

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

07.

O.A. No. 330 of 2011

Major Nishant Gupta

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With : OA No. 195 of 2011

For petitioner: Mr. K. Ramesh, Advocate (OA No. 330/11)
Mr. S.S. Pandey, Advocate (OA No. 195/11)

For respondents: Ms. Anjana Gosain, Advocate with Col. Devender Singh

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

14.03.2012

1. Both the petitions bearing OA No. 330/11 (Major Nishant Gupta) and OA No. 195/11 (Capt Kanika Gupta) are involve similar question of law, therefore, they are being taken up together. For purposes of the convenient disposal, the facts of the case of Major Nishant Gupta are being taken into consideration.

2. Petitioner vide this petition has prayed that directions be issued to the respondents to quash and set aside Government of India - Ministry of Defence order dated 01.07.2011 and to grant extension of service as per Government of India - Ministry of Defence letter dated 20.07.2006, as per new terms of service so that fiscal consequential benefits of pay and pensionary benefits, and disability pension, where granted after retirement on 31.08.2011 could be released in the rank of substantive Major.

3. Petitioner was commissioned on 01.09.2001 as a Short Service Commissioned Officer. He was approved for Permanent Commission on 24.05.2006 but because of his low medical category status, he could not be granted Permanent Commission and he was discharged on 31.08.2011. The main grievance of the petitioner is that he has been retired as a Acting Major and not as a Substantive Major, which has disentitled him to the benefits of a Major thereby subjecting him to loss of status and finances. In this connection, it will be appropriate to mention that petitioner was inducted in service by virtue of Army Instruction No. 1/93 which contemplates that Short Service Commission (Technical) in the Corps of Engineers, Signals and Electrical and Mechanical Engineers be granted to Civilian Gentlemen, including temporary Central/State Government Servants, serving personnel of the Regular Army and Territorial Army (including officers of the Territorial Army) and serving personnel of the Navy and Air Force for a period of five years on specified terms and conditions of service. In that eligibility and other conditions were mentioned. Officers are put on probation during the training period and after successful completion of pre-training (technical), they are granted substantive rank. Clause 15 of AI No.1/93 reads as under :

15.Promotion : Officers will be eligible for promotion to the substantive rank of Lt on completion of two years commissioned service including the ante date granted under Para 14. No further substantive promotion will be admissible. They will be eligible for acting promotion under the rules as applicable to Permanent Commissioned Officers.

4. Thereafter a reference, regarding substantive ranks, was made to the Ministry of Defence by Military Secretary Branch, Army vide letter dated 31.03.2005. The relevant portion of the said letter dated 31.03.2005 reads as under;

"5. The aforesaid rule position is also reproduced in para 69 of Regs for the Army Revised Edition, 1987. Since SSCOs awaiting grant of PRC and those not granted PRC do not come within the definition of 'reckonable commissioned service', they are not eligible for grant of substantive rk of Capt, Maj and Lt Col on completion of 2, 6 & 13 years respectively. The provns of MoD letter cannot therefore automatically be made applicable to SSCOs. It would become applicable to those offrs who are granted permanent commission. However, a separate case has already been taken up with the Govt. for revising the terms and conditions of service of SSCOs including grant of substantive promotion to the rk of Capt, Maj and Lt. Col and related issues. The decision of MoD is awaited."

5. According to this letter, a separate case was taken up with the Government for revising the terms and conditions of Short Service Commission officer including grant of substantive rank of Capt, Maj and Lt Col and decision of MoD was awaited.

6. In pursuance of this reference made by the Army HQ, a decision has been given by the MoD vide notification dated 28.10.2005 which reads as under;

"The Gazette of India

Ministry of Defence

New Delhi, the 28th October, 2005

S.R.O. 121 – In exercise of the powers conferred by Section 12 of the Army Act, 1950 (46 of 1950) the Central Government hereby extends

the validity of the scheme of appointment of Women as Officers in the Indian Army and for that purpose makes the following amendments in the notification of the Government of India in the Ministry of Defence vide number S.R.O. 11 dated 15th February 1992, namely:-

(1) Extension of the tenure of Women Officers – the tenure of Women Officers inducted under Women Special Entry Scheme (Officers) introduced by notifications vide numbers S.R.O. 11 dated the 15th February, 1992 S.R.O. dated the 23rd January 1993 and S.R.O. 10(E) dated the 12th December, 1996 shall be extended by five years from 1997.

(2) Extension of tenure of Short Service Commission Officers – The tenure of Short Service Commission Officers (for male officers) and Women Special Entry Scheme (Officers) shall be extended up to fourteen years.

(3) Women Special Entry Scheme shall cease to apply and Women officers shall be inducted through Short Service Commission officers entry in the Corps/Service notified vide numbers S.R.O. 11, dated 15th February, 1992, S.R.O. 1, dated the 23rd January, 1993 and S.R.O. 10(E) dated the 12th December, 1996.

