the constitutional validity of Section 24, read with Second Schedule of the Right to Information Act, 2005, which effectively exempted certain intelligence and security organisations from furnishing information under the Right to Information Act, 2005. After summarising the Supreme Court's jurisprudence with regards to judicial review in such matters, this Court did not interfere with Section 24 on the ground that questions of national security were involved, and hence, this Court was not the proper forum to weigh the matter. It was categorically stated by this Court that the Executive is the sole arm of the State responsible for national security, and hence, must make such decisions.

24. In Lt. Col. P.K. Choudhary v. Union of India and Others**, 2020 SCC OnLine Del 915**, wherein a direction was sought to be issued to *inter alia* the Union to withdraw their policy to the extent that it banned the Petitioner and other members of the Indian Army from using social networking platforms like Facebook and Instagram, a Division Bench of this Court,

while taking note of the judgments of the Apex Court in Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, **(2020) 5 SCC 481**; Esab India Ltd. v. Special Director of Enforcement, **(2011) 178 DLT 569;**Mehmood Pracha v. Intelligence Bureau, **2018 SCC OnLine Del 9499**; Digi Cable Network (India) Pvt. Ltd. v. Union of India, **(2019) 4 SCC 451**; and State of N.C.T. of Delhi Vs. Sanjeev,**(2005) 5 SCC 181**, has refused to exercise its discretion vested under Article 226 and has observed as under:-

> *"**19.** Supreme Court in Union of India v. Rajasthan High Court, (2017) 2 SCC 599 was concerned with the directions issued by a High Court, to include the Chief Justices and Judges of the High Court in the list of persons exempted from pre-embarkation security checks at airports. While setting aside the said order of the High Court, it was held that (i) the High Court had evidently transgressed the wise and self-imposed restraint on the power of judicial review; matters of security ought to be determined by the authorities of the government vested with the duty and obligation to do so; (ii) gathering of intelligence information, formulation of policies of security, deciding on steps to be taken to meet threats originating both internally and externally, are matters on which Courts singularly lack expertise; (iii) it was not for the Court, in the exercise of its power of judicial review, to suggest a policy which it considered fit and the formulation of suggestions by the High Court for framing a National Security Policy travelled far beyond the legitimate domain of judicial review; (iv) formulation of such a policy is based on information and inputs which are not available to the Court; and, (v) the Court is not an expert in such matters.*
>
> ***20.** More contemporaneously, in the context of procurement of Rafale Fighter Jets for Indian Air*

> *Force, it was reiterated that though there is a general presumption against ousting the jurisdiction of the Courts, there are however certain areas of governmental activity, national security being the paradigm, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. Comparatively recently, in Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481, in the context of disclosure under the Right to Information Act, 2005, the proceedings of the Collegium System for appointment and elevation of Judges to the Supreme Court and High Court, the Supreme Court held (i) if the inner working of the government machinery is needlessly exposed to public, it would hamper frank and forthright views, thoughts or options on sensitive matters; (ii) therefore the level of deliberations of that class or category of documents get protection, in particular, on policy matters; (iii) the Court would be willing to respond to the executive public interest immunity to disclose such documents where national security or high policy, high sensitivity is involved; (iii) there are several limitations on complete disclosure of governmental information, especially in matters relating to national security; and, (iv) there is also a need to accept and trust the government's decision makers. Yet again in The Secretary, Ministry of Defence v. BabitaPuniya, AIR 2020 SC 1000, in the context of grant of permanent commission to women in the Indian Army, it was reiterated that the Courts are indeed conscious of the limitations viz. issues of national security and policy, imposed on the judicial evolution of doctrine in matters relating to armed forces."*

25. Upon perusing the above cases, it is exceedingly clear that this Court does not interfere with policy decisions pertaining to national security in normal course, as this Court is not best placed to take such decisions.

26. Policy decisions with regard to national security are taken after careful consideration of the socio-political scenario of the country, along with the socio-political scenario of the border countries. Further, a measured analysis is undertaken when it comes to application of schemes propounded by other countries to the conditions in India. The Courts cannot and should not delve into the appropriateness of such policy decisions and, thus, endanger one of the most important aspects of the basic structure doctrine, i.e., the principle of separation of powers.

27. Coming to the issues at hand, this Court finds it appropriate to first analyse the salient features of the Impugned Scheme. The Impugned Scheme, as stated, is a recruitment-generation scheme which will satisfy a large number of unemployed Indian youth and 25% of the Agniveers will be allowed to continue in the Armed Forces beyond the period of 4 years.This has been done by the Government in order to meet the objective of creating an Armed Force which is agile, youthful, physically fit, and mentally alert. This will bring the Indian Armed Forces in line with nations such as the *inter alia* United States, United Kingdom, and France. The importance of creating such a force has also been brought to the attention of this Court.

28. The Agniveer Scheme will increase the 'leader to led' ratio from 1.1 to 1.28; a ratio that would aspire confidence, and would ease the pressure of the forces on ground. Expert opinions have also been sought on the Impugned Scheme; who have in fact suggested the revamping of the existing in-take and retention scheme as well. Considering the fact that the laudable objective of maintaining national security is at the heart of the Impugned Scheme, this Court does not find it arbitrary, capricious or devoid of reason.

29. As our collective memory serves us, there have been several border skirmishes in the recent past. Such transgressions exacerbate the need to have a leaner and fitter Armed Force which is capable of handling the mental and physical distress that accompanies service in the Armed Forces.

