

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1734 of 2021

Gp Capt Sanjeev Kapoor

.....

Applicant

Versus

Union of India and Ors.

.....

Respondents

For Applicant

:

Shri Rajiv Manglik, Advocate

For Respondents

:

Dr. V.S. Mahndiyani, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is a serving Gp Capt in the Army and is aggrieved by his non-empanelment to the rank of Brig (equivalent rank in Air Force and Navy), and rejection of his statutory complaint. He has made the following prayers:

- (a) To call for the records of all the No 2 Promotion Boards held in 2020 in respect of the applicant for promotion to the

rank of Brig (Equivalent ranks in Air Force and Navy) and peruse the same; and

(b) To quash and set aside the promotion policy dated 05.02.2016, to the extent that it excludes the super-speciality of Orthopaedics qua the officers including the applicant who have done the super- speciality during the period when the same was carrying weightage for promotion; and

(c) To declare that the applicant is entitled for the super speciality marks for promotion to the extent as prescribed as per policy dated 05.02.2016; and

(d) To declare quash and set aside the letter dated 28.07. 2021;

(e) To quash and set aside the ACR of the applicant for the period 01.01.2014 to 31.12.2014; and

(f) To direct the respondents to re-consider the applicant with changed profile after adding the super-speciality marks, restore the seniority of the applicant and grant all

consequential benefits including pay and allowances, seniority;
and

(g) To award exemplary costs in favour of the applicant.

(h) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

Brief Facts of the Case

2. The applicant was commissioned into Army Medical Corps (AMC) on 22.01.1991 and was seconded to the Air Force on the same date. He had served in various sectors; had been deployed in major operational areas; done well on various courses and had held challenging appointments. The applicant did his post-graduation in MS (General Surgery) from 20.12.1995 to 20.12.1998. Later he did his MS (Orthopaedics) from 11.08.2003 to 11.08.2005 whilst on study leave. It is the applicant's case that in 2004 the respondents changed the promotion policy wherein MS (Orthopaedics) was removed from the list of super speciality without a clause to protect those who had already acquired this qualification.

3. The applicant was considered for the rank of Grp Capt (& equivalent) in his first chance by Promotion Board (AFMS) No 3: AMC (Spl) held on 23.12.2010 and was not empanelled for promotion. Aggrieved by the same, he submitted a statutory complaint dated 04.03.2011, wherein he impugned certain CRs and also prayed for consideration of his qualification in Orthopaedics as a super-specialty for qualifying marks. The competent authority duly examined the statutory complaint dated 04.03.2011 and granted partial redressal to the applicant by expunging his ACR (2001-2002) & ACR (2002-2003) on technical grounds vide order dated 17.04.2012. However, the prayer regarding qualification marks for super-specialty was held to be untenable.

4. In the meantime, the applicant was considered in the Promotion Board (AFMS) No 3 AMC on 15.12.2011 (2nd Chance) wherein he was again graded 'NS' on comparative merit with his original profile. Following partial redress granted to him by the competent authority vide order dated 17.04.2012, the applicant was reviewed against his 1st & 2nd chance with the changed

profile, however, he was graded 'NS' in both these considerations. Thereafter, he preferred another statutory complaint dated 30.01.2012 against all the CRs in his reckonable profile. In addition, the applicant also prayed that Orthopaedics be considered as 'super-specialty' and additional marks over and above that for his MS (General Surgery) be awarded as qualifying marks for promotion.

5. The competent authority examined the statutory complaint of the applicant dated 30.01.2012 in the light of the applicant's overall profile and relevant documents and found that all CRs in the reckonable profile of the applicant were fair, objective, well corroborated, performance based and technically valid. There being no evidence of any bias or subjectivity, none of the CRs merited any interference. Accordingly, the competent authority vide order dated 11.02.2013 rejected the statutory complaint dated 30.01.2012.

