

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA**

O. A. No. 55 Of 2011

IC – 44874 N Col MM Mujumdar, now posted
to CE A & N Zone as ACE, and a resident of
T-100, ‘Sapper House’ Birchganj Military Station,
Port Blair, Andaman – 744 103

- **Applicant**

- Versus –

1. UNION OF INDIA, Service through : The Secretary, Ministry of Defence, South Block, New Delhi – 110 011.
2. The Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi -110 011.
3. The Military Secretary, Integrated HQ of MoD (Army), DHQ PO, New Delhi – 110 011.
4. Engineer-in-chief, Integrated HQ of MoD (Army), DHQ PO New Delhi-110 011

.....**Respondents**

For the applicant : Mr. Rajib Mangalik, Advocate,

For the respondents : Mr. B.K.Das, Advocate

Date of order : 09.04.2013

ORDER

Per Lt. Gen. K.P.D.Samanta, A.M :

This is the second round of litigation by the applicant before this Tribunal challenging his non-promotion to the rank of Brigadier. The applicant had earlier

approached this Tribunal by filing OA 16 of 2011 ventilating his grievance against his non-promotion to the rank of Brigadier due to sudden and abrupt change of existing policy on promotion made by the respondents by issuing policy circular dt. 4th January 2011. However, as it was noticed that the applicant had approached the Tribunal without exhausting the departmental statutory remedy available to him, the said OA was disposed of at the admission stage vide order dt. 23.3.11 by directing the respondents to treat the said OA as a representation of the applicant and to dispose of the same by passing a speaking and reasoned order within a specified time frame. Accordingly, a detailed order was passed by the respondents on 27.5.11 rejecting the prayers of the applicant made therein. The applicant has inter alia challenged the said rejection order in this OA while reiterating his earlier prayer for promotion to the rank of Brigadier.

2. The factual matrix giving rise to this OA is as follows :-

3. The applicant, while prosecuting his M.Tech degree in the Bombay University, was commissioned as Technical Graduate entry and was granted Short Service Commission during the training period at Indian Military Academy. On successful completion of training he was granted permanent Commission in the Corps of Engineers on 13.6.1987 with an antedate seniority w.e.f. 13.6.1985. He joined 68 Engineer Regiment in February 1988. After joining the service, he completed and obtained his M.Tech degree in Civil Engineering from Bombay University in First Class with Distinction. Subsequently, during the course of service, he underwent various professional courses including a course in Advance Explosive Ordnance Disposal in UK. He also earned various commendations and medals for his meritorious and dedicated service to the Army.

4. In course of his service, the applicant got successive promotions up to the rank of Colonel and was aspiring for his next promotion as Brigadier for which he was also eligible as per extant rules.

5. The case of the applicant is that as per long standing promotion policy, M.Tech/ME degree was treated as equivalent to Defence Service Staff College (DSSC) course for the purpose of granting weightage for promotion. Persons having such M.Tech degree were not treated differently. However, the Govt. issued a policy circular on 31st Dec 2008 to be effective from 1.1.2009, by which quantification system was introduced whereby 95% marks were allotted for quantified parameters including confidential reports (CR), various Course and Honours and Awards and 5% marks were kept apart for 'Value Judgement' by the Selection Board members for aspects that cannot be quantified. This policy circular was modified to some extent by the impugned policy letter dt. 4.1.11 (annexure-A1) whereby 95% marks were divided into two parts, viz. CR 90% and 5% for Courses and Honours and Awards. So far as Courses are concerned, persons having completed "DSSC/TSOC Course" have been allotted 0.75 marks, while those with M.Tech post graduation degree were allotted a maximum of 0.65 marks in No. 2 Selection Board, which is applicable to the applicant for promotion from Colonel to Brigadier. The marks for DSSC/TSOC are allotted on a sliding scale (maximum is 0.75) based on the performance and grading obtained in those courses; and so far as M.Tech degree is concerned, three different categories were created viz. "M.Tech through competitive selection by MT Dte." (Cat I), "M.Tech other than by competitive Selection" (Cat II) and "M.Tech while on study leave/others" (Cat III) and different marks have been allotted for different mode of entry into the M.Tech course. The applicant fell in Category III as he

