

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI  
19.

T. A. No. 394 of 2010  
Writ Petition (Civil) No. 10092/2009

Maj Ashish Saxena

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. Rajiv Manglik, Advocate.

For respondents: Sh. R. Balasubramanian, Advocate.

CORAM:

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

ORDER  
3.3.2011

1. This case has been received on transfer from the Hon'ble Delhi High Court.
2. The petitioner, by this petition, has prayed for quashing and setting aside the impugned order dated 17.6.2008 to the extent that it grants the seniority w. e. f. 2.5.2002 to the petitioner and to hold and declare that depression of seniority by additional 12 months in respect of the petitioner, who opted to be governed by the old scheme of 3/S/98 as illegal and for quashing the order dated 23.2.2007 and he also prayed that the respondents may be directed to fix the seniority of the petitioner we.f. 2.5.2001.
3. The petitioner was a Short Service Commissioned Officer and he was commissioned on 2.9.2000 after completing the successful training at Officers' Training Academy, Chennai and was granted the rank of Lieutenant (Lt.) in the Artillery Corps of the Army. The petitioner was commissioned as per the provisions

of the Special Army Instructions (SAI) 3/S/98. The petitioner was commissioned initially for a period of five years from the date of commission. After completion of 5 years, the petitioner was either to be given permanent commission or extension for another period of 5 years or discharged. The officers commissioned as SSCO can opt for the option of permanent commission on expiry of initial contract period and the petitioner opted for grant of permanent commission/extension of another period as SSCO. The petitioner continued to serve and was again considered by the Selection Board in 2005 but was not granted permanent commission and was declared fit for extension of another term of five years. Meanwhile, a new policy came into force on 20.7.2006, whereby he was granted permanent commission and the seniority of the petitioner was further depressed by another 12 months on ground of substantive rank of Captain. The officers between 5<sup>th</sup> and 7<sup>th</sup> year of service who have not exercised their second option for permanent commission may opt to continue under the old scheme governed by Special Army Instructions (SAI) 3/S/98. Detailed administrative instructions regarding exercise of option was issued by Service HQ separately. As per Clause 4(b) on grant of permanent commission, depression of seniority equivalent to the difference in prescribed training period between the SSC Course in and the corresponding regular course at IMA and an additional loss of 12 months to be effected. The petitioner is precisely aggrieved by this that he has to lose period of 12 months of service. In fact, the petitioner could not make it after four years of service but could make it in 8<sup>th</sup> year as a Permanent Commissioned Officer. Had this policy not been there, then the petitioner would not have been given seniority from the date of permanent commission i. e. from 2008, when he was given a second chance to be inducted on permanent commission. This policy rather has benefited the petitioner instead of depriving the petitioner of

any benefit. In normal service jurisprudence, the seniority is to be reckoned from the date of substantive appointment. In case of the petitioner here in Short Service Commission, he could not make it within first five years but could make it in second chance during 8<sup>th</sup> running year. Therefore, in normal course, his seniority will be reckoned from 2008 and in the meanwhile, other Short Service Commissioned or direct recruits could have marched over him. But in fact, looking to his past service, he only loses seniority by 12 months. This, in our opinion, cannot be said to be arbitrary or illegal in any manner. Rather the Government has been fair in giving him depression or loss of seniority for 12 months only, whereas if this administrative instruction had not been brought into force, the petitioner would have lost more than 3 batches and he would have got seniority from 2008 when he came as a Permanent Commissioned Officer. Rather this order has been for the benefit of the petitioner that in the scheme of commissioning, he only lost seniority by 12 months.

4. In this view of the matter, we are of the opinion that no illegality has been committed by the respondents. Consequently, we do not find any merit in this petition and the same is dismissed with no order as to costs.

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

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

New Delhi  
March 3, 2011