

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA 1458/2022**

**Col Gulshan Saini**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Ankur Chhibber, Advocate**

**For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**

**HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)**

**ORDER**

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is serving officer, being aggrieved by his non-empanelment for promotion to the rank of Brigadier by No. 2 Selection Board (AFMS) and prays for the following reliefs:-

*a) To call for the records based on which the Statutory Complaints dated 05.11.2020 and 29.06.2021 preferred by the Applicant stood rejected by the Respondent No.1 terming the same to be untenable in nature and thereafter quash the same;*

*b) To direct the respondents to re-examine the Value Judgement Marks awarded to the Applicant by the Promotion Board (AFMS) No.2 in accordance with currently prevailing Promotion Policy promulgated vide Government of India, Ministry of Defence/D/(Medical) letter no. 10(1)/2015/D (Med) dated 05.02.2016, re-assess whether these are commensurate with reckonable career profile and special achievements of the Applicant and also whether they correspond with his CR average for the reckonable period and thereafter expunge the same, if any;*

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***c) To direct the Respondents to expunge inconsistencies in awarding Value Judgement Marks, if any thereby awarding fresh Value Judgement Marks that are commensurate with reckonable career profile, Special achievements and CR average of the Applicant for the reckonable period.***

***d) To direct the Respondents to consider the Applicant afresh by holding a fresh Promotion Board in his changed profile and if found fit, the Applicant may be promoted to the next higher rank duly preserving his seniority alongwith grant of related benefits attached thereto;***

***e) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.***

### **Facts of the Case**

2. Applicant was commissioned in the Army Medical Corps of Indian Army on 06.07.1990 with date of seniority being 12.05.1991, and was promoted to the rank of Colonel w.e.f. 11.04.2011. Applicant was considered for the promotion to the rank of Brigadier by No.2 SB (AFMS) for first chance on 26.11.2018, the result of which was declassified on 09.01.2019, wherein he was graded 'NS' (Not Selected). He was subsequently considered for second and third chances held on 05.05.2020 and 10.05.2021 respectively, but he was again held to be not selected.

### **Submission on behalf of the Applicant**

3. Ld. Counsel for the applicant submits that in spite of his consistently high ACR gradings and notwithstanding his achievements and career profile till date, he may have been awarded disproportionately low Value Judgement Marks by the Promotion Board, and the reason for this is the prevailing practice of presenting a preliminary merit list, prepared on the basis of Quantified CR, to the members of the Promotion Board before they award Value Judgement Marks, and therefore, the Promotion Boards have not adhered to the laid down procedure, as prescribed in the current Promotion Policy, in letter and spirit.

4. Drawing our attention on the non-empanelment of the applicant to the rank of Brigadier, Ld. Counsel submits that the act of Respondents of not empanelling him and promotion to the rank of Brigadier even once despite being suitable and eligible for it is not only contrary to the service rules but also overlooks the blotless service rendered by him during his tenure as an outstanding AMC Officer.

5. Stressing on the service record, Ld. Counsel submits that the Applicant served in different locations of the country in varying terrains under difficult circumstances, and bears no disciplinary or administrative award of any sort from the Organisation, while more

importantly, of the 31 years of his military service, the applicant served almost one third in field areas, coupled with four tenures in HAA including two tenures in OP MEGHDOOT (Siachen).

6. Focusing on the ACRs, Ld. Counsel submits that since after getting commissioned in the Indian Army, applicant has been a devoted and sincere officer having unshakeable faith in the organization, and though in AFMS, ACR endorsements follow a closed system, the Applicant is certain that all his Reporting Officers under whom he has served so far, would have graded him high since they have always praised and appreciated the Applicant's work from time to time, and during his entire career, no weak/adverse remark has ever been communicated to the Applicant.

7. Arguing on the methodology of selection, Ld. Counsel submits that the applicant has no reason to suspect anything malafide on behalf of the Respondents; however, the only possible reason that may be attributed for his supersession and thus; his non-selection may be the award of lesser Value Judgement Marks by the Promotion Board that his 'Overall Profile', whereas these marks may not be commensurate with reckonable career profile of the Applicant and his

special achievements coupled with his CR average for the period under consideration.

8. Addressing us on the issue of method adopted for the award of Value Judgements marks, Ld. Counsel submits that the applicant might have been undervalued because of the methodology being followed by the Respondents while preparing the Approach paper and other documents for the guidance of the Promotion Board as directed vide Govt. of India, Ministry of Defence /D(Medical) Letter No. 10(1)/2015/D(Med) dated 05.02.2016.

