

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

OA 1617/2024

Maj K D Agnihotri ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Indra Sen Singh and  
Mr. Nasir Mohammad, Advocate(s)  
For Respondents : Mr. Anil Gautam, Sr. CGSC

WITH

OA 1612/2024

Major Parveen Kumar ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate  
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

WITH

OA 1613/2024

Maj Girish Singh Thakur ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate  
For Respondents : Mr. K.K. Tyagi, Sr. CGSC

WITH

OA 1614/2024

Maj Jubit Jestine ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Indra Sen Singh and  
Mr. Nasir Mohd, Advocates  
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

WITH

OA 1769/2024

Maj Harsh Sharma  
Versus

..... Applicant

Union of India & Ors.

..... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate  
For Respondents : Mr. Jagdish Chandra, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of Armed Forces Tribunal Act, 2007 this OA. has been filed by the applicants who are aggrieved by impugned letter No. A/63062/PGT/GS/FT&TS) dated 02.01.2024 reducing the vacancies of officers of other Arms & Services (OAS) to 05 vacancies in M.Tech Course under PGT scheme in IIT, IISC, DIAT & IIST- ISRO under the Army quota for academic session 2024-2026.

2. The matter was heard at length on the question of interim relief on 29.05.2024, wherein aforesaid this Tribunal has considered the issue under contention in detail in - (i) OA 1603/2024, (ii) OA 1612/2024, (iii) OA 1613/2024 (iv) OA 1614/2024 and (v) OA 1617/2024, thereby granting interim relief by restoring the vacancies for the OAs as in original order maintaining the status quo ante and

subsequently, the said relief was extended to another OA 1769/2024, vide order dated 29.05.2024 itself.

3. We find that subsequently, OA 1603/2024 was dismissed as 'withdrawn', as recorded vide our order dated 04.09.2024. Thus, treating OA 1617/2024 as the 'Lead Case' for the purpose of present adjudication, we find it pertinent to refer to the detailed interim order passed by the this Tribunal vide its order dated 29.05.2024, reproduced herein as under:

2. *The applicants being similarly placed, analogous hearing of the case is thus allowed. We have heard the Learned Counsels for both the parties on the interim prayer of the applicants which read to the effect :*

**"9. INTERIM ORDER, IF ANY, PRAYED FOR:**

*That the Applicant has made out a prima-facie case and is hopeful of succeeding in the instant case. As mentioned hereinabove, the GATE for admission to M-Tech academic session announced so far, but informally it has been learnt that the same is likely to be held between 10 May 2024 to first week of June 2024. It is also informally learnt that the M-Tech session 2024-2026 is most likely to commence from last week of July 2024. In view thereof an irreparable damage would be caused to the Applicant unless a direction is issued to the Respondents to set-apart one vacancy for the Application against the Army quota, i.e out of 60 vacancies seats assigned to the Army Academic Session 2024-2026, pending final disposal of the instant case. Therefore in the peculiar facts & circumstances of the case, the Applicant most humbly prays that this Hon'ble Court may most graciously be pleased to pass the following interim order/direction pending disposal of the instant OA:-*

*a) Direct the Respondents to set-apart one vacancy for the Applicant against the Army quota, i.e out of 65 vacancies/seats assigned to the Army for the Academic Session 2024-2026, pending final disposal of the instant case; and*

*b) Pass any other order/ direction as this Hon'ble Court may deem appropriate in the facts & circumstances of the case."*

3. *In brief, the case relates to allocation of vacancies for M.Tech Course by the Army under PGT scheme in IIT, IISC, DIAT & IIST-ISRO for various technical arms and services as well as other arms and services. The*

applications were invited from the candidates for selection for the PGT course as per provisions of policy letters dated 24.02.2022 wherein vacancies were indicated to be 90 per year. The relevant Paras of the letter are extracted as under:

“Vacancies

7. A total of 450 vacancies are available in a five year cycle i.e., 90 vacancies per year for sponsorship of Indian Army Officers for M Tech under PGT Scheme. The distribution of 90 vacancies for M Tech is as follows :-

(a)	Engrs	-	30
(b)	Sigs	-	30
(c)	EME	-	30

(d) Other Arms & Services. Officers of all Arms & Services are permitted to apply for M Tech. The vacancies for officers from other Arms & Services will be shared by the three technical Arms/Services (Engrs, Sigs & EME) proportionally.

8 to 11 xxx xxx xxx

Submission of Application

12. Applications will be submitted to the respective Line Directorate by 15 Oct duly vetted and recommended by IO and RO.

