

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

12.

O. A. No. 87 of 2010

With

O.A. No. 199 of 2010

Col BB Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Rajiv Manglik, Advocate.

For respondents: Sh. R. Balasubramanian, Advocate for Respondents (In
O.A. No. 87 of 2010).
Sh. Ankur Chhibber, Advocate for Respondents (In O.A.
No. 199 of 2010).

CORAM:

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

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

ORDER

30.5.2011

1. Both these petitions involve same question of law and are therefore being disposed of by this common order. However for convenient disposal of the petitions, the facts in **Col. BB Singh v. Union of India & Ors.** (O.A. No. 87 of 2010) are taken into consideration.

2. Petitioner by this petition has prayed that the records quantifying the marks for various courses may be called from the respondents and same may

be quashed and set aside after perusal. The result of No. 2 Selection Board held on 12th January 2010 in respect of the applicant may be quashed and respondents may be directed to convene the fresh Selection Board for promotion to the post of Brigadier Signals.

3. Petitioner was commissioned in the Indian Army on 12th June 1982 in the rank of 2/Lt. and he was allotted the Corps of Signals. Petitioner has a technical qualification of Bachelor of Technology in Electronics and Communication. The officers in the Corps of Signals have a choice of attaining post graduation by either undergoing DDSC Course at Wellington (Degree of MSc in Defence Studies from Madras University) or pursuing M.Tech/ME from a civil university at the government expense or at own expense or undergoing the TSC at IAT, Girinagar, Pune. Petitioner was detailed to undergo Master of Engineering in the specialised field of Microwave and Radar in 1991 and 1992 and he attained post graduation from Roorkee University. It is also alleged that the Corps of Signals is a specialised technical arm of the Army responsible for providing necessary communication network to the Army. Petitioner was posted as the Commanding Officer of the Commanding Signal Regiment and performed his duties with great distinction. He has held number of posts during his service career. It is pointed out that prior to 31st December 2008 a policy of promotion was framed wherein all the CRs above 9 years of service was considered by the Selection Board and the courses being done by the officers carry the weightage. It is also submitted that Post graduation courses in any field carry the same weightage. Respondents framed a new policy dated 31st

December 2008 which was implemented from 1st January 2009 and which has bearing on our subject and the relevant paras read as under:

"General

1. The existing promotion system governed by the provisions of ibid letter, has evolved over the years and has withstood the test of time in consistently achieving the basic aim of selecting only those officers who are competent and fit in all respects, to higher ranks. In the efforts to constantly improve the system and bring in greater transparency and objectivity, the conduct of Selection Boards using a Quantified System is being adopted with effect from 01 Jan. 2009.

Quantification Model

2. The model has quantified as many selection criteria as is feasible for greater objectivity and to enable discernment of the most deserving candidates for higher rank from amongst a batch of officers.

Terms of Reference

3. Terms of reference for conduct of Selection Boards by quantification system are as follows:

(a) 95 per cent marks will be given for quantified parameters to include confidential reports (CRs), courses and honours and awards.

(b) Five per cent marks will be kept for value judgment by the Selection Board (SB) Members for aspects that cannot be quantified.

Distribution of Marks

4. Distribution of marks for various submits are given below:

<u>Type of CR</u>	<u>No. 3 SB</u>	<u>No.2 SB</u>	<u>No. 1SB</u>	<u>SSB</u>
CRs	89	90	91	92
Courses and Honours and				
Awards	6	5	4	3

Quantification

Total	95	95	95	95
Value judgment	5	5	5	5
<u>Grand Total</u>	100	100	100	100

CR Profile

5. The allocation of marks for CR profile is based upon the following considerations:

- (a) Primacy of CR Primacy of the CR vis a vis other criteria like courses, honours and awards etc. has been established by allocating max marks for CR grading for all selection bds.
- (b) Criteria vis-a-vis Other CRs Greater wightage essential for command/criteria appointments as compared to staff/instructional/extra regimental employment has been factored in.
- (c) Reckonable Profile All CRs in reckonable profile being considered under the existing policy will be quantified.
- (d) Recommendations for Promotion There are four shades of recommendations for Cols. Brig. And Maj Gen viz Should Promote/May Promote/Not Yet Recommended/Not Recommended. These will be reflected in member data sheet (MDS) as hitherto fore for the value judgment of SB members.
- (e) Reports earned in OP MEGHDOOT and OP PAWAN outside reckonable profile, will continue to be included for No.3 Selection Board as hitherto fore, for value judgment only.

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Review

13. The Quantified System of Selection Boards will be evaluated and refined for a period of three years from implementation, till the system stabilises."

