

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

OA 266/2016

Col Ranjit Sundaram **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. Y.P. Singh, 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, 2008 by a serving Col of the Army who has since retired and is aggrieved by his non-employment to the rank of Brig by No 2 SB and by the policy on awards of marks for course in the quantified system. He has made the following prayers:

- (a) To declare the action of the respondents as unjust, arbitrary and illegal, and
- (b) To quash and set aside the impugned order dated 04.01.2011 to the extent of award of different marks for the M. Tech course and DSSC/TSOC; and/or

- (c) To quash and set aside the different categories, CAT I, II and III made for the award of marks for the qualification of M. Tech made on the basis of method of admission for acquiring such qualification; and
- (d) To direct the respondents to re-calculate the quantified marks obtained by the applicant in No 2 Selection Board held in Sep 2014 and Nov 2015 by correcting the marks for the qualification of M. Tech in the selection board and in case he is above the last officer approved for promotion promote the applicant to the rank of Brig with all consequential benefits; and alternatively,
- (e) To quash and set aside the No 2 Selection Board held in Sep 2014 and Nov 2015 qua the applicant to consider the applicant for promotion to the rank of Brig; and
- (f) To quash and set aside the rejection of the applicant for nomination of the applicant for higher professional course on the basis of consideration of M. Tech marks based on Cat- III; and
- (g) To direct the respondents to allot equal marks to M. Tech qualification as that of DSSC/TSOC irrespective of the method of obtaining the admission to such course; and

- (h) To direct the respondents to re-consider the applicant for nomination on professional course of HC/HDMC by allocating correct marks for his M. Tech qualification by granting any waiver if so required; and
- (i) To direct the respondents to reflect his correct profile to the selection board including his achievements in the field of sports (Tennis) and other awards for proper value judgement marks; and
- (j) To direct the respondents to consider the applicant as a Special Review (Fresh) case by the No 2 SB for promotion to the rank of Brig and grant all consequential benefits including seniority, pay and allowances in case the applicant is found fit; and
- (k) To award exemplary costs in favour of the applicant.
- (l) 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 the Army (Corps of Signals) on 09.06.1990 as a Technical graduate with two years ante-date seniority. The applicant did well on various courses of

instructions and held important appointments. In 1998, the applicant did his M. Tech in Computer Information Systems from Florida Institute of Technology, USA after availing study leave to do this course. On return from the course the applicant held many computer related appointments including as an Instructor at Military College of Telecommunication Engineering, Mhow. During his career he was also conferred the VCOAS Commendation Card twice and the Army Cdr's Commendation Card twice. In Dec 2004, he was considered for promotion to the select rank of Lt Col by No 4 SB and was empanelled. He was considered as a fresh case by No 3 SB in Apr 2006 and was not empanelled. The applicant then filed a non-statutory complaint dated 20.5.2006 and he was granted partial redressal, whereby certain figurative assessment by the RO in the CR 06/00- 05/01 were expunged. He was later empanelled for promotion to the rank of Col and commanded 21 Corps Sig Regt (AREN). He was later considered by No 2 SB as a fresh case in Sep 2014 and was not empanelled. The applicant then filed another non-statutory complaint dated 24.11.2014 against his non-empanelment. However, this was rejected vide order dated 08.06.2015. The applicant was considered as a First Review case by No 2 SB in Nov 2015 and he was not empanelled.

3. It is the applicant's case that when the Qualification Selection System (QSS) was initially introduced in 2009 vide policy letter dated 31.12.2008, both Defence Services Staff College (DSSC) course and M. Tech Course had equal weightage in the qualitative system. And that with the new policy of 2011 dated 04.01.2011, the weightage for M. Tech Course vis-à-vis DSSC was reduced. While DSSC/TSOC had a weightage of 1.5 for No 3 SB the weightage for M. Tech had a maximum of 1 mark for Cat I course to 0.50 for Cat III Courses, (i.e.,) M. Tech Courses done on study leave. It is the applicant's case that though he had done his M. Tech from US whilst on study leave, the organization had actually granted him permission since such courses were not available in India then. It is the applicant's case that as a result of this change in weightage marks, in the No 2 SB, while DSSC/TSOC had 0.75 marks, the applicant having done his M. Tech on study leave got a weightage of only 0.35, whereas anyone who did Cat I M. Tech Course got 0.65 marks for No 2 SB. It is the applicant's case that the change in policy of weightage for M. Tech courses has been the reason for his non-empanelment.