13 to 14 xxx xxx xxx

15. Preliminary Screening : Line Directorates. Applications will be screened at respective Line Directorate and Line MS in accordance with QR given at Appendix A. This process will be completed by 20 Oct. Nominal Roll along with the applications of eligible officer will be forwarded to Approval & Plans Branch (FT & Tri-Services) by 25 Oct.

16. Screening by a Board of Officers. A board of officers will be convened at Approval & Plans Branch in last week of Oct to ascertain eligibility of officers for CSE. The list of eligible officers will be disseminated to the environment by 15 Nov.

17 to 20 xxx xxx xxx

21. Final List : Interview. Final list of officers fielded for interview in specific stream and institute will be intimated to Line Directorates & Command HQ and also uploaded on HQ ARTRAC website by 15 Mar. A minimum of two officers per vacancy will be fielded for interview.

22 to 30 xxx xxx xxx

31. This policy will be effective with effect from M Tech selection process 2023-25 (i.e. CSE-2023). The following policy letters will be superseded on issue of this policy :-

- (a) DGMT (MT-10) Policy letter No A/63062/PGT Policy/GS/MT-10 dt 06 Dec 2018.
- (b) DGMT (MT-10) Policy letter No A/63062/PGT Policy/GS/MT-10 dt 10 Dec 2019.

(c) DGMT (MT-10) Policy letter No A/63062/PGT Policy/GS/MT-10 dt 06 Sep 2021.”

4. The amplification notes were issued vide letter dated 27.10.2022 the relevant Paras of which is reproduced as under :

**“4. Mechanism for Earmarking Vac for Other Arms & Services**

(a) Earlier, for total 90 vac for IA, Engrs, Sigs & EME had been earmarked 30 vacs each in M Tech. Till last yr, offr from other Arms & Services had a fix quota of 06 x vac which were equally distr between Engrs, Sigs & EME. This entailed that 02 x vac were fixed for other Arms & Services out of a total of 30 vac each earmarked for Engrs, Sigs & EME.

(b) As per HQ ARTRAC Policy for selection of Indian Army offr for Post Graduate Training (M Tech) at IIST/IISc/BARC/IIST (ISRO) issued vide Apvl & Plans Br FT & Tri Services letter No A/63062/PGT Policy/GS/FT & TS dt 24 Feb 22, for the Academic session 2023-25, other Arms & Services will compete for all vac on equal footing, without any fix No of vac of any Arms & Services. It implies that successful No of offr from other Arms & Services (excl Engrs, Sigs & EME) will be equally divided amongst the 30 vac each earmarked for Engrs, Sigs & EME. In case of the successful candidates from other Arms & Services are not in a multiple of 3, the vac will be distr in the sequence of Engrs, Sigs & EME. The sequence will continue in the next yr, in continuation from where the last vac of Engrs/Sigs/EME was utilized by other Arms & Services.”

5. Consequently a letter dated 21.08.2023 was issued by HQ ARTRAC giving out the details for conduct of GATE Examination for academic Year 2024-26 wherein the schedules of activities were given at Para 4 which reads thus :

4. Sch of GATE Exam 2024-26. Sch of GATE Exam 2024-26 is given as under :-

<u>S No</u>	<u>Activity</u>	<u>Timelines</u>	<u>Remarks</u>
(a)	Regn by offr for GATE	24 Aug to 29 Sep 23	In consultation with Line Dts
(b)	Last date for submission of applications alongwith GATE credentials by officers to respective Line Directorates	15 Oct 23	
(c)	Submission of applications by Line Directorates to Approval & Plans Br/FT & Tri Services	25 Oct 23	
(d)	Vetting of application by Approval & Plans Br/FT & Tri Services, HQ ARTRC & intimation of candidates list for appearing of GATE	15 Nov 2023	
(e)	Promulgation of final list of candidates shortlisted for appearing in PGT (M Tech) 2024-26 by HQ ARTRAC (Approval & Plans	30 Nov 2023	

	<i>Br/FT &amp; Tri Services)</i>		
<i>(f)</i>	<i>Conduct of GATE Exam</i>	<i>First week of Feb 2024 (Avbl on GATE Website)</i>	
<i>(g)</i>	<i>Declassification of GATE Results</i>	<i>Third week of Mar 2024</i>	
<i>(h)</i>	<i>Approval and Plans Br/FT &amp; Tri Services to promulgate interview panel of short listed offrs to the envt taking consideration of GATE score and MS inputs</i>	<i>01 May 2024</i>	
<i>(j)</i>	<i>Conduct of Interview by Panel</i>	<i>10 May 2024 to 31 May 2024</i>	
<i>(k)</i>	<i>Declassification of Final Results</i>	<i>15 Jun 2024</i>	
<i>(l)</i>	<i>Commencement of courses</i>	<i>Jul (As per schedule of respective IITs)</i>	

6. The respondents promulgated a list of eligible candidates vide their letter dated 27.12.2023 who were permitted to undertake GATE-2024 written examination in February 2024 in which the applicants' name was included in list of eligible candidates and accordingly they participated in the written examination.

