

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

OA 288/2022

Lt Col Amita Rai Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER

Invoking the jurisdiction of this tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed the present OA with the following prayers:-

(a) Call for the records including the policy instructions based on which the Respondents considered the Applicant in the specialist stream despite her never having functioned as a specialist by comparing her merit with the Spl Officers without any PCR instead of Non Spl Officer based on her appointments as also the fact that in the event of promotion, she was required to be assigned appointment even in the Rank of Col as tenable by the Non Specialist Officer and rejecting her for promotion in her all three considerations on that basis as well as rejecting her Statutory Complaint against the same in terms of the order dated 26.08.2021 and thereafter, quash all such orders including the order dated 26.08.2021.

(b) Direct the respondents to treat the applicant as Non Spl for the purpose of her comparative merit and grant her promotion as Col and the appointment of the Selection Grade Col with all consequential benefits including the pay and allowance, seniority and continuity of service in the event the Applicant has been

found to have scored total marks in any of her three Selection Board above the last empanelment Officer who was in the same zone of consideration as the Applicant.

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

Brief Facts of the Case

2. The applicant was commissioned into the Army Medical Corps (AMC) in the rank of Captain on 21.01.2002 as a Post-Graduate (PG) candidate, holding an MD degree in Pharmacology. In terms of the prevailing policy, she was granted 36 months of ante-date seniority on account of her MD qualification, and accordingly, her seniority was reckoned from 21.01.1999.

3. For the purpose of filling vacancies arising in the year 2018, the applicant was considered for promotion to the rank of Colonel (and equivalent) by Promotion Board (AFMS) No 3: AMC (Spl), held on 01.03.2018, which constituted her first statutory chance. However, she was graded as 'NS' (Not Selected), as reflected in DGAFMS Note No.18836/PB (M) No.3/Col/AMC (Spl)/2018/DGAFMS/DG-1(X) dated 03.05.2018.

4. Thereafter, for filling the vacancies pertaining to the year 2019, the applicant was again considered for promotion to the rank of Colonel by Promotion Board (AFMS) No 3: AMC (Spl), held on 05.12.2018, which was her second statutory

chance. On this occasion too, she was not selected, and the result of the said Promotion Board was declassified vide DGAFMS Note No.18836/PB(A)3/Col/AMC(Spl)/2019/DGAFMS/DG-1(X) dated 12.02.2019.

5. Being aggrieved by her non-empanelment to the rank of Colonel (and equivalent) in both her first and second chances, the applicant submitted a statutory complaint dated 05.08.2019. In the said complaint, she urged that she had consistently been employed as a Medical Officer and detailed to perform administrative duties, on account of which she had never earned any Professional Capability Report (PCR). She contended, therefore, that she ought to have been considered in the Administrative Cadre for promotion to the rank of Colonel (and equivalent). Accordingly, she sought redress by way of consideration by a review Promotion Board in the appropriate stream, with protection of her seniority.

6. During the pendency of her statutory complaint, the applicant was once again considered for promotion to the rank of Colonel by Promotion Board (AFMS) No 3: AMC (Spl), held on 01.06.2020, which was her third statutory chance. However, she was again graded as 'NS' (Not Selected), as per

DGAFMS Note No.18836/PB(A)3/Col/AMC(Spl)/2020/DGAFMS/
DG-1(X) dated 06.11.2020.

7. Meanwhile, the statutory complaint dated 05.08.2019 filed by the applicant came to be rejected by the Ministry of Defence vide Note No.15(161)/2021/D (Medical) dated 26.08.2021, holding it to be devoid of merit. The outcome of the statutory complaint was communicated to the applicant vide letters dated 15.09.2021 and 12.10.2021. Being aggrieved by the rejection of her statutory complaint by the competent authority, the applicant has approached this Tribunal by way of the present Original Application.

Submissions on Behalf of the Applicant

8. Learned counsel for the applicant submits that within the Armed Forces Medical Services (AFMS), there exist two distinct streams of doctors, namely, the *General Duty Medical Officers* and the *Specialist Medical Officers*. While the former are tasked with clinical and general duties, the latter discharge specialist responsibilities in hospital and non-hospital appointments. For officers in the latter stream, certain conditions are required to be satisfied before they can be elevated as *Classified Specialists*. One such stipulation is that an officer must serve as a *Graded Specialist* for a minimum period of four years, and must secure an average

of '7' or above in the ACRs without adverse remarks in the last two available ACRs as a *Graded Specialist*. It is further submitted that although an officer under a DV ban may be considered for classification, the further processing of such officer is kept in abeyance until the DV ban is lifted. Apart from these conditions, officers are assessed, inducted into the specialist pool, and thereafter subjected to reassessment and observation by a Senior Advisor.

