

**SUPREME COURT OF INDIA**

Col.IVS Gahlot

Vs.

Union of India

C.A.No.8047 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

06.08.2018

**JUDGMENT**

**Ashok Bhushan,J.,**

1. This appeal has been filed questioning the judgment dated 20.07.2015 of Armed Forces Tribunal, Principal Bench, Delhi by which O.A. No. 428/2013 filed by the appellant has been dismissed. The appellant was commissioned in the army in Armed Forces Medical Services (AFMC) on 06.04.1984, received his promotion to the rank of Colonel with effect from 01.01.2007. On 15.11.2011 the appellant was considered for promotion to the rank of Brigadier by Promotion Board (Medical) but could not be selected for promotion. Appellant had filed a statutory complaint against the non-promotion by the Board. The competent authority duly examined the statutory complaint and by decision dated 08.04.2013 granted partial redress by expunction of the entire assessment of the SRO in CR 2010. On 19. 06. 2013, appellant was considered for promotion by Review Promotion Board (Medical) but could not be selected. Being aggrieved by non-promotion, appellant filed O.A.No.428/2013 . The O.A. has been dismissed by the Armed Forces Tribunal vide judgment dated 20.07.2015 aggrieved by said judgment this appeal has been filed.

2. The appellant's case before the Tribunal was that in his consideration for promotion he was denied marks for Ph.D. degree in Anthropology (Science) awarded to him by Berhampur University in 1998. He further questions non granting of any mark for his Post Graduate training qualification obtained from G.S.V.M. Medical College, Kanpur and further no marks were awarded on his Master degree in Personnel Management in 2005 obtained from Pune University. The Tribunal although accepted the claim of grant of mark for Master degree in Personnel Management but rejected the claim of the appellant for grant of any mark for Ph.D. degree as well as Post Graduate training in Pediatrics.

3. Shri Yashank P. Adhyaru, learned senior advocate appearing for the appellant contends that the Ph.D. degree awarded by Berhampur University, which university was competent to award Ph.D. degree, was fully entitled to be awarded marks by Promotion Board (Medical). He submits that the grant of Ph.D. degree was not dependent on any recognition by Medical

Council of India. Relying on a letter dated 15.12.2017 addressed by Government of India to the Director (Medical), Central Organisation ECHS, Delhi Cantt., where it has been clarified that Medical Council of India has informed that recognition of Ph.D. degree does not come under the purview of Medical Council of India, it is submitted that the denial of marks to the appellant was illegal. He further submits that Post Graduate training obtained from a recognised medical institution by the appellant was also entitled to be awarded marks. He further submits that the promotion policy which was earlier issued in the year 2004 could not have been reviewed before five years as was contemplated by policy dated 14.01.2004. The amendment of policy by subsequent policy dated 22.05.2006 was not valid. He submits that had the appellant been granted the marks by Promotion Board (Medical) on the aforesaid two counts he would have surely been promoted to the rank of Brigadier. Non promotion had adversely affected him which needs to be redressed by this Court.

4. Learned counsel appearing for Union of India refuting the above submission contends that Ph.D. degree obtained by appellant by Berhampur University is not recognised by Medical Council of India as per Medical Council of India Act, 1956, hence, no error has been committed by the Promotion Board (Medical) in not rewarding any marks to the appellant. It is further contended that the Post Graduate Training which is relied by the appellant is also not training of any integrated course obtained by the appellant after taking study leave, nor any certificate of passing the training course has been filed by the appellant to make him eligible to award of any mark on the Post Graduate training. He submits that promotion policy can be changed from time to time and there was no error in modification of the promotion policy in the year 2006.

5. We have considered the submissions of the learned counsel for the parties and perused the records.

6. The right to be considered for promotion in accordance with the rules for promotion is right of every officer and employee. In the present case there is no denial that appellant was considered by Promotion Board (Medical) on 15.11.2011 and thereafter again by Review Promotion Board (Medical) on 19.06.2013. Appellant's case is that had he been granted one mark each for the Ph.D. degree and Post Graduation training course, he could have been definitely in the list of promoted officer and denial of marks on aforesaid two counts was illegal. The Tribunal committed error in not considering the above claim in accordance with law.

7. We need to first consider the promotion policy under which the appellant's claim was considered. The consideration of each officer has to be in accordance with the promotion policy as in existence and applicable to Armed Forces Officers (Medical). The promotion policy dated 14.01.2004 is brought on record as Annexure A-5.