30. Further, as stated earlier, a number of Agniveers will be absorbed by Public Sector Undertakings and other Government establishments on various posts. The Agniveers would also be given various certificates which would enable them to secure a job in the Government and Public Sector Undertakings. Working with the Army for four years will definitely instil a feeling of nationalism in the Agniveers which is important for the youth of the country. This feeling of nationalism will be a major deterrent for these persons from resorting to crime in the future.

31. A perusal of material on record shows that the scheme is a well thought out policy decision by the Government of India. The candidates selected under the Impugned Scheme would be enrolled as Agniveers which forms a distinct rank in Armed Forces. During the period of four years, the Agniveers would be given training, including weapon training etc., and they would also be placed at various sectors/avenues. On completion of four years they would be given appropriate certificates for the experience they have gained while working as Agniveers. 25% of the selected candidates will also be appointed in the regular Army Cadre and out of the rest 75% Agniveers who would not be able to make it to the regular Army Cadre, many of them can be absorbed in Paramilitary Forces, and further with various skill certificates, Agniveers will be in a better position to gain meaningful employment in the avenues in which they possess a skill certificate. Needless to state that four years training period would also instil

a sense of nationalism in these personnel that would more or less prompt them to use their skills and focus on the development of the country. Such advantages cannot be overlooked and dislodged on the basis of the apprehension that after four years such individuals may be unemployed or the mere apprehension that they may take to illegal or unethical activities, after being trained in the Army. This Impugned Scheme cannot be interfered with by this Court only on the basis of such apprehensions and bald averments.

32. Another major grouse of the Petitioners is that Agniveers would not be given pension at the end of four years. Such pension, it has been contended, is being extended to soldiers from other nations which have deployed similar short term services in the Armed Forces. However, the Petitioners have failed to realise that a principal distinction between nations such as Israel, which have deployed such a policy, and India, is that the Indian Government has not made it mandatory for the youth of the nation to serve in the Armed forces.

33. This Court also finds no force in the argument of the Petitioner that the Government has failed to make provisions for the meaningful employment of Agniveers in the future. As stated earlier, the Government has in fact sought to extend entrepreneurship financial schemes such as MUDRA and Start-Up India to Agniveers as well. Furthermore, the Government has avowed to give Agniveers priority in government organisations; 10% reservation has been made for Agniveers in the Department of CAPF under the Ministry of Home Affairs, 10% in all the Departments under the Ministry of Defence, and 5% in all the Departments under the Railways. Material on record also discloses that the Impugned

Scheme will not only provide opportunity for youth to serve the country but will also result in the Armed Forces having the most capable individuals who will be rewarded with a decent financial package and a bright future.

34. This Court is of the opinion that rather than focusing on the alleged political motives of the Impugned Scheme, it is necessary to focus on the benefits that are being provided by the said Scheme. As stated earlier, the Agniveers who are not recruited in the regular army would be given skill certificates which will enable them to get employment in the private sector. A Scheme such as the one impugned herein will not only help in the personal development of the individuals who are recruited at a young age, but it will also equip the youth of the country with necessary skills that can aid them to secure better paying opportunities in fields to which they are specifically suited. The Scheme would, therefore, benefit in the growth and betterment of an individual which will only help in the growth and betterment of the nation. It is through this prism that one must assess the Impugned Scheme.

35. Needless to say, despite the *bona fide* intentions of the Government, the instant Scheme is susceptible to meeting obstacles, like any other initiative of the State. The possibility of this too has been taken care of as the Government of India *vide* MOD Letter No. DMA/JS/(N&DS)/2021/Agnipath-01 dated 15.06.2022 has assured that *"any operational issues arising during the implementation of the scheme shall be resolved with approval of the MoD, whenever necessary, with concurrence of MoF under the provisions laid down."*

36. Aside from this, as stated above, this Court, while exercising its powers under Article 226 of the Constitution of India cannot consider

alternatives to the Impugned Scheme. The formulation of the Scheme is an exercise of the 'sovereign policy-making functions' of the Central Government, which ought not to be interfered with unless on the settled principles discussed above.

37. To conclude, this Court finds it apposite to reiterate that policy decisions, particularly those which have wide-ranging implications on the nation's health and security, should be decided by bodies best suited to do so. It appears that the Government has been considering, for a long time, the possibility of creating an Armed Forces which consists of more youthful, agile, and physically adept individuals. Upon considering the opinions of experts bodies, defence personnel, and carefully studying the models adopted by other nations, it has decided to finally replace the prior mode of recruitment with the recruitment envisaged by the Agnipath Scheme. Considering that the stated objective of the Government is neither discriminatory nor *mala fide,* or arbitrary, this Court finds no reason to interfere with it.

PART-B

ISSUES

38. The issue which come to fore for the consideration of this Court in the rest of the Writ Petitions is as to whether the Union's actions attract the principles of promissory estoppel and legitimate expectation, thereby mandating it to complete the recruitment process under the 'Common Entrance Examination' (*hereinafter referred to as 'the CEE'*) and 2019 Notification for the Indian Army and Air Force respectively?

FACTS

Facts pertaining to the recruitment to the Indian Air Force

39. The Indian Air Force, the air arm of the Indian Armed Forces, back in December 2019, invited online applications from the candidates to join as airmen in certain categories under 'Group X' and 'Group Y' trades for the intake in 01/2021 Batch.

40. As per the Notification, the Indian Air Force had envisaged this process in the following three stages: the candidates first had to undergo an online test; persons shortlisted from the first round were to be called at Airmen Selection Centre for document verification, followed by physical fitness tests, group discussion, and adaptability tests; and candidates who qualified the 2nd phase were to be issued the appointment letter for the medical examination. Upon the conclusion of this process, the list of candidates finally selected was to be published on 10.12.2020.

