COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2831 of 2022
with
M.A. No. 3963 of 2023
and
M.A. No. 4204 of 2022

In the matter of :

Brig Ram Prakash Pandey ... **Applicant**

Versus

Union of India & Others ... **Respondents**

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri Neeraj, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

> *"(a) **Call for the records based on which the Respondents have categorized the injury suffered by the Applicant as the Physical casualty when the same ought to have been categorized as Battle casualty as***

also the records based on which the Respondent No.3 was permitted and in fact notified the impugned policy dated 03.11.2022 as also applied retrospectively against the Applicant to render him medically ineligible for the purpose of nomination for the NDC and on that basis passing the impugned order dated 07.11.2022 vide which the Applicant has been denied nomination for the NDC-63 against the single vacancy earmarked for the Army Intelligence Corps and thereafter quash all such orders including the policy dated 03.11.2022 so far as the same was made applicable on the Applicant as also the impugned order dated 07.11.2022 for the nomination for the NDC-63 for the INT Corps.

(b) Direct the Respondents to reconsider the eligible officers of the Int Corps afresh by

declaring the Applicant eligible for such consideration based on the existing policy as applicable before impugned order dated 03.11.2022 as also by treating the injury of the Applicant as a Battle casualty with further direction to ensure that Respondent No.3 is completely excluded from the process of decision making and thereafter nominate him for the NDC if otherwise found fit by the Board and detail him for the same which is going to commence from 01.01.2023. However, without prejudice the Respondents be directed to permit the Officer nominated for the course from the MS Pool or against any other vacancy and the earmarked vacancy of INT Corps for NDC be allotted to the Applicant.

(c) Restrict the Respondent No 3 from initiating any action or orders affecting

the Applicant adversely with posting, nomination for NDC or future career prospects.

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case."

By way of para 9 of the OA, the applicant had made a prayer for interim relief as follows :

"Since the Applicant has already established the prima facie case and inherent illegality in the action and therefore the Respondents be directed to keep the single vacancy of NDC of the INT Corps for the NDC Course commencing from 01.01.2023 reserved till final disposal of the present OA by restraining the Respondents to detail any Officer for the said vacancy."

However, the prayer for interim relief was dismissed by the Tribunal vide its detailed order passed on 23.12.2022 with liberty to the applicant to agitate all the issues during the final hearing.

BRIEF FACTS

2. The applicant is a serving Brigadier in the Indian Army belonging to the Intelligence Corps (INT Corps). The applicant has filed the instant OA on 05.12.2022 with respect to his non-selection for National Defence College Course-63 (NDC-63), which was to commence from January, 2023. The applicant is aggrieved by the actions of the respondents wherein they carried out an amendment by way of a policy issued by the MS Branch dated 03.11.2022 in the Army Order SAO 4/S/2014 issued by Respondent No. 2. The applicant submits that the impugned policy (the amendment) dated 03.11.2022 by which the medical category 'S1H1A2P1E1' and 'C2O1P1E2' which was earlier eligible as per SAO 4/S/2014 as mentioned in the Policy dated 24.01.2018 was made ineligible medical category for nomination for NDC Course which was done to achieve an oblique purpose to slight the applicant by making him ineligible for such nomination, who otherwise could not have been overlooked had the respondents considered the eligible officers of the batch of the INT Corps for NDC Course on merit.

3. The applicant submits that although the process of nomination for the NDC-63 Course had been initiated in July, 2022, the impugned policy was applied retrospectively to extend a clear favour to another officer in utter disregard to the procedure. The applicant further submits that upon becoming aware of his non-selection for NDC-63 Course due to the application of amended medical criteria, he preferred a Statutory Complaint dated 24.11.2022. Apparently, the said Statutory Complaint dated 24.11.2022 has not been responded to and as alleged by the applicant the respondents do not entertain such complaint against the policy, it is apparent that the Statutory Complaint has not been disposed of by the respondents till date. Aggrieved by the same, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant is an outstanding INT Corps officer who was not selected for NDC-63 Course due to the amendment in the policy for selection for the said Course which was

promulgated on 03.11.2022 by the MS Branch in which the requirement of medical category criteria was changed for selection for NDC Course and due to which the applicant became ineligible for selection for the NDC-63 Course. The learned counsel for the applicant further submitted that the said policy was changed just four days prior to the holding of the Selection Board of the NDC-63 Course which caused immense harm to the applicant as the applicant, who otherwise could have upgraded his medical category as per the provisions and policies of the Indian Army, could not do so as there was very limited time between the promulgation of the policy changing the medical category criteria and the holding of the Board for Selection of NDC-63 Course.