7. However, in between the selection process, the impugned letter dated 02.01.2024 was issued by the respondents based on a study to re-assess the requirement of M.Tech qualified officers which was approved by the COAS. In this letter, the Number of vacancies were reduced from earlier 450 to 325 for a block of 5 years and yearly allocation was reduced to 65 from 90. Thus, the vacancies of other arms and services were reduced from 06 to 05 thereby adversely affecting the chances of applicants' undergoing the M.Tech Course.

8. We have heard the detailed submissions of the learned counsel for both the parties on the aspect of Interim prayer and have perused the records placed before us.

9. We find that in the internal communication between HQ ARTRAC and MS Branch dated 10.04.2023 which is placed as Annexure R-5 by the respondents the principle of allocation of vacancies for Technical Arms and Other Arms & Services have been lucidly explained based on which the vacancies have been re-calculated for Block year 2024-28 and same issued vide the letter dated 02.01.2024. The calculation of vacancies for Block

Year 2019-23 and later for the Block Year 2024-2028 have been calculated by the respondents and same has been submitted through the Short Counter Affidavit reproduced as under:

**“COMPARTIVE CHART IN R/O PREVIOUS AND PRESENT 5 YEAR ROLL ON PLAN FOR PG/M TECH**

2019-2023	Total Vacs	Vacs Alloted (Per Yr)			Distributed
	450	90			30 Per Tech Arm and proportionate for Other Arm and Services wef 2022.
		Arms	Cat I	Cat II	
		Engrs	30	15	
		Sigs	30	10	
		EME	30	15	
		OAS	Proportionate	-	
		TOTAL	90	40	
2024-2028	325	65			{*8 Addl vacs alloted to Officers of other Arm & Services} Based on study Report approved by COAS
		Arms	Cat I	Cat II	
		Engrs	20	15	
		Sigs	21	10	
		EME	19	15	
		OAS	05	+8*	
		TOTAL	65	48	

10. During the course of submissions before us it was argued by learned counsel for the respondents that the vacancies for Other Arms & Services have now been increased to 13 i.e. 05 in Category-I & 08 in Category-II; thus, enhancing their chances of success. If that be so, the grievance of the applicants should not have occurred at all. However, the grievance of the applicants is with respect to vacancies in the Cat-I as the restrictions and conditions imposed consequent to promulgation of letter dated 02.01.2024 has led to disqualification of the applicants who have appeared in the written examination and if successful, are to undertake the GATE interview which is underway while the interim prayer is being heard.

11. While adjudicating upon a claim regarding interim relief, the Court is to be satisfied of the three well settled tests, specifically (i) strong prima facie case in favour of the applicant, (ii) irreparable injury likely to be caused to him and (iii) balance of convenience in favour of the applicant.

12. As far as the condition of a strong prima facie case is concerned, while arguing a strong prima facie case, the party seeking interim relief is not only to show a prima facie case in its favour but shall satisfy the test of a “strong” prima facie case. The keyword “strong” cannot be ignored while testing the merit of the claim. The said observations have been referred to and reiterated by the Hon’ble Supreme Court on several

occasions including the recent judgment passed in K. Palaniswamy Vs. M. Shanmugam, 2023 SCC Online SC 177.

13. At this moment, it would be pertinent to refer to the order of this Tribunal in Nb Sub Vinod Prasad Vs. UoI & Ors.[OA 159/2017; Date of Order: 22.12.2021], reproduced as under:

*“11. From the aforesaid prima facie assessment made it is clear that finding the acts of the respondents to be unsustainable, one vacancy of the year 2016 was directed to be kept vacant to consider the claim of the applicant which was pending in the application. Hon'ble Supreme Court in a catena of judgments which have been cited before us by Mr. Pandey has reiterated time and again in many cases that rules of the game pertaining to a selection cannot be changed once the selection process has commenced. We may also refer to the following judgments; i.e.. K. Lakshmi Vs. State of Kerala and Ors. (2012) 4 SCC 1151. Arup Das and Ors. Vs. State of Assam and Ors. ((2012) 5 SCC 559), Rakhi Ray and Ors. Vs. High Court of Delhi and Ors. (2010) 2 SCC 637), Barot Vijaykumar Balakrishna and Ors. Vs. Modh Vinaykumar Dasrathlal and Ors. (2011) 7 SCC 308), Kishor Kumar and Ors. Vs. Pradeep Shukla and Ors. [2012] 4 SCC 103] and Public Service Commission, Uttranchal Vs. Jagdish Chandra Singh Bora and Anr. [2014] S SCC 644] wherein the said principle has been reiterated.*