41. Accordingly, on 20.01.2020, the online registration commenced. The Petitioners, akin to other aspirants, applied under vacancies in various posts.

42. It is stated that the Petitioners, much like other aspirants, also waited for the first phase of online examinations to be conducted from 19.03.2020 to 23.03.2020. However, in the interim, as the COVID-19 pandemic brought the functioning of the nation to a standstill, these online exams were postponed indefinitely.

43. Clarity was provided to the Petitioners *vide* a Notification issued by the 'Central Airmen Selection Board' in October 2020 notifying the conduct of the exam from 04.11.2020 to 08.11.2020. A provisional admit card was also issued to the applicants, and the exams were successfully conducted on these dates.

44. On 26.11.2020, the result of the first phase was declared, and the Petitioners emerged successful in this phase. For the second phase, to be

held from 11.01.2021 to 25.01.2021, the Petitioners were issued admit cards, and accordingly they prepared for the various tests envisaged under the second phase. It is stated that the Petitioners emerged successful in this round as well.

45. Between 03.02.2021 till July 2021, the Petitioners were subjected to a medical examination. Some Petitioners qualified in this round and were found to be medically fit to serve in the Indian Air Force.

46. Accordingly, a provisional selection list containing the name of the candidate, cut-off marks, and position of the candidate was published by the Central Airmen Selection Board. This list categorically stated that the enrolment list containing names of the selected candidates would be published on 10.06.2021.

47. In September 2020, Central Airmen Selection Board issued notifications in Rajasthan, Uttar Pradesh, Haryana, and Bihar inviting applications for the post of Airmen in Group X trades ('2020 Notification'), as were also invited under the 2019 Notification. Under the 2020 Notification, all the three stages were to be conducted on one single day, as opposed to the three phases envisaged under the 2019 Notification.

48. The results for this Notification were announced on 25.01.2021, 25.02.2021 and 16.03.2021, according to which 5062 candidates were selected; 3756 through rally recruitment and the remaining 1306 from the waiting list of intake of 2/2020 Batch, i.e. from the Notification prior to the 2019 Notification.

49. It is stated that between 10.07.2021 and 31.05.2022, Central Airmen Selection Board gave various reasons, such as the COVID-19 pandemic, and administrative reasons, for delaying the publication of enrolment list of the

2019 Notification.

50. On 14.06.2022, a Notification was issued by the Government of India introducing a new scheme titled 'Agnipath' for recruitment to the Indian Air Force. Agnipath Scheme envisaged a term of 4 years for candidates and only 25% of candidates were to be retained after the 4-year tenure. The stated rationale for Agnipath Scheme was the reduction of the Army's expenditure on pension and salaries. After declaration of Agnipath Scheme, pending recruitments in the Air Force stood cancelled.

51. The Petitioners upon being aggrieved by the introduction of the Agnipath Scheme have approached this Court.

Facts pertaining to the recruitment to the Indian Army

52. These Writ Petitions pertain to the recruitment of Personnel's Below Officer Rank, such as soldier clerk, store keeping assistant, etc., in the Indian Army.

53. The recruitment for Personnel's Below Officer Rank (PBOR) in the Indian Army is conducted through 'rallies', followed by medical, physical, and written examination known as the 'Common Entrance Examination' (*hereinafter referred to as 'the CEE'*).

54. In June 2020, the Indian Army issued a Notification for the recruitment for the post of Solider (General), Soldier (Technical), Soldier (Clerk).

55. The Petitioners participated in the first three rounds of the recruitment process and emerged successful. Thereafter, the Petitioners waited for the Union to conduct the CEE which was originally scheduled to be conducted on 30.05.2021, however, citing the COVID -19 pandemic, the CEE was delayed by the Union repeatedly.

56. In June 2022, the Union notified the Agnipath Scheme, which subsumes the preexisting forms of recruitment. As this Scheme has effectively nullified the recruitment of the Petitioners, the Petitioners have approached this Court.

Arguments advanced by the Petitioner

57. Mr. Prashant Bhushan, learned counsel for the Petitioners in these set of matters, has made two principal submissions. Firstly, he argued that the actions of the Union are hit by the principle of promissory estoppel as the Petitioners, upon being selected for the Indian Air Force, decided to forgo other job opportunities to their detriment. Mr. Bhushan has stated that the Petitioners have been hopeful of gaining employment with the Indian Army and Navy for about 3 years now and have lost prime years of their life. In this regard, Mr. Bhushan has placed reliance on judgments of the Apex Court in Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., **(1979) 2 SCC 409** and State of Bihar v. Kalyanpur Cement Ltd., **(2010) 3 SCC 274**. Secondly, he has contended that the Petitioners having participated in the selection process, are entitled to a legitimate expectation that the results would be declared. Mr. Bhushan has stated that such expectation flows from a) that the recruitment was initiated in accordance with the relevant rules; b) that the Notification of 2019 has the sanction of law; and c) the Respondent in fact carried out the recruitment process for the Indian Navy in three phases.

58. Mr. Bhushan has also argued that the Union's arbitrariness is writ large from the fact that recruitment was successfully concluded in the Indian Navy even during the pandemic, as opposed to the Indian Army and Indian

Air Force. It has been argued that this act of 'cherry-picking' is violative of Article 14 of the Constitution.

59. Other than this, the Mr. Bhushan has also argued that the recruitment of candidates through rally recruitment in the Indian Army and Air Force, despite the written process of recruitment being underway is discriminatory and arbitrary, falling foul of Article 14 of the Constitution. In this regard, reliance has been placed on Ramana Dayaram Shetty v. International Airport Authority of India**, (1979) 3 SCC**.