had secured the M.Tech degree on his own. In this case the marks allotted are only 0.35 whereas in other two categories the marks allotted are 0.65 and 0.50 respectively. Thus, according to the applicant, he has been deprived of the benefit of his M.Tech degree in two ways, first it was not treated as equivalent to DSSC/TSIOC degree, as hitherto followed, and thereby he could not get any marks for having M.Tech degree and secondly, since he obtained M.Tech degree on his own and not through the service channels, he will get much lesser marks in comparison to others. Thus, according to the applicant, he has been denied his legitimate expectation to be promoted to Brigadier rank due to introduction of this new policy in January 2011, which has adversely affected his career prospects. That apart, because of this lower mark for M.Tech degree, he could not be selected for HC/HDMC course for which separate marking are allotted, which he did not get. It is also alleged by the applicant that his case was not properly considered by the selection committee as his records were not updated by including in his service profile the M.Tech degree as also other courses done by him successfully during the course of his employment. For all these reasons, he has been deprived of his due promotion and his batch mates stole a march over him in the matter of selection for promotion. Apart from above, the applicant is also aggrieved by the number of posts/vacancies made available to the Corps of Engineers for HC/HDMC course, which according to him, should have been much more considering the importance of specialized M. Tech degree. The applicant further substantiated by submitting that he, being a Technical Graduate entry officer with M.Tech degree, was preferred to be placed in 'works' related assignments like CWE in MES and not given command of combat engineer regiments, though his qualification and merit did not come on the way. It had a far reaching effect on the applicant's career; in

that he, being in 'works' related command assignment, was considered only for HDMC, while his peers who commanded combat engineer regiments were considered for both HC and HDMC. That made his scope of competition steeper than his peers in combat engineer stream. Making all such averments, the applicant has prayed for the following reliefs :-

- i) To declare the action of the respondents as unjust, arbitrary and illegal; and
 - ii) To quash and set aside the order dt. 27 May 2011; and
 - iii) To quash and set aside the impugned order dated 4.1.2011 to the extent of award of different marks for the M Tech course than DSSC/TSOC; and/or
 - iv) To quash and set aside the different categories, CAT I, II and III made for the award of marks for qualification of M Tech made on the basis of method of admission for acquiring such qualification, and
 - v) To quash and set aside the marks awarded for the HC/HDMC course as the marks of DSSC has been added for consideration for derailment on these courses; and
 - vi) To direct the respondents to allot equal marks to the M. Tech qualification as that of DSSC/TSOC irrespective of the method of obtaining the admission to such course; and
 - vii) To direct the respondents to consider the applicant afresh for promotion to the rank of Brig by applying he new criteria of M Tech marks along with HC/HDMC weightage; and
 - viii) To grant all consequential benefits including the seniority of the applicant; and
 - ix) To award exemplary costs in favour of the applicant.
6. The respondents have contested the application by filing a reply affidavit to which the applicant has also filed a rejoinder.
7. In the reply affidavit, the respondents have denied all the allegations of the applicant on all material points. It is submitted that prior to adoption of "quantification

system of selection” vide policy letter dated 31st December 2008, the selection was made as per the then policy dt. 6.5.1987. It was based on “value based judgement” system. Entire service profile of officers of a batch was placed before the Selection Board and officers were empanelled and/or not empanelled on the basis of their comparative merits within the batch, as evaluated by the members of the Selection Board. In order to bring in greater objectivity and transparency in the selection process, Quantification Selection System was evolved and adopted. Wide ranging consultations and interactions were carried out within the Army. A detailed study was also carried out by the Study Group. All parameters for selection, which could be quantified, were allotted certain marks. Out of 100, a total of 95 marks have been fixed for all quantified parameters, 05 marks have been kept for value judgement in respect of parameters, which could not be quantified. It is submitted that policy of Quantified Selection System was promulgated vide letter dated 31st Dec 2008 but the said policy does not supersede but modifies the earlier policy dated 6 May 1987. The criteria for consideration for selection remained the same. Method of evaluation has been modified from Value Judgement to Quantified System. Since 1 Jan 2009 every Selection Board for the rank of colonel, Brigadier, Maj Gen and Lt. Gen has been conducted under the Quantified System of Selection. This policy was further reviewed and modified by the policy letter dt. 4.1.2011, which has been impugned by the applicant in this OA.

8. It is not denied that the applicant has secured M Tech degree. It is however, stated that he also appeared in the DSSC examination but could not qualify. It is also submitted that the applicant was also considered for nomination to HC/HDMC course and even for promotion to the rank of Brigadier but, for being low in quantified merit, he was not

found fit for empanelment. It is clarified that DSSC course (Staff college) has always been perceived on a higher pedestal than M.Tech course. Since the applicant has done M. Tech course, he was awarded marks for the same during consideration for HC/equivalent course in 2009 and 2010 and this position is very much known to the applicant. It is stated that selection for HC/HDMC was based on merit and not on any other consideration. The applicant did not come in merit and accordingly, he was not nominated for that course.