Arguments by the Counsel for the Applicant

4. The counsel reiterated the service profile of the applicant, the various courses done and then elaborated on the applicant's efforts to pursue his M. Tech in Computer Information System from USA by availing study leave. The counsel then took us through the initial QSS policy dated 31.12.2008 and elaborated as the weightage given to courses. The counsel then drew our attention to QSS Policy dated 04.01.2011 (Annexure A-2) and highlighted the distribution of marks given at Paras 5, 6, 7 and 8.

5. The counsel then drew our attention to the weightage for DSSC and M. Tech and the breakdown of weightage given at Appendix A regarding DSSC, and to Appendix B regarding M. Tech. The counsel then elaborated that overall, while DSSC & M. Tech earlier had equal weightage, it had now been differentiated with a max of 1.5 for DSSC and only 01 mark for M. Tech. Referring to Appendix B, the counsel further asserted that here this one mark had been further sub divided based on the CGPA. He further highlighted that the grading system varied from institution to institution and universities, thus it was not possible to have a uniformity in the CGPA systems, as given in the policy letter.

6. The counsel then emphasized that categorization of M. Tech course with Cat I to III was discriminatory, as all officers even if they are doing a course on study leave, it is in the organizational interest that the courses are assigned on study leave. The counsel emphasized that the applicant having done a specialised course should have been given the weightage of 0.65 under Cat I instead of 0.35 under Cat III.

7. The counsel then drew our attention to the non-statutory complaint dated 24.11.2014 (Annexure A-6) and explained the issues raised. He then drew our attention to MS Branch letter dated 10.06.2015 (Annexure A-3) by which the complaint had been rejected and emphasized that the respondents failed to see the necessity of equality of weightage for courses raised by the applicant. He then concluded by emphasizing that with the new policy dated 04.01.2011, the categorization of M. Tech courses and the graded weightage had all created inequality and prejudice to officers like the applicant. He emphasized that the weightage be made equal or in the least, the course done by the applicant be accepted as a Cat I M. Tech course and he be reconsidered by No 2 SB again.

Arguments by the Counsel for the Respondents

8. The counsel reiterated the organizational structure of the Army, the concept of non-select and select ranks, the concept of promotion boards for select ranks and elaborated on the process of rendition of CRs. The counsel then elaborated on the introduction of the quantified QSS in 2009 (Annexure R-1), the breakdown of marks for CR, which was further clarified vide policy letter dated 15.04.2009 (Annexure A-2) and emphasized that prior to the introduction of QSS, the conduct of selection Boards was governed by the policy letter dated 06.05.1987 (Annexure A-4).

9. The counsel then briefly recapitulated the service profile of the applicant and highlighted the fact that the applicant had availed study leave as per the policy in vogue and had gone to US to do his M. Tech. The counsel stated that there was nothing on record to suggest that the organization had sent the applicant abroad to do his M. Tech, and that it was based on the applications submitted by the applicant. The counsel further emphasised that nor had the applicant placed any document or details in support of his claim that he was sent abroad on study leave by the organisation to do the course. He further added that contrary to the assertion by the applicant, the applicant had adequate chances to appear in the

DSSC entrance exam and further added that the applicant had taken the DSSC entrance exam in 2001 but did not qualify being low in merit.

10. Further referring to the QSS policy dated 31.12.2008 and 15.04.2009, the counsel then elaborated on the subsequent QSS policy dated 04.01.2011 (Annexure A-2) and explained the details of distribution of marks. The counsel emphasized that the policy was based on detailed consideration of the organizational requirements and that the cadre controlling authority was entitled to undertake requisite changes in policy keeping in view the organizational needs. He further emphasized that an officer has to be governed as per the prevailing policy at the time of consideration. In this case, when the applicant was considered by No 2 SB, the policy dated 04.09.2011 was in vogue. The counsel also emphasised that these policies were uniformly applied to all officers being considered for promotion in various promotion boards. Thus, there was no merit or *locus standi* for the applicant to state that the policy has caused prejudice to him alone. The counsel then emphasized that the policies of 2008 and 2011 have been upheld in the following orders of the AFT:

(a) OA 374/2011 – Lt. Col. Shobit Rai Vs. Union of India & Ors.