4. As per this policy 90 marks were fixed for Selection and 5 marks for the courses, honours and awards and 5 marks for the value judgment. Petitioner's case was considered under this policy and he could not be selected. Therefore, he filed the present petition challenging this policy especially with regard to the 5 marks which was fixed for the courses, honours and awards. Learned counsel for the petitioner made submission that for the purposes of 5 marks, no guideline has been quantified however petitioner learns that 1 mark has been only earmarked for the post graduation M.Tech whereas 2 marks have been fixed for the staff course and remaining 2 marks have been fixed for the honours and awards. The grievance of the petitioner is that awarding 2 marks for the staff course and 1 mark for the technical qualification is discriminatory. Though this kind of distribution of marks has not been given but this has been affirmed by the Committee. The respondents in their reply submitted that it has not been disclosed for the reasons of the services but this is the distribution which they have made. Learned counsel submitted that this quantification which had been done is bad as the qualification which he possesses i.e. M.Tech cannot be given a less importance than that is given to the staff course. Learned counsel submitted that in fact Signals is a technical branch and that benefit of technical qualification cannot be in any manner lower than that of the staff course. This policy has further undergone a change and a

new policy has been now formulated on 4th January 2011 and in that a new policy has been worked out and total of marks have been given 95 for the CRs, courses, honours and awards and 5 marks have been given for the value judgment. 95 marks were earlier also fixed for the purpose of CRs and courses and honours and awards. Now in this policy the 95 marks continued to be the same and the other 5 marks have further been divided and out of that 3 marks have been given for courses and 2 for honours and awards and out of 3 marks we have been given to understand that 0.65 mark has been fixed for M.Tech and 0.50 mark if it is done by other than competitive examination and if one does it with study leaves then it is 0.35. Learned counsel for the petitioner submitted that during the time petitioner done M.Tech and at the time when he did the M.Tech, the M.Tech and Staff courses were equated. That may be so but the fact remains that the policy which has been promulgated on 31st December 2008 it has been clearly mandated that the M.Tech and study courses stand at different footing. Just because at one point of time M.Tech qualification and study courses carry same weightage that does not mean that respondents are bound to carry same policy. It is with the passage of time new developments in technology have come and respondents are free to change the policy looking into the exigency of the situation. It is also pointed out that staff college is held by all India competition amongst the armed personnel. Learned counsel for petitioner pointed out that the M.Tech is also done at the national level. That may be so a person who has passed staff college is better equipped and more beneficial for the services rather than a person having technical qualification. Therefore, it is for the respondents to decide that what policy they have to follow. It is not for the petitioner to say that just because at

one point of time he had this M.Tech qualification which was equated to study college therefore the policy which has been subsequently formulated has given more importance to the study college. It is a matter of policy and the new changes which have already been undertaken in 2011 is also on the basis of the recommendations of the Selection Committee which has examined the pros and cons. Therefore, it is a matter of policy decision and not just because at one point of time both were equated and given the same weightage and subsequently it is not then that cannot render the policy arbitrary. It is a matter of growing knowledge and policies are always subject to change from time to time looking into the exigency of services.

5. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **N. Suresh Nathan and Anr. V. Union of India and Ors. 1992 Supp (1) SCC 584**. In that case the qualification has been laid down that three years' service has to be counted from the date of obtaining the degree or from his service prior to obtaining the degree for computing the period of three years for the purpose of promotion. Their Lordships held that three years' service has to be counted after obtaining the diploma in engineering. Therefore, this case is of no avail to petitioner. Similarly in the case of **T. Sham Bhat v. Union of India and anr. 1994 Supp (3) SCC 340**, the question was that persons other than from civil servants were eligible to be considered for the IAS with 8 years of service which was increased to 12 years of service. Their Lordships held that IAS Selection Regulations which prevailed for 33 years there is no justification to change it after such a long time. Therefore they struck down increasing the service

period from 8 years to 12 years. This case is also distinguishable on facts from the case in hand. Learned counsel for the respondents drew our attention to the case of **K. Jagadeesan v. Union of India and Ors. (1990) 2 SCC 228**. In that case it was observed that it is prerogative of the State to frame the rules and to amend the same. In that case the rules were amended and it was laid down that Engineering degree qualification for promotion from Mechanical Engineer (Senior) to Director (ME) is valid and this was upheld on the ground that power to amend the rules is the prerogative of the State under proviso to Article 309 of the constitution. It is true that rules have to be framed by the State looking into the exigency of the services. In the present case at one point of time one set of rules prevailed and subsequently another set of rules were promulgated for promotion from the post of Colonel to Brigadier Signals. Therefore, this is the prerogative of the State and it cannot be declared to be ultra vires or invalid just because it does not suit a particular petitioner. It may be that prior to the framing of the rules of 31st December 2008 the qualification of M.Tech and study college were treated equally but subsequently it was realised that a person who has studied in staff college has greater employability and, therefore, more importance has been given to him. Subsequently in 2011 they have made it more transparent on the recommendations of the Selection Committee and quantified the marks as mentioned above. Therefore, it is a matter of policy decision for the government and we do not find that the policy which has been laid down in Circular dated 31st December 2008 is in no way discriminatory so as to be violative of Articles 14 and 16 of the constitution.

6. Hence, we do not find any merit in these petitions and the same are dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
May 30, 2011