

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW
DELHI**

23.

O.A NO. 374 OF 2010

Lt Col Shobhit Rai

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S.S Pandey, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

17.10.2011

Justice Mathur, Chairperson

1. The petitioner in this petition has prayed that the policy instructions dated 31.12.2008, by which the respondents have adopted quantification model of selection, may be quashed and that the respondents be directed to allot more marks for Staff College than M.Tech in respect of officers belonging to the Corps of EME. He has also prayed that the respondents be directed to consider the petitioner for promotion by holding a

special review (fresh) by removing the disadvantages suffered by him on two parameters as mentioned above.

2. The petitioner was commissioned in the Army as second Lieutenant on 14.12.1991. With passage of time, he became Lt Col. In the meantime, the petitioner completed his Engineering Degree and also did M.Tech from IIT. He was posted with 619 EME Battalion in the field when his ACR was initiated in June 2008 for the No.3 Selection Board. Subsequently, the name of the petitioner was nominated for Senior Officers EME Course (SO EME 93). When promotion to the post of Col was considered, he could not make it during 2009, 2010 and 2011. Therefore, he has filed this petition making the grievance that the policy suffers from various lacunae and same should be quashed and the petitioner's case should be considered afresh.

3. It may be relevant to mention here that the first policy referred to by the petitioner is dated 6.5.1987. The petitioner has highlighted some of the common features referred to in Para 10 i.e. guidelines for the assessment. In the policy of 1987, it was laid down that the overall profile of the officer shall be considered and due consideration is to be given for officers who have consistency in overall performance over late starters. Subsequently, a new policy was introduced on 31.12.2008. This new policy of 2008 laid down new norms and it is now known as "quantification system of selection". In this

policy, 95% marks are to be given for quantified parameters to include confidential reports (CRs), courses, honours and awards and 5% marks will be kept for value judgment by Selection Board (SB) Members for aspects that cannot be quantified. The 95% had been further distributed as per the policy, which we need not go through, and marks have been assigned on various criteria like appointment, profile, recommendation for promotion, weightage for the courses passed by an officer and their relevance as he rises at the rank. Gallantry awards and other awards have also been recognised and given due weightage. The recommendation for promotion was also given due weightage. Therefore, a comprehensive policy was laid down. This policy further underwent little change and finally on 4.1.2011, another policy has come into force and been promulgated. The policies keep changing from time to time, looking to the needs of the Army. Normally, policy decisions are taken after long experience of the working of the Army and the experience which has been gained by the Army and that is formulated into policy. Policies are being amended from time to time to make the Army more efficient thereby reducing grievances to the minimum. Whenever new policies are introduced, sometimes some people stand to lose and sometimes some stand to gain also. To illustrate, at one point of time, figurative assessment of 7 was considered to be a rejection criteria, but now with the introduction of the quantification

system, it is no longer considered to be a rejection criteria. Be that as it may, this fact is only mentioned to show that changes in policy are being brought about in order to make the Army more efficient and reduce grievances of the forces to the minimum.

4. Unfortunately, in the present case, the petitioner's case was considered for the first time on 1.5.2009 on the basis of the policy which was in force i.e. on 31.12.2008 and he could not make it. His case was again considered in 2010 and in that also he could not make it. The last review was in July 2011. In that also, he could not make it. Therefore, grievance of the petitioner is that if value based system i.e. consistency of the CR, had been the criteria, perhaps he would have made it. According to him, M.Tech degree was not recognised in the 2008 policy and if due weightage was given to it, he may have been empanelled. He also pointed out that because unequals had been treated as equals he had lost out. He has also submitted that he passed the Senior Command Course and he was under the impression that perhaps that will benefit him in his consideration for promotion. It is true that one prepares his service profile keeping in view exigencies of service. Sometimes changes may not be according to the expectation of the person and his hopes may not fructify. This is what has happened in the present case. He did his M.Tech with the hope that this technical/academic excellence may give him an advantage.

But to his misfortune, that was not given due weightage in the 2008 policy. The same had been given due weightage only in the policy which was brought about on 4.1.2011. Unfortunately, in July 2011 also, he could not make it. Therefore, the contention, which the petitioner has raised, is not justified. Courts have powers to strike down the policy and that too only in cases where it violates Article 14 of the Constitution of India; if it is discriminatory or arbitrary. Since criteria keeps changing from one policy to another, just because the criteria in the 1987 policy was not included in the new policy does not mean that the policy is arbitrary or discriminatory. Therefore, just because certain criteria of the 1987 policy was not reflected in the new policy of 2008, it does not mean that the policy of 2008 or 2011 is discriminatory or arbitrary, in any manner.

5. We do not find any merit in this petition. In the result, it is dismissed, with no order as to costs.

A.K MATHUR
(Chairperson)

S.S DHILLON
(Member)