8. In the present case, we are concerned with paragraphs 11, 12 and last line of paragraph 18. Paragraph 11 deals with allocation of marks on different qualifications. Two year full time training program is mentioned as item No.(d) in table of the qualifications. It is useful to extract the aforesaid item No.(d) of the aforesaid table:

"Qualifications: Officers in possession of the following academic will be awarded marks, as mentioned against each:-

<i>1</i>	<i>Qualification</i>	<i>Marks</i>
<i>(d)</i>	<i>Two-year full time training program during study leave in India/Abroad in a medical field from an institution/university recognized by a statutory body</i>	<i>2</i>

9. Paragraph 12 refers to various academic achievements which includes Doctor of Philosophy(Ph.D.) which is to the following effect:

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

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

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

10. The above policy was issued on 14.01.2004 and in paragraph 18 following was stipulated "the policy will be reviewed after five years".

11. The above policy was amended by Order dated 22.05.2006 heading of which itself mentioned "amendment to promotion policy dated 14th January 2004:AFMS Officers."

12. Amendments were made in paragraph 11 and paragraph 12 which are relevant in the present case. For existing paragraph 11, new paragraph 11 was substituted which provided in clause (d) that for "two-year full time structured training program during study leave in India/Abroad in a medical field from an institution/university recognized by a statutory body, one mark shall be allocated. For existing paragraph 12, new paragraph was substituted which is to the following effect:

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

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

13. At the outset, we may consider the submission raised by the appellant that since the policy dated 14.01.2004 contemplated that the policy will be reviewed after five years, there was no occasion for the review of the policy after two years only. There cannot be any dispute that it is the authority of the employer to frame promotion policy for promotion of its officers and employees. When an employer has power to frame policy it has inherent power to change the policy from time to time. This Court in *Hardev Singh Vs. Union of India and another*<sup>1</sup>, laid down that it is always open to an employer to change its policy in relation to giving promotion to the employees. The above case was also a case of promotion of officers of Indian Army. A new promotion policy dated 31.12.2008 with regard to promotion was issued changing the criteria for promotion where in place of value judgment weightage were to be given on different aspects, repelling the challenge to new policy following was laid down in paragraphs 25 & 26, which is to the following effect:

"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 *Virender S.Hooda Vs. State of Haryana*<sup>2</sup>, where this Court had held in para 4 of the judgment that:

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."

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

14. The stipulation in the policy dated 14.01.2004 that policy will be reviewed after five years was in no manner a fetter on right of the Government to review the policy as and when occasion arose. There was no statutory restriction on the Government from reviewing the policy even before five years. We fully approve the view of the Tribunal that the policy dated 14.01.2004 could have rightly been amended in the year 2006.

15. Furthermore, the earlier policy was issued on 14.01.2004 and in accordance with the appellant, it could have been reviewed only after five years. Admittedly the appellant came

for consideration by the Promotion Board on 15.11.2011 i.e. much after five years from the issue of the policy on 14.01.2004. At the time when appellant was considered the amendment dated 22.05.2006 was in force. An officer has to be considered in accordance with the policy as prevalent at the time of his consideration. Hence, we do not find any error in consideration of the claim of the appellant as per the amended policy dated 22.05.2006.

16. Now, we come to the claim of the appellant on the basis of Ph.D. degree obtained from Berhampur University in Anthropology (Science). Berhampur University like any other university as per University Grants Commission Act, 1956 was fully competent to institute any degree including Ph.D. degree. In the policy which was issued on 14.01.2004, on any Ph.D. degree a candidate was eligible for grant of three marks. Amendment made by Order dated 22.05.2006 the eligibility has been restricted to "Doctor of Philosophy(Ph.D.) recognised by Medical Council of India". No exception can be taken to the amendment by which only those Ph.D. degrees are eligible for one mark which are recognised by Medical Council of India. There is a rational for restricting the award of marks only on those Ph.D. degrees which are recognised by the Medical Council of India. Medical Council of India recognises medical degrees awarded by different universities and institutions under the Medical Council of India Act, 1956. The Promotion Policy dated 22.05.2006 is for promoting officers belonging to Armed Forces Medical Services (AFMS), hence restricting the award of marks to those Ph.D., which have been recognised by Medical Council of India has object and purpose.