9. It is further clarified that the grievance of the applicant regarding difference in marks allocated to two different courses/qualifications i.e. Defence Service Staff college Course (DSSC)/ Technical Staff Officers Course (TSOC) on the one hand and M Tech on the other hand is misconceived. It is stated that marks for the course have been allocated keeping in view utility of the course to the organization. Also as the rank goes higher, weightage for the course reduces.

10. It is submitted that every officer commissioned into the Corps of Engineers is primarily an Engineer. Technical competence to execute construction related works by the combat Engineer/MES/BRO is ensured by making degree in engineering as a mandatory qualification for all officers of the Corps of Engineers. Qualification of M Tech is only preferable for design related staff appointments and specialized projects. DSSC/TSOC courses are based on written competitive examination for officers of all arms and services including officers of Technical Arms i.e. Corps of Engineers, Signals and Electronics and Mechanical Engineering (EME). Employability of DSSC/TSOC course qualified officer is much more varied primarily due to the designated aim of these courses and its consequent curriculum. The M. Tech qualification has limited utility and

relevance within the chosen arm/area of specialization. Their qualification in particular field is utilized for technical assignments, projects and training requirements. Therefore, the marks have been allotted on the basis of primary consideration of utility of the course to the organization as a whole. M Tech has been kept marginally low as compared to DSSC/TSOC courses.

11. So far as nomination for Higher Command (HC) and Higher Defence Management Course (HDMC) is concerned, it is submitted that applicant was approved for promotion to the rank of Colonel during 2004. It is further submitted that the applicant has not been put to any disadvantage because as per policy, vacancies for HC/HDMC are allocated to every Corps on pro rata basis. A common panel of HCC/HDMC nominees as per the total vacancies of individual arms and services is drawn. Thereafter officers are nominated on individual courses irrespective of order of merit. In other words, if an officer who had been CWE/Commanded BRTF is in the common panel, he will be nominated for HDMC. The applicant was also considered for such nomination during 2009 and 2010 by applying the policy uniformly. His qualification of M Tech was given equal weightage vis-à-vis DSSC/TSOC. There were total 14 vacancies. In the order of merit, the applicant was not amongst first 14. Therefore, he could not be nominated. In 2010 also he could not come within the 17 vacancies in order of merit.

12. So far as categorization of M Tech under CAT I, II and II as per policy of 4.1.11 is concerned, it is stated that selection for M Tech is through competitive examination in the Army. Detailed criteria has been laid down under which officers are eligible to apply for competitive examination with minimum 4 years of service, and those who have

qualified in Part B exam with less than 35 years of age can apply. In addition, ground performance as reflected in the ACR is also taken into account. The subjects of M Tech are selected as per requirement of the organization. The M. Tech degrees are obtained through IITs (Indian Institute of Science and Institute of Armament Technology). Whereas the applicant obtained such M. Tech degree on his own from Bombay University after qualifying through GATE examination. The categorization has been made by a review committee of experts in which an officer from technical side was also there. This policy was approved by the Central Govt., and therefore, the applicant cannot challenge this policy as discriminatory and arbitrary.

13. The applicant has filed a rejoinder in which he has annexed certain documents to establish his contentions raised in the main application.

14. We have heard the ld. advocates for both sides at length and have perused various documents placed on record.

15. Mr. Rajib Mangalik, ld. adv. for the applicant has strenuously argued by referring to the impugned policy decision of 4th January 2011 that before introduction of this policy, all along, M.Tech degree and DSSC/TSOC degree were treated at par and equal weightage was given to the candidates for promotion. However, due to abrupt change of the policy at the threshold of promotion of the applicant, his chance of promotion has been diminished inasmuch as his M.Tech degree was considered in a lower pedestal whereas those having DSSC/TSOC course were given higher weightage. Therefore, such abrupt change of policy by giving it retrospective effect so far as the batch mates of the applicant are concerned is arbitrary and illegal. It is contended that since the applicant had to his credit the M.Tech degree and since it was all along treated at par with

DSSC/TSOC course for the purpose promotion, the applicant was sure that his case will also be considered and therefore, he did not take much initiative to pursue the DSSC/TSOC course seriously. Mr. Mangalik has specifically submitted that this new policy was not at all approved by the Govt. of India and therefore, it could not have been applied by the respondents for promotion. In support of his contention, Mr. Mangalik has referred to a decision of the Hon'ble Delhi High Court dated 19.11.12 in the case of **Darshan Lal Chowdhary –vs- UOI** (WP © 5182 of 2012 etc. etc.). In that case, the policy decision of 4th January 2011 on the subject of “Review of Quantified System for Selection Boards” was scrutinized and it was observed that the said policy was not approved by the Central Govt.