5. The learned counsel for the applicant submitted that any change in the policy should be a well-deliberated process of the respondents and needs consultations amongst various stakeholders including the environment and their feedback taken and then a concerted decision to amend the policy should be taken. The learned counsel further submitted that in the instant case, it is not known if the entire process of due deliberation to change the said policy was done and the

environment was consulted. The learned counsel for the applicant also submitted that the Army Training Command (HQ ARTRAC) has been delegated the power by the competent authority to make such policies which cannot be sub-delegated to any other authority and the promulgation of the amended policy by the MS Branch, which effected the change in the medical category for selection for the NDC Course, is illegal as the HQ ARTRAC is the only competent authority to issue such amendments.

6. The learned counsel for the applicant further submitted that as per the policy No. 76086/Policy/DGMS-5A dated 30.09.2021 issued by the Directorate General of Medical Services (Army), an officer can seek for early review of his low medical category by way of an unscheduled Medical Examination. The learned counsel submitted that as per this policy, officers placed in Temporary and Permanent Low Medical Category Classification (LMC) may request for an early review of the LMC status after a period of 12 weeks from the date of last medical categorisation board but not more than once for a disability, if the Authorised Medical Attendant (AMA) certifies that the officer's medical

and physical condition has improved. The learned counsel further submitted that the applicant was placed in low medical category in January, 2022 and had become eligible to seek early review of his low medical category in April, 2022 and, had the change in the policy been declared well in time by the respondents, the applicant would have made all efforts to seek such a review to upgrade his medical category. The learned counsel for the applicant also submitted that as per the old policy for the NDC Course selection, the applicant was eligible with respect to the medical category for consideration for the NDC-63 Course and hence, did not make effort to seek such an early review of his low medical category.

7. The learned counsel for the applicant submitted that the agenda for NDC-64 Course stated that this was the 'Look-1' of the applicant which means that the applicant was not considered for the NDC-63 Course, however, the respondents have submitted that the applicant was indeed considered for NDC-63 Course and was not selected for the said Course. The learned counsel for the applicant submitted that it was quite astonishing to find that the

applicant was 'Look-1' for NDC-63 Course as well as NDC-64 Course. The learned counsel submitted that if the applicant was 'Look-1' for NDC-64 Course, then he should be considered against the merit of the officer who was selected for NDC-63 Course as a Special Review case.

8. The learned counsel for the applicant took a plea of legitimate expectation to be treated fairly and placing reliance on the judgment dated 14.05.2019 of the Hon'ble High Court of Delhi in the case of ***Charanpal Singh Bagri Vs. University of Delhi & Ors. [W.P.(C) 6751/2019 & CM APPL. 28336/2019]***, whereby the issue of 'legitimate expectation' was laboured upon by the counsel for the applicant submitting that in that case, there was a change in the eligibility conditions for admission to the under-graduate courses of the University of Delhi made one day before the commencement of the admission programme to the University of Delhi for the year 2019-20, which sudden changes without prior public notice in terms of Rule 14(1) of the Regulations notified on 06.05.2019 by the University Grants Commission and also which were without even a previous notice of six months to the students preparing for

their eligibility for admission to the University of Delhi, were held to be not valid.

9. The learned counsel for the applicant also submitted that the Army Order, namely, AO No. 02/2023/GS/Apvl-1 dated April, 2023 (which now deals with NDC/APPPA Course selection), which supersedes SAO 4/S/2014 was promulgated and took its effect in April, 2023 in which the new medical category as amended vide Policy dated 03.11.2022 was included and hence, this new AO is not applicable in the case of the applicant for the selection of NDC-63 Course and the provisions of SAO 4/S/2014 should be applicable in the applicant's case.