60. In addition to the above grounds, the Petitioners in the 'Army CEE Matters' have argued that the inaction of the Union of India in holding the CEE examination is arbitrary, whimsical, and violative of Article 14 of the Constitution of India. The Petitioners have also placed reliance upon Shankarsan Dash v. Union of India**, (1991) 3 SCC 47**, to argue that the State cannot act in an arbitrary manner while making appointments in State employment.

Arguments advanced by the Respondent

61. *Per contra*, the Ld. ASG, appearing for the Respondents, has argued that it is a well settled position of law that no vested rights could possibly have accrued in favour of the Petitioners during the recruitment process. In this regard, reliance has been placed upon the following judgments: Shankarsan Dash v. Union of India**, (1991) 3 SCC 47;** Babita Prasad v. State of Bihar**, 1993 Supp (3) SCC 268**; A.P. v. D. Dastagiri, **(2003) 5 sec 373**; Union of India v. S. Vinodh Kumar**, (2007) 8 SCC 100.** Ld. ASG, appearing for the Respondent No. 1 has further argued that the decision to change the mode and method of recruitment falls under the purview of

'sovereign policy-making functions' of the Central Government, thereby rendering the scope of judicial review extremely limited. This is especially true for the appointment to the Armed Forces, as it relates directly to issues of national security.

62. It has also been argued that the Agnipath Scheme was necessitated due to the peculiar border situation, the incessant threats and attempts to infiltrate the said borders by hostile neighboring countries and non-state actors. It is stated that upon an analysis of the existing structure of the below 'officer' rank divisions of the Indian Army, it was observed that the average age of the Indian Armed Forces personnel was 32 years. This was in stark contrast with the global position of armies which showed that the average age of Armed Forces across the world was 26 years. This is true for the Navy and Air Force as well. Hence, the object sought to be achieved through the Agnipath Scheme is to have a blend of young jawans, sailors or airmen between the age of 18-25 years as Agniveers, supervised by experienced regular cadre personnel.

63. Ld. ASG has also argued that the Indian Navy was constrained to culminate its recruitment process as it is a leaner force as compared to the Indian Army and Air Force. She has corroborated this by pointing out that the Indian Navy has very few bases only in coastal cities and had a manpower shortage of about 12,500 sailors already. It is further stated that there was already a shortage of about 16.5% in 2020, and any further delay in the recruitment would have resulted in an increased manpower shortage of 20%. This shortage would only get exacerbated with every passing year. Hence, it was solely in national interest that the Indian Navy had to continue its recruitment process and induct two batches, while the Indian Army and

Indian Air Force did not. It is submitted that if the same was not done, the functioning of the Indian Navy would have been severely compromised.

64. It has also been placed on record by the Ld. ASG that the rally recruitment cannot be equated with the regular recruitment process of the Indian Army and Air Force. With regards to recruitment in the Air Force, the Ld. ASG stated that recruitment rallies were conducted in various locations to increase intake from tribal, hilly and remote areas of the country, so as to maintain demographic balance in the Air Force. It has further been stated that rallies, as opposed to the previous recruitment method, are a fast-track process and hence, cannot be equated with the regular recruitment process. It is stated that such rallies were conducted and concluded back in December 2020, as opposed to the regular recruitment which was supposed to be carried out well into 2021. Hence, due to the marked difference in process and timelines, the Petitioners cannot be equated with individuals inducted through rally recruitment. Further, with regard to the Indian Army, it has been stated that due to the COVID-19 pandemic, only four rallies could be conducted as opposed to about 80 rallies which were conducted prior to the pandemic. The Ld. ASG has argued that the Armed Forces needed to recruit officers urgently considering that the normal course of recruitment is a multi-prong process. In summation, it has been argued by the Ld. ASG that the Petitioners cannot claim parity with rally recruits, as this mode of recruitment was conducted in different circumstances, and to serve the particular purpose of *inter alia* maintaining the demographic balance.

ANALYSIS

65. The first question before this Court is whether the Union's actions

attract the principles of legitimate expectation thereby mandating it to complete the recruitment process under the CEE and 2019 Notification for the Indian Army and Air Force respectively.

66. The principle of legitimate expectation has been dealt with in great detail by the Apex Court as well as by this Court. After briefly dealing with the jurisprudence developed under the principles, this Court will test their applicability to the case at hand. The principle of legitimate expectation has two facets: procedural and substantive. While procedural legitimate expectation relates to the chance of a representation or hearing before a particular decision is made, substantive legitimate expectation relates to promise of a benefit of a substantive nature to be granted to an individual (Refer to: Punjab Communications Ltd. v. Union of India**, (1999) 4 SCC 727**).

67. The doctrine of legitimate expectation, which has its genesis in administrative law, is invoked to hold the government accountable and good to its word. This doctrine is invoked if an individual is aggrieved by the alteration of rights or obligations, which deprive such individual of any benefit or advantage and affects such individual adversely. However, such doctrine, as elucidated in Union of India v. Hindustan Development Corpn., **(1993) 3 SCC 499**, is too nebulous to form the basis to invalidate a law. In a similar vein, considerations of public interest outweigh the legitimate expectation of an individual. In other words, the Executive is well within its powers to change policies for reasons which are not arbitrary, *mala fide*, or when taken in public interest. Only if a decision to change a policy is arbitrary or capricious, it may be struck down (Refer to: M. Ramesh v. Union of India**, (2018) 16 SCC 195;** Kerala State Beverages (M&M) Corpn.