(b) OA 87/2010 – Col BB Singh Vs. Union of India & Ors.

(c) OA 55/2011 – Col MM Mujumdar Vs. Union of India & Ors.

(d) OA 199/2010 – Col R S Ghanwat Vs. Union of India & Ors.

(e) OA 03/2014 – Col V Satish Kumar Reddy Vs. Union of India & Ors.

11. The counsel further relied on the following judgments of the Hon'ble Supreme Court which have upheld the promotion policies:

(a) Hardev Singh Vs. Union of India [(2011) 10 SCC 121 dated 14.09.2011].

(b) MM Mujumdar Vs. Union of India And Ors. [CA (D) No.23984/2014 dated 18.12.2014].

12. Referring to the assertion on the graded weightage for CGPA the counsel emphasized that it was also a considered policy decision which was uniformly applicable to all officers. The counsel asserted that this had been upheld in the AFT (PB) order dated 08.01.2016 in OA No.3/2014, Col V Satish Kumar Reddy Vs. Union of India & Ors.

13. Further referring to the plea of the applicant that his M. Tech qualification be considered as a Cat I course, the counsel stated that as per the policy, M. Tech done on study leave fell under Cat III and weightage for various SBs were given accordingly. The counsel further added that both DSSC and M. Tech were equally important for holding various appointments. With the Army being command oriented, due weightage is given to the various command oriented courses. The counsel further added that this has been upheld by the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Col Chander Ballabh Sharma** (CA No.29-30/2016).

14. The counsel concluded by emphasizing that the policy on QSS was uniformly applied to all officers and that these policies have been revised periodically based on the organizational requirement and that an exception cannot be made for the applicant alone.

Consideration

15. Having heard both the parties, the only issue to be considered is whether the applicant is entitled to the course weightage of Cat I M. Tech for the course done by him on study leave, which as per policy falls under Cat III. The respondents have submitted the CR dossier, files pertaining to the examination of complaints and the Board Proceedings of the No 2 SB.

Promotion Policies

16. The QSS was introduced in 2009 vide policy letter dated 31.12.2008. This policy was refined and evaluated over a period of three years from implementation. The breakdown of marks for CRs was further elaborated vide letter dated 15.04.2009 and subsequently a complete fresh revised policy letter was issued vide letter dated 04.01.2011. The relevant extracts pertaining to weightage in the CR and weightage for courses is extracted here:

Policy letter dated 31.12.2008

Military Secretary's Branch
IHQ of MoD(Army)
DHQ, PO New Delhi-11

31 Dec 2008

04502/MS Policy

CONDUCT OF SELECTION BOARDS BY QUANTIFICATION SYSTEM

Ref:- MS Branch Policy Letter 31525/PMSSB dated 06 May 1987

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 an effort 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 percent marks will be given for quantified parameters to include confidential reports (CRs), courses and honours and awards.

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

Distribution of Marks

4. Distribution of marks for various SBs are as given below:-

Type of CR	No 3 SB	No 2 SB	No 1 SB	SSB
CRs	89	90	91	92
Courses and Honours & Awards	6	5	4	3
Quantification Total	95	95	95	95
Value Judgment	5	5	5	5
Grand Total	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 gradings for all selection bds.

(b) **Criteria vis-à-vis Other CRs.** Greater weightage 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 judgement of SE members.

(e) Reports earned in OP MEGIDOOT and OP PAWAN outside reckonable profile will continue to be included for the 1 Selection Board as hitherto fore, value judgement only.

Performance on Courses

6. The weightage for courses are based upon courses attended by an officer and their relevance as he rises in rank.

Honours and Awards (HBA)

7. Gallantry awards will be given weightage for two Sits after the award. Awards for distinguished services will be considered for one 50 after the award. Maximum of t marks can be awarded to any officer for 1I & A

8. Commendation Cards will be considered only for No 2 and 3 SBs.

Value Judgment Marks

9. Five percent marks have been set aside for value judgement by the Selection Board for assessing parameters that cannot be quantified

10. Following parameters will be considered by the SB members while allocating marks for value Judgement

(a) **Performance.** Aspects of performance covered in Battle Performance Reports, remarks in pen picture and miscellaneous remarks (incl special Achievements).