6. Thereafter, the applicant was considered in the Promotion Board (AFMS) No 3 AMC on 14.01.2013 (3rd Chance) and was empanelled for promotion to the rank of Col (& equivalent).

Accordingly, the applicant was promoted to the rank of Gp Capt in Feb 2013. Subsequently, the applicant was considered by the Promotion Board (AFMS) No 2 AMC in May 2020 for promotion to the rank of Brig (& equivalent) wherein he was not empanelled with his original profile. Aggrieved, the applicant submitted statutory complaint dated 29.10.2020. This complaint was filed against the CR for the period 01.01.2014 to 31.12.2014 and stated that MS (Orthopaedics) be considered as 'super-specialty' and additional marks be awarded over and above the marks given for his MS (General Surgery).

7. The competent authority examined the statutory complaint of the applicant in the light of the applicant's overall profile and relevant documents and found that all CRs in the reckonable profile of the applicant, including the impugned CR in the reckonable profile were fair, objective, well corroborated, performance based and technically valid. There being no evidence of any bias or subjectivity, none of the CRs merited any interference. Accordingly, the competent authority vide order dated 28.07.2021 rejected the statutory complaint dated 29.10.2020. In the meantime, the

applicant was considered by No 2 SB on 10.05.2021 for the promotion to the rank of Brig (& equivalent) as a First Review Case, wherein the applicant was empanelled to the rank of Brig (& equivalent). Although, the applicant was already empanelled to the rank of Brig by No 2 SB in May 2021 as a First Review, the applicant still being aggrieved by his loss of seniority, submitted a non-statutory complaint dated 09.09.2021 in which he also impugned ACR of 2020 on grounds of inconsistency. The competent authority, after due examination found that the impugned CR had not been considered by any of the Promotion Boards and therefore held that the complaint was untenable. Accordingly, the competent authority vide order dated 11.04.2022 rejected the statutory complaint dated 09.09.2021. Hence, this OA.

Arguments by the Counsel of the Applicant

8. The counsel briefly explained the exemplary service profile of the applicant, his achievements and appreciation earned for contribution in various professional work and other activities. The Counsel then recapitulated the applicant's consideration to the rank of Col (& equivalent) by PB (AFMS) No 3 as in Dec 2010 and Dec

2011 as his first and second chance, his special reviews against his first and second chance in pursuance of partial redressal granted to him by the competent authority vide order dated 17.04.2012, his subsequent empanelment in Jan 2013 and how this had resulted in loss of seniority and placed him at a major disadvantage for his future promotions. The Counsel also explained briefly the details of the statutory complaints filed on 30.10.2012 and 29.10.2020; non-statutory complaint dated 09.09.2021 and the outcome of these complaints.

9. Referring to the impugned CR of 2014, the counsel submitted that the applicant was apprehensive of low assessment by the IO, due to certain professional differences with the IO during the relevant period. The applicant was also apprehensive that due to lack of interaction with the RO, the applicant was not rated appropriately and objectively. Therefore, the counsel prayed that any inconsistency/aberrations in the impugned CR be expunged.

10. The counsel argued that non-consideration of the applicant's plea regarding award of marks for super speciality of MS

(Orthopaedics) by the respondents while disposing statutory complaints without assigning any cogent reason was bad in law.

11. The counsel submitted that the applicant after clearing the selection criterion, was granted study leave in 2002 to pursue Orthopaedics as his super speciality subject, as per the policy in vogue then. Further, the reply dated 12.07.2021 in response to the RTI dated 08.06.2021 made it amply clear that in 2003, MS (Orthopaedics) was one of the super specialities, post MS (General Surgery). The counsel argued that by applying the amended policy issued vide MoD letter dated 05.02.2016, instead of policy issued vide letter dated 17.05.2006, the applicant was put to a disadvantage.