17. Learned counsel for the appellant had submitted that the Medical Council of India does not recognise any Ph.D. degree for which he has placed reliance on the letter dated 15.12.2017 addressed by the Government of India, Ministry of Health & Family Welfare to the Director (Medical), Central Organisation ECHS, Delhi Cantt. This Court on 06.04.2018 directed the respondent to obtain instructions with regard to the aforesaid letter dated 15.12.2017. By letter dated 15.12.2017 addressed to the appellant, a copy of reply received from the Medical Council of India dated 07.12.2017 was forwarded. A Joint Secretary to Medical Council of India issued the letter dated 07.12.2017 which is to the following effect:

"The Secretary to the Govt. of India,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi

Kind Atten :-Sh.D.V.K. Rao, Under Secretary(ME-I)  
Subject: Recognition of Ph.D. Degree -request of Col. Indra Veer Singh Gahlot —  
Regarding

Sir,

Please refer to your letter No.Z.20015/15/2 015-ME-I(FST14 34 7 2 ) dated 01.11.2017, on the subject noted above.

In this regard, this is to inform you that the matter with regard to recognition of Ph.D. Degree does not come under the purview of Medical Council of India.

Yours faithfully

Sd/-x-x-x-x-x

(Dr. Rajendra Wabale) Joint Secretary"

18. Learned counsel for the respondent has referred to Indian Medical Council Act, 1956. Section 11 of the Medical Council of India Act pertains to recognition of medical qualifications granted by universities or medical institutions in India. Section 11 is as follows:

"11. Recognition of medical qualifications granted by Universities or medical institutions in India.-

(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

19. Section 11 of the Act refers to the First Schedule. The heading of the First Schedule is "recognized medical qualifications granted by universities or medical institutions in India". The First Schedule contains list of various universities or medical institutions of India which contains a column "recognised medical qualifications". Berhampur University is also one of the universities mentioned in the Schedule. The perusal of Schedule A indicates that although various medical degrees have been mentioned in the column "recognised medical qualifications" but qualification of Ph.D. in Anthropology(Science) is not included in the recognised medical qualifications for Berhampur University.

20. Learned counsel for the appellant referring to the letter dated 15.12.2017 read with letter dated 07.12.2017 of the Medical Council of India contends that since Medical Council of India does not recognise Ph.D. Degree, Ph.D. Degree awarded by Berhampur University could not have been ignored. Section 11 of the Medical Council of India Act, 1956, as noticed above, provides for recognition of medical qualifications granted by universities or medical institutions in India in First Schedule to the Act contains list of universities and medical institutions. Berhampur University is also one of the universities, which finds place in the First Schedule. Various medical courses of Berhampur University find place in the

First Schedule but there is no mention of any Ph.D. degree. The list of recognised medical courses of Berhampur University is as follows:-

<b>University Medical Institution</b>	<b>or</b>	<b>Recognised Medical Qualification</b>	<b>Abbreviation for Registration</b>
Berhampur University		Bachelor of Medicine and Bachelor of Surgery	M.B.B.S., Berhampur
		Diploma in Orthopaedics	D.Orth., Berhampur

		Diploma in Child Health	D.C.H., Berhampur
		Doctor of Medicine (Physiology)	M.D. (Physiology)
		Master of Surgery (Orthopaedics)	M.S. (Orthopaedics)
		Doctor of Medicine (Paediatrics)	M.D. (Paediatrics)
		Master of Surgery (General Surgery)	M.S. (General Surgery)
		Doctor of Medicine (General Medicine)	M.D. (General Medicine)
		Doctor of Medicine (Pharmacology)	M.D. (Pharmacology)
		Doctor of Medicine (Pathology)	M.D. (Pathology)
		Master of Surgery (Anatomy)	M.S. (Anatomy)
		Master of Surgery (E.N.T.)	M.S. (E.N.T.)
		Doctor of Medicine (Forensic Medicine and Toxicology)	M.D. (Forensic, Medicine and Toxicology)

	Doctor of Medicine (Social and Preventive Medicine)	M.D. (S.P.M.) (M.K.C.G.) Medical College, Berhampur granted from 1-12-1974).
	Doctor of Medicine (Anaesthesiology)	M.D. (Anaes.)
	Doctor of Medicine (Obstetrics and Gynaecology)	M.D. (Obst. And Gynae) (This shall be a recognised qualification when granted in or after 1975)
	Doctor of Medicine (Microbiology)	M.D. (Microbiology) (This shall be a recognized medical qualification when granted by Berhampur University in respect of the students being trained at M.K.C.G. Medical College, Berhampur, Orissa on or after 1990.)
	Doctor of Medicine (Dermatology,	M.D. (D.V.L.) (This shall be a recognized