Ltd. v. P.P. Suresh**, (2019) 9 SCC 710**).

68. The Petitioners in all the matters before us contended that they had sought recruitment in the Armed Forces. It is stated that the recruitment was halted at the fag end of the recruitment process inasmuch as a select list has been brought out which included the names of many of the Petitioners herein and due to the expectation that they would be gainfully employed by the Armed Forces, they failed to seek employment elsewhere. However, due to the initiation of the Impugned Scheme, they find themselves in a lurch; neither did they seek employment elsewhere, nor can they enter the Armed Forces through the pre-existing schemes anymore. It is stated that they have become over-aged to be considered for appointment elsewhere also.

69. The doctrine of legitimate expectation cannot come to their rescue. It is true that some of the Petitioners have cleared certain rounds of the recruitment process and have merely been waiting to get their appointment letters. The principal contention of the counsel appearing for the Petitioners is that the Petitioners, after having gone through the recruitment process for appointment to the Army under the erstwhile process, have already been shortlisted and were included in the provisional list but Appointment Letters were not issued to them due to the Impugned Scheme. It is well settled that individuals who were merely waiting to be issued Appointment Letters, cannot claim to have a vested right to gain employment. It is well settled position of law that nobody has an indefeasible right to claim employment. The issue as to whether any right inures in a candidate without an appointment order being issued in their favour has been crystallized by the Apex Court in a number of judgments. A Constitution Bench of the Apex Court in Shankarsan Dash (supra) has observed as under:

> *"7. **It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.** This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] ."*
>
> (emphasis supplied)

70. In Raghuveer Singh Yadav, **(1994) 6 SCC 151)**, the Apex Court has held as under:

> *"**5**. It is not in dispute that Statutory Rules have been made introducing Degree in Science or Engineering or Diploma in Technology as qualifications for recruitment to the posts of Inspector of Weights and Measures. It is settled law that the State has got power to prescribe qualifications for recruitment. **Here is a case that pursuant to amended Rules, the Government has withdrawn the earlier notification***

> ***and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules."***
>
> (emphasis supplied)

71. In Jai Singh Dalal v. State of Haryana, **1993 Supp (2) SCC 600**, the Apex Court, after placing reliance on the Constitutional Bench Judgment of the Apex Court in Shankarsan Dash (supra), has observed as under:

> *"7. ..... In the background of these facts this Court came to the conclusion that the mere fact that the candidates were chosen for appointment in response to the advertisement did not entitle them to appointment. To put it differently, no right had vested in the candidates on their names having been entered on the select list and it was open to the Government for good reason not to make the appointments therefrom and fill in the vacancies. In a recent decision in Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] the Constitution Bench of this Court reiterated that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to appointment against the existing vacancies. It was pointed out that ordinarily the notification merely amounts to an invitation to qualified candidates to*

> *apply for recruitment and on their selection they do not acquire any right to the post. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for that purpose. Albeit, the State must act in good faith and must not exercise its power mala fide or in an arbitrary manner. The Constitution Bench referred with approval the earlier decision of this Court in Subash Chander [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] .* ***Therefore, the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria****……."* (emphasis supplied)

72. The Apex Court in M. Ramesh (supra), after placing reliance on Jai Singh Dalal (supra) & Shankarsan Dash (supra), has observed as under:

> *"**21**. The first issue that arises is whether the petitioners have any vested right to claim that the result must be declared and if the petitioners are selected, they should be appointed. This Court in Jai Singh Dalal v. State of Haryana [Jai Singh Dalal v. State of Haryana, 1993 Supp (2) SCC 600 : 1993 SCC (L&S) 846] held that merely because the Government had sent a requisition to UPSC to select the candidates for appointments, did not create any vested right in the candidate called for the interview to be appointed. It was also held that the authority which has the power to specify the method of recruitment must be deemed to have the power to revise and substitute the same. The Court, however, also laid down that at best the Government may be required to justify its action on the touchstone of Article 14 of the Constitution. This view has been followed in a large number of cases. In Vijay Kumar Mishra v. High Court of Patna [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] ,* ***this Court held that there***

> ***is a distinction between selection and appointment. It was held that a person, who is successful in the selection process, does not acquire any right to be appointed automatically. Such a person has no indefeasible right of appointment.***
>
> ***22****. It is, thus, well settled that merely because a person has been selected, does not give that person an indefeasible right of claiming appointment. As far as the present cases are concerned, results have not been declared and even the selection process is not complete. As such, there is no manner of doubt that the petitioners have no enforceable right to claim that the result should be declared or that they should be appointed if found meritorious."* (emphasis supplied)

73. In addition to these settled principles of law, the material on record also weighs heavily against the Petitioners. The instructions for candidates published in PSL dated 31.05.2021 also stated that *"Candidates whose names appear in Provisional Select List are NOT (R) NOT guaranteed enrolment."* The fact that no right was created in favor of individuals selected in the provisional list is also borne out from the fact that the provisional list states at the very beginning that the said Provisional Select List was valid only up to 30.11.2021. Pertinently, the advertisement dated 21.12.2019, published for the recruitment to the Air Force also stated that *"the terms and conditions given in the advertisement are guidelines only and orders issued by the Government as amended from time to time will apply for the selected candidates."* These caveats weigh heavily against the claim of the Petitioners to indicate that the Petitioners cannot claim to have an enforceable right to gain employment [(Refer to: M. Ramesh (supra)**;** Jai Singh Dalal (supra)]. Further, there exists a distinction between selection

and appointment. Simply because an individual was successful in the selection process, it does not mean that they have acquired a right to be appointed. There exists no indefeasible right of appointment in favour of such an individual (Refer to: Vijay Kumar Mishra v. High Court of Patna**, (2016) 9 SCC 313;** State of M.P. v. Raghuveer Singh Yadav, (supra).