9. It is the applicant's grievance that although she was initially brought into the specialist pool as a *Graded Specialist* in Pharmacology, she was never observed by any Senior Advisor for the purpose of elevation as a *Classified Specialist*. Consequently, she was never posted against specialist appointments in Pharmacology nor was she placed under the supervision of a Senior Advisor during the course of her service. Effectively, therefore, she was deployed only in the capacity of a Medical Officer, performing duties akin to those discharged by General Duty Medical Officers.

10. It is further urged that the inaction on the part of the respondents resulted in the applicant not being posted as a Specialist at any stage, and consequently, she was deprived of earning *Professional Capability Reports (PCRs)* in her ACRs. Since

than the Specialist stream. On these grounds, the applicant challenges the impugned Promotion Board proceedings insofar as they relate to her non-empanelment.

Submissions on Behalf of the Respondents

13. Per contra, learned counsel for the respondents would draw attention to Para 2 of O/o DGAFMS/DG-1(X) CRD Cell letter No.17267/Policy/Vol II/DGAFMS/DG-1(X) CRD Cell dated 15.01.2013, wherein it has been stipulated that the Professional Capability Report (PCR) in respect of specialist officers holding a postgraduate degree in Pharmacology shall be initiated only when such officers are posted to AFMC, BHDC (to work with ACMS), INM, IAM, HAMRC, AFCME and DRDO units. Further, as per Para 2(e) of O/o DGAFMS/DG-1(X) CRD Cell letter No.17267/ Policy/DGAFMS/ DG-1(X) CRD Cell dated 24.08.2015, initiation of PCR is not envisaged for specialist officers when posted against Medical Officer appointments.

14. Learned counsel for the respondents further submits that, as per the extant Training Rules (as amended from time to time), mere acquisition of a postgraduate degree and/or classification as a graded specialist does not *ipso facto* entitle an officer to be posted as a specialist, the same being regulated by the specialist

authorisation and the requirements of service. It is pointed out that postings as specialist officers are contingent upon the availability of vacancies within the pool sanctioned by the Government of India and are further subject to service exigencies, including requests for compassionate postings and/or spouse co-location grounds.

15. In this factual background, learned counsel highlights that the applicant is married to an AMC officer who superannuated from service on 30.09.2021, and that she has consistently been posted together with her spouse since 2005. Consequently, by virtue of her own preference and conduct, she did not remain available for posting to institutions such as AFMC, BHDC (to work with ACMS) or other identified units where she could have undertaken her specialty and thereby earned a PCR. Thus, the non-initiation of PCR is attributable to the applicant's own conduct.

16. It is next contended that the applicant never raised any grievance in advance regarding either her non-posting to specialist appointments or non-initiation of PCR, nor did she file any contemporaneous representation during her service tenure. The issue was raised only belatedly in her statutory complaint dated 05.08.2019, preferred after her non-empanelment in Promotion Board No 3 to the rank of Colonel (equivalent). It is

further urged that non-initiation of PCR is not a ground to exclude a specialist officer from consideration by Promotion Board No. 3 (AFMS): AMC (Spl).

17. Expatiating further, learned counsel for the respondents submits that the applicant, having been duly classified as a graded specialist and fully conscious of her consideration in the specialist stream, never protested against her inclusion in the said stream during the selection process. Her present grievance, raised belatedly after more than 15 years of service, therefore suffers from gross delay and laches and is not sustainable.

Consideration

18. We have heard learned counsel for both parties and carefully perused the pleadings and documents placed on record, hereinafter we find that the pivotal issue for determination is whether the applicant, having never functioned in specialist appointments nor earned PCRs, could be fairly and lawfully considered in the Specialist stream for promotion to the rank of Colonel.

19. At the outset, we find that it is not in dispute that the applicant was granted ante-date seniority due to her MD qualification and was classified as a Graded Specialist in Pharmacology. However, she was never posted to Armed Forces Medical College (AFMC), Base

Hospital Delhi Cantonment (BHDC), or other authorised institutions where PCR could be earned. Even though she tenanted general Medical Officer/administrative appointments throughout her service, it has been clearly stated in DGAFMS/DG-1D letter dated 17.01.2005 that the name of the applicant was always reflected as Graded Specialist Pharmacologist.

20. We note that the same is further confirmed vide the letters dated 27.02.2008 and 29.02.2012, 11.12.2013 and 15.12.2014, wherein the applicant's name finds mention in the list of graded specialists. These letters have been placed on record from Annexure R-7 to R-9. The fact that her name has been always included in the list of graded specialists has not been contested by the applicant. Similarly, it is also seen from the records that the applicant has been in receipt of Graded Specialist pay w.e.f. 24.09.2004 until now.