16. Mr. Mangalik has further contended that the policy of 4th January 2011 is arbitrary and discriminatory. By referring to para 8 of the impugned policy by which weightage for M.Tech degree assigned for various selection boards has been prescribed, it is contended that three different categories have been created viz. “ 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) and “M Tech while on Study Leave/Others” CAT III and different marking have been given for securing M.Tech degree through different method of entry into the Institute/University. Since the applicant obtained his M.Tech degree on his own, he falls in Cat III and thus awarded lowest mark of only 0.35. His contention is that when the degree is the same and the value of the degree is also the same though awarded by different UGC approved universities or by IITs, different marks cannot be allotted. All should get equal mark for obtaining M.Tech degree and there should not be any discrimination on the basis of mode of entry into the

institute/university. According to him, the in-service candidates are selected for MTech through a competitive examination held amongst them, which is far less competitive than those who secured such M.Tech degree from UGC recognized universities through a much stiffer competition, being selected through GATE which is no less important than the competition held amongst in-service candidates. Mr. Mangalik has placed reliance on the decision of Hon'ble Supreme Court in the case of **T.Shyam Bhat –vs- UOI**, 1994(Sup) SCC 340 to contend that the policy of Jan 2011 being arbitrary is liable to be set aside.

17. Mr. Mangalik has also contended that the applicant has been deprived of his fair chance of promotion as his bio data was not updated by the respondents. His further contention is that because of non-updating of his qualifications and various courses done by him, his nomination to HC/HDMC course has also not been possible and thus, the applicant has again been deprived of his promotional chance. Mr. Mangalik urged that the prayers of the applicant made in this application should be allowed.

18. The contentions as advanced by the ld. adv. for the applicant are strongly resisted by Mr. B.K.Das, ld. adv. for the respondents. He, at the outset, raised two preliminary objections stating that the application is not maintainable as the applicant has approached this Tribunal without filing any statutory complaint which is mandatory as per Army Act. On that score, the application is premature and cannot be entertained. His second objection is that the applicant has mainly challenged the policy decision framed by the Govt. and as such, this Tribunal has no jurisdiction to entertain this application in view of Sec. 14 of the AFT Act. In support of this, he has referred to a decision of Chennai Bench

of AFT in OA 24 of 2010 decide on 21.1.2011 (**Major General EJ Kochekkann –vs- UOI & Ors**) (unreported).

19. On merit of the case, it is contended by the Id. adv. for the respondents that the case of the applicant was duly considered but he could not be selected on merit vis-à-vis his other batch mates and, therefore, he cannot challenge his non-selection. Mr. Das has further contended that it has been held in a number of decisions by the Hon'ble Apex Court that policy decision is the prerogative of the Govt. and court or tribunals should not interfere with the same. He has further submitted that the policy decision of 31st December 2008 which is modified slightly by the impugned policy letter dt. 4th January 2011, was already considered by the Principal Bench of the Armed Forces Tribunal in **Col. B.B.Singh –vs- UOI & Ors** (OA 87 of 2010) and the said policy was upheld by its judgement dt. 30.5.2011. Similarly, in OA 374 of 2010 (**Lt. Col. Shobhit Rai –vs- UOI & Ors**), the same policy was also considered and it was held, vide its judgement dt. 17.10.11, that the policy decision of 31.12.2008 was neither arbitrary nor discriminatory. In view of such judicial decisions, there is nothing to be adjudicated in this case as the applicant has mainly challenged the said policy decision and hence the application is liable to be dismissed.

20. We have given thoughtful consideration to the rival contentions and have meticulously gone through various documents placed on record. We have also gone through the original selection board proceedings as produced by the MS Branch (respondent No. 3) with the help and assistance of Lt. Col. Manish Kumar of that Branch.

21. Before we proceed to deal with the matter on merit, it will be appropriate to consider the preliminary objections raised by Mr. B.K.Das, the Id. advocate for the respondents.