74. There is another irreconcilable factor weighing against the Petitioners: public interest. As has already been stated, a recruitment process can be changed by the State midway, if the same is in public interest. The Agnipath Scheme seems to adequately pass this test as well. The stated objective of the scheme is to reduce the age of the Armed Forces; this will make the forces leaner, agile and will be greatly beneficial for border security. It has also been stated that the Impugned Scheme, by reducing the average age of soldiers, will bring our Armed Forces at par with other nations, as the average age of Armed Forces across the world is 26 years. The stated objective of the Impugned Scheme is to have a blend of young Jawans, Sailors or Airmen between the age of 18-25 years as Agniveers, supervised by an experienced regular cadre having the age of 26 years. To achieve this goal, the State has also been consistently decreasing the age bracket of officers. As dealt with in the first part of this judgment, such stated objectives of the Government cannot be said to be arbitrary, whimsical or *mala fide;* they serve a definite public interest.

75. This Court will now adjudge whether the principle of promissory estoppel is applicable to this case. Like the doctrine of legitimate expectation, promissory estoppel too is simply a shield and not a sword. In Motilal Padampat Sugar Mills Co. Ltd., (supra) it was held that even if larger public interest is in favour of the changed policy, it would not be

enough for the Government to state that public interest would suffer if the Government were required to honour its obligation. Recently, the Supreme Court in Union of India v. Unicorn Industries**, (2019) 10 SCC 575,** was confronted with whether the Union of India be estopped from withdrawing the exemption from payment of excise duty in respect of certain products, due to the principle of promissory estoppel. After referring to multiple judgments, and tracing the evoluation of the principle of promissory estoppel, the Apex Court observed that Courts must not bind the Government to policy decisions for all times to come, irrespective of how such policy decisions may affect public interest. In this regard, the following is reproduced:-

> "***15. It could thus be seen that, this Court has clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to see all aspects including the objective to be achieved and the public good at large.*** *It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principle of equity must forever be present in the mind of the Court while considering the applicability of the doctrine. It has been held that the doctrine of promissory estoppel must yield when the equity so demands and when it can be shown having regard to the facts and circumstances of the case, that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. After considering the earlier judgments on the issue, which have been heavily relied upon by the assessees, this Court has observed thus: (Kasinka Trading case [Kasinka Trading v. Union of India, (1995) 1 SCC 274] , SCC pp. 287-88, para 21)*

"21. The power to grant exemption from payment of duty, additional duty, etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty, etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner."(emphasis supplied)

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18. *It has been observed, that the withdrawal of exemption in public interest is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the public interest. It has been held that, where the Government acts in public interest and neither any fraud or lack of bona fides is alleged much*

less established, it would not be appropriate for this Court to interfere with the same. Ultimately, this Court came to the conclusion that the withdrawal of the exemption was in the public interest and, therefore, refused to interfere with the order of the Delhi High Court dismissing the petitions.

*****

23. Another three-Judge Bench of this Court in Mahaveer Oil Industries [State of Rajasthan v. Mahaveer Oil Industries, (1999) 4 SCC 357] has taken a similar view. In Shree Sidhbali Steels Ltd. [Shree Sidhbali Steels Ltd. v. State of U.P., (2011) 3 SCC 193] , this Court was considering the question with regard to validity of the notification which withdrew 33.33% of the hill development rebate, on the total amount of electricity bill, granted under the earlier notification. This Court while considering the similar challenge observed thus: (Shree Sidhbali Steels Ltd. case [Shree Sidhbali Steels Ltd. v. State of U.P., (2011) 3 SCC 193] , SCC p. 207, para 33)

"33. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the court. ***However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the court would not raise an equity in favour of the promisee and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be invoked.The Government can change the policy in public interest.*** *However, it is well settled that*

> *taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law."*
>
> (emphasis supplied)

76. The law regarding promissory estoppel has also been summarised in Kasinka Trading v. Union of India**, (1995) 1 SCC 274,** in the following manner:-

> "***12. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine.*** *The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.*
>
> ***13.*** *The ambit, scope and amplitude of the doctrine of promissory estoppel has been evolved in this country over the last quarter of a century through successive decisions of this Court starting with Union of India v. Indo-Afghan Agencies Ltd. [(1968) 2 SCR 366 :AIR 1968 SC 718] Reference in this connection may be made with advantage to Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582 : (1970) 3 SCR 854] ; Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] ; Jit Ram Shiv Kumar v. State of Haryana [(1981) 1 SCC 11 : (1980) 3 SCR 689] ; Union of India v. Godfrey Philips India Ltd. [(1985) 4 SCC 369 : 1986 SCC (Tax) 11]*

; Indian Express Newspapers (Bom) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] ; Pournami Oil Mills v. State of Kerala [1986 Supp SCC 728 : 1987 SCC (Tax) 134] ; Shri Bakul Oil Industries v. State of Gujarat [(1987) 1 SCC 31 : 1987 SCC (Tax) 74 : (1987) 1 SCR 185] ; Asstt. CCT v. Dharmendra Trading Co. [(1988) 3 SCC 570 : 1988 SCC (Tax) 432] ; Amrit Banaspati Co. Ltd. v. State of Punjab [(1992) 2 SCC 411] and Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499 : JT (1993) 3 SC 15] In Godfrey Philips India Ltd. [(1985) 4 SCC 369 : 1986 SCC (Tax) 11] this Court opined: (SCC p. 388, para 13)

"We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it."