*12. That apart, it has been laid down by the Hon'ble Supreme Court in the cases of K. Lakshmi, Arup Das and Ors, and Rakhi Ray and Ors. (supra) that once the process of selection for notified vacancies is held, then the selection process has tot confined to the vacancies notified; once the process of selection has commenced, additional vacancies cannot included in the selection process on any consideration, administrative or otherwise. If there are additional vacancies, the same have to be notified separately and a fresh selection process held. The selection process has to be held strictly in accordance with the notification issued for the vacancies notified as held by the Hon. Supreme Court in the cases of Barot Vijaykumar Balakrishna, Kishor Kumar and Ors. and Public Service commission, Uttranchal (supra).*

*13. In our considered view in this case both these principles; i.e. (i) that once the process of selection has commenced no change can be made; and (ii) that selection can be held only with regard to the vacancies notified and changing the vacancy position, once the process for selection has commenced by increasing the vacancy, is not permissible; have been violated. When selection process was notified for 15 vacancies for the year 2013 and when the selection process was concluded and the merit list prepared for the 15 vacancies on 24<sup>th</sup> December, 2013, then the respondents could fill up only 15 vacancies for the said year. They had no authority, under law, to increase the*

*vacancies from 15 to 22 after the selection process was completed and allot 7 more vacancies by reducing the vacancies for the year 2014 for which the selection process had also commenced vide notification issued on 1 January, 2014. This, in our considered, has resulted in the entire selection process conducted for both these years being vitiated or liable to be declared as illegal. However, as more than 37 persons have been appointed in the selection process and they have been promoted to the cadre of officers more than six years back, it is not appropriate to disturb them by declaring the entire selection as vitiated. On the contrary, interest of justice would be met in case for the post which was directed to be kept vacant by the interim order passed on 21 February, 2017, the applicant is directed to be promoted and adjusted to that post.”*

14. Reiterating the principle laid down in a catena of judgements of the Hon'ble Supreme Court including K. Lakshmi Vs. State of Kerala and Ors [(2012) 4 SCC 1131], Arup Das and Ors. Vs. State of Assam and Ors. [(2012) 5 SCC 559], Rakhi Ray and Ors. Vs. High Court of Delhi and Ors. [(2010) 2 SCC 637], Barot Vijaykumar Balakrishna and Ors. Vs. Modh Vinaykumar Dasrathlal and Ors [(2011) 7 SCC 308], Kishor Kumar and Ors. Vs. Pradeep Shukla and Ors. [(2012) 4 SCC 103] and Public Service Commission, State of Uttaranchal Vs. Jagdish Chandra Singh Bora and Anr. [(2014) 8 SCC 644], it has been clearly emphasized by this Tribunal in Nb Sub Vinod Kumar (supra) that the rules of the game pertaining to a selection cannot be changed once the selection process has commenced.

15. An analysis of aforesaid judgments makes it clear that the applicants have a strong prima facie case, while the balance of convenience also lies in favour of the applicants in view of the fact that the availability of vacancies earmarked was changed in midst of the selection process which started on 24.08.2023, and therefore, it is a clear cut observation that the rules of the game had been changed in between when game has already commenced. We are not inclined to agree with the argument on behalf of the respondents that the letter about the distribution of vacancies was issued before the written examination and therefore the applicants were well aware of it. It is our well considered view that letter dated 24.02.2022 was in operation while the applications were invited by the respondents vide their letters dated 21.08.2023 and that the eligibility list was already issued on 27.12.2023. It is also important to take note of Para 31 of letter dated 24.02.2022 wherein it is stated “This policy will be effective with effect from M Tech selection process 2023-25 (i.e. CSE-2023)”; thus nowhere clarifying that the letter was only applicable for year 2023-25.

16. As far as third condition i.e. irreparable loss is concerned, we are of the considered opinion that due to age bar, as well as the competitive nature of the GATE exam, the applicants are going to suffer irreparable loss since neither the vacancies can be created at a later stage, nor the selection process can be reversed, being of civil nature and conducted by an altogether a different organization, wherein it would not be possible to undo any loss if done to the applicants.