10. *Per contra*, the learned counsel for the respondents submitted that the acceptable medical standards for promotions to the select higher ranks are governed by MS Branch letter No. 04548/MS Policy dated 14.12.2012, whereas the medical categories for selection for NDC Course are governed by SAO 04/S/2014. The learned counsel for the respondents further submitted that the case to align the medical standards required for NDC/APPPA Course with No.1 Selection Board (No. 1 SB), which selects officers for

higher ranks) has been in deliberation for over two years as numerous inputs were received from the environment highlighting the need to align the medical standards for NDC/APPPA with No. 1 SB as a number of NDC qualified officers were not getting empanelled in No. 1 SB due to the medical reasons, which had created dissonance in the environment, when the organisation has invested heavily in their training. The learned counsel for the respondents further submitted that in the meantime, the Office of the DMA, vide their letter No. DMA/JS(N)/2021/11/Gen dated 07.01.2021 issued an advisory regarding empanelment of officers to higher ranks in low medical category with the employment restriction in the backdrop of the Hon'ble Raksha Mantri's Operational Directives necessitating the services to remain prepared for conflict at all time and at short notice.

11. The learned counsel for the respondents submitted that the said issue was discussed and deliberated during the subsequent Army Commanders' Conference in June, 2021 and December, 2021 and submitted that the issue of aligning the medical category for promotion to the higher ranks and

selection for NDC Course was already in deliberation in system for a long time and the contention of the applicant that it was done in a haste without stakeholder consultation is misconceived. The learned counsel further submitted that based on the need of the environment and subsequent detailed deliberations, inputs to align medical category for NDC/APPPA courses with acceptable medical standards for No. 1 SB were sought from HQ ARTRAC vide MS Branch letter No. 04485/MS Policy dated 23.06.2022 and HQ ARTRAC vide their letter No. 265002/MS Policy dated 27.07.2022 endorsed the proposal for aligning medical standards for NDC Course with acceptable medical standards for promotion by No. 1 SB. The learned counsel for the respondents submitted that the case file was then processed to obtain In-Principle Approval of the competent authority and the In-Principle Approval was accorded on 03.08.2022 and thereafter, the entire case was forwarded to HQ ARTRAC for effecting necessary amendments in SAO 04/S/2014 on 05.08.2022. The learned counsel for the respondents further submitted that the HQ ARTRAC carried out their deliberations and sought certain inputs and the

GOC-in-C ARTRAC Command, vide their letter dated 01.11.2022, endorsed the changes in the policy. The learned counsel further submitted that based on this endorsement, the policy changing the medical standards for NDC/APPPA Course was issued on 03.11.2022 and this policy is uniformly applicable to all arms and services without any discrimination to any arm/service or to an individual.

12. The learned counsel for the respondents also submitted that the MS Branch is the nodal agency to carry out modalities for conduct of the Selection Boards for NDC/APPPA Courses and Selection Boards for promotion to higher ranks and, therefore, from time to time brings out changes in the policies which affect these issues.

13. On a specific query made by the Court as to why the applicant continued to remain on the Agenda list for selection for NDC-63 Course when it was clear after the promulgation of change in the policy of the medical standards dated 03.11.2022 that the officer will not be eligible for selection for NDC-63 Course as per the amended medical category and the selection Board meeting of the said Course was scheduled on 07.11.2022, the learned counsel

for the respondents submitted that the mandatory qualitative requirements and the number of 'Looks' that an officer gets for NDC Selection are based on Policy letter No. 04485/MS Policy dated 24.01.2018, wherein vide Para 10 of the said policy, the mandatory qualitative requirements are enunciated and since the applicant was eligible in all respects as per Para 10 of the said policy, his name continued to remain on the Final Agenda List for selection for NDC-63 Course.

14. The learned counsel for the respondents also submitted that based on Para 20 (a) and (b) of the Policy dated 24.01.2018, the applicant continued to be as 'Look-1' for the NDC-64 Course.

