

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

25.

O. A. No. 84 of 2011

Major Anupam Chaure

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S.S. Pandey, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate with Col. Devendra Singh.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. Z.U. SHAH, MEMBER.

ORDER
27.5.2011

1. Petitioner by this petition has prayed that the respondents have wrongly denied permanent commission to the petitioner as per letter dated 23rd November 2009 as well as the order of release has been issued vide letter dated 20th December 2010 and same may be quashed and the respondents may be directed to consider for grant of permanent commission to the petitioner on the basis of his revised option as forwarded by him vide letter dated 29th September 2009 and grant such commission if found fit in all respect with all consequential benefits.

2. Petitioner obtained his LL.B degree in April 1997 and LL.M in December 1999 and applied for grant of Short Service Commission in the Judge Advocate General's Department in response to the advertisement published by the respondents in the

employment news. He successfully cleared written examination and after due selection by the Services Selection Board after interview, he was granted Short Service Commission in JAG Department of the Indian Army on 3rd March 2001 and was posted to 4 Kumaon for the active counter insurgency area in Jammu & Kashmir for one year as mandatory infantry service. He continued to serve and thereafter an option was asked for permanent extension/release which he exercised to continue till 2nd March 2011 for a period up to 10 years. Thereafter an option was asked for permanent commission to which he replied on 24th September 2009 that he was not willing to accept a permanent commission. Thereafter at the change of heart he immediately wrote back that he is desirous of being considered for a permanent commission by sending his option to the Area HQ on 29th September 2009. On 29th September 2009, he again wrote to the authorities that he is willing for permanent commission. This communication was received by the respondents Area HQ which is apparent from the copy which the petitioner has filed and in which he filed recommendations by the IO as well as the RO but he was not granted permanent commission and, therefore, he has approached this Tribunal by filing this petition.

3. The respondents filed their reply and pointed out that the communication dated 29th September 2009 was not received by the MS Branch. It is also alleged that petitioner has not given any reason why he has changed his option within four days. Learned counsel for the respondents has submitted that this option alleged by the petitioner to have been given to the Area HQ has not been received by the MS Branch, Delhi. Thereafter respondents were directed on 9th May 2011 to file an affidavit that whether second option of the petitioner dated 29th September 2009 which is said to have been forwarded to the MS Branch with due recommendations

of the IO and the RO, was received by the MS Branch or not and whether the copy of the same was sent to Southern Command, Pune or not and whether any proceedings have been done and whether it has really been despatched to MS Branch by entering it in the proper register or not. Today when the matter is called the authorities are not in a position to say whether the 29th September 2009 option given by the petitioner to the Area HQ was received by MS Branch or not. No affidavit to this effect has been filed. Be that as it may but one thing is admitted by learned counsel for the respondents that it was received by the Area HQ Bombay and appears to have not been despatched to the MS Branch. Whether it was despatched to MS Branch or not that is not the concern of the petitioner. It is admitted that the petitioner has filed second option before the Area HQ and it has been duly signed by the IO and RO. If they have not despatched it, it is the problem of the respondents. The petitioner for whatever good reason has given second option to the respondents for change of his option and desirous to be considered for permanent commission, it was the duty of the respondents to have considered his second option. Now it is admitted by the respondents that this second option has been received by the respondents i.e. Area HQ. It may be a communication gap from one place to another and that is for them to look into and take appropriate steps. However the fact remains that the petitioner has delivered the second option within four days duration to the respondents. Now it has come to the light that the respondents have received it and we direct the respondents to consider the second option and pass an appropriate order in accordance with law. This exercise should be done as far as possible within a period of three months.

4. The petition is accordingly disposed of with no order as to costs.

A.K. MATHUR
(Chairperson)

Z.U. SHAH
(Member)

New Delhi
May 27, 2011