Arguments by the Counsel of the Respondent

12. The counsel briefly took us through the salient aspects of the policy on promotion to select rank and asserted that it was a well settled principle of law that a long-settled seniority cannot be unsettled based on a belated grievance of any applicant. The counsel added that the prayer in the instant OA for awarding additional marks by treating MS (Orthopaedics) as a super speciality

subject was not being agitated for the first time. In fact, the applicant had been agitating the same claim for over a decade. His contentions were rejected time and again, the first instance being rejection of his statutory complaint vide order dated 17.04.2012. However, the applicant chose to be silent on the same for over a decade.

13. The counsel submitted that the applicant was reagitating his contention on the strength of an RTI reply by the PIO dated 12.07.2021. The counsel clarified that the PIO was not the competent authority on grant of super-specialty marks in the promotion board as the promotion policy enunciated by Govt of India wherein PG & Post-Doctoral subjects for which qualification marks are to be awarded were laid down based on Medical Council of India (MCI) notification of 2000. Therefore, a reply to RTI application dated 12.07.2021 cannot form the basis of this OA.

14. The counsel narrated that the applicant, after completing his MS (General Surgery) in the year 1998, applied for pursuing MS (Orthopaedics) vide letter dated 04.06.2002 and accordingly permission to do MS (Orthopaedics) was granted to him vide letter

dated 01.08.2003. The counsel submitted that the applicant was granted study leave for doing MS (Orthopaedics) as another degree i.e. MS (Orthopaedics) and not a super speciality subject. The counsel further stated that at that relevant point of time, conditions for grant of PG on study leave was contained in Training, Grading and Classification (TGC) Rules of 2000 in conjunction with MCI PG Regulations, 2000. Even at the relevant time, MS (Orthopaedics), was considered as a specialty only, and not a super-specialty akin to DM or M. Ch degree.

15. The counsel contented that the TGC Rules for grant of study leave and the promotion policy wherein award of qualification marks is granted, were essentially two different policies promulgated for different purposes. The counsel pointed out that although PG & super-specialization marks are granted to specialist & super-specialist officers who have attained these degrees via TGC Rules as applicable, the qualification marks in the promotion policy has been postulated strictly as per PG/super-specialty classifications of subjects on medical studies as mentioned in the schedule of MCI

Regulations, 2000. In the present case, the applicant was awarded qualification marks as per policy in vogue.

16. Referring to the impugned CR of 2014, the counsel asserted that the competent authority after duly considering the statutory complaint dated 29.10.2020 rejected the same vide Order dated 28.07.2021 being devoid of merit. The counsel submitted that the presumption of the applicant regarding under assessment in the impugned ACR of 2014 was found to be baseless as he was rated 'Outstanding' veering towards 'Exceptionally Outstanding' by all reporting officers with matching pen-pictures.

Consideration of the Case

17. Having heard both the parties at length, the issues that requires consideration are;

- (a) Whether the respondents have fairly disposed of the complaints and whether any CR merits interference.
- (b) Whether the applicant is entitled to additional marks for MS (Orthopaedics) as claimed by the applicant.

18. We have examined the CR dossier, examination of complaints and the Board proceedings submitted by the respondents. Before proceeding further, it is imperative to understand the genesis of PG & super-specialization marks granted to specialist & super-specialist officers.

19. Prior to 2004, no marks were awarded for PG & Post-Doctoral qualifications in the Promotion Policy of 1996. At the relevant point of time, when the applicant was granted study leave to pursue MS (Orthopaedics). Para 9 of Training, Grading & Classification (TGC). Rules of 2000 governed the conditions for grant of PG on study leave. The same is reproduced as under:

9. Orthopaedics, Marine Medicine and Aerospace Medicine-

(a) In addition to the above criteria, the following eligibility criteria will be applicable for the specialities of Orthopaedics, Marine Medicine and Aerospace Medicine: -