22. The first objection of Mr. Das is that the application is not maintainable as the applicant has approached this Tribunal without exhausting departmental statutory remedy available to him. We are, however, not convinced by this contention of Mr. Das. It may be recalled that the applicant had earlier filed an original application before this Tribunal being OA 16 of 2011 against his non-promotion. That OA was disposed of at the admission stage on 23.3.2011 by directing the respondents to consider the same as a representation of the applicant and dispose it by a speaking order. Accordingly, the respondents disposed of the same by way of rejecting the prayer of the applicant by order dated. 27.5.2011 (annexure-A2). Therefore, it is not correct that the applicant did not approach the authorities for redressal of his grievance. It may not be strictly in terms of rules by way of filing a statutory complaint but when the authorities have already considered his grievance in accordance with direction of the Tribunal, filing of a formal statutory complaint will be an empty formality because the authorities are supposed to give the same reply by rejecting his complaint. In that view of the matter, we are of the opinion that the application cannot be rejected on this technical ground as raised by the Id. counsel for the respondents.

23. The second objection of the Id. adv. for the respondents is that this Tribunal is not competent to adjudicate the validity and legality of policy matter in view of Sec. 14 of the AFT Act whereby the power of the Hon'ble High Court under Art. 226 as also of the Hon'ble Supreme Court have been retained. Therefore, if the applicant wants to challenge

the policy decision, this Tribunal is not the proper forum. In support of his contention, Mr. Das has relied on an unreported decision of the Chennai Bench of the Armed Forces Tribunal in the case of **Maj. Gen. EJ Kocheikkan** decided on 21.1.2001. In that case it was held at para 3 as under:-

“ 3. Under Section 14 of the Armed Forces Tribunal Act, this Tribunal has no jurisdiction to decide whether the Government policy is valid or not. Section 14 of the Armed Forces Tribunal Act specifically excludes the exercise of powers under Articles 226 and 227 of the Constitution of India. The remedy open to the applicant is only to challenge those impugned policies referred to in his application before the appropriate forum and not before the Tribunal. “

24. On the other hand, Mr. Mangalik, ld. adv, for the applicant has placed reliance on the Constitution Bench decision in **L. Chandra Kumar –vs- UOI & Ors**, AIR 1997 SC 1125 wherein the provisions of Administrative Tribunals Act, 1985, which is more or less identical with AFT Act, 2007, were considered and it was held that the Tribunals are competent to hear matters where the *vires* of statutory provisions are questioned. It was also held that the Tribunals will also have the power to test the *vires* of subordinate legislations and rules except the *vires* of the parent statute which created the Tribunal. It is, therefore, submitted by Mr. Mangalik that this Tribunal is fully competent to adjudicate on the question of validity and legality of the policy decision dt. 4.1.2011 as challenged by the applicant.

25. We have gone through the decision of the Chennai Bench (supra) and it appears that it was passed ex parte against the applicant and there was no elaborate argument on this issue. We, however, find that in Sec. 14(5) of the AFT Act, it has been clearly provided that “**the Tribunal shall decide both questions of law and facts that may be raised before it.**” Therefore, in our considered view, the Tribunal is competent to hear

matters where *vires* of policy decision has been raised. Accordingly, we reject the second objection of the ld. adv. for the respondents.

26. Now we come to the main issues, as raised by the applicant in this OA.

27. The applicant has inter alia challenged the impugned policy circular dated 4.1.2011 to the extent the qualification of M.Tech has been made inferior to DSSC/TSOC course and allotment of different marks for possessing same M.Tech. Degree etc.

28. It is seen that through the policy letter dt. 4.1.20-11 (annexure-A1), certain guidelines for conduct of selection boards by quantification system have been prescribed. It is, in fact, continuation of the earlier policy letter dt. 31st December, 2008, that was made effective from 1.1.2009.

29. Mr. Mangalik has submitted before us that the Hon'ble Delhi High Court in WP© 5182 of 2012 (**Darshan Lal Chowdhary –vs- UOI & Ors etc.**) (Unreported) has held that the policy decision of December 31, 2008 was not approved by the Ministry of Defence and therefore, it cannot be acted upon. It may be noticed that in para 27 of the said judgement it has been observed that the “Ministry of Defence further directed the Army Headquarters that the revised Quantification Policy should be implemented with effect from January 04, 2011.” The revised policy was notified on 4.1.2011 indicating that it has been approved by the Govt. though the fact remained that the Ministry did not approve the same. Accordingly, the selection board proceedings that were held in accordance with the revised quantification policy were set at naught by the Hon'ble Delhi High Court by the said judgement. However, it is brought to our notice that the said decision of the Hon'ble Delhi High Court has been stayed by the Hon'ble Apex Court in

SLP No. 5725 of 2013 by order dt. 18.2.2013. Therefore, we need to consider the matter independently.