15. The learned counsel for the respondents submitted that whether the expectation of the applicant is reasonable or legitimate in the context is a question of fact in each case and whenever a question arises, it is to be determined not according to the claimant's perception but in the larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. Placing reliance on the

judgment dated 14.06.2019 of the Hon'ble High Court of Delhi in the case of ***Charanpal Singh Bagri Vs. University of Delhi and Others [W.P. (C) No. 6751 of 2019 etc.]*** contended to the effect that none of the issues as brought out in the five clauses reproduced hereinbelow are applicable to the applicant to garner 'legitimate expectation'. The relevant paras of the aforesaid judgment read as under :

> ***"16. Reliance was also placed on behalf of the petitioners on the verdict of the Hon'ble Division Bench of this Court in "GNCT of Delhi & Ors. Vs. Naresh Kumar" 2010 SCC Online Del 3942, observing vide paragraphs 21 & 22 to the effect:-***
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> > ***"21. After a survey of leading decisions on the point, the legal position with respect to legitimate expectation can be summarized as under:***
> >
> > ***I Mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weightage to it may render the decision arbitrary.***
> >
> > ***II Legitimate expectation may arise (a) if there is an express promise given by a public authority; or (b) because of acceptance of a regular practice, a claimant can reasonably expect it to continue; and (c) such expectation may be reasonable.***
> >
> > ***III For a legitimate expectation to arise, the decision of administrative***

authority must affect the person by depriving him of some benefit or advantage which he had in the past been permitted, by the decision maker, to enjoy and which he can legitimately expect to be permitted to continue, until some rational grounds for withdrawing it have been communicated to him.

IV If the authority proposes to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter.

V The doctrine of legitimate expectation permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made."

16. The learned counsel for the respondents further placed reliance on the judgment of the Hon'ble Supreme Court rendered on 12.07.2023 in the case ***Sivanandan C.T. and Others Vs. High Court of Kerala and Others [Writ Petition (Civil) No. 229 of 2017]*** to submit to the effect that legitimate expectation must always yield to larger public interest and the *doctrine of legitimate expectation* does not impede or hinder the power of a public authority to lay down a policy or withdraw it. The public authority has the

discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The Courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, Courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation. The learned counsel narrated the relevant portions of the above judgement which are reproduced below :

> ***"41. The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and***

interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.

42. In Paponette v. Attorney General of Trinidad and Tobago, 27 the Privy Council held that a claimant only has to prove the legitimacy of their expectation. In this regard, the claimant must establish that the expectation is based on an existing promise or practice. Once the claimant establishes their legitimate expectation, the onus shifts to the authority to justify the frustration of the expectation by identifying any overriding public interest. This Court has been applying similar burden requirements in cases of legitimate expectation.

43. The principle of fairness in action requires that public authorities be held accountable for their representations, since the state has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predictable manner and honor the promises made or practices established unless there is a good reason not to do so. In Nadarajah (supra), Laws LJ held that the public authority should objectively justify that there is an overriding public interest in denying a

legitimate expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that state actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

d. Consistency and predictability as aspects of non-arbitrariness

44. Another significant development in the jurisprudence pertaining to the doctrine of legitimate expectation is the emphasis on predictability and consistency in decision-making as a facet of non-arbitrariness. In Ram Pravesh Singh (supra), it was held that the doctrine of legitimate expectation applies to a regular, consistent, predictable, and certain conduct....."

17. The learned counsel for the respondents relied upon the verdict of the Hon'ble Supreme Court in the case of ***Hardev Singh Vs. Union of India and Another [(2011) 10 Supreme Court Cases 121]*** to submit to the effect that it is open to an employer to change its policy in relation to giving promotion to the employees and the Court would normally not interfere in such policy decisions. Para 25 of the aforesaid judgement is reproduced as under :

> ***"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. We would like to quote the decision of this Court in the case of Virender S. Hooda Vs. State of Haryana [(1999) 3 SCC 696] 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."***

18. The learned counsel for the respondents also placed reliance on the order passed by this Tribunal in the case of ***Maj Gen Jagjeet Singh Nanda Vs. Union of India and Ors. [TA 10/2023 [WP No. 13496/2022]***, wherein in its order, the Tribunal has directed that the respondents are entitled to make policy changes as required by them. While delivering this order, the Tribunal has also taken note of the judgment rendered by the Hon'ble Supreme Court in ***Hardev Singh (supra)***, wherein the Apex Court has held that an officer will be considered by the policy as applicable on the

date of consideration. The relevant para of the aforesaid order is reproduced below :