(i) Orthopaedics: The officer must be a graded specialist in General Surgery. The officers as per recommendations of the CO/Commandant of the unit, Sr Adviser/ Consultant and Sr Consultant Surgery will be detailed for three years training at AFMC/ suitable service institute subject to approval by MSAC or they can go on Study Leave. After successful completion of training (to be certified by the Sr Adviser)/ Study Leave the officers will automatically be graded in Orthopaedics from the date of completion of such training/ Study Leave. For Classification in Orthopaedics the Date of Grading in Surgery will be considered as effective date for these officers provided, they have worked for minimum two years as Graded Specialist in

Orthopaedics. The officers who join service with a degree in Orthopaedics from civil institution will be graded in Orthopaedics only after they successfully (to be certified by the Sr Adv under whom training is conducted) complete 12 months of training in General Surgery under the supervision of a Sr Adviser and after two years of commissioned service. However, they can apply for grading after one year of service which will be considered subject to satisfactory progress report in training in General Surgery by the Sr. Adviser.

(ii) Marine Medicine.

The officers should have at least three years of service as sub mariner/diver for detailment for Advance Course.

(iii) Aerospace Medicine.

The officer should have successfully completed the Primary Course in Aerospace Medicine at Institute of Aerospace Medicine, Bangalore before commencement of the Advance Course.

(b) The selection of candidates for Marine Medicine and Aerospace Medicine will be carried out by a separate entrance examination conducted by DGMS(Navy) and DGMS(Air) respectively, duly approved by the DGAFMS.

(c) Marine Medicine and Aerospace Medicine courses will be conducted at institute of Naval Medicine (INM), Mumbai and Institute of Aerospace Medicine (IAM), Bangalore as applicable.

(d) Officers would be subjected to a screening test at the end of 24 weeks.

(e) On conclusion of the Advanced Course, a Grading Examination will be held at INM/IAM by a Board of Examiners detailed by the respective DGMS duly approved by the DGAFMS.

(f) Officers who successfully complete the Advanced Course at INM or IAM and recommended by the Board of Examiners will be automatically graded wef the date the Director/Commandant of the institution signs the Board Proceedings.

20. Thus, as per Para 9 of TGC Rules 2000, it is clear that 'MS Orthopaedics' was considered as a specialty-subject 'Surgery' at that

time. Thereafter, vide promotion policy dated 14.01.2004 for the first time, marks for PG & Post-Doctoral qualifications were included in the promotion policy. As per Para 11 and 12 of the said policy, maximum of 02 marks were allocated for PG degree and 03 marks for post-doctoral qualifications. The relevant paras 11 and 12 of MoD Policy dated 14.01.2004 are reproduced below: -

11. PG Qualifications: Officers in possession of the following academic achievements will be awarded marks as mentioned against each:

<i>Ser No</i>	<i>Qualification</i>	<i>Marks</i>
<i>(a)</i>	<i>Doctor of Medicine (MD)/Master of Surgery (MS)/ Masers in Hospital Administration (MHA) recognized by Medical Council of India/ Diplomate National Board (DNB)_</i>	<i>2</i>
<i>(b)</i>	<i>Master of Dental Sciences (MDS) (for AD Corps) recognized by Dental Council of India</i>	<i>2</i>
<i>(c)</i>	<i>Master of Science (M.Sc)(Nursing)(for MNS) recognized by Nursing Council of India</i>	<i>2</i>
<i>(d)</i>	<i>Two-year full time training program during study leave in India/ Abroad in a medical field from an institution/ university recognized by a statutory body</i>	<i>2</i>
<i>(e)</i>	<i>Post Graduate degree in a subject related to medical field from an institute/ university recognized by a statutory body</i>	<i>2</i>
<i>(f)</i>	<i>All Diploma Courses recognized by Medical Council of India</i>	<i>1</i>
<i>(g)</i>	<i>Defence Services Staff College course at Wellington</i>	<i>1</i>
<i>(h)</i>	<i>National Defence College course at New Delhi</i>	<i>1</i>
<i>(i)</i>	<i>Long Defence Management course from College of Defence Management, Secundrabad</i>	<i>1</i>
<i>(j)</i>	<i>LLB</i>	<i>1</i>
<i>(k)</i>	<i>MBA</i>	<i>1</i>

NOTE: If an officer is having more than one of the above-mentioned qualifications, marks not exceeding two (2) will be credited.