30. Mr. Das, Id. adv. for the respondents has placed reliance on some decisions of the Apex Court to buttress his contentions that in the matter of policy decision, courts or tribunals cannot interfere and it is prerogative of the Govt. to frame such policy decision keeping in view the best interest of the organization. He has further contended that the selection board has the right to evolve its own mode of evolution on merit and selection and the court cannot substitute its own assessment in that regard. The decisions cited by Mr. Das are :

- i) **Hardev Singh –vs- UOI (2011) 10 SCC 121**
- ii) **Secy.(Health) Deptt. etc. –vs- Dr. Anita Puri ... (1996) 6 SCC 282**
- iii) **K. Jagadeesan –vs- UOI.... (1990) 2 SCC 228**

31. Per contra, Mr. Mangalik has placed reliance on the decision of the Apex Court in the case of **T.Sham Bhat –vs- UOI & Ors**, 1994(Supp) SCC 340 to contend that if the policy decision is arbitrary and discriminatory, courts can certainly interfere and quash the same.

32. We need not go into these rival contentions at length since this is the settled position of law and there cannot be any quarrel with the proposition of law that framing of policy is the prerogative of the Govt. and the courts and tribunals should be slow in interfering with such policy decision unless it is found to be discriminatory and arbitrary violating the principles of equality as enjoined in the Constitution of India.

33. The applicant has, of course, raised the allegation of discrimination and arbitrariness in the impugned policy decision. The applicant has laid much stress on the allegation of discrimination which has caused great injustice and prejudice to him, thus,

leading to his supersession in the matter of promotion to the rank of Brigadier. It is contended that -

34. As per old policy passing of Staff College (DSSC) course and obtaining post graduation degree, which is M.Tech for an Engineer officer, were considered equivalent and both groups were treated equally in the matter of award of marks/weightage for promotion. This policy was later changed in 2008, where a Staff College graduate got fractionally higher marks/weightage when compared to one who hold a MTech degree when considered for promotion or competitive courses like Higher Command (HC). By then the applicant had no opportunity left to compete or clear his staff college. The applicant has further submitted that he did not make much effort to prepare and clear his staff college entrance examination but would have done so had he known that clearance of such an examination would have greater promotional value than doing M.Tech. In other words, the applicant has challenged the provision made in the revised policy to the extent the equality between staff college course and M.Tech degree course was abolished and the officers who possess M.Tech. degree course have been placed in disadvantageous position.

35. Mr. B.K.Das, Id. adv. for the respondents has placed reliance on the decision of the Principal Bench of the AFT in the case of **Col. B.B.Singh –vs- UOI** (OA 87 of 2010) decided on 30.5.2011 (unreported) where the policy decision of 31st December 2008 has been upheld. Similarly, in another decision in OA 374 of 2010 (**Lt. Col. Shobhit Rai – vs- UOI**) the Principal Bench of AFT by its order dt. 17.10.11 has also considered the same issue which has been raised by the applicant in the present case. In that view of the

mater, it is contended by Mr. Das that there is nothing more to be adjudicated on this issue by this Tribunal.

36. We have gone through the decision of the Principal Bench in Col. BB Singh's case (supra) and we find that identical issue was raised in that case and the Tribunal observed as under :-

“...Learned counsel for the petitioner submitted that during the time petitioner done M.Tech ..., the M.Tech and Staff Courses were equated. That may be so, but the fact remains that in the policy which has been promulgated on 31st December, 2008, it has been clearly mandated that the M.Tech and study courses stand at different footing. Just because at one point of time, M.Tech qualification and study course carried same weightage that does not mean that respondents are bound to carry same policy. It is with the passage of time new developments in technology have come and respondents are free to change the policy looking into the exigency of the situation. It is also pointed out that staff college is held by all India competition amongst the armed personnel. Learned counsel for petitioner pointed out that the M.Tech is also done at the national level. That may be so as a person who has passed staff college is better equipped and more beneficial for the services rather than a person having technical qualification. Therefore, it is for the respondents to decide that what policy they have to follow. It is not for the petitioner to say that just because at one point of time he had this M.Tech qualification which was equated to study (staff) college, therefore, the policy which has been subsequently formulated has been given more importance to the staff college. It is a matter of policy and the new changes which have already been undertaken in 2011 is also on the basis of the recommendations of the Selection Committee which has examined the pros and cons. Therefore, it is matter of policy decision and not just because at one point of time both were equated and given the same weightage and subsequently it is not then that cannot render the policy arbitrary. It is a matter of growing knowledge and policies are always subject to change from time to time looking into the exigency of service.”