> ***"26. In Hardev Singh Vs. Union of India & Ors. reported as (2011) 10 SCC 121, the Apex Court has held that an officer will be considered by the policy as applicable on the date of consideration. The relevant para is reproduced below :***
>
> > ***"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. We would like to quote the decision of this Court in the case of Virender S. Hooda Vs. State of Haryana [(1999) 3 SCC 696] 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."***

19. The learned counsel for the respondents further placed reliance on the judgment dated 27.02.2022 of the Hon'ble High Court of Delhi in the case of ***Harsh Ajay Singh etc. etc. Vs. Union of India & Ors etc. [W.P. (C) 11011/2022 etc. etc.)*** wherein the issue of challenging the policy as laid down by the Govt. of India and the constitutional validity of

scheme was challenged and it has been observed that in a catena of cases that the scope of judicial review accorded to this Court does not extend to excessively questioning the policy decisions of the government, unless they are arbitrary, discriminatory or are based on irrelevant considerations. Relevant paras of the aforesaid judgment are reproduced below :

> ***"15. It has been settled in a catena of cases that the scope of judicial review accorded to this Court does not extend to excessively questioning the policy decisions of the government, unless they are arbitrary, discriminatory or are based on irrelevant considerations. In State of Orissa v. Gopinath Dash, (2005) 13 SCC 495, the Apex Court has held as under:-***
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> > ***"7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.***

5. While exercising the power of judicial review of administrative action, the Court is not the Appellate Authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonise qua any matter which under the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Asif Hameed v. State of J&K [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] and Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223 : AIR 1990 SC 1277] .) The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere."

16. The Apex Court in Centre for Public Interest Litigation v. Union of India, (2016) 6 SCC 408, wherein the Petitioner had challenged the decision of the Government of India to allow voice

telephony to Reliance Jio Infocomm Ltd., has summarised the principles in this regard as under:-

> *"22. Minimal interference is called for by the courts, in exercise of judicial review of a government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as courts are not well equipped to fathom into such domain which is left to the discretion of the execution. It was beautifully explained by the Court in Narmada Bachao Andolan v. Union of India [Narmada Bachao Andolan v. Union of India, (2000) 10 SCC 664] and reiterated in Federation of Railway Officers Assn. v. Union of India [Federation of Railway Officers Assn. v. Union of India, (2003) 4 SCC 289] in the following words: (SCC p. 289, para 12)*
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> > *"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."*
>
> *26. xxx xxx*

"it is, however, central to received perceptions of judicial review that courts may not interfere with exercise of discretion merely because they disagree with the decision or action in question; instead, courts intervene only if some specific fault can be established—for example, if the decision reached was procedurally unfair [Ibid.]

27. The raison d'être of discretionary power is that it promotes the decision-maker to respond appropriately to the demands of a particular situation. When the decision-making is policy-based, judicial approach to interfere with such decision-making becomes narrower. In such cases, in the first instance, it is to be examined as to whether the policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy."

17. Recently, the law related to judicial review in policy decisions has been reiterated in State of Maharashtra v. Bhagwan, (2022) 4 SCC 193, in the following manner:-

"28. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications.

Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences."

xxx *xxx*

36. Aside from this, as stated above, this Court, while exercising its powers under Article 226 of the Constitution of India cannot consider alternatives to the Impugned Scheme. The formulation of the Scheme is an exercise of the "sovereign policy-making functions" of the Central Government, which ought not to be interfered with unless on the settled principles discussed above.

37. To conclude, this Court finds it apposite to reiterate that policy decisions, particularly those which have wide-ranging implications on the nation's health and security, should be decided by bodies best suited to do so. It appears that the Government has been considering, for a long time, the possibility of creating an Armed Forces which consists of more youthful, agile, and physically adept individuals. Upon considering the opinions of experts bodies, defence personnel, and carefully studying the models adopted by other nations, it has decided to finally replace the prior mode of recruitment with the recruitment envisaged by the Agnipath Scheme. Considering that the stated

objective of the Government is neither discriminatory nor mala fide, or arbitrary, this Court finds no reason to interfere with it."