9. Ld. Counsel further submits that as per the Promotion Policy in vogue, the CR average is the basic criteria for selection by the Promotion Board, and the prescribed process of selection is so competitive and mathematical that even a minor deviation or aberration in overall marking up to a decimal place can result in an average which is enough to influence the outcome of the Promotion Board.

10. Stressing on the current practice, Ld. Counsel submits that the to prepare a list based on Quantified CR average for the guidance of the Promotion Board even through the Promotion Policy in vogue, has no provision for such a merit list based on the Quantified CR average, and this Quantified CR merit list, is being

prepared by adding together the officers' extrapolated CR average and the marks for qualifications, then this merit list along with other applicable criterion is presented to the members of the Promotion Board for the award of the Value Judgement Marks.

11. Stressing further, Ld. Counsel submits that the Quantified CR Merit List by its very nature is inadvertently skewed in favour of the Officers possessing Super Specialist/Specialist qualifications and immediately introduces an element of bias in their favour, thus, presenting the member of the Promotion Board with a *fait accompli*.

12. Ld. Counsel further submits that the current practice of preparing the Quantified CR merit list purportedly for assisting the Promotion Board to award the Value Judgement Marks as an opposite albeit unintended effect, and such a merit list, even though it may not be the final one, is persuasive enough to influence the outcome when presented to the Members of the Promotion Board before the award of Value Judgement Marks.

13. Submitting on the issue of current promotion policy Vide Govt. of India, Ministry of Defence/D(Medical) Letter No. 10(1)/2015/D(Med) dated 05.02.2016, Ld. Counsel submits that the present policy vide Para 16(c) specifically directs that only the members of the Special Promotion Board (AFMS) shall award marks

for Value Judgement on the basis of Qualification (both Professional and Administrative) and it is quite evident that the current policy explicitly prohibits the award of marks for Value Judgement on the basis of Qualification (both Professional and Administrative) by all other Promotion Boards AFMS) except Special Promotion Board (AFMS), which is against all principles of natural justice, as this practice provides an undue advantage to Super Specialist/Specialist or Non-Specialist Medical Officers whereby they get dual benefit of enhanced marking of Value Judgement Marks (based on Quantified CR Merit List) along with their qualification marks (which is their only entitlement), and therefore, the preparation of a merit list based on Quantified CR average must cease forthwith in keeping with the letter and spirit of present promotion policy.

14. On the academic qualifications of the applicant, Ld. Counsel submits that the Applicant has been awarded M.Phil (Hospital & Health Systems Management) degree jointly by Christian Medical College, Vellore and Birla Institute of Technology and Science, Pilani, along with MBA (Hospital Administration) from Swami Vivekanand Subharti University, Meerut and though these post-graduate qualifications are not recognized by the MCI, yet the curriculum of both these PG degrees is purely hospital

administration oriented, therefore, while considering the applicant for empanelment to the rank of Brigadier, the Promotion Board ought to have considered all the above-mentioned qualifications possessed by the Applicant which enhances his scope of promotion to the aforesaid higher rank.

### **Submissions on behalf of the Respondents**

15. Per Contra, Ld. Counsel for Respondents submit the applicant being a Medical Officer in the highly specialized Army Medical Corps had only tenanted administrative appointments in the rank of Colonel, and he was considered for promotion to the rank of Brigadier twice, and the applicant was graded "Not Selected" being low in the comparative merit.

16. Addressing the submissions on policy, Ld. Counsel submits that the promotion in AFMS is governed by Promotion policy issued vide letter no. 10(1)/2015/D(Medical) dated 05.02.2016 as amended and Para 17 of the policy in respect of Promotion Board No. 2 mandates that a select list of all officers in the zone of consideration will be prepared by adding extrapolated CR average (maximum 90) + marks for qualifications (maximum 1.5 for PB-2) + marks for award decorations (maximum 1) will be added for making the final select list.



17. Addressing us on the issue of award of Value Judgement Marks, Ld. Counsel submits that Para 16 of the promotion policy governs the award of value judgement marks and a bare perusal of the said promotion policy would make it evident that it envisages overall assessment of officers in the zone of consideration to ascertain their fitness for promotion, and the composition of board comprises of the three vice-chiefs, wherein senior most officer amongst the three becomes the Chairman & other two become members, with the DGAFMS along with the three DGsMs and the DG (Org & Pers) constitute the board, with all the members of the Board individually awarding the Value Judgement Marks on separate marking sheets as per the overall profile of the officers, and in the end, the average of the marks awarded by all the Board members present is used to calculate the overall marks.