“It is true that rules have to be framed by the State looking into the exigency of services. In the present case at one point of time one set of rules prevailed and subsequently another set of rules were promulgated for promotion from the post of Colonel to Brigadier Signals. Therefore, this is the prerogative of the State and it cannot be declared to be ultra *vires* or invalid just because it does not suit particular petitioner. It may be that prior to the framing of the rules of 31st December 2008 the qualification of M.Tech and staff college were treated equally but subsequently it was realized that a person who has studied in staff college has

greater employability and, therefore, more importance has been given to him. Subsequently in 2011 they have made it more transparent on the recommendations of the Selection Committee and quantified the marks as mentioned above. Therefore, it is a matter of policy decision for the Government and we do not find that the policy which has been laid down in circular dated 31st December 2008 is in no way discriminatory so as to be violative Articles 14 and 16 of the Constitution. “

Similarly, in Lt. Col. Shobhit Rai’ case (supra), it has been observed as under :

“According to him, M.Tech degree was not recognized in the 2008 policy and if due weightage was given to it, he may have been empanelled. He also pointed out that because unequals had been treated as equals he had lost out. He has also submitted that he passed the Senior command course and he was under the impression that perhaps that will benefit him in his consideration for promotion. It is true that one prepares his service profile keeping in view exigencies of service. Sometimes changes may not be according to the expectation of the person and his hopes may not fructify. This is what has happened in the present case. He did his M.Tech with the hope that this technical/academic excellence may give him an advantage. But to his misfortune, that was not given due weightage in the 2008 policy. The same had been given due weightage only in the policy was brought about on 4.1.2001. Unfortunately, in July 2011, he could not make it. Therefore, the contention, which the petitioner has raised, is not justified. Courts have powers to strike down the policy and that too only in cases where it violates Article 14 of the Constitution of India; if it is discriminatory or arbitrary. Since criteria keeps changing from one policy to another, justice because the criteria in the 1987 policy was not included in the new policy does not mean that policy is arbitrary or discriminatory....”

37. In view of the above decisions of the Principal Bench on the issue raised by the applicant herein, we do not consider it necessary to further dwell on this point any longer and we adopt the view of the Principal Bench in this regard and hold that it is always open to the Govt. to amend policy decision in regard to promotion and recruitment in the best interest of the organization. No one can claim that since once M.Tech degree was considered equivalent to Staff College, it has be treated as such for all time to come.

38. Of course, it is argued that such amended policy should be given prospective effect. In other words, it is contended that the applicant obtained M.Tech degree at the

time or immediately after his entry into the service in 1988 when it was treated as equivalent to Staff College. Therefore, the applicant did not pursue the staff college entrance examination seriously. But suddenly when this equilibrium was disturbed in 2008, there was no time for the applicant to do the staff college course. Thus, the new policy has a retrospective effect on the applicant or his batch mates.

39. We have considered this contention of the applicant with reference to the original documents that were placed before us by the MS branch (respondent No. 3). Lt. Col. Manish Kumar from the M.S. Branch explained the entries made in these documents. Having perused these documents in detail we have found that the applicant had not cleared the staff college entrance examination despite taking two chances. It was purely on account of his failure to clear such an entrance examination and not because of lack of intent to clear such examination that he did not pass the staff college and naturally, therefore, he could not be eligible for the marks/weightage that are given to those officers who are staff college qualified while considering for promotion. We, therefore, do not find much merit in this contention of the applicant and accordingly reject such contention.

40. The applicant has also contended that he could not be selected for HC/HDMC courses because of low marks allotted for M.Tech degree. We have also analyzed the original records in detail and considered the merit list for each occasion (2009 and 2010), the applicant was considered for selection for the ibid courses. We found that on every occasion he was not nominated to those two career courses purely on account of merit despite considering all updated inputs with regard to the applicant's career. In this regard we have found no point of discrimination by the respondents.