ANALYSIS

20. We have heard both the parties and have perused the record produced before us.

21. The following issues were raised by the applicant due to his non-selection for the NDC-63 Course :-

(a) The change in the Policy dealing with medical standards for selection for NDC/APPPA Courses, close to date of holding the selection board for the said Course, thereby denying him the opportunity to upgrade his medical category and be eligible as per new medical standards.

(b) Sudden change in Policy dealing with medical standards for NDC/APPPA Course without adequate consultation amongst stakeholders.

(c) 'Look I' of the applicant for both the courses viz. NDC-63 and NDC-64 courses in the Agenda List for the said courses.

(d) Consideration of the applicant as Special Review case since he was not eligible for NDC-63 Course solely on

medical grounds and subsequently marked as 'Look 1' for NDC-64 Course.

22. Change of Policy. The need for the change of policy of medical standards required for selection for NDC to align with No. 1 SB (Selection of Officer from Brig to Maj Gen and Maj Gen to Lt Gen) has been in discussion in the Indian Army since 15.12.2020 as per the records perused by us. The issue has also been proposed to be discussed as an agenda point for discussion during the Army Commanders' Conference in April, 2021. There have been much correspondence between the HQ ARTRAC (Army Training Command) and Army HQ to seek inputs based on which Approval In-Principle was obtained from the Chief of the Army Staff (COAS) for effecting changes in the policy on 02.08.2022. The final proposal thereafter was forwarded from AHQ to HQ ARTRAC to process the draft Army Order (AO) for publication on 04.10.2022. The AO was finally endorsed by the GOC-in-C ARTRAC on 01.11.2022 and forwarded to the Army HQ for publication, and the same communication also stated that a policy letter in the interim (till publication of the AO) be issued by the MS Branch to

effect the necessary changes in the policy. The policy letter dated 03.11.2022 was thereafter issued by the MS Branch of Army HQ effecting the necessary changes in the policy of medical standards for selection for NDC/APPPA Course.

From the records perused, it is clear that the said policy was in the making for past two years and enough consultations amongst all stakeholders were held. The discussion during Army Commanders' Conference about the changes in policy takes into account the views of the entire army as the Army Cdrs represent views of the officers of their respective geographical areas and hence the perception of the applicant that the change in the policy was done in haste with a malafide intention to the detriment of the applicant is not correct. The HQ ARTRAC was consulted adequately and their inputs were taken into account prior to seeking Approval In-Principle of the COAS for making changes in the policy of medical standards for selection for NDC/APPPA Courses.

The policy letter dated 03.11.2022 effecting the changes in the medical standards for NDC/APPPA Course which was an interim measure finally was incorporated into

the new AO No. 02/2023/GS/Apvl-1 which governs selection for NDC Course and the said AO was published in April, 2023 with it having superseded the earlier AO on the subject viz. SAO 4/S/2014. The new AO took effect from the date of its issue i.e. April, 2023. The applicant has also argued that since the new AO came into being in April, 2023, therefore, the provision of the new AO was not applicable in his case as the selection for NDC-63 Course took place on 07.11.2022 and the provisions of the old AO viz. SAO 4/S/2014 was applicable in his case for selection for NDC-63 Course. In this regard, it is pertinent to note that the MS Branch, as an interim measure, had issued a policy letter on 02.11.2022 effecting the change in the policy for NDC Course selection and the selection for NDC-63 Course was to be guided by the interim policy of 02.11.2022 and hence the contention of the applicant with respect to the applicability of the new AO viz. AO No. 02/2023/GS/Apvl-1 promulgated in April, 2023 with its coming into effect in April, 2023 is not correct, as the applicant's consideration for selection was correctly done in accordance with the interim policy dated 02.11.2022.