***14.** In Excise Commissioner, U.P. v. Ram Kumar [(1976) 3 SCC 540 : 1976 SCC (Tax) 360 : AIR 1976 SC 2237] four learned Judges of this Court observed: (SCC p. 545, para 19)*

"The fact that sales of country liquor had been exempted from sales tax vide Notification No. ST-1149/X-802 (33)-51 dated 6-4-1959 could not operate as an estoppel against the State Government and preclude it from subjecting the sales to tax if it felt impelled to do so in the interest of the revenues of the

> *State which are required for execution of the plans designed to meet the ever-increasing pressing needs of the developing society. It is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers."*
>
> *****
>
> ***23.*** *The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had been issued.* ***The withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The courts, do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act.***" (emphasis supplied)

77. Hence, it emerges that this Court cannot bind the Government to its policy decision, if the same is changed due to overarching concerns of public interest. Furthermore, Courts are less likely to interfere when such concerns of public interest intersect with matters concerning national security (Refer to: Centre for Public Interest Litigation v. Union of India**, (2016) 6 SCC 408;** Indian Rly. Construction Co. Ltd. v. Ajay Kumar**, (2003) 4 SCC 579;** Lt. Col. P.K. Choudhary v. Union of India and Others**, 2020 SCC OnLine Del 915;** Axiscades Aerospace and Technologies Pvt.

Ltd. v. Union of India &Ors**., 2018 SCC OnLine Del 9320;** ESAB India Limited v. Special Diriector of Enforcement & Anr**., 2011 SCC OnLine Del 1212)**.

78. The Petitioners have claimed that they have let go of other opportunities while awaiting the recruitment process to resume. It is their contention that due to this, they suffered on account of the sudden change in policy initiated by the Government. Hence, they claim that the Government being bound by the principle of promissory estoppel will have to bring the recruitment process to its logical conclusion. This argument also does not find favour with this Court, firstly, as there was no vested right in claiming appointment even after a selected list has been declared, and secondly on account of the larger public interest weighing strongly in favour of the Agnipath Scheme. This Court has already analysed other aspects of the Impugned Scheme in detail in the first part of this judgment, and reached the unequivocal conclusion that the Impugned Scheme is not arbitrary, capricious or devoid of reason. On the contrary, it squarely falls within the ambit of 'public interest'. As emerges from the various cases reproduced above, Courts have not evoked the principle of promissory estoppel when faced with a change of policy necessitated by public interest. The Government in this case cannot be held to be bound by the recruitment process initiated by it. Further, as dealt with already, the Petitioners, who are at various stages of the recruitment process, have no vested right to claim such recruitment.

79. The contention of the learned Counsel for the Petitioners that the persons who have been appointed in Navy have been given preferential treatment *via-a-vis* the recruitment of Soldiers and Airmen in the Army and

the Air Force respectively also cuts no ice. A perusal of the material, as submitted by the learned ASG, shows that due to COVID-19 Pandemic, there was no recruitment in the Indian Air Force and, therefore, 02/2020 Batch was declared as a Batch holiday. The learned ASG has also submitted that before the onset of COVID-19 and the ensuing lockdown, the written examination of the candidates of 02/2020 Batch had been completed and the merit list had been prepared and all the candidates of 02/2020 Batch were treated as 01/2021 Batch. It has also been submitted by the learned ASG that the recruitment of Sailors, which is the entry level appointment in the Indian Navy, is much lesser as compared to the Indian Army and the Indian Air Force. It has been submitted by the learned ASG that the total strength of Sailors in Indian Navy is approximately 60,000 and due to COVID-19 Pandemic, the Indian Navy has a manpower shortage of approximately 12,500 Sailors. The learned ASG has further submitted that there was a short-fall of 16.5% Sailors in the Indian Navy in 2020 due to delay in recruitment process and not recruiting Sailors in the Indian Navy would only make the situation worse. Resultantly, the Indian Navy had to, in national interest, continue its recruitment process. In view of the reasons given by the learned ASG, this Court does not find any force in the contention of the Ld. Counsel for the Petitioners that if the Indian Navy could continue recruitment, so could the Indian Army and the Indian Air Force.

80. The contention of the learned Counsel for the Petitioners that the Petitioners who took part in the regular recruitment process should be placed at par with individuals who were recruited through rallies also does not hold water. Rally recruitment was conducted for both, the Indian Army and the Indian Air Force, under different circumstances, and on differing scales.

81. With respect to the Indian Army, the rally recruitment was undertaken to increase intake of the people from tribal and hilly areas in the Armed Forces so as to maintain a demographic balance, rallies were conducted at various locations in the country to recruit young people in the Armed Forces. A chart detailing the recruitment rallies conducted by the Army Recruiting Offices (AROs) has been submitted by the Ld. ASG which shows that the recruitment rallies during the COVID-19 Pandemic were conducted in ARO Ludhiana at Khanna from 07.12.2020 to 22.12.2020; in ARO Lansdowne at Kotdwar from 20.12.2020 to 02.01.2021; in ARO Silchar at Agartala from 12.01.2021 to 20.01.2021 and in ARO Siliguri at Sevoke Road Mil Station from 13.01.2021 to 21.01.2021. The said chart further shows that out of 47 rallies that were to be conducted only four rallies could be conducted between December 2020 & January 2021 as compared to about 80 rallies which were conducted throughout the year in pre-pandemic. As explained by the Ld. ASG, the method of recruitment of soldiers by way of written examination and the method of recruitment of soldiers by way of rallies are different and the time taken in both the processes is also different; while the rallies are a fast-track method of recruitment, the regular mode of recruitment was multi-pronged, and took longer, especially during the pandemic. By the time the normal recruitment process in the Army was concluded, the Government had already taken the policy decision to bring in the new Agnipath Scheme.

