

**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 disputed question, therefore, they are being taken up together. For purposes of the petition, 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 Officer 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 disintitiled 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 order, a separate order has also been 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 is 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 28<sup>th</sup> 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 15<sup>th</sup> 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 15<sup>th</sup> February, 1992 S.R.O. dated the 23<sup>rd</sup> January 1993 and S.R.O. 10(E) dated the 12<sup>th</sup> 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 15<sup>th</sup> February, 1992, S.R.O. 1, dated the 23<sup>rd</sup> January, 1993 and S.R.O. 10(E) dated the 12<sup>th</sup> 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. As per Clause 4 which clearly says that substantive rank shall be extended to Short Service Commission to both 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 given to the Short Service Commission. This decision was given by the MoD.

8. We have heard arguments of both the parties and we tried to find out whether this notification has been in any manner 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 the new notification which has been issued modifying the terms and conditions for such Short Service Commission Officers and it has been modified by the circular dated 20.07.2006. By virtue of this circular, now the persons who have been recruited as Short Service Commission Officers their terms and conditions have been revised. In that they have laid down that persons who are recruited as Short Service Commission Officers will be given a 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 but a option has been asked from all the officers who are already serving in the Army. They have been asked to give their option 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 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 also 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. But that decision has not been elaborated and it has been elaborated vide notification dated 20.07.2006 whereby serving Short Service Commissioned officers were asked option whether 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. It appears that thereafter he again change his mind and gave his option third time for revised scheme on 13.04.2009.

**10.** Learned counsel for the petitioner tried to persuade us that since he had opted for revised scheme on 13.04.2009 then he may be permitted to govern 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 on that basis all actions have been taken, therefore, it is not open for the petitioner to change his option from old scheme to new one. Hence, arguments of learned counsel for the petitioner that petitioner may be allowed to govern under the revised scheme are not sustainable. Therefore, we reject this argument of learned counsel for the petitioner. Petitioner will be only permitted to govern by the old scheme.

**11.** Now the question is that how his terms and conditions will be governed. As 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 that was already under consideration with Army HQ. This clarification was sought by the Army HQ from the MoD and MoD clarified it on 28.10.2005 and they have clarified that all these persons (men and women) who have been recruited as Short Service Commissioned officer will be given substantive rank as given to the Permanent Commission Officer. Therefore, so far as this decision is concerned that is final.

**12.** Learned counsel for the respondents has tried to persuade us that since vide notification dated 20.07.2006, new policy came into force, therefore, notification dated 28.10.2005 has automatically stood superseded.

But there is no such mention in the notification dated 20.07.2006 that shows that Government consciously taken the decision to give benefits to Short Service Commissioned officers and that cannot be altered. Had the Government's intention to alter this decision as contained in notification dated 28.10.2005 then it could have find mention in the notification dated 20.07.2006 but that is not done. That show the intention of the Government that they were very clear that those persons who have 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 stand affirmed and no such decision has in any manner amended or modified by the Government.

**13.** Therefore in our opinion all the persons inducted as Short Service Commissioned officer are to be given substantive rank as given to the Permanent Commissioned Officer. There is no modification or amendment order issued by the Government to the notification dated 20.07.2006 or any other notification bearing in the subject. Learned counsel for the respondents has tried to persuade us that once notification dated 20.07.2006 has already been come into force then there will be no change of option once given as they will have to necessarily served till 14 years. This submission of learned counsel for the respondents is misconceived. 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 the other similarly situated persons as given to the Permanent Commissioned Officer by virtue of this order so as to avoid flood of litigations by filing separate petitions before a Tribunal or before

other courts. Similarly connected petition bearing O.A. No. 195/2011 stand allowed.

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

**New Delhi  
March 14, 2012  
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**S.S. DHILLON  
(Member)**