(b) **Recommendations for Promotion.** These will be reflected in MDS as hitherto fore for the value judgement of SB Members.

(c) **Potential.** Employability in higher ranks

(d) **Degree of Difficulty.** Challenges in appointments held, service under strict/ liberal raters, inflated/ deflated reports and reports under officers other than Army Officers

(e) Disciplinary awards/Administrative actions.

Additional Guidelines for Assessing Promotability

11. Irrespective of the position in the merit list, officers with the following will not be recommended for promotion:

(a) Cases involving moral turpitude, gross negligence, acts of cowardice or un-officer like behaviour which reflects on the moral fibre of an officer.

(b) Negative character baits

(c) Poor performance in combat and operational operations.

12. While assessing officers with disciplinary background the gravity and nature of the offence and the service level at what the offence was committed would be taken into consideration.

Review

13. The Quantified System of Selection Board will be evaluated and refined for a period of three years from implementation till the system stabilizes.

sd/-
(Rakesh Nandan)
Brig
Dy MS (P CM & CR)

Policy letter dated 15.04.2009

Military Secretary's Branch
IHQ of MoD(Army)
DHQ, PO New Delhi-11

15 Apr 2009

04502/MS Policy

CONDUCT OF SELECTION BOARDS BY QUANTIFICATION SYSTEM

1. Refer MS Branch letter of even No dated 31 Dec 08.
2. Consequent to promulgation of *ibid* policy, numerous queries have been received seeking detailed distribution of marks given at Para 4 of the letter. It has been decided that details pertaining to CRs be disseminated for information of all concerned.
3. **Marks for CRs.** Distribution of marks for CRs for various Selection Boards are as given below:-

Ser No	Type of CR	No 3 SB	No 2 SB	No 1 SB	SSB
(a)	Reports on Criteria Appt for present SB	50	50	50	55
(b)	Reports on Criteria Appt for last SB	-	10	15	15
(c)	Staff/ Instructional/ Other Reports (Reckonable Profile)	39	30	26	22
(d)	Total	89	90	91	92

4. This letter be read in conjunction with the policy letter at reference.

sd/-
(Rakesh Nandan)
Brig
Dy MS(P, CM & CR)
for Military Secretary

Policy Letter dated 04.01.2011

Military Secretary's Branch
IHD of MoD(Army)
DHG PO, New De 110011

04 Jan 2011

04502/M5 Policy

CONDUCT OF SELECTION BOARDS BY QUANTIFICATION SYSTEM

1. Refs:-
 - (a) MS Branch Policy Letter No 31525/P/MS 50 dated 06 May 1987
 - (b) MS Branch Policy Letters No 04502/M5 Policy dated 31 Dec 2008
 - (c) MS Branch Policy Letters No 04502/M5 Policy dated 15 Apr 2009

General

2. The Quantified System for Selection Boards was adopted with effect from 01 Jan 2009. The policy envisaged evaluation and refinement of the system over a period of three years from implementation, till the system stabilises. A detailed review of the existing Quantified Model was carried out based on feedback from the environment. The revised weightages have been approved by the competent authority. The revised policy on conduct of Selection Boards (SBs) by Quantification System is contained in succeeding paras.

Overall Distribution of Marks in the Quantified Model

3. The overall distribution of marks of the Quantified System will remain the same as earlier and are as follows:-

(a) 95 marks will be given for quantified parameters to include confidential reports (CRs) Courses, Honours and Awards

(b) Five marks are earmarked for Value Judgment (VJ) by the Selection Board (SB) members for aspects that cannot be quantified.

CR Profile

4. The allocation of marks for CR profile is based on the following considerations-

(a) **Primacy of CR.** Primacy of the CR vis-à-vis other criteria like performance on courses, honours and awards has been maintained.

(b) **Comd vis-à-vis other CRs.** Greater weightage has been given for Command / Criteria Appts as compared to Staff/ Instructional/Extra Regimental Employment. While ensuring greater weightage to criteria reports, a minimum of 50% of the total weightage for the CRs is allotted to criteria reports earned in present rank.