21. It is essential to observe that in the case of **Union of India** Vs. **Lt Col P.K. Choudhary** (Civil Appeal No.3208/2015), the Hon'ble Supreme Court vide its judgement dated 15.02.2016 framing and changing promotion policies, including allocation of vacancies and determination of promotion criteria, is primarily a matter of executive policy and within the exclusive discretion of the

State, subject only to constitutional limitations such as Articles 14 and 16. The Court reiterated that while promotion is a normal incidence of service, the right to be considered for promotion is not absolute and can be subject to reasonable changes in policy, provided these are not arbitrary or discriminatory. The Court declined to interfere with the revised Army promotion policy, underscoring that courts should not weigh the merits of the policy or direct how the allocation of posts and cadres ought to be managed, as this remains within the policy-making prerogative of the government unless there is clear evidence of violation of constitutional guarantees of equality or non-discrimination.

22. On the other hand, respondents have pointed out that PCR initiation depends on posting to specified institutions. The applicant's consistent spouse co-location postings did contribute to her non-exposure to specialist appointments.

23. Having given our thoughtful consideration, while we find some merit in the applicant's contention that, in the absence of a Performance Classification Report (PCR), her candidature was never assessed in the Specialist stream and therefore evaluated on parameters which were not strictly relatable to her service profile, but at the same time, it is not disputed by the applicant that she

continuously enjoyed spouse-coordinated postings from 2005 till August 2021 at her own choice in non-specialised appointments, notwithstanding the fact that she was a graded specialist in Pharmacology.

24. Further, we find it pertinent to note that by virtue of holding a Doctorate of Medicine (MD) qualification, the applicant was granted the benefit of three years' ante-date seniority in addition to specialist pay throughout her service career; advantages which she would not have been entitled to had she been treated as an officer of the Administrative stream. The fact that is also not denied that the applicant was fully aware of her consideration as a Specialist stream officer, prior to the conduct of No 3 Promotion Board as per records and yet she did not raise any representation against such consideration in the specialist stream at the appropriate time and only did so after her non-selection to the rank of Colonel.

25. At this point, we find it essential to refer to Para 5(f) of Ministry of Defence, Office of the DGAFMS/DG-1D letter No.3741/DGAFMS/DG-1D dated 12.02.2018 reproduced below :

"5.(f). Officers must be Classified by 18 years of physical service as Captain (excluding ante-date if any) or equivalent in Navy and Air Force. Officers who are not classified within the stipulated period will continue in the specialty as a Graded Specialists till promotion to the rank of Colonel (select) or equivalent after which they will automatically shift to Adm cadre. However, exceptions may be

considered in the interest of the organization on a case-to-case basis at the discretion of the DGAFMS."

which envisages that unclassified officers beyond 18 years of service shall be shifted to the Administrative stream.

26. Thus, the submission that the applicant, having never earned a PCR, effectively remained "unclassified" and therefore ought to have been considered in the Administrative stream, holds limited relevance. Its applicability would arise only post promotion to the substantive rank of Colonel and subject to the availability of a suitable billet against her MD qualification.

27. Moreover, the fact remains that the applicant never objected to the non-initiation of her PCR at any stage of her career, nor did she raise any grievance against her postings and assignments as a graded specialist. On the contrary, she accepted and sought choice postings in establishments other than those prescribed in DGAFMS letter dated 15.01.2013 reproduced below, wherein PCRs are mandatorily initiated for specialization in Pharmacology:

"Tele 23094502

17267/Policy Vol II/DGAFMS DG-1(XVCRD Cell 15 Jan 2013

**OFFICE OF THE DGAFMS/
DG-1(X)/CRD CELL
INITIATION OF PCRS**

1. Refer Para 4.10 cf AO 1/2010 (and Para 57 of NO(Spl) 2/2009 & AFO 16/2009).

2. The PCR of specialists in Anatomy, Physiology, Pharmacology and Forensic Medicine posted to AFMC will continue to be initiated by the respective HoD as hither-to-fore. But outside AFMC, these specialists will submit their PCRs only when posted to the following institutes:-

(a) Posted to SH Delhi Cantt to work in their respective Dept in ACMS

(b) INM

(c) IAM

(d) HAMRC

(e) AFCME

(f) DRDO units like DIPAS

3. If there are two or more officers of the same specialty in one of the above units and one of them is a Senior Advisor, then the Sr Adv will initiate PCRs for other officers.

4. In the event of there being no designated Senior Advisor for the above mentioned specialist officers, the PCRs will be forwarded directly to the respective Senior Consultant for endorsement.

5. This policy will come into force with immediate effect. The specialists who have not submitted their PCRs while initiating ACR 2012 will now forward the same to the respective Senior Consultant quoting this note as an authority.