23. Agenda List. The issue of the drawing of the Agenda List (both provisional as well as Final) was also examined by us. The provisional Agenda List for NDC-63 Course was promulgated by the respondents in July, 2022 and the final Agenda List was promulgated on 05.11.2022. The applicant's name was included in the provisional as well as the final Agenda List promulgated by the respondents. The inclusion/exclusion of any officer in the Agenda List is based on the Mandatory Qualitative Requirements (QR) as per Para 10 (a) and (b) and Para 12 of Policy letter No. 04485/MS Policy dated 24.01.2018 which read as follows :

> ***"Mandatory Qualitative Requirements (QR)***
>
> ***10. The mandatory QRs for consideration of Brigadiers for NDC and APPPA Courses will be as under :***
>
> ***(a) Age Less than 53 years as on 01 January of the year of commencement of the course.***
>
> ***(b) Adequately Exercised (AE) Requirement :***
>
> ***(i) Officers placed on criteria appointments on or before 01 April of the year preceding the year of consideration for NDC/APPPA will not be eligible.***
>
> ***(ii) Officers of General Cadre should have been adequately exercised in the command of a Brigade or specified equivalent formation for a minimum period of 15 months and earned two criteria command reports.***

(iii) Officers of other Arms and Services should have earned minimum two reports over a period of 15 months in specified criteria appointments.

(iv) General Cadre inductees from other Arms will be required to meet the AE requirement on General Cadre appointments. Criteria Reports earned by these officers in the rank of Brigadier in their parent Arm will be re-edited as Non Criteria."

The Para 12 of the ibid policy read as under :

"<u>Finalisation of Agenda</u>

12. <u>Agenda List</u> : Every year, a list of all Brigs, who fulfil the mandatory QRs will be drawn separately for all Arms/Services known as the Agenda List. The Agenda List of all eligible officers will form the basis for drawing the computerized order of merit of the officers."

The Para 12 of the said policy explicitly states that the finalised Agenda List will be drawn every year of all Brigs, who fulfill the mandatory QRs for all Arms/Services. The finalised Agenda List of all eligible officers will form the basis for drawing the computerized order of merit of the officers.

Since the applicant had fulfilled all the mandatory QRs for selection of NDC Course, his name was correctly kept in the provisional as well as Final Agenda List of the respondents.

24. Timing of the Change in Policy. The change in the policy for medical standards for selection of the NDC/APPPA Course was promulgated on 02.11.2022 and the selection for the NDC/APPPA Course took place on 07.11.2022. The applicant submits that he had legitimate expectation for selection for the said Course and had the change in the policy promulgated by the respondents well in time, he would have adequate time to upgrade his medical category to the new required standards as it was allowed to do so by asking for a Review of the medical category as provided for in Policy No. 76086/Policy/DGMS-5A dated 30.09.2021.

The applicant and the respondents relied upon the verdicts of various Courts as enunciated in Paras 14 to 18 hereinabove to claim their positions with respect to legitimate expectation. It is pertinent to mention that the purpose of the change in the policy was to align the medical standards set for selection for NDC Course with the selection of officers for higher positions through the conduct of No. 1 Selection Board (No.1 SB). It is, therefore, important to note that the amendment in the policy was brought out in the larger interest of the Army as an organisation as considerable effort

is invested in training the senior officers in the NDC and if subsequently the officers do not get promoted after having undergone the NDC Course, it will be a colossal loss to the Army. It can, therefore, be summarised that the intention of the army in undertaking the change in its policy for the NDC selection was in the larger public interest and not targeted against an individual or for that matter the applicant as alleged by him in the OA. It is rather unfortunate that the timing of the change in the policy has adversely affected the applicant but there was no malafide intention to deny the applicant a chance for selection to the NDC Course. It is further essential to observe that the mandatory requirement of a public notice of the nature required in terms of Rule 14(1) of the Regulations notified by the University Grants Commission necessitating prior notice as in *Charanpal Singh Bagri (supra)* does not exist in the various policies promulgated by the MS Branch for either selecting officers for the NDC Course or for selection for higher ranks. Furthermore, it is essential to observe that as laid down by the Hon'ble Supreme Court in ***P. Suseela & Ors. etc. etc. Vs. University Grants Commission & Ors. etc. etc. [Civil***

Appeal Nos. ..... of 2015 (arising out of SLP (Civil) Nos. 36023-36032 of 2010)] in judgment dated 16.03.2015, a legitimate expectation has to yield to the larger public interest of selection of the most meritorious. The observations made in Paras 18, 19 and 20 of the said verdict read to the effect :-