(c) **Reckonable Profile.** All CRs in reckonable profile being considered will be quantified. 'Look-Two-Down' principle, by taking into consideration all CRs earned in the present rank and previous rank, will continue for No 3SB, No 2 SB, and No 1 SB as hitherto. 'Look Three Down' principle by taking into consideration all CRs in previous to previous rank (je Cols rk) will be adopted for SSB only.

(d) **War Reports/ Op Reports Earned Outside Reckonable Profile (OP MEGHDOOT/OP VIJAY(Kargil)/OP PAWAN/Any Other Specified Operations.** These CRs will be reflected in MDS for the purpose of Value Judgement of SB Members in all SBs and will not be quantified, if out of reckonable profile.

(e) **Derivation of Weightage for Officers Not Holding Criteria/Non Criteria Appointments.** In case an offr does not get exposure in Staff/ Instr/Other Non Criteria appointment in a particular rank, the quantified total marks earned in Criteria reports in that rank will be taken into consideration to derive weightage for the Non Criteria reports in the required proportion. In special circumstances such as 100% AE waiver for war wounded offrs, extrapolation from non criteria to criteria reports will be carried out. For Non General Cadre officers, the value for Command/ Criteria reports will be derived from reports earned in Staff ERE/ Instructional appointments. This ensures that laid down percentage of weightages for current rank vis-à-vis previous rank(s) is not violated.

Distribution of Marks

5. The revised distribution of marks for various SBs is as under:-

Type of CR	No 3 SB	No 2 SB	No 1 SB	SSB
Criteria (Maj/Lt Col)	50	15	-	-
Staff/Instr/Others(Maj/Lt Col)	39	07	-	-
Criteria (Col)	-	45	19	04
Staff/Instr/Others(Maj/Col)	-	23	08	02
Criteria (Brig)	-	-	46	20
Staff/Instr/Others (Brig)	-	-	18	06
Criteria (Maj Gen)	-	-	-	46
Others (Maj Gen)	-	-	-	14
CR Total	89	90	91	92
Courses	04	03	02	01
Honours & Awards (Gallantry Awards only)	02	02	02	02
Quantified Total	95	95	95	95
Value Judgment	05	05	05	05
Grand Total	100	100	100	100

Performance on Courses

6. The weightages of courses are based on the category of course i.e. competitive courses, mandatory courses and other courses. Weightage assigned for courses in various SBs are as follows:-

Courses	No 3 SB	No 2 SB	No 1 SB	SSB
JC/Mandatory course	0.75	-	-	-
DSSC/TSOC	1.50	0.75	0.50	0.25
SC*	-	0.50	0.25	-
H/LDMC/HACC/0.50x NHCC	-	0.75	0.50	0.30
NDC/0.70xAPPA	-	-	0.75	0.45
Other courses	1.75	1	-	-
Total	4	3	2	1

* 0.50 for Q (I) and 0.40 for Q Grading in 2 SB
0.25 for Q (I) and 0.20 for Q Grading in 1 SB

7. **DSSC/TSOC and JC.** Marks for DSSC/TSOC and JC are allotted on a sliding scale based on the grading obtained as given at **Appendix A.**
8. **M. Tech.** The weightages for M. Tech assigned for various SBs are as follows:

SBs	M. Tech Through Competitive Selection by MT Dte (Cat I)	M. Tech other than by Competitive Selection by MT Dte (Incl Advance Course) (Cat II)	M. Tech while on Study Leave/ Others (Cat III)
No 3 SB	1.00	0.75	0.50
No 2 SB	0.65	0.50	0.35
No 1 SB	0.30	0.20	0.15
SSB	0.15	0.10	0.07

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Appendix 'A'
(Refers to Para 7 of MS Policy)

WEIGHTAGES FOR DSSC / TSOC

Ser No	DSSC Grading	TSOC Grading	MARKS			
			No 3 SB	No 2 SB	No 1 SB	SSB
1.	A1/D/D1	D/D1	1.5	0.75	0.50	0.25
2.	A1/A2	A1	1.4	0.65	0.45	0.25
3.	B/B1	A	1.2	0.55	0.35	0.25
4.	B2/B3	B	1	0.45	0.27	0.25
5.	C1/C2/C3	C	0.75	0.30	0.20	0.25
6.	E1/E2/E3	E	0	0	0	0

Notes:-

1. Officer qualified on DSSC/TSOC will be awarded 0.25 marks in SSB irrespective of the course grading.
2. All officers attending foreign staff course will be awarded grading based on their course report of the foreign staff course.

