

06. IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

M.A. Nos. 328 of 2011 & 329 of 2011  
In O.A. No. 116 of 2011

Pilot Officer Narayan Muzumdar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Anil Bakshi, Advocate.  
For respondents: Sh. Ankur Chhibber, Advocate.

**CORAM:**

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

**ORDER**  
14.09.2011

O.A. No. 116 of 2011 & M.A. Nos. 328 & 329 of 2011

1. Petitioner by this petition has prayed that the Respondents may be directed to publish the two mandatory Gazette Notifications regarding Petitioner's initial provisional short service commission with effect from 5<sup>th</sup> January 1987 and subsequent permanent commission with effect from 19<sup>th</sup> January 1987. It is also prayed that the Respondents may be directed to supply a copy of the said two Gazette Notifications to the petitioner. It is further prayed that the Respondents may be directed to supply fresh certificate of service of the petitioner after amendments showing proper Gazetted Notifications and provide a copy of Air Force List to the Petitioner showing Petitioner's name under proper Gazette Notification.

2. Petitioner during the period 1973 to 1986 acquired educational qualification of M.Sc. (Physics) and P.G. Diploma (Computer Science) and also represented Air Force eleven times in services sports meet and Defence Services five times in the

National sports meet, in the sports event of body building. Petitioner was granted out of turn promotion to the rank of Sergeant. On 5<sup>th</sup> January 1987 Petitioner was selected and joined the Air Force Academy as Provisional Short Service Commission in the rank of Pilot Officer in Meteorological Branch of Air Force under the provisions of Govt. of India Air Force Instructions No. 20/76 dated 8<sup>th</sup> May 1976. Thereafter he successfully completed the training from 5<sup>th</sup> January 1987 to 19<sup>th</sup> December 1987 with 81 Ground Duty Officers course and secured third position out of 16 trainees. On completion of such training the Petitioner was granted Permanent Commission (on 12 months probation) in the Meteorological Branch in his existing rank of Pilot Officer. In August 1988 Petitioner was posted to No. 5 Wing, Air Force Kalaikunda in West Bengal as Meteorological Officer. During November 1988 to August 1990 the Petitioner was subjected to show cause notice of termination of his service based on the letter dated 5<sup>th</sup> December 1988 written by Petitioner's immediate superior namely Squadron Leader Ravi Mani although the Air Force HQ sought confirmation of the Petitioner's services. The Petitioner sought judicial intervention and filed a writ petition in Hon'ble Calcutta High Court and the Hon'ble Calcutta High Court stayed the termination of service proceedings and directed that his services can be utilised in another department. Against the order of the Hon'ble Calcutta High Court a Letter Patent Appeal was filed in the Division Bench of Calcutta High Court which was also dismissed. It is also alleged that the Respondents did not issue any Gazette Notification of the Petitioner's selection on probation on Short Service Commission. Since the Petitioner's batch mates were confirmed and he was not confirmed therefore he sought voluntary premature retirement from service in the rank of Pilot Officer and he was retired on 30<sup>th</sup>



September 1997. After retirement the Petitioner was informed about his Certificate of Service. In that certificate it was wrongly and illegally stated as under:

“(i) Gazette Notification of the applicant for PSSC (wef 05-1-87)- N/A

(ii) Gazette Notification of the applicant for PC (wef 19-12-87)- 59/87.”

3. Thereafter the Petitioner after approaching the Respondents filed the present petition and sought the aforesaid reliefs.

4. A reply was filed by the Respondents and Respondents in their reply pointed out that so far as the Provisional Short Service Commission Gazette Notification which was not issued is concerned it has been issued and granted the Petitioner a Provisional Short Service Commission w.e.f. 5<sup>th</sup> January 1987 by the Notification dated 20<sup>th</sup> May 1989. Therefore so far as the first relief is concerned that has been conceded by the Respondents. Now comes the second question of grant of Permanent Commission Notification of the Petitioner. This cannot be granted to Petitioner because the Respondents in their reply have pointed out that a draft Gazette Notification of Permanent Commission (on 12 months probation) was initiated in the month of April 1988 to grant permanent commission in Meteorological Branch from 19<sup>th</sup> December 1987 as per AFO 237/77 however during this probation period due to poor performance in his branch duties an unsuitable report was raised on him. Hence, the permanent commission in the Meteorological Branch was not confirmed and his name was not published in the Gazette Notification along with his batch mates. Thereafter a show cause notice on 26<sup>th</sup> May 1989 was served on the Petitioner and after considering his reply dated 19<sup>th</sup> July 1989 he was removed from service w.e.f. 31<sup>st</sup> August 1990. The Petitioner obtained a stay against his removal from the High Court of Calcutta on 5<sup>th</sup> September 1990. The Hon'ble High Court passed the order in favour of the Petitioner on 15<sup>th</sup> September 1992 setting aside the

termination order and ordered to change the branch of the officer to Administrative/Education. Air HQ filed an appeal against this judgment of the High Court but the High Court upheld its earlier judgment and the officer was finally reinstated in service. The Petitioner was given option for Administrative Branch, however the Petitioner submitted his willingness for Education Branch on 18<sup>th</sup> September 1996. On approval by the MoD, the Petitioner was detailed to undergo training at Air Force Academy, Dundigal in the Education Branch with 102 Ground Duty Officers' Course which had commenced from 5<sup>th</sup> May 1997. He reported on 5<sup>th</sup> May 1997 and had applied for cancellation of the course as well as sought for premature retirement from service w.e.f. 30<sup>th</sup> June 1997 on the grounds of supersession and lack of career prospects. The Petitioner was granted premature retirement from service w.e.f. 30<sup>th</sup> September 1997.

5. In this background we have heard learned counsel for the parties at length.

6. So far as first relief is concerned that has already been granted to Petitioner on 5<sup>th</sup> January 1987. So far as second relief is concerned that cannot be granted to Petitioner as he has not successfully undergone the probation in Educational Branch. Therefore he cannot be granted a confirmation on the post of Pilot Officer. But since the Petitioner was selected for a Pilot Officer and failed in his probation period therefore he was discharged as a Commissioned Officer and he is not entitled to a permanent commission and no Notification can be issued in his favour by treating him as a Permanent Commissioned Officer but he continued to be discharged officer. A person who has not successfully completed probation period in normal course is liable to be discharged. The Petitioner had already sought



voluntary premature retirement therefore no relief can be granted. The Respondents are however directed to issue service certificate to the Petitioner.

7. We do not find any merit in this petition and the same is dismissed with no order as to costs. The applications are disposed of.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**September 14, 2011**  
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