18. On the issue of apprehension of applicant about awarding of value judgement marks, Ld. Counsel submits that the apprehension of the applicant is unfounded as the promotion boards were held strictly in accordance with the promotion policy dated 05.02.0216 as amended, and the applicant could not be empanelled solely on the ground of low overall comparative merit vis-a-vis other officers in the zone of consideration.

19. Arguing on the service jurisprudence, Ld. Counsel submits that it is a settled proposition of service jurisprudence that the promotion is governed by rules and there lies no vested right to promotion, and it is a matter of record that the Applicant was fairly considered in all three chances of promotion to the rank of Brigadier along with other officers in the Zone of Consideration as per the extant rules governing the same and he was evaluated strictly based on the overall performance including the award of Board marks and other marks.

20. On the issue of consideration of educational qualifications of the applicant, Ld. Counsel submits that as per the existing policy dated 05.02.2016, the MBA degree should be a structured course on study leave, from an institute/university recognized by a statutory body for qualifying for grant of qualification marks in the Promotion Boards, and since, the applicant has not acquired the MBA degree on study leave and is from the Distance Learning Programme, while not recognized by the Medical Council of India, and with regard to the M.Phil (Hospital and Health systems management) degree acquired by the applicant, it is neither a structured course on study leave nor is recognized by the Medical Council of India, therefore,

the qualifications acquired by the Applicant is not eligible for the award of qualifications marks.

### **Consideration**

21. We have heard the arguments of both the sides, while giving thoughtful consideration to the same, and have perused the documents placed on record by both the parties including policy letters. After a detailed perusal, we have formulated following points of consideration:

- a) Whether the practice and methodology adopted in awarding Value Judgement Marks on the basis of Quantified Merit List are legally tenable or not ?**
- b) Whether the applicant was awarded marks for his educational qualifications with due recognition of the same or not ?**

### **Interim order**

22. Meanwhile, at the time of final arguments on 25.07.2023, it was brought to our notice by the Ld. Counsel for the applicant that the applicant is scheduled to be discharged on 31.07.2023 on attaining the age of superannuation, if not promoted to the next rank. Noting the aforesaid submission, vide order dated 25.07.2023,

this Tribunal has stayed the superannuation of the applicant till the pronouncement of the judgment.

### **Issue (a)**

23. Proceeding to decide the first issue (a) under consideration on merits, it would be appropriate for us to refer to policy letters on the subject. We find that the promotion for Medical Officers in the Armed Forces is governed by promotion policy issued vide MoD letter No. 10(1)/2015/D(M) dated 05.02.2016 as amended from time to time.

24. On a bare perusal, we find that Para 16 and 17 of the letter provide for the weightage allocated to the various parameters to be considered by the Board Members while awarding 2 marks of Value Judgment that are not quantifiable and the breakdown of final overall marks out of 100 respectively. Para 16 and 17 of the aforesaid policy is reproduced herein:

***"16. Weightage to the Members of the Board. The Board members will have a weightage of two (2) marks. The Board members shall award marks for value judgment for aspects that cannot be quantified such as :***

- (a) Overall profile including military reputation in professional and administrative field.*
- (b) Appointments held (Comd)/Staff/Administrative/Instructional).*
- (c) Qualification both professional and administrative (only for Special Promotion Board) (AFMS).*
- (d) Special achievements- Professional, Administrative, Academic, Sports, Adventure games at National and International level.*
- (e) Gallantry and Distinguished Service Awards (Gallantry Award in being awarded marks for Gallantry Award separately in terms of para 14).*

- (f) *Employability in future appointments*
- (g) *Med Category*
- (h) *Disciplinary background.*

*Average of the marks awarded by all the Board members present, will be used to calculate overall marks.*

**17. Final Overall Marks.** *A select list of all officers in the zone of consideration will be prepared by adding extrapolated CR average (maximum 90) + average marks of Board members (maximum 2) + marks for qualification (maximum 2) + marks for awards/decorations (maximum 1) + marks for field/difficult area postings for PB3 and PB4 (maximum 0.30) will be added for making the final select list. Thus, the final over all marks shall be computed as under:-*

i.	<i>ACR average extrapolated out of 90</i>	<i>- 90.00</i>
ii.	<i>Marks awarded by the Board</i>	<i>- 2.00</i>
iii.	<i>Marks for Qualifications</i>	<i>- 2.00 Max (as applicable)</i>
iv.	<i>Marks for Gallantry Awards</i>	<i>-1.00 Max (as applicable)</i>
v.	<i>Marks for Field/Difficult Area Postings</i>	<i>- 0.30 Max (only in PB No 3 and PB No-4)</i>

25. It is undisputed that the applicant was awarded three chances awarded to the applicant and the marks were awarded for ACRs out of 90 and since the applicant has no Gallantry Award, he was not awarded for the same. Therefore, these two aspects warrant no deliberation.