82. Hence, due to these marked differences in rally recruitment and the erstwhile method of recruitment, the contention of the Petitioners that the normal method of recruitment through examinations must be concluded, does not hold any water. In any event, it cannot be said that the Government

ought not to have recruited any candidate, other than through CEE, as the same would result in massive shortage of soldiers in the Indian Army. Article 14 cannot be invoked to state that soldiers must have been recruited by both the processes, i.e. by CEE and by conducting rallies, and appointing soldiers through only one of the source is violative of Article 14 of the Constitution of India.

83. Similarly, for the Indian Air Force too, due to delay in recruitment through examination mode, i.e. STAR, rallies were conducted at various places in the country to cater to the intake of Air Force. The rallies for recruitment in the Air Force were conducted between January and February, 2020 and from September to December, 2020.

84. The recruitment process to conduct STAR has been explained in a chart, which reads as under:

ACTIVITIES OF STAR 01/2020 (INITIALLY FOR INTAKE 01/2021 AND LATER SHOFTED TO CATER FOR INTAKE 02/2021)			
ACTIVITY/EVENT	**PERIOD/DATE**	**FIGURES**	**REMARKS**
Publication of Advertisement for STAR 01/2020 for intake 01/2021	21 Dec 2019	----	Planned for Jan 2021 course with 3770 enrolment vacancies
Registration for STAR 01/2020 for intake 01/2021	02 Jan to 20 Jan 20	444888	Written exam planned to be conducted in 260 centres across 75 cities.
Admit Cards issued to candidates	--	443451	
Planned to conduct STAR 01/2020 to Intake to 01/2021	19 Mar to 23 Mar 20	--	STAR 01/2020 for intake 01/2021 could not be conducted in Mar 2020 due to outbreak of Covid-19 and postponed to Aug 2020
Planned to conduct STAR 01/2020 to Intake to 01/2021	22 Aug to 26 Aug 20	--	STAR 01/2020 for intake 01/2021 could not be conducted in Aug 2020 due to restrictions imposed on large gatherings by MHA
Planned to conduct STAR 02/2020	Sep 2020	--	With the prolonged uncertainty wrt lockdown restrictions and remote possibility of conducting all India level STAR examination, STAR 02/2020 **was cancelled**.
Shifting of STAR 01/2020 from Intake 01/20212 to Intake	09 Oct 20 (Corrigendum)	--	A Corrigendum to Advertisement published on 21 Dec 2019 was issued stating the new Schedule for

02/2021			STAR 01/2020 Phase-I exam & consideration of STAR 01/2020 for Intake 02/2021 in place of Intake 01/2021
STAR Online Exam (Phase-I) for Intake 02/2021	04 Nov to 08 Nov 20	295155	
Passed in Phase-I Exam	--	27256	
Candidates shortlised for Phase-II	--	17323	
Phase-II at ASCs (Physical + Adaptability Tests)	11 Jan to 25 Jan 21	16002	
Candidates recommended in Phase-II	--	9883	
Candidates recommended in Medicals	--	8065	
No. of candidates in PSL	31 May 21 (PSL Publish date)	10810	
Enrolment was withheld	23 Jul 21	--	Following GOI instructions

85. From a perusal of the above chart, it appears that by the time the results were published on 31.05.2021, the Agnipath Scheme was already in horizon. Akin to the Indian Army, by this time the rally recruitment which is a shorter method meant to maintain the demographic balance had already been concluded. Hence, much like the Indian Army too, the Petitioners cannot claim appointment simply because their counter parts have been recruited by way of rallies. Further, it is apposite to state that no one prevented the Petitioners from participating in the rallies and gaining employment in either the Indian Army or the Air Force.

86. The Petitioners, during the course of hearing, also sought to argue that the stated objective of maintaining demographic balance in the Armed Forces through the rallies is misconceived since such rallies were also conducted in Delhi and Bhopal. This argument too does not find favour with

this Court as we cannot take a myopic view of the objective sought to be achieved by the rally recruitment. During the pandemic, we were confronted with unprecedented and uncertain times. Such unprecedented times warranted that certain decisions be taken in public interest to ensure that the Armed Forces could function optimally. It is in such public interest that a handful of rallies were conducted in cities. This by itself does not mean that the purpose of rallies, which is to maintain demographic balance, was abandoned by the Government. This Court does not find any fault with this decision of the Government, which was carried out in good faith, and in larger public interest.

87. We have gone through the genesis of the two principles of equity, and the jurisprudence governing their applicability. We have also had the occasion to go through certain cases, with similar facts; wherein a recruitment process was halted midway. It emerges that *firstly*, the Petitioners have no vested right to seek such recruitment, and *secondly*, that promissory estoppel and legitimate expectation find themselves severely restricted by the overarching concerns of public interest.

88. We have extensively gone through the Agnipath Scheme, and can conclusively state that this Scheme was made in national interest, to ensure that the Armed Forces are better equipped. Due to this, this Court finds that the Petitioners have no vested right to claim that the recruitment under the 2019 Notification and CEE Examination needs to be completed. Furthermore, both promissory estoppel and legitimate expectation cannot be applied in the instant case to force the Government to complete the recruitment keeping in mind larger public interest.

89. In light of this, all the Writ Petitions stand dismissed, along with the

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pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

FEBRUARY 27, 2022
Rahul/Sh