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Appendix 'B'
(Refers to Para 8 of MS Policy 04502/MS Policy dated 04 Jan 2011)

CGPA WEIGHTAGES FOR M. TECH

Ser No	CGP A	Marks											
		No 3SB			No 2 SB			No 1 SB			SSB		
		Cat I	Cat II	Cat III	Cat I	Cat II	Cat III	Cat I	Cat II	Cat III	Cat I	Cat II	Cat III
1.	8.5 & above	1.00	0.75	0.50	0.65	0.50	0.35	0.30	0.20	0.16	0.15	0.10	0.05
2.	7.5-8.49	0.90	0.65	0.40	0.55	0.40	0.25	0.25	0.15	0.13	0.15	0.10	0.05
3.	6.5-7.49	0.75	0.50	0.30	0.45	0.30	0.15	0.22	0.13	0.10	0.15	0.10	0.05
4.	5.0-6.49	0.50	0.30	0.25	0.35	0.20	0.10	0.18	0.11	0.08	0.15	0.10	0.05
5.	4.0-4.99	0.35	0.20	0.10	0.25	0.15	0.07	0.15	0.10	0.05	0.15	0.10	0.15
6.	Less than 4	0	0	0	0	0	0	0	0	0	0	0	0"

17. The Hon'ble Supreme Court has held in various cases that the Govt. is entitled to make policies and make changes to such policies as deemed necessary, and that a court cannot strike down a policy

decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. Further in cases pertaining to promotion it has held that the promotion has to be governed by the policy in vogue at the time of the promotion.

18. Thus, the Hon'ble Supreme Court in the case of **State of M.P. Vs. Narmada Bachao Andolan**, (2011) 7 SCC 639 held that-

"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Singh Vijay Pal Singh v. State of U.P. [(2007) 6 SCC 44], Villianur Iyarkkai Padukappu Maiyam v. Union of India [(2009) 7 SCC 561] and State of Kerala v. Peoples Union for Civil Liberties [(2009) 8 SCC 46].)

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."

19. The Hon'ble Supreme Court in its judgement dated 14.09.2011 in the case of **Hardev Singh Vs. Union of India & Anr.**, [CA No.3973/2020], held that it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions.

"25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions.

26. We would like to quote the decision of this Court in Virender S. Hooda v. State of Haryana [(1999) 3 SCC 696 : 1999 SCC (L&S) 824] where this Court had held in para 4 of the judgment that: (SCC p. 699)

- " ... When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

Similarly, in **Balco Employees' Union v. Union of India** [(2002) 2 SCC 333] it has been held that the court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition."

20. Further the Hon'ble Supreme Court in the case of **IVS Gahlot Vs. Union of India (UOI) and Ors.** [Civil Appeal No.8047 of 2018]

held that-

15. Furthermore, the earlier policy was issued on 14.01.2004 and in accordance with the Appellant, it could have been reviewed only after five years. Admittedly the Appellant came for consideration by the Promotion Board on 15.11.2011 i.e. much after five years from the issue of the policy on 14.01.2004. At the time when Appellant was considered the amendment dated 22.05.2006 was in force. An officer has to be considered in accordance with the policy as prevalent at the time of his consideration. Hence, we do not find any error in consideration of the claim of the Appellant as per the amended policy dated 22.05.2006.

21. The Honble AFT in its judgement dated 08.01.2016 in the case of **Col V Satish Kumar Reddy Vs. Union of India** [OA No.3/2014] held that the percentage of marks obtained in an institution cannot be compared with the CGPA scale followed by another institution. The relevant Paras are extracted below:

"12. In addition to above, percentage of marks obtained in an institution cannot be compared with the CGPA scale followed by other institutions as they stand on entirely different reference datum. This aspect may be kept in mind by the respondents in the present study and review being carried out by them on the above aspects as confirmed by the learned counsel of the respondents.