26. A bare perusal of the aforesaid policy letter reveals that para 16 (c) of the policy letter clarifies that "Qualification, both Professional and Administrative" is subsumed within the two marks for Board members, only for the Special Promotion Board in (AFMS) which considers officers from the rank of Major General to Lieutenant General and thus, the contention of the Ld. Counsel for the applicant regarding specialist qualification of the applicant or

lack of it, does not have any impact on the Value Judgment and therefore, the contention does not hold ground.

27. On an examination of the aforesaid policy letter in detail, we find that as per Para 17 of the promotion policy letter dated 05.02.2016, the breakdown of 100 marks to be awarded to each candidate is quite distinct from each other, while the Para 16 clearly shortlists the factors for consideration for award of Value Judgement Marks out of 2 Marks and the same has no connection with CR ratings of the candidates or the already existing Quantified Merit List of the candidates. We find that the value judgment marks are for distinctly 'Non Quantifiable' factors which are independent of CR ratings and have been covered under the factor "ACR average extrapolated out of 90" (as per Para 17 (i)).

28. At this point, we find that another policy letter dated 16.08.2017 has been promulgated by the respondents amending the existing promotion policy and the same is reproduced herein:

*No. 10(1)/2015/D(Medical  
Government of India  
Ministry of Defence*

*New Delhi, the 16 August, 2017.*

*To*

*The Chief of the Army Staff  
The Chief of Naval Staff  
The Chief of Air Staff  
The Director General, Armed Forces Medical Services  
New Delhi.*

*Subject: Procedure for selection and promotion of Armed Forces Medical Services (AFMS) officers viz., Army Medical Corps (AMC), Army Dental Corps (ADC), Army Medical Corps(Non-Technical)(AMC/NT) and Military Nursing Service (MNS).*

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Sir,

*I am directed to refer to this Ministry's letter of even number dated 05.02.2016, as amended vide letter of even number dated 16.09.2016, on the above mentioned subject, and to say that the following is added/incorporated under para 16 of the aforesaid letter:-*

***In case the award of value judgment mark alters the comparative overall merit of an officer resulting in changing promotion prospects, the Promotion Board should record the reasons for awarding low/high value judgment marks which would help Competent Authority appreciate the rationale before approving the Board Proceedings.***

2. *The aforesaid addendum/amendment will be implemented with immediate effect.*

Yours faithfully,

(A.K. Tewari)

Under Secretary to the Government of India

Tele; 2301 9546

Copy to:-

DGSMS(Army/Navy/Air)

29. Noting that the amended paragraph has to be read in addition to the Para 16 of the promotion policy dated 05.02.2016, we are of the opinion that the aforesaid addition to the promotion policy gives an impression that the Board Members have to restrict themselves to existing Order of Quantified Merit, which is presented to the Board Members at the time of award of Value Judgement Marks. We find this practice not only colors the vision of the Board Members but is also flawed in nature.

30. It is pertinent to observe that the Board members awarding Value Judgement marks as per existing Order of Quantified Merit will render the entire exercise of Selection Board into a mathematical exercise, without due and independent application of

mind of Board Members, thereby, ignoring the factors listed at Para 16 of promotion policy. We are of the opinion that the Para 16 clearly spells out that marks to be awarded by the Board Members is for Non-quantifiable factors, and judicial rationale asserts that it must be done by the Board Members with independent and unbiased application of mind, after evaluation of the factors enshrined under the Para 16.

31. While the whole process of selection of candidates of promotion is required to have a neutral and unbiased approach, the practice of placing the Quantified Merit List before the Board Members will dilute the independence application of mind, and the marks awarded for Value Judgement would be driven by the Quantified Merit List, instead of independent evaluation of profile of the applicant on the basis of factors enlisted under Para 16. Thus, it appears to be an "Organization Facilitated Prejudice", biasing the decision of the board members, and therefore, in our opinion, there is an imperative need for the Competent Authority to review the entire methodology of awarding the Value Judgment marks by the Board Members.