(4) Substantive promotions shall be extended to Short Service Commission Officers (Men and Women) as applicable to Permanent Commission Officer.

Jose Thomas, Under Secy."

7. Clause 4 clearly stipulates that substantive rank shall be extended to Short Service Commission, both to men and women, as applicable to Permanent Commission Officers. Therefore, grievance of the petitioner is that since the MoD issued a clarification by which the Permanent Commission Officers have been given substantive rank, that should also be applicable to Short Service Commission Officers.

8. We have heard arguments of both the parties and we tried to find out whether this notification has in any manner been withdrawn, modified or amended by the respondents. Respondents have not pointed out whether this decision of MoD has anywhere been modified or amended. In this connection, our attention has been invited to a notification dated 20.07.2006 which has been issued modifying the terms and conditions for such Short Service Commission Officers. By virtue of this circular, the terms and conditions of Short Service Commission Officers have been revised. In that they have laid down that persons who are commissioned as Short Service Commission Officers will be given the substantive rank of Capt on completion of 2 years reckonable commissioned service, Major on completion of 6 years reckonable commissioned service and Lt Col on completion of 13 years reckonable commissioned service. However an option has been asked from all the officers who are already serving in the Army, as to whether they are willing to be governed by the revised terms and conditions or by the old terms and conditions.

9. In this connection, it will be relevant to mention the Gazette notification dated 28.10.2005, issued by the Government of India Ministry of Defence, which has been reproduced above. Para 2 of the said notification has laid down that the tenure of Short Service Commission Officers (for male officers) and women Special Entry Scheme (Officers) shall be extended up to fourteen years. However, this decision has not been elaborated, and it was vide notification dated 20.07.2006 that detailed policy has been enunciated whereby serving Short Service Commissioned officers were asked to exercise their option as to whether they wish to be governed by the revised scheme or by the old scheme. So far as the petitioner is concerned, he opted for revised

terms on 23.11.2006. Thereafter he cancelled his earlier option for the revised terms and opted for the existing/old terms on 24.02.2007. Thereafter he again changed his mind for the third time on 13.04.2009 and opted for the revised scheme.

10. Learned counsel for the petitioner tried to persuade us that since he had opted for the revised scheme on 13.04.2009, he may be permitted to be governed by this scheme. In our opinion that cannot be done because once he has given his option for old scheme and that has been accepted by the respondents and consequential actions have been taken. It is not open for the petitioner to change his option thereafter. Hence, arguments of the learned counsel for the petitioner that petitioner may be allowed to be governed under the revised scheme are not sustainable. Therefore, we reject this argument of learned counsel for the petitioner. Petitioner will be governed by the old scheme.

11. The question then arises is as to how his terms and conditions of service are to be governed. As the petitioner was inducted in service by virtue of Army Instruction No. 1/93, therefore, his services will be governed by that AI. As far as the matter of granting substantive rank of Major is concerned, it was already under consideration with Army HQ. Such clarification was sought by Army HQ from the MoD and MoD clarified it on 28.10.2005 vide their Gazette Notification that all these persons (men and women) who have been commissioned as Short Service Commissioned officer will be given substantive rank as given to the Permanent Commissioned Officer. Therefore, so far as this decision is concerned it is final.

12. Learned counsel for the respondents has tried to persuade us that with the issuance of notification dated 20.07.2006, the new policy has come into force, therefore, the notification dated 28.10.2005 automatically stood superseded. But there is no such mention in the notification dated 20.07.2006. The Government consciously took the decision to give certain benefits to Short Service Commissioned officers and that cannot be altered. Had the intention of the Government been to alter this decision, as contained in notification dated 28.10.2005, then it should have found mention in the notification dated 20.07.2006, but that has not been done. This indicates the intention of the Government that those persons who have been inducted as Short Service Commissioned officer will also be given substantive rank as given to the Permanent Commissioned Officer. Therefore, this decision of the Government stands affirmed and this decision has not in any manner been amended or modified by the Government.

13. Therefore in our opinion all the persons inducted as Short Service Commissioned Officers are to be given substantive rank as given to the Permanent Commissioned Officers. There is no modification or amendment issued by the Government to the notification dated 28.10.2005 or any other notification having a bearing on the subject except for the notification dated 20.07.2006. Learned counsel for the respondents has tried to persuade us that should the notification of 28.10.2005 be taken in totality then SSCOs will have no option of leaving the Army before completion of 14 years service. This submission of learned counsel for the respondents is misconceived as the notification of 20.07.2006 specifically stipulates at Para 4 that "*All other provisions of AI 1/93 as amended will continue to be applied mutatis mutandis, to respective SSCOs*".

14. Hence, petition is allowed and respondents are directed to grant substantive rank to the petitioner and to other similarly situated persons as given to the Permanent Commissioned Officer by virtue of this order so as to avoid flood of litigations by other similarly situated persons filing separate petitions before the Tribunal or other courts. Similarly connected petition bearing O.A. No. 195/2011 stands allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 14, 2012
mk