13. In view of the apprehension expressed by the learned counsel for the petitioner on the above issues and the review of the issues being still under consideration by the respondents we examined the issue in detail, we found that even if we hypothetically awarded the same marks to the petitioner as awarded to those who did the M.Tech in service and / or the staff college, it would not still bring him to a place by

which his merit in promotion would improve to the level which is anywhere near to those of the last officer of his batch who was promoted. Therefore, even if notionally such marks were awarded to the petitioner, he would still not make the grade on merit for promotion as evident from the records examined by us."

Complaints

22. The applicant had filed two non-statutory complaints. The first complaint dated 26.05.2006 was filed against his non-empanelment in No 3 SB held in Apr 2006, in which he was considered as a fresh case. The applicant was granted partial redressal, in that certain numerical assessment of the RO in two CRs which were set aside. The second non-statutory complaint dated 24.11.2014 was filed against his non-empanelment by No 2 SB held in Sep 2014, in which he was considered as a fresh case. The applicant had highlighted his career profile and achievements. He also stated that though he did his M. Tech from US, he had been placed at a disadvantage since this was considered as a Cat III course. Also that all along he had always been graded 'Above Average'/'Outstanding' by the IO but was apprehensive that other reporting officer may have not assessed him properly due to inadequate interaction. The applicant had prayed that his entire reckonable profile be scrutinized and aberrations/inconsistencies, if any, be removed. That adequate value judgment marks be given for having done his M. Tech from US and that he be reconsidered by No 2 SB. The examination

reviewed the CRs in the reckonable profile and concluded that it was a clear 'Above Average' profile with positive pen picture and recommendations for promotion and career courses and, therefore, none of CRs merited any interference. With reference to the categorization of the M. Tech Course, the examination concluded that, since the applicant had done the course whilst on study leave, and that it had been correctly categorized as Cat III as per the policy of Jan 2011. It also held that it was merely an acquisition of an additional educational qualification during study leave, at best from a foreign university, and thus was not a special achievement. The examination also concluded that the applicant had not been empanelled due to his overall comparative merit. Accordingly, the complaint was dismissed vide order dated 08.08.2015.

CRs

23. In the reckonable profile at the time of fresh consideration by No 2 SB in Sep 2014, there were a total of 16 CRs from 06/99 to 08/13. This included five CRs in the rank of Maj, four CRs in the rank of Lt Col and seven CRs in the rank of Col. Overall the applicant had eight criteria reports, five in the rank of Maj/Lt Col and three as a Col. In the overall profile, the applicant had 19.5% box gradings as 'Outstanding' and balance 80.5% as 'Above

Average'. In the criteria reports the applicant had 5% 'Outstanding' box grading and balance 95% are 'Above average'. The applicant had earned eight technical reports in criteria appointments, of which 25% were 'Outstanding' and the balance 75% were 'Above Average'. Thus, the overall profile of the applicant was a clear above average profile.

No 2 SB

24. The applicant was given his three considerations by No 2 SB and was not empanelled due to his overall comparative merit amongst those considered. The details are tabulated below:

Ser	Year	Consideration	BYOS	Remarks
(a)	Sep 2014 Sigs 1988 Batch	Fresh	1988	NE OOM-89.214 Last offr-90.335
(b)	Nov 2015 Sigs 1989 Batch	First Review	1989	NE OOM-89.233 Last offr-90.477
(c)	Feb 2014 Sigs 1990 Batch	Final Review	1990	NE OOM 88.946 Last offr-90.541

Conclusion

25. In view of the above consideration, we conclude that the respondents are justified in categorizing the M. Tech done by the applicant whilst on study leave as Cat III, as per the QSS policy dated 04.01.2011 which was in vogue during the applicant's

consideration by No 2 SB in 2014. All the CRs in the reckonable profile are well corroborated, technically valid and as per the overall profile of the officer, and therefore none of them merit any interference. The complaint has been dealt with appropriately as per the merits of the case. The applicant has not been empanelled due to his overall comparative merit amongst those considered.

26. In view of the above consideration and conclusion, the OA is dismissed being bereft of any merit.

27. No order as to costs.

28. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 27th day of September, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN P.M. HARIZ)
MEMBER (A)**

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