	Venerology and Leprosy)	medical qualification when granted by Berhampur University in respect of students being trained at M.K.C.G. Medical College, Berhampur, Orissa on or after 1991.)
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21. Whereas with regard to various medical institutions like All India Institute of Medical Sciences and Sree Chitra Thirunal Institute for Medical Science and Technology, Thiruvananthapura, there are mention of various Ph.D. courses. It is useful to refer to relevant extract from First Schedule with regard to the few Ph.D. courses recognised in All India Institute of Medical Sciences and Sree Chitra Thirunal Institute for Medical Science and Technology, Thiruvananthapura, which are as follows:-

<b>University Medical Institution</b>	<b>or</b>	<b>Recognised Medical Qualification</b>	<b>Abbreviation for Registration</b>
All India Institute of Medical Sciences		Doctor Philosophy (Anatomy)	of Ph.D. (Anat.)
		Doctor Philosophy (Biochemistry)	of Ph.D. (Biochem.)
		Doctor Philosophy (Microbiology)	of Ph.D. (Micro.)
		Doctor Philosophy (Pathology)	of Ph.D. (Patho.)
		Doctor Philosophy (Physiology)	of Ph.D. (Physiology)
		and 38 other fields.	
Sree Chitra Thirunal Institute for Medical Science and Technology, Thiruvananthapura		Doctor Philosophy (Biochemistry)	of Ph.D. (Biochem.)
		Doctor Philosophy (Microbiology)	of Ph.D. (Micro.)
		Doctor Philosophy (Pathology)	of Ph.D. (Patho.)

22. There being Ph.D. degree courses recognized for medical institutions in the First Schedule of the Medical Council of India Act, 1956, we cannot find any fault in the restriction imposed by policy dated 22.05.2006 restricting award of marks only to the Ph.D. degrees recognized by Medical Council of India. Coming to the letter dated 15.12.2017 which in turn refers to the letter dated 07.12.2017 of Medical Council of India, the letter mentions that recognition of Ph.D. degree does not come under the purview of Medical Council of India. The Medical Council of India in its First Schedule recognizes medical courses which also contains various Ph.D. courses. It may be true that Ph.D. degree awarded to a candidate needs no recognition from the Medical Council of India but for the purposes of this case, the marks can be claimed by a candidate in promotion only when the Ph.D. course is recognized by Medical Council of India. Thus the letter dated 15.12.2017/07.12.2017 cannot help the appellant in the present case. Moreover, any communication issued by Joint Secretary of Medical Council of India cannot be given any precedence on the clear statutory provisions contained in Section 11 read with First Schedule of Medical Council of India Act, 1956.

23. Now, we come to the Post Graduate training program on which the appellant is also claiming allocation of marks. Two year full time training program to be eligible for award of one mark required to fulfill following conditions:

- a) full time structured training program.
- b) during study leave in India/abroad.
- c) in a medical field from an institution/university recognized by statutory body.

24. The appellant has filed certificate as Annexure A-1 dated 11. 12 . 1995 issued by Professor and Head, Department of Pediatrics, G.S.V.M. Medical College, Kanpur, which is to the following effect:

" Department of Pediatrics Children's hospital:  
G.S.V.M. Medical College:  
Kanpur — 208002  
Dated:11.12.1995

#### CERTIFICATE

Certified that Indra Veer Singh Gahlot had been working in Pediatrics from March, 1991 till November, 1993. The Department of pediatrics is recognized for M.D. Pediatrics and Diploma Courses.

The department is maintaining student- teacher ratio of 1:1 including Dr. Indra Veer Singh Gahlot. During the period of stay of Dr. Gahlot, Prof.G.P.Mathur was the Head of the Department.

During the period of his stay, Dr. Gahlot was doing emergency duties independently. He had chances to perform exchange-blood transfusions in the premature Baby Nursery. He also participated in the P.G.teaching programme.

Sd/-

(Illegible) Sarla Mathur Prof.& Head"

25. The above certificate does not indicate that appellant completed full time structured training programme.

26. The appellant contended that he was granted permission to attend the training program but there is no material to indicate that he was granted two years study leave to join two years structured training program. The certificate dated 11.12.1995 as claimed by appellant does not fulfill the essential conditions as laid down in paragraph 11 of the Order dated 22.05.2006 to make appellant eligible for one mark. We thus do not find any error in the Promotion Board (Medical) not allocating one mark for two years training program. Armed Forces Tribunal did not commit any error in rejecting the above claim also. We thus do not find any error in the judgment of Armed Forces Tribunal warranting interference by this Court in exercise of jurisdiction under Article 136 of the Constitution of India.

27. The Civil Appeal is dismissed.

*Judgment Referred.*

<sup>1</sup>(2011) 10 SCC 0121

<sup>2</sup>(2002) 2 SCC 0333