

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI  
(Court No.2)**

**O.A NO. 350 of 2011**

**IN THE MATTER OF:**

**Brig Stephen Jude Gracias**

**.....APPLICANT**

Through : Mr. K. Ramesh, counsel for the applicant

**Vs.**

**UNION OF INDIA AND OTHERS**

**...RESPONDENTS**

Through: Mr. R. Balasubramanian, counsel for the respondents

**CORAM:**

**HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER**

**HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

**JUDGMENT**

**Date: 22.11.2011**

1. This petition was filed before the AFT (Principal Bench) on 02.9.2011 as OA No.350/2011.

2. The applicant vide his OA has prayed for quashing and setting aside of the order MOD dated 17.08.2011 being alleging contrary to Army HQ MS Policy letter dated 23.03.1995. The applicant has also sought directions to the respondent No.3 to reconsider him for nomination of NDC Course-51 so that a 'Second Look' could be granted in accordance with the Army HQ Policy. Since the applicant has not been considered for NDC-51, he should now be considered for nomination to attend NDC-52 commencing from January 2012. Alongwith the main OA, the applicant has also prayed for an interim relief seeking stay of the impugned GOI order dated 17.08.2011 as

also pending the final declassification of the announcement of names of officers for the NDC -52 Course commencing in Jan 2012 till his case is decided.

3. Brief facts of the case are that the applicant was commissioned on 07.07.1980 into the Corps of Engineers. He became Brigadier on 01.03.2008. Because of his good performance, he was nominated to attend NDC-50 which was to commence on 04.01.2010.

4. While attending the Course at NDC-50, the applicant developed fever which was subsequently diagnosed as blood cancer (Acute Myeloid Leukemia). On 12.12.2010, the Secretary, NDC wrote a letter to Army HQ stating that since the applicant has been absent more than 21 days of course instructions, he could not be permitted to continue on the course. Thus, he was medically withdrawn.

5. The applicant was discharged from the hospital. He was placed in Temporary Medical Category P-3(T-12) on 08.07.2010. Subsequently, he was upgraded to P-2(P) on 29.10.2010.

6. However, the name of the applicant was not considered for nomination to NDC-51 which was to commence in Jan 2011, since the applicant was in low medical category. The applicant has alleged that he had written a letter to the MS on 06.09.2010 for giving a 'second look' since the applicant was likely to be upgraded to acceptable medical category by the time the course commences in Jan 2011. He

did not receive any response. Subsequently, the applicant made a statutory complaint on 28.01.2011 which was rejected by the order of the Central Government dated 17.08.2011 (impugned order).

7. Learned counsel for the applicant argued that the policy of 23.03.1995 lays down as under:-

“2. XXXXX

3. *Selection Procedure:-*

(a) *The selection system provides for two looks for all Brigs provided they fulfil the laid down eligibility criteria.*

(b) *At the first stage all eligible officers are shortlisted in a computerized order of merit based on the QR mentioned at Para 4.”*

8. Learned counsel for the applicant further argued that though there was no medical criteria laid down in the said policy letter. As per normal practice a person is required to be in the acceptable medical category at the time of commencement of Course/at the time of his promotion. Being a low medical category does not debar a person from due consideration for selection.

9. Learned counsel for the applicant also argued that keeping in view the aim of the course which is to *“impart training in National and International related fields to selected senior Defence and Civil Services Officers and to promote research and understanding of various related issues by creating necessary aptitude for such work. The NDC is aimed to prepare the next generation of policy makers selected from the Defence Services and Civil Services of India for*

*increased responsibility through a Course involving National Security and Strategy*". It is essential that an officer who is well qualified and is amongst top rankers in his job should be trained in order to derive the maximum benefit from his professionalism and experience.

10. Learned counsel for the applicant argued that an officer is given the second look/consideration only if he has not been nominated in the first-look, as contended by the respondents, but is nowhere laid down in the policy letter. Under these circumstances, an officer who does not make it in the first selection is in fact given a second look, while the better officer who was nominated for an earlier course but could not attend the course due to events beyond his control is being now denied the second look is a great injustice to officer/applicant.

11. Ld. Counsel for the applicant argued that the applicant's ailment has been stated to be attributable to the Military Service and thus it is all the more reason that since the applicant has now come into the acceptable medical category, he should be given another chance for consideration for attending the NDC.

12. Ld. Counsel for the applicant further submitted that Article 14 of the Constitution lays down that the classification has to be reasonable and within the framework of Constitution and it has also laid down two conditions viz.:-

(a) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(b) the differentia must have a rational relation to the object sought to be achieved by the Act.

13. In this case it is beyond doubt that the applicant is competent and therefore, he was selected during the first selection process for NDC-50. Withdrawal of the applicant from the course was beyond his control and attributable to Military Service. Therefore, the applicant needs to be considered for the second look provided he is in the acceptable medical category and is also meeting other criteria. In this case, opportunity of second look is being given to those officers who are not so competent in a comparative manner and who have not been nominated in the first chance. Thus, the intelligible differentia is not balanced and nexus between the basis of classification and the object of the act which makes the classification is not clear.

14. Learned counsel for the respondents submitted that the applicant was considered and was nominated for NDC-50 commencing on 04.01.2010. On 15.01.2010, he was admitted in the hospital for some ailment. Since he continued to remain in hospital, the Secretary, NDC informed the Army HQ vide letter dated 12.02.2010 that since the applicant has lost 21 days of instructions, he needs to be withdrawn. This stage was rather late and no reserve could have been detailed in his place as averred by the applicant in his OA. Thus, the

vacancy which was due to the Corps of Engineers was exhausted by the applicant.