12. Marks will be awarded for possessing any one of the academic achievements as given below:

- (a) Master of Chirugury (M.Ch) - 3
- (b) Doctorate in Medicine (DM) - 3
- (c) Doctor of Philosophy (Ph.D) - 3
- (d) Diplomate of National Board (DNB)
(Super-speciality subject) - 3
- (e) Two years training during study leave in a specialized field of medical sciences/ Certificate of Training from an institute/ university recognized by a statutory body - 3

Note: If an officer is having more than one of the above-mentioned qualifications, marks for only one qualification will be credited.

21. The 2004 policy was subsequently amended in 2006 vide Govt. of India, MoD letter N. 10, (1)/2004/D (Med) dated 17.05.2006 to the extent that the qualification marks of 2 marks for PG degree and 03 marks for post-doctoral qualifications were reduced to 01 mark each for both. The relevant paras 11 and 12 of MoD Policy dated 17.05.2006 are reproduced below: -

11. PG Qualifications: Officers in possession of any one of the following academic achievements will be awarded mark as mentioned against each:

<i>Ser No</i>	<i>Qualification</i>	<i>Marks</i>
<i>(a)</i>	<i>Doctor of Medicine (MD)/Master of Surgery (MS)/ Masers in Hospital Administration (MHA) recognized by Medical Council of India/ Diplomate National Board (DNB)_</i>	<i>1</i>
<i>(b)</i>	<i>Master of Dental Sciences (MDS) (for AD Corps) recognized by Dental Council of India</i>	<i>1</i>

(c)	<i>Master of Science (M.Sc)(Nursing)(for MNS) recognized by Nursing Council of India</i>	1
(d)	<i>Two-year full time structured training program during study leave in India/ Abroad in a medical field from an institution/ university recognized by a statutory body</i>	1
(e)	<i>Post Graduate degree in a subject related to medical field from an institute/ university recognized by a statutory body</i>	1
(f)	<i>All Diploma Courses recognized by Medical Council of India</i>	0.5
(g)	<i>Defence Services Staff College course at Wellington</i>	0.5
(h)	<i>National Defence College course at New Delhi</i>	0.5
(i)	<i>Long Defence Management course from College of Defence Management, Secundrabad</i>	0.5
(j)	<i>LLB</i>	0.5
(k)	<i>MBA</i>	0.5

NOTE: If an officer is having more than one of the above-mentioned qualifications, mark not exceeding one (1) will be credited.

READ:

12. *Officers in possession of any one of the following academic achievements will be awarded one (1) mark:*

- (a) Master of Chirugury (M.Ch) recognized by MCI*
- (b) Doctorate in Medicine (DM) recognized by MCI*
- (c) Doctor of Philosophy (Ph.D) recognized by MCI*
- (d) Diplomate of National Board (DNB) (Super-speciality subject)*

Note: If an officer is having more than one of the above-mentioned qualifications, mark for only one qualification will be credited.

22. The footnotes to para 11 and para 12 of the Promotion Policy of 2004 as well as in the amendment of 2006 categorically states that if an officer has more than one of the aforementioned qualifications, marks not exceeding two for PG qualification and

marks for only one post-doctoral qualification will be given to the candidate.

23. Thus, at the time of applicant's consideration by PB(AFMS) No.3 in 2010, 2011 and 2013, the award of qualification marks were governed by the policy letter dated 17.05.2006. Thereafter, the policy was further amended by MoD letter dated 05.02.2016 which was applicable to the applicant in his consideration by PB(AFMS) No.2 for promotion to the rank of Brig(equivalent). The relevant paras 12 and 13 of MoD Policy dated 05.02.2016 are reproduced below: -