**Issue (b)**



32. Proceeding to examine the second issue (b), it is pertinent to examine the validity and authenticity of the course undertaken by the applicant and on perusal of documents on record, we find the Part II order promulgated by the Respondents dated 18.02.2010 detailing the degree of M.Phil in Hospital & Health Systems Management from the Birla Institute of Technology and Science (BITS), Pilani and the same is reproduced below:

**"RESTRICTED**

**PARI-II ORDER: OFFICER /NUR OFFICERS**

**GROUP CM'**

US NO.: 3747003 Unit: Base Hospital Delhi Cantt-10 Address: Delhi Cantt-10 Serving in : HQ Delhi Area Brigade/Sub Area: HO Delhi Area	Present Pt II Order No. 164 No. of casualties: 02 Last Pt II Order No. 163 Off's last Pt II order No:- Div/Area: Corps	Dated : 18/02/2010 No. of pages : 01 Dated :18/02/2010 Dated : AMC Comd : West Comd
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Personal No. MR-06154H

Name of Offr: GULSHAN SAINI

Rank Substantive: LT Col (05)

Acting / Re-employed:

CDA (0) A/C No. 03/044/17670

Arms or Service/Regt: Army Medical Corps

S. no.	Casualty Code	Nature of Casualty	From Date dd/mm/yyyy	To Date dd/mm/yyyy	Data 1	Date 2
1	2	3	4	5	6	7
01	xxx	xxx	xxx	xxx	xxx	xxx
02	ACQUAL	Acquired M. Phil in Hospital & Health Systems Management from the Birla Institute of Technology and science. 29.08.2009	21/10/2014	-	-	- 62

Certificate:- CTC Copy of certificate att for MPRSS (0) only.

sd/-  
 (PK Das)  
 Brig  
 Brig /IC Adm & Cdr Tps"

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33. Further perusal of the records leads us to Part II order dated 30.10.2018 detailing the Degree of Masters of Business Administration (Hospital Administration) from the Swami Vivekanand Subharti University, Meerut, the relevant portion of which is reproduced herein:

Ser. No. (1)	Casualty Code (2)	Nature of Casualty (3)	From Date dd/mm/yy (4)	To Date dd/m m/yy (5)	Data1 (6)	Data 2 (7)	Data 3 (8)	Data 4 (9)
1.	ACQUAL	Acquired Degree- Master of Business Administration (Hospital Administration) on 01/06/2016 from Swami Vivekanand Subharti University, Meerut (UP). Copy of Degree certificate bearing No 9842 dated 30 Oct 2018 issued by Swami Vivekanand Subharti University, Meerut (UP) is attached.	01/06/2016		Masters degree	62		

*(Mintu Kumar)*  
Maj  
Adm Offr  
for Commandant"

34. We also find that the applicant was duly granted prior permission to attend the course of Masters in Business Administration (Hospital Administration) from the Swami Vivekanand Subharti University, Meerut, and the letter granting

permission to the applicant to undergo the aforesaid course by Dte Gen of MoD Services (Army) (DGMS-1B) has been produced before us and the same is reproduced below:

*Tele Mil: 23094775*

*B/6154/DGMS-1(b)*

*31 Dec 2014*

**DTE GEN OF MEDICAL SERVICES (ARMY)**  
**DGMS-1(b)**

**APPLICATION FOR GRANT OF PERMISSION FOR PURSUING**  
**MBA THROUGH CORRESPONDENCE**

1. *Ref application for grant of permission for pursuing MBA through correspondence dated 21 Nov 2014 in r/o MR-06154H Col Gulshan Saini of this Dte Gen.*
2. *Permission of the competent authority is hereby accorded to MR-06154H Col Gulshan Saini, Dir MS (T&C) of this Dte Gen to pursue Master of Business Administration (MBA) (Distance Learning Pgme) from Swami Vivekanand Subharti University, Meerut commencing from Nov 2014 subject to following conditions:*
  - (a) The course will be undertaken by the offr under own arrangements.*
  - (b) There will be no financial implications to AFMS/State.*
  - (c) Contact classes/pgme if any will be attended by the off on entitled leave under own arrangements.*
  - (d) Instant permission is subject to exigencies of services.*
  - (e) It may be noted that no request from the off regarding extension / posting to a st or retention in the same station or TD for specific purpose of study / examination will be accepted.*
3. *The offr may be info accordingly.*

*(Ranjeet Kumar)*  
*Lt Col*  
*JDMS/MS-2*

**DGMS-3A**

*Copy to:*

***O/o DGAFMS/CRD Cell***

35. Till now, it has been adequately established, without an iota of doubt, that the applicant has been granted permission for undertaking the qualification, the same being undertaken by him, duly clearing the examinations, while securing the degree for both the courses and the same has been taken on record through the

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Part II orders quoted above, which means that the Competent Authorities were cognizant about both the courses pursued by the applicant.

