

**ARMED FORCES TRIBUNAL, CHANDIGARH  
REGIONAL BENCH AT CHANDIMANDIR**

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OA 610 of 2012

**Ritesh Shrivastava** ..... **Petitioner(s)**  
**Vs**  
**Union of India and another** ..... **Respondent(s)**

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For the Petitioner (s) : Mr Rajeev Anand , Advocate

For the Respondent(s) : Mr Gurpreet Singh, Sr. PC

**Coram: Justice Vinod Kumar Ahuja, Judicial Member.  
Lt Gen (Retd) HS Panag, Administrative Member.**

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**ORDER  
30.05.2013**

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The petitioner has filed the present petition seeking the following relief/directions:-

- (i) For quashing the order dated 25-10-2011 (Annexure A-10) passed by office of respondent No.1 and communicated to the applicant by letter dated 31-10-2011 wherein the statutory complaint made by the applicant under Section 27 of the Army Act read with DSR Para364 has been rejected by a bald, non-speaking and unreasoned order against his lawful & legal entitlement regarding his seniority as per the provisions of relevant instructions in peculiar facts & circumstances of the case of the applicant.
- (ii) For the issuance of the necessary orders or directions for the restoration of seniority of the applicant upon permanent commission without

loss affected by opting permanent commission in the reconsideration chance which is defacto as the first chance of the applicant as a Technical Entry and consequential fixation of seniority without any additional loss of seniority for exercising the option in the peculiar facts & circumstances along with all consequential benefits including pay & allowances with retrospective effect arising out of the main prayer being granted.

- (iii) For the issuance of order or direction that this Hon'ble Tribunal deems fit in the facts and the circumstances of the present case.

The brief facts leading to the instant petition are that the petitioner, who obtained the degree in Metallurgical Engineering in the year 1996, joined the Indian Army in Short Service Commission (Non Technical) Course-70 at OTA Chennai in November 1999. While undergoing training and having learnt about the Technical Entry Scheme, he applied for change of entry from SCC (Non Technical -70) to SSC (Technical Course-13). His request was turned down by the authorities and intimation to this effect was given to him vide communication dated 12-02-2002 (Annexure A-2). Being aggrieved by this decision of the authorities and there being provision of acceptance of Metallurgical in Engineering in the Army Instructions SAI 7/S/66 and A1 1-2-/93 dealing with the conditions of

the Short Service (Technical), he again made a representation to the Army Authorities for the said conversion and it was again declined by the Military Secretary vide letter dated 5-02-2003 (Annexure A-3) on the ground that since no vacancy for Metallurgical Engineering Stream was released for SSC (T) 13 Course, therefore, no vacancy of that stream was notified. Thereafter he made a detailed non-statutory complaint on 12-02-2004 highlighting the fact therein that one of his juniors who was also possessing Bachelor of Engineering in Metallurgical Branch was transferred from Non- Technical to Technical Entry even though no vacancies of the Metallurgy were published in the advertisement. Subsequently the said non-statutory complaint was processed as a Statutory Complaint as per requirements of the Organisation. In the mean time when the petitioner's Non-statutory complaint was still pending for more than 11 months, he was about to complete his five years of service. As per Army HQ instructions, he was required to opt for grant of Permanent Commission to seek five years extension service. The case of the petitioner is that since he was dependent upon his transfer from Non- Technical to Technical Entry for which he filed the non statutory complaint and required option was to be exercised in March 2005 in a time bound manner, he had to opt for five years extension of service. According to him, though he was eligible, fit and qualified as well as willing for Permanent Commission, but he could not exercise his option due to the pendency of non-statutory complaint pending since February 2004. After lapse of further six months' time when he felt