41. The next contention of the applicant is that in the new policy of January 2011 while M.Tech degree holder was awarded certain weightage in terms of marks when being considered for promotion, there was categorization made amongst the post graduates which was unfair to the applicant. The applicant substantiated this aspect by making a submission that an officer who was selected through a less competitive group from within the Army and sent to do M.Tech got more points than the one who had obtained this post graduation degree of M.Tech through a stiffer competition in a larger group through his own effort before joining the army. To further emphasis on this issue, the applicant submitted that he was one of those who joined the Army Engineers after having secured entrance in M.Tech before joining the army. He further added that the competition which he had to face was far more than those officers who were selected from within the army to do M.Tech. Therefore, such discrimination in award of points or weightage between the two categories stands to his disadvantage, which is not only discriminatory but has been detrimental to bringing him up in merit for promotion.

42. For better understanding of the grievance of the applicant in this regard, it will be useful to extract below para 8 of the policy circular dt. 4th January 2011, which is as under:-

“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-1)	M.Tech other than by Competitive Selection by MT Dte (Inc. advance Course) (Cate-II)	M.Tech while on Study Leave/Others (Cate 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

“

43. The applicant falls in category III as he has done M.Tech course on his own. The marks allotted for this category is 0.35 in No. 2 SB whereas marks allotted for doing the same course through competitive selection by MT Dte is 0.65 (Cat- I). In case of other than competitive selection the marks allotted is 0.50. Thus, it is evident that for doing the same M.Tech degree marks are allotted differently on the basis of mode of entry into the course. Criteria of performance and level of difficulty in completion to get in a MTech course are not the determining factors to allot such differential marks for the same degree of MTech. Direct entry officers stand a distinct advantage over those who joined through Technical Graduate entry.

44. Thus, it is clear that the changed rules prescribe giving slightly higher marks with some advantage to those who did M.Tech course while in service in comparison to those who did the same course by taking study leave or on their own. Such different grading or allotment of different marks for doing the same post graduate degree of M.Tech on account different mode of entry into the course does not appear to be a sound principle and no valid reason has been assigned by the MS Branch in the counter affidavit or during oral submissions. This rule position would place the Technical Graduate entry officers on a recurring disadvantage in all select rank promotions. Type of entry and not merit which has taken precedence, though promotion in the army is purely on merit basis where comparative merit goes down upto 2nd or 3rd decimal point and makes substantial difference in comparative merit. This aspect of the rule i.e. para 8 of the policy letter dt.

4.1.2011 (annexure-A1), as quoted above, should be reconsidered by the appropriate authorities to bring in judicious and equitable distribution of marks to all M.Tech degree holders irrespective of their mode of entry into the course, while considering officers for promotion with same qualification.

45. We have also perused the promotion board proceedings of No. 2 SB (Col. to Brigadier) in respect of 1985 batch of Engineers. We found that the position of the applicant was comparatively low in merit in quantified system of assessment. We do not find any inadequacy or improper award of any of the points/marks including that of value judgement, which appears to be unjust or biased against the applicant. We are of the view that the promotion made was appropriately done and the applicant missed his promotion on account of comparative low merit although his performance in the career was objectively represented in the said promotion board.

46. We have already observed after perusal of the original documents that the applicant was to an extent in a numerically disadvantageous position for receiving fraction of lesser marks for doing M.Tech course prior to or immediately after joining the army on his own when compared to those who earned little more points than him for doing the same M.Tech degree while in service. This point is well documented within the rules and quantified system of promotion which is followed in the Army, and therefore, is not in contravention of the extant policy or rules. However, even if, hypothetically the applicant was to receive the same points as others who did M.Tech while in service, such promotional ingredients in points would not still bring him to a place by which his merit in promotion would go up to a level which is anywhere equal to the last officer of his batch who was promoted. Therefore, even if notionally such points were to be awarded in

favour of the applicant, although not in accordance with rules, he would still not make the grade on merit to get promotion in his batch as is evident from the records that have been examined by us.

47. Thus, considering the matter from all angles, we do not find that the applicant has been able to establish any valid reason requiring our intervention. We are of the considered opinion that there is no merit in this case, which is liable to be dismissed. We order accordingly. There will be no order as to costs.

48. Let the original records be returned to the MS Branch on proper receipt.

49. Let a plain copy of this order duly countersigned by the Tribunal Officer be furnished to both sides after observance of prescribed procedure.

(LT. GEN. K.P.D.SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE R.N.RAY)
JUDICIAL MEMBER