36. Proceeding to adjudicate on the issue of award of marks for the educational qualifications, we find that the Para 12 of the promotion policy letter dated 05.02.2016 enshrines the number of marks to be awarded for the PG educational qualifications out of a total of 2 marks; which is distinct from the 2 marks awarded for Value Judgment. These marks, thus, allocated for PG qualifications in various disciplines for the purpose of Promotion Board-2 which considers Colonels for promotion to Brigadiers, the relevant portions with respect to the applicant are reproduced as under:-

**"PG Qualification.** *Officers in possession of the following academic achievements or equivalent will be awarded marks in the relevant Promotion Board of AFMS as mentioned against each:-*

S.No.	Qualification	Marks				
		PB4	PB3	PB2	PB1	SPL PB2
(a)	xx	xx	xx	xx	xx	xx
(b)	Master in Hosp Administration (MHA/MD (HA) recognized by Medical Council of India/DNB (HCM), DNB (Family Medicine)	NA	1	0.50	0.50	Nil
(c)	xx	xx	xx	xx	xx	xx

(d)	xx	xx	xx	xx	xx	xx
(f)	Post Graduate Degree in a subject related to the Medical field from an Institution/ University recognized by a statutory body (MCI/DCI/INC). (eg: Masters in Medical Science and Technology (MMST))	NA	1	0.50	0.50	Nil
(l)	xx	xx	xx	xx	xx	xx
(m)	LLB/MBA (structured course on Study Leave from institute/university recognized by a statutory body)	0.50	0.50	0.25	0.10	Nil

37. To support their arguments that the courses of M.Phil and MBA are not recognized by the Medical Council of India, Respondents have placed before us a document published by Medical Council of India titled "Post Graduate Medical Education Regulation – 2000" (Amended upto may 2018) wherein relevant page 55 reads as follows:-

***"Specialties/ subjects in which postgraduate Degree and Diploma can be awarded by the Indian universities and the eligibility requirements of candidates for registration for the same.***

***A. M.D. (Doctor OF MEDICINE)*** For which candidates must possess recognized degree of MBBS (Or its equivalent recognized degree) relevant portion is reproduced below.

xxx	xxx	xxx	xxx
13. Hospital Administration.			
xxx	xxx	xxx	xxx"

**M.Phil (Hospital & Health Systems Management)**

38. A detailed perusal of the Para 12 of the promotion policy letter dated 05.02.2016 would reveal that the M.Phil Course has not been provided for in the aforesaid paragraph. We are unable to comprehend the reason of non-inclusion of M.Phil in the PG qualifications, in spite of the M.Phil being a well recognized postgraduate research degree that is of two years duration, and even though the degree is officially categorised as a masters, it actually resembles a Doctorate due to the fact that an M.Phil goes above and beyond the conventional taught Master's degree by emphasizing independent study and a more narrowly focused subject.

39. Going through the structure and details of the M.Phil course undertaken by the applicant, we find that this Off-Campus programme is conducted by Birla Institute of Technology & Science (BITS), Pilani in collaboration with Christian Medical College (CMC), Vellore and Bombay Hospital, Mumbai. While Contact classes for four weeks are held at Vellore / Mumbai / Indore during the first semester, and at Pilani, during the second semester, the viva-voce for dissertation in the final semester is held at BITS, Pilani.

40. We find that the Point (f) of Para 12 of the aforesaid promotion policy specifies that any "*Post Graduate Degree in a subject related to the Medical field from an Institution/ University recognized by a statutory body (MCI/DCI/INC). (eg: Masters in Medical Science and Technology (MMST))*", thereby, laying down three basic requirements under this clause for award of marks, clarified as under:

- a) It must be a Postgraduate Degree.
- b) It must be related to the Medical Field.
- c) Institution/University must be recognized by a statutory body.

41. On a perusal of above requirements, we are of the opinion that the M.Phil course undertaken by the applicant is a Postgraduate Degree, and is related to the medical field, which is evident not only from the structure of the course, but from the nomenclature of the course itself. With respect to third requirement, we find that the M.Phil course undertaken by the applicant in Birla Institute of Technology & Science (BITS), Pilani is well recognized by University Grants Commission (UGC), which is the statutory body conferred with the recognition of M.Phil courses in India.

42. We are unable to digest the fact that despite fulfilling all the three conditions, Respondents were unable to apply the same for the purpose of awarding the marks, restricting themselves to mere literal “word to word” application of the relevant paragraph of aforesaid policy. It is worth observing that while the promotion is not a right, and the person has right to fair consideration, but denying the fair consideration to a person, on the sole basis of literal interpretation of a paragraph, which is itself ambiguous in nature, will itself vitiate the right to fair consideration for promotion which a fundamental right enshrined under Article 16(1), and cannot be said to be justified, especially in cases where the person is well falling within the ambit of the application of existing policy, but loses out due to sheer literal interpretation of the policy. Therefore, we are of the view that the applicant must have been awarded 0.50 marks for the M.Phil course undertaken by the applicant.