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

Sr No	Qualification	Marks				
		PB4	PB3	PB2	PB1	Spl PB
(a)	Doctor of Medicine (MD)/Master of Surgery (MS)/Diplomat National Board (DNB) in related subjects recognized by MCI	NA	1	1	0.50	Nil
(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)	Master of Dental Sciences (MDS) recognize by Dental Council of India (for AD Corps only)	NA	1	0.50	0.50	Nil
(d)	Master of Sciences (M.Sc) (Nursing) recognized by Indian Nursing Council	1	0.50	0.25	0.10	Nil

	(For MNS only)					
(e)	Two-year full time structured training program during study leave in India/ Abroad in a medical field from an institution/ University recognized by a statutory body (eg : Trg in Med Informatics)	NA	1	0.50	0.50	Nil
(f)	Post Graduate Degree in a subject related to Medical field from an institution/ University recognized by a statutory body (MCI)/DCI/INC) (eg: Masers in Medical Science and Technology (MMST)	NA	1	0.50	0.50	Nil
(g)	Diploma courses recognized by Medical Council of India/ Dental Council of India/ Indian Nursing Council for AM, AD Corps Offrs and Members of MNS respectively	0.50	0.50	0.25	0.10	Nil
(h)	Diploma in Marine Medicine (DMM)	NA	1	0.50	0.50	Nil
(j)	HDMC from College of Defence Management, Secunderabad	NA	NA	0.50	0.25	Nil
(k)	HDMC from College of Defence Management Secunderabad	NA	0.50	0.25	0.10	Nil
(l)	NDC	NA	NA	0.50	0.25	Nil
(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

Note: If an officer is having more than one of the above-mentioned qualifications, marks not exceeding one (01) in PB4, MNS & PB3 AFMS, 1 mark in PB2: AFMS and 0.50 in PB1 AFMS will be awarded respectively.

The qualification of Diploma in Marine Medicine will be awarded 1 mark till the time the Master Degree in Marine Medicine is granted MCI Approval. Once the MD in Marine Medicine starts Diploma Marine Medicine will be awarded marks as awarded to other Diploma holders as mentioned in the table at para (g) above. This will be effective prospectively from the date of passing out of first batch of MD (Marine Medicine).

13. Marks for Post Doctoral Qualification: officers in possession of any one of the following academic achievements will be awarded marks in the relevant Promotion Boards as mentioned against each: -

Sr No	Qualification	Marks				
		PB4	PB3	PB2	PB1	Spl PB
(a)	Doctorate in Medicine (DM)/ Master of Chirurgery (MCh)/ PhD recognized by MCI/ Diplomate of National Board (DNB) in super speciality subjects	NA	1	0.50	0.25	Nil
(b)	02 years fulltime structured trg in a super speciality during study leave in a medical field from an institute/ university recognized by a statutory body	NA	0.50	0.25	0.10	Nil
<p>Note: If an officer is having more than one of the above-mentioned qualification, marks not exceeding one (01) in PB3, AFMS, 0.50 marks in PB2 AFMS and 0.25 marks in PB1 AFMS will be awarded respectively.</p>						

Complaints

24. Although the applicant had made multiple complaints, for the purpose of disposal of this case, only statutory complaint dated 29.10.2020 and non-statutory complaint dated 09.09.2021 have been examined. The first statutory complaint was against non-empanelment to the rank of Brig (& equivalent) by PB No 2 (AFMS) held on 05.05.2020, wherein the applicant was considered in his first chance. The applicant had prayed that the CR (01/14-12/14) be reviewed and aberration, if any, be set aside; that in the qualified merit, his super speciality of MS (Orthopaedics) be given additional weightage in addition to MS (General Surgery). That he be then

reconsidered afresh by PB No 2 (AFMS). The examination reviewed all the five CRs in the reckonable period and concluded that the assessments ranged from near exceptionally 'outstanding' to 'exceptionally outstanding'. All CRs were well corroborated and performance based with no evidence of bias or subjectivity. Thus, the competent authority concluded that the impugned CR and the other CRs did not merit any interference.