> ***"18. The doctrine of legitimate expectation has been dealt with in two judgments of this Court as follows :***
> ***In Union of India v. International Trading Company [(2003) 5 SCC 437], it was held :***
>
> > ***"23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with***

respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See Parbhani Transport Coop. Society Ltd. v. Regional Transport Authority [AIR 1960 SC 801 : 62 Bom LR 521], Shree Meenakshi Mills Ltd. v. Union of India [(1974) 1 SCC 468 : AIR 1974 SC 366], Hari Chand Sarda v. Mizo District Council [AIR 1967 SC 829] and Krishnan Kakkanth v. Govt. of Kerala [(1997) 9 SCC 495 : AIR 1997 SC 128]."

19. Similarly, in Sethi Auto Service Station v. DDA (2009) 1 SCC 180, it was held:-

"33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural

fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited.(Vide Hindustan Development Corpn. [(1993) 3 SCC 499]"

20. In University Grants Commission v. Sadhana Chaudhary (1996) 10 SCC, 536, it is true that in paragraph 22, some of the very appellants before us are referred to as having a legitimate expectation in the matter of appointment to the post of Lecturer in Universities/Colleges, but that case would have no direct application here. There a challenge was made to exemptions granted at that time to Ph.D. holders and M. Phil. degree holders. It was found that such exemption had a rational relation to the object sought to be achieved at that point of time, being based on an intelligible differentia. An Article 14 challenge to the said exemption was, therefore, repelled. Even assuming that the said judgment would continue to apply even after the 2009 Regulations, a legitimate expectation must always yield to the larger public interest. The larger public interest in the present case is nothing less than having highly qualified Assistant Professors to teach in UGC Institutions. Even if, therefore, the private appellants before us had a legitimate expectation that given the fact that the UGC granted them an exemption from the NET and continued to state that such exemption should continue to be granted even after the Government direction of 12th November, 2008 would have to yield to the larger public interest of selection of the most meritorious among

candidates to teach in Institutions governed by the UGC Act.

25. Merit List for NDC-63 Course The applicant was first in the Qualitative merit in the INT Corps officer's list but was not awarded the Board Member Assessment (BMA) marks by the members of the selection board and was marked as 'Not Eligible' and consequently he was not selected for the NDC-63 Course due to his medical category.

26. Merit List for NDC-64 Course. As per the records produced before us, the applicant was not selected for the NDC-64 Course due to him being low in the *inter se* merit amongst the INT Corps officers, which came up for selection for NDC-64 Course.

27. Look-1 for NDC-64 Course. The applicant was considered as 'Look-1' for the NDC-64 Course despite him being considered for selection in the NDC-63 Course in the previous year (2022). From the records produced before us, it was brought out vide N-28 on File No. A/48711/NDC-63/MS (BRIGS) of Dr. Pragya Shantanu [Director, MS (Brigs)] (signed on 03.02.2023) that the policy dated 24.01.2018 for selecting officers for the NDC Course is silent about officers

who are marked 'Not Eligible' as to whether it will counted as their 'Look' or not. It was further recommended by Dr. Pragya Shantanu in the noting that since each member of the SSB (Board members of NDC selection) had graded the applicant as 'Not Eligible', it is recommended that the officer's consideration for the NDC-63 Course may not be counted as a 'Look'. The said recommendation was accepted by the MS on 06.02.2023 and, therefore, the Agenda List for NDC-64 Course has rightly shown the Look of the applicant as 'Look-1'.

28. Special Review Case for Applicant. The plea of the applicant to consider his case as a Special Review and re-consider him for the NDC-64 Course based on the comparative merit of the officer who was selected for the NDC-63 Course was also examined by us. It is important to note that there is no provision for Special Review in selecting officers for the NDC Course as per the MS Branch Policy letter dated 24.01.2018 and hence applying the analogy of Special Review policy pertaining to promotion to higher ranks for NDC selection is not appropriate, especially when no such provisions exist.

CONCLUSION

29. In view of the foregoing, we are of the considered view that the prayers made vide the OA 2831/2022 cannot be granted and the same is accordingly dismissed. Consequently, all pending miscellaneous applications, if any, stand closed.

30. There is no order as to costs.

Pronounced in the open Court on this 17 day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/ng/