15. He further argued that on 28.10.2010 the Selection Board for nomination of NDC-51 took place. The applicant was in a low medical category and therefore, his name was not considered. The applicant went through a medical board on 29.10.2010 and was finally upgraded into P-2 category which is acceptable medical category on 08.11.2010.

16. Ld. Counsel for the respondents further argued that the issue of being in acceptable medical category was addressed in the Army HQ Letter dated 24.09.2004 which was consequent to the judgment of Hon'ble High Court of Delhi in WP(C) No.80/2004. The said policy gave out that since the NDC Course was important and had a link with the officers securing higher ranks, it was essential that the officers who attend the NDC Course must be in acceptable medical category. Ld. Counsel further submitted that as per the said letter, the officer should be in acceptable medical category at the time of consideration and also at the time of joining of course.

17. Besides, Ld. Counsel for the respondents also argued that since the applicant had already been selected in the first look but due to certain reasons, the applicant had not been able to complete the course, thus it would be deemed that the applicant had availed the

look, therefore, it was not fair to reconsider him again as it would have denied some other officer a fair chance.

18. Ld. Counsel for the applicant in response to the arguments of Ld. Counsel for the respondents drew our attention to the nomination letter for NDC-50 in which the applicant's name also figures at Sl. No.(m). Para 2 of the said letter dated 24.10.2009 states that "*the above detailment is subject to their remaining in acceptable medical category on the date of joining and no drop in performance*".

19. Having heard both the parties at length and having perused the policy letters thereto, we are of the opinion that the applicant was certainly nominated by his own merit in NDC-50 commencing on 04.01.2010. But unfortunately, he had to be withdrawn from the course for reasons beyond his control. The ailment that he suffered was attributable to Military Service. It is his fortunate that he has been upgraded to acceptable medical category.

20. The policy letters for nomination to the NDC Course is not very clear as to the two looks that are required to be given to the officers. In normal course, a person who does not figure in the first look will be given a second look. Normal understanding is that one who does not figure in the first look will be considered for the second look. In this case perhaps it is a unique situation where the applicant having been nominated in the first look was unable to undergo the course due to

reasons beyond his control. The policy letter is silent on this type of position arisen in this case. In this respect the whole policy letter and aim and object of the policy are to be kept in mind.

21. We have ascertained that in other causes of instructions where nomination is based on comparative merit/entrance examination, a candidate who fails to attend the course due to extraneous reasons does not forfeit his authorised provided number of chances/considerations. Therefore, in all fairness the applicant needs to be given another chance to be considered for selection to the NDC Course, provided he meets the eligibility criteria.

22. We have further considered the impact on the environment by giving the applicant a second look. The very fact that should the applicant be given a consideration and is selected, it will imply that the applicant is higher in comparative merit and as such likely to be promoted to the next rank. Training such an officer who is likely to be promoted, due to his standing in the comparative merit will be beneficial to the organisation in the long term. Thus, the 'aim' set forth for the course will be met.

23. We have also considered the argument that giving the applicant a 'Second Look' will deprive another officer a chance to do NDC. We strongly consider that merely giving 'Second Look' does not mean that the applicant is selected or nominated. He has to meet the eligibility



criteria and has to be high enough in the comparative merit. This consideration to the applicant, should he be nominated, will deprive another officer of the chance to do NDC is thus not correct. Therefore, it cannot be said to be giving the applicant an unfair advantage over the officer who is not nominated to attend NDC-52.

24. We have ignored the issue of non-consideration of the applicant for NDC Course-51. Though we have noted the dichotomous reply given by the respondents which claims that the applicant was not considered on 28.10.2010 because the applicant was in low medical category. At the same time, the respondents have also made an averment in their counter-affidavit to say that he was not entitled to a second look having been selected during the first look.

25. Considering the facts and ailment suffered by the applicant which was beyond his control and has been declared as attributable to Military Service by medical authorities, we feel that denying him the second look is in a form of penalty rather than giving the officer a favourable consideration of having suffered this ailment attributable to Military Service. Thus, we hold that the applicant was entitled for the 'Second Look'. The selection in the 'First Look' was not completed due to his illness beyond his control and attributable to military service. Therefore, he cannot be blamed for not completing the course.

26. We have already considered and disposed off M.A. No.433/2011 on 22.11.2011 in which Brig A.K. Sapra and others had sought to be impleaded in this OA as party respondents. We are conscious of the fact that the interest of the organisation should be paramount, while justice should also be done to all the parties. Therefore, we direct the respondents to consider allocating one additional vacancy to the Army, without quoting this as a precedent, as a one time measure, in view of the peculiar facts and circumstances of the case, should the applicant be selected to attend the NDC-52 on his own merit. Thus, the larger interest of the organisation will be served while justice will be rendered to all concerned.

27. Keeping in view the overall interest of the organisation, which specifically translates to the best officer to be selected to attend the NDC Course, we are of the opinion that the applicant needs to be given a 'second look' provided he meets the eligibility criteria. His 'First Look' will not come in the way. Since the consideration for NDC-52 was to take place on 13.10.2011 as per the assertions made by the applicant as well as the respondents, we had issued an interim order dated 12.10.2011 to consider the applicant subject to outcome of this petition. Now the OA has been finalised, the respondents are directed to proceed accordingly as per the outcome of his consideration. In case he is selected and found meritorious, he should be detailed on the course NDC-52. The interim order stands disposed off.

28. The application is partly allowed. No orders as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**  
Announced in the open Court  
on this 22<sup>nd</sup> day of November, 2011

**(MANAK MOHTA)**  
**(Judicial Member)**