### **MBA (Hospital Administration)**

43. Proceeding to decide the applicability of the award of marks for the course of Masters in Business Administration (MBA) in Hospital Administration undertaken from the Swami Vivekanand Subharti University, Meerut, we find it necessary to refer to Point



(m) of the Para 12 of the aforesaid promotion policy, which notes that marks would be awarded for “*LLB/MBA (structured course on Study Leave from institute/university recognized by a statutory body)*”, thereby, again prescribing the three conditions to be fulfilled for the purpose of award of marks, specified herein:

- a) The Course must be either LL.B or M.B.A.
- b) The Course must be a structured course.
- c) The Course must have been undertaken during the study leave.
- d) The Institute/University from where the course has been undertaken must be recognized by a statutory body.

44. It is without an iota of doubt that the applicant undertook the course of MBA in Hospital Administration which is a structured course, and the Swami Vivekanand Subharti University, Meerut, from where the applicant undertook this course is duly recognized by the Distance Education Bureau (DEB) of University Grants Commission (UGC), and All India Council for Technical Education (AICTE), both of which are statutory bodies. Since, this course as enshrined under the policy requires recognition from the statutory body, and not specifically from the Medical Council of India, a condition which in the case of the applicant is adequately fulfilled,

we find that the arguments by the Ld. Counsel for the respondents are misplaced and unfounded.

45. The only condition which is unfulfilled in the case of the applicant is that the applicant undertook this course on his regular engagement with the Indian Army through distance education mode, without taking study leave specifically for this purpose. Considering that the MBA can be undertaken in Distance Mode, we now proceed to examine the validity of the MBA course, and the applicability of the aforesaid point (m) of the Para 12 of the aforesaid promotion policy.

46. On a detailed research on the validity of the courses obtained through Distance Education, and them being at par with the Conventional courses undertaken in regular mode, we stumbled upon several guidelines prescribed by the UGC, with most recent being University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020 promulgated vide Central Government Notification dated 04.09.2020 and asserted by another notification dated 02.09.2022, whereby the relevant para 22 of the Regulations is reproduced as under:

*"22. Equivalence of qualification acquired through Conventional or Open and Distance Learning and Online modes.— Degrees at undergraduate and postgraduate level in conformity with UGC notification on Specification of*

*Degrees, 2014 and post graduate diplomas awarded through Open and Distance Learning mode and/or Online mode by Higher Educational Institutions, recognised by the Commission under these regulations, shall be treated as equivalent to the corresponding awards of the Degrees at undergraduate and postgraduate level and post graduate diplomas offered through conventional mode."*

47. Noting that the applicant has pursued this course way before the UGC Regulations of 2020 came into force, our research led us to a notification issued by UGC vide letter no. F.No. UGC/DEB/2013 dated 14.10.2013, para 2 of which is relevant, and is reproduced as under:

"1. *xx xx xx xx xx*  
 2. *A circular was earlier issued vide UGC letter F1 No.-52/2000 (CPP-II) dated May 05, 2004 (copy enclosed) mentioning that Degrees/Diplomas/Certificates awarded by the Open Universities in conformity with the UGC notification of degrees be treated as equivalent to corresponding awards of the traditional Universities in the country.*  
 6. *xx xx xx xx xx xx*"

48. We find the aforesaid notifications issued by the University Grants Commission (UGC) from time to time, by virtue of it being a statutory body entrusted with the regulation of higher education in India, makes it clear that the Degrees/Diplomas/ Certificates awarded through Open/Distance education mode is equivalent to those awarded through regular mode, thereby, making it abundantly clear that whether or not the course has been undertaken by distance mode, or in study leave through regular

mode, would make no difference at all, neither to the validity of the course undertaken, nor on the effectiveness of education.

49. It is an established fact that the Distance Education curriculum was brought in the Higher Education system of India to facilitate the working professionals to undertake their studies in higher education courses without breaking their working stint with their authorities or employers. It is worth observing that the policy with respect to service personnels with regular MBA completed on study leave, stands on a higher footing than an MBA course undertaken in Distance education mode without taking study leave, while serving the organization alongside, is discriminatory in nature, and violative of Article 14 of the Constitution of India, specially, when the statutory body of a repute of UGC repeatedly notifies the equivalence of courses undertaken through distance and regular mode.