25. With regard to weightage in qualified merit for post-doctoral qualification, the examination concluded that the applicant had been granted appropriate marks as per policy dated 05.02.2016. The examination concluded that the applicant had not been empanelled due to his overall comparative merit amongst those considered. The complaint was rejected vide order dated 28.07.2021.

26. In the non-statutory complaint dated 09.09.2021, the applicant impugned ACR 2020 on the grounds that he was apprehensive that the RO/STO may have been subjective due to certain personal animosity issues. The examination held that the ACR 2020 had not been considered by any PB. Nor had any extract of adverse remarks communicated to the applicant by any of the

Reporting officers. Since the complaint did not establish any service wrong that may have been caused to the applicant on any service report/ privilege that may have been deprived, the examination concluded that the complaint was untenable and was therefore, rejected vide order dated 11.04.2022.

RTI

27. With regard to the response to the RTI dated 12.07.2021, which classified MS (Orthopaedics) as a super-specialty post following MS (General Surgery), that assertion is incorrect. The RTI on which the applicant's case is based has no authority in the matter to interpret a Govt. notification. The Public Information Officer (PIO) misinterpreted the pertinent Notification No. 33078/DGAFFS/DG-1D (2003) dated 06.03.2002, wherein Orthopaedics is explicitly designated as a specialty rather than a super-specialty.

CRs

28. There are five CRs in the reckonable period from 2014 to 2018. The CR of 2014 is rated as 8.50/8.50/9.00/9.00 by the IO/RO/SRO/DGMS, and in the technical report, it is rated as 8.50/8.50 by FTO/STO. The pen pictures are complimentary, and

the IO has made positive recommendations for staff, instructional, and specialist appointments, while the RO and SRO have made positive recommendations for specialist appointments. There are no weak points or remarks in the report. Thus, the CR is assessed to be well corroborated and technically valid. Therefore, we see no reason for any interference now. It is also relevant that with this CR as part of his reckonable profile, he was empanelled to the rank of Brig (Equivalent) has PB(AFMS) No. 2 in his second chance.

29. We have also examined the CR of 2020 which was impugned in the non-statutory complaint. The CR is an exceptionally outstanding CR with positive and laudatory pen picture by all the reporting officers. All reporting officers have also made positive recommendation for empanelment for Command/ Staff/ Instructor/ Specialist appointments. We have no hesitation in stating that the apprehension of the applicant is entirely misplaced.

PB No 2 (AFMS)

30. The applicant was considered as a fresh case by PB No 2 (AFMS) held on 05.05.2020. A total of 133 Col (& equivalent) were considered for 35 vacancies. The applicant was at Ser No 61 in the

order of merit with a total mark of 91.10, while the last empanelled officer's merit was 91.60. As seen from the PB documents, the applicant's qualification was recorded as MBBS, MS (General Surgery), MS (Orthopaedics) and he was granted 01 marks in the qualified merit as per the policy dated 05.02.2016. Regarding the contention of the applicant, that he ought to have been given an additional .50 marks for his post doctor qualification of MS (Orthopaedics), it has been made abundantly clear from our consideration that he is not entitled for any additional marks as per the policy in vogue which is applied uniformly to all officers under consideration. Further the applicant was subsequently empanelled by PB No 2 (AFMS) held on 10.05.2021 in his second chance.

Conclusion

31. In view of the above consideration, we conclude that none of the CRs merit any further interference. The respondents have justly disposed of both the complaints. The applicant has been considered for promotion as per the policy in vogue which is applied uniformly to all officers under consideration. The applicant is thus not entitled to any additional marks for MS (Orthopaedics).

The applicant had not been empanelled earlier due to his overall comparative merit amongst those considered.

32. The OA is therefore, dismissed being bereft of any merit.

Pronounced in the open Court on this day of ^H27 Feb., 2024.

(RAJENDRA MENON)
CHAIRPERSON

(P M HARIZ)
MEMBER(A)

/ashok/