17. We find resonance in the observations of Hon'ble Supreme Court in K. Manjushree Vs. State of Andhra Pradesh [(2008) 3 SCC 512], wherein it has observed in Para 29 as under:

*“29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”*

18. Relying upon the K. Manjushree (supra), while we do not find any illegality in reduction of vacancies from 450 to 325 for block year 2024-28 which has led to corresponding reduction of yearly vacancies from 90 to 65, which is based on a study and approved by the Competent Authority i.e. COAS. However, it is our considered view that the letter has been issued at a belated state wherein the selection process has already begun and the list of eligible candidates has been issued by the authorities on 27.12.2023.

19. *In view of the aforesaid analysis, we direct that the vacancies for other Arms and Services shall be restored to 06 and the additional eligibility criteria as imposed by the letter dated 02.01.2024, shall not be applicable to the applicants and that the eligible applicants shall be permitted to appear in the GATE Interviews based on their qualification in the written examination, as per eligibility criteria and the position shall be restored as status quo ante the letter dated 02.01.2024 for the present batch of applicants, till the pendency of this OA.*

20. *Needless to say, there shall be no stay on the operation of the letter dated 02.01.2024 for future batch of applicants.”*

4. We have heard both the parties at length on the relief sought by the applicants, and have perused the documents placed on record in a detailed manner, and we find that there is nothing substantial left for adjudication as the issue under consideration has been already dealt in detail vide our interim order dated 29.05.2024, and thus, we find it appropriate to reiterate our directions here in to the effect that while we do not find any illegality in reduction of vacancies from 450 to 325 for block year 2024-28 which has led to corresponding reduction of yearly vacancies from 90 to 65, which is based on a study and approved by the Competent Authority i.e. COAS. However, it is our considered view that the letter has been issued at a belated state wherein the selection process has already begun and the list of eligible candidates has been issued by the authorities on 27.12.2023.

5. Therefore, we are of the opinion that the vacancies for other Arms and Services shall be restored to the original number 06 as it

was before the issuance of letter dated 02.01.2024 and the additional eligibility criteria as imposed by the letter dated 02.01.2024 shall not be applicable to the present batch of consideration.

6. Consequent to our order dated 29.05.2024, the respondents in execution of our order restored the number of vacancies to 06 from 05 in Category-I as status quo ante. Accordingly the additional 01 vacancy was made available to applicant of OA 1603/2024: namely Major Anshul Sharma. Therefore, there was no further cause of action in the instant batch of cases having attained finality.

7. However, during the course of submissions on 04.09.2024, learned counsel argued that the applicants be considered on equal footing with candidates of all arms for open vacancies irrespective of specific reservations for various arms and services. In this context it is relevant to take note of Para 15 of our order dated 29.05.2024 wherein we have observed that the letter dated 24.02.2022 was the operative order while the applications were invited vide their letter dated 21.08.2023 and therefore it was held that the rules of the game cannot be changed in between when game has already commenced. Therefore now while considering the submissions of the applicants we are once again inclined to refer to Par 3 of the aforesaid order wherein Para 7 of letter dated 24.02.2022 has been

reproduced indicating the distribution of vacancies and Para 4 of the amplification notes has also been noted which gives out the methodology of distribution of vacancies from Engineers, Signals and Electrical Mechanical Engineer (EME) to other arms and services. It is also essential to refer to Para 8 of our aforesaid order wherein the sub distribution of the vacancies for block year 2024-28 have been recorded. Therefore we do not find any merit in the averments on behalf of the applicants that they be now considered for vacancies in open domain beyond the allocated 06 vacancies as we are not inclined to deny the legitimately reserved vacancies to other categories of candidates from Corps of Engineers, signals and EME.

8. In reverence to orders of Hon'ble High Court of Delhi in W.P (C)10445/2024 dated 07.08.2024 and by our own conclusions we are of the view that there is no further question which merits our attention in this batch of application and therefore same is disposed off having attained the logical conclusions consequent to our orders dated 29.05.2024. Since the applicants are held to be eligible for no further relief the aforesaid order of Hon'ble High Court of Delhi stands appropriately addressed.

9. In view of the above analysis, the aforesaid OAs are disposed of in terms of aforesaid directions.

10. No order as to costs.

11. Miscellaneous pending application, if any, also stands disposed of.

Pronounced in the open Court on 18 day of September, 2024.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN C.P. MOHANTY]  
MEMBER (A)

Ps