6. This has the approval of the DGAFMS

**Sd/-xxx
(Ajit Gopinath)
Surg Capt
Dir AFMS CRD**

**DGMS(Army)/DGMS-1A
DGMS Navy/PDMS (P&M)
DGMS (Air)/DMS (HR)"**

28. It is our considered view that if the applicant were to be considered as a candidate of the Administrative stream, it cannot be lost sight of that such a course of action by respondents would have an adverse impact on the comparative merit on those officers who are not before us, who are borne on the original panel of the

Administrative stream, and who face the constraint of limited vacancies in higher ranks. Unlike the applicant, such officers have not enjoyed the twin benefits of ante-date seniority and specialist pay throughout their service. It is not also of significance that the applicant has never, at any stage, opted for being posted to those appointments where she is entitled to a PCR nor has she sought transfer to the Administrative cadre.

29. Additionally, we have also carefully examined the applicant's Confidential Reports (CRs) and the statutory complaint preferred by her. Based on her statutory complaint dated 24.04.2005, the ICR for period 01.06.2002 to 30.11.2002 was redressed by the competent authority vide their letter dated 15.06.2005, from where it emerges that all other CRs are consistent with her performance and reveal no element of perversity, bias or arbitrariness. The non-empanelment of the applicant for promotion was based solely on her overall profile and comparative merit as assessed by Promotion Board (AFMS) No 3, AMC (Special), in the three chances availed by her for the years 2018, 2019 and 2020.

30. Apart from the aforesaid policy provisions, we consider it apposite to refer to Para 6 of MoD letter No.10(1)/2015/D(Medical) dated 05.02.2016 which unequivocally stipulates that only those

specialists who are formally transferred to the Administrative cadre shall be considered as officers of the Administrative stream :

"6. Those officers of Specialist Cadre in the rank of Lt Col (& Equivalent), who are transferred to the Administrative Cadre for any reason and come up for consideration of the Board will be considered in their turn in the Administrative Cadre only, if they have earned at least one ACR in the Administrative Cadre. If such officers do not meet the criteria minimum one ACR in the Administrative Cadre, then they will be considered in the Promotion Board of the Specialist Cadre and, if found fit, will be assigned to the Administrative Cadre on promotion."

Conclusion

31. In the conspectus of facts and circumstances discussed above, it is evident that the applicant was commissioned into the Army Medical Corps as a Post-Graduate (MD) officer and was accordingly classified as a Graded Specialist (Pharmacology) in terms of the extant policy. She continued to receive specialist pay and other consequential benefits of such classification throughout her service career. However, due to her own choice of spouse co-location postings and the corresponding absence of tenures in designated specialist establishments, she did not earn any Professional Capability Report (PCR).

32. The applicant's grievance essentially rests on the contention that, having never functioned in specialist appointments nor earned PCRs, she ought to have been considered in the Administrative stream for promotion to the rank of Colonel. While the Tribunal

finds some force in her argument that the absence of PCRs may have affected her comparative assessment, the fact remains that she herself never objected to her inclusion in the Specialist stream during any of her three considerations by Promotion Board (AFMS) No 3, nor did she seek transfer to the Administrative cadre at any stage.

33. It is also pertinent to note that she availed the benefits of ante-date seniority and specialist pay admissible only to officers of the Specialist stream. Having consciously accepted and derived the advantages of that classification, she cannot now, upon being found 'Not Selected', turn around and claim parity with officers of the Administrative stream, who form a distinct cadre governed by separate norms of assessment and have not enjoyed such benefits.

34. The reliance placed by the applicant on Para 5(f) of Ministry of Defence letter dated 12.02.2018 is misplaced. The said provision merely envisages that officers who remain unclassified upon completion of 18 years of service shall, upon promotion to the rank of Colonel, be assigned to the Administrative stream. In the applicant's case, however, she continued to be borne on the strength of the Specialist cadre as a Graded Specialist and was

never transferred to the Administrative cadre as required under Para 6 of MoD letter No.10(1)/2015/D(Medical) dated 05.02.2016. Consequently, her consideration in the Specialist stream cannot be said to be illegal or ultra vires of policy.

35. We find merit in the submission of the respondents that the applicant's own choices of spouse co-location postings from 2005 to 2021 precluded her from being detailed to institutions such as AFMC, BHDC (working with ACMS), INM, IAM, HAMRC, AFCME or DRDO units where alone PCR initiation is authorised for officers of her specialty. The absence of PCRs, therefore, is not attributable to administrative arbitrariness but to personal convenience and choice exercised by the applicant herself.

36. In view of the foregoing analysis, we find no infirmity, irregularity or illegality in the applicant's consideration for promotion in the Specialist stream by Promotion Board (AFMS) No 3 for the years 2018, 2019 and 2020, nor in the rejection of her statutory complaint by the Ministry of Defence vide order dated 26.08.2021. The impugned orders do not suffer from any procedural or substantive illegality warranting interference by this Tribunal.

37. Accordingly, the OA is **dismissed** being devoid of merit.

38. No order as to costs.

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

Pronounced in open Court on this 16th day of October, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

AKC/-G