50. We are of the opinion that when the equivalence of Degrees acquired through distance mode find themselves at par with those acquired through regular mode in every other aspect, whether for higher education or for employment, an exception cannot be carved out specifically for the Armed Forces, which renders the policy discriminatory in nature in absence of any reasonable

justification, and therefore, in view of the above analysis, the condition prescribed in point (m) of the Para 12 of the aforesaid promotion policy laying down the requirement of the course to be undertaken during study leave is quashed herein with respect to MBA as unconstitutional in nature.

51. Respondents have relied upon the judgment of ***MR-05873P Col. IVS Gahlot, AMC v Union of India & Ors (OA 428/2013, AFT PB decided on 20.07.2015)***, as upheld by the ***Hon'ble Supreme Court of India in Civil Appeal no.8047 Of 2018.***

On a detailed perusal of the aforesaid judgement of the Hon'ble Supreme Court, as well as that of the Principal Bench of this Tribunal, we find that the factual position in the present case was different from that in the case of ***Col. IVS Gahlot (supra)***. In the case of ***Col. IVS Gahlot, (supra)*** the issue pertained to two courses - first, being a Certificate of Dept of Pediatrics, issued by Head of the Department of Paediatrics, GSVM Medical College, Kanpur, wherein the applicant was unable to show any certificate of passing the structured training program, with second being a Ph.D course in Anthropology, wherein the applicant was denied the award of marks on the ground that it was well specified in the policy that institution granting Ph.D has to be recognized by the

Medical Council of India, which is not the issue in the instant case, as there is neither any requirement of recognition of Medical Council of India, nor the MBA or M.Phil Courses are be recognised by the Medical Council of India, as was observed in the case of ***Col. IVS Gahlot (supra)*** by the Hon'ble Supreme Court that Medical Council of India does recognize the Ph.D. courses, and that despite that the applicant, Col IVS Gahlot has undertaken Ph.D. course from a university different from those recognized by the Medical Council of India.

52. Observing that the case of ***Col. IVS Gahlot (supra)*** is entirely different from the instant case of the applicant on the basis of factual matrix, we are of the considered view that the educational qualifications of applicant case fall under the per Para 12 (f) and Para 12 (m) of the promotion policy letter dated 05.02.2016, **thereby, entitling him for the grant of @ 0.50 marks for M.Phil and 0.25 marks for MBA respectively; thus, eligible for award of 0.75 marks for the PG educational qualifications.**

53. On a perusal of the Board results of No. 2 Promotion Board in respect of the applicant, wherein he has been considered as a first chance candidate on 26.11.2018, second chance candidate on

05.05.2020 and third/last chance candidate on 10.05.2021, we find that in all the three chances, the applicant has been awarded NIL marks for the PG qualifications, where he should have been given credit for the qualifications of MBA and M.Phil. We further observe that had the marks for aforesaid qualifications been granted to the applicant, he was well above the cut-off merit in his promotion list.

### **Directions**

54. Concluding in the light of aforesaid analysis, we quash the condition of "Study Leave with respect to MBA" as enshrined under Para 12(m) of the aforesaid promotion policy dated 05.02.2016, being discriminatory and unconstitutional in nature, we dispose off the present OA with following directions to the Respondents:

- a) The results of Promotion Board No.2 (AFMS) with respect to the applicant in all the three considerations are quashed and set aside.
- b) Respondents to convene a Special Promotion Board No.2 (AFMS) within two months from the date of pronouncement of this order with fresh calculation of marks awarded for the PG qualifications of the applicant, and if found fit, to promote him from the date of original seniority, by an additional vacancy, without prejudicing any other candidate.

- c) Till the declassification of Special Promotion Board No.2 (AFMS), the applicant shall continue to remain in service.
- d) Respondents are directed to review the policy and procedure followed for the award of value judgment marks by the Board Members at earliest.
- e) Quashing the condition of "Study Leave" enshrined under Para 12(m) of the aforesaid promotion policy dated 05.02.2016, shall take effect from the date of pronouncement of the order, thereby, having prospective operation and shall not operate upon any promotion effected to under the aforesaid policy till date, except the instant case.
55. Consequently, this OA is disposed of.
56. Miscellaneous application, if any, stand disposed of.
57. No order as to costs.

Pronounced in the open Court on **21<sup>st</sup>** day of August, 2023.

**(JUSTICE RAJENDRA MENON)**  
**CHAIRPERSON**

**(LT GEN C.P. MOHANTY)**  
**MEMBER (A)**

/ps/