that there was undue delay in taking decision on this complaint, then he addressed a DO letter dated 29-10-2005 to the then Chief of the Army Staff wherein the petitioner highlighted his grievance and stated that due to non redressal of his complaint and consequent upon granting ante date seniority, he was left with no other choice but to opt for extension of service as the two years disadvantage would have definitely affected his future career adversely. According to him, this undue delay of justice resulted in denial of exercising the option for Permanent Regular Commission. In the said DO, he also requested that in case the redressal sought in the non-statutory complaint is given, then he should be given a change to opt for PRC without additional loss of seniority for exercising his option. In response to this DO, he petitioner received a communication dated 30-11-2005 from the Military Secretary (Annexure A-6) intimating that his statutory complaint had already been processed and the same was likely to be finalised soon by the Complaint Advisory Board. Ultimately after lapse of more than two years' period, his statutory complaint dated 12-02-2004 was accepted vide order dated 20-04-2006 (Annexure P-7) whereby he was given favourable redress and his entry was ordered to be corrected from SSC-70 (Non Technical) to SSC-13 (Technical) with ante date seniority and financial effects as applicable to other officers of SSC-13 (Technical) Batch without any retrospective effect on pay & allowances and other consequential benefits. Thereafter the petitioner was granted permanent Commission along with the officers of Short Service Commissioned Officers of

SSC -13 (Tech) Course vide communication dated 17-06-2006 (Annexure A-8). On being given Permanent Commission his seniority was fixed as 06-11-1999 after deducting two months training difference between IMA and OTA technical candidates and also one year seniority loss for opting the Permanent Commission in second chance. Feeling aggrieved by this order, he again submitted a statutory complaint dated 02-06-2011 (Annexure A 9) for the restoration of seniority with the request that his second chance of opting Permanent Commission should be considered as the defacto first chance as Technical Commissioned Officer and not as option of reconsideration. As averred in the petition, the undue delay in disposing of his non-statutory complaint led him to opt for Permanent Commission in his reconsideration chance in 8<sup>th</sup> year, and his seniority has been reduced by one year for no fault or mistake on his part. As such he sought for the restoration of one year seniority which has been reduced for opting Permanent Commission in second chance and requested for his placement at par with course mates of SSC (Tech) 13 in terms of seniority, promotion and pay & allowances, who opted for Permanent Commission in their first chance. This statutory complaint was rejected vide order dated 25-10-2011 (Annexure A-10) which was communicated to him vide letter dated 31-10-2011. Having no other option, he has approached this Tribunal by filing the present petition.

Notice was issued to the respondents and the reply was filed on their behalf.

In the preliminary objections of the reply it has been pleaded by the respondents that the petitioner has not stated if any Rule or Instruction has been violated by the respondents. He opted for and was granted Permanent Commission under the provisions of AI 10/2000 (Annexure R-2). His seniority has been fixed as per the provisions contained in AI 10/2000. He has no cause of action and, therefore, the application is not maintainable. The respondents have also raised another preliminary objection regarding limitation in which is stated that the entry of the petitioner was changed from SSC (Non Tech) to SSC (Tech)-13 vide order dated 20<sup>th</sup> April 2006 (Annexure A-7). As such, the cause of action, if any, arose, on 20-04-2006 He did not represent upto 02-06-2011 that on account of change of entry from Non Technical to Technical, he was entitled for exercising option for Permanent Commission afresh. The present application is, therefore, barred by delay and laches as well as the statutory provisions of limitation.

In addition to these two objections, it is also stated that the petitioner while opting for Permanent Commission, did not make any submission or claim that the option exercised in the eighth year of service be treated as the first option, as is being contended now. Therefore, the petitioner having availed of the benefit of grant of Permanent Commission is estopped to contend that grant of Permanent Commission and consequential fixation of seniority be treated as if he was granted PC in the fifth year of service.

On merits, the stand of the respondents is that the petitioner, a Technical Graduate, at his own accord, joined SSC (non-Technical) Course -70 at OTA, Chennai in the year 1999. While undergoing training he applied for change of entry from SSC (Non Technical-70) to SSC (Technical -13). His request was not acceded to because for SSC Tech-13) no vacancy in the Metallurgical stream was notified. He was granted Short Service Commission on 2-09-2000 as SSC (Non Tech) under the scheme in which he had applied for and joined the training. The petitioner preferred a non-statutory complaint dated 12-02-2004 for conversion of entry from SSC -70 (Non Tech) to SSC-13 (Tech) which was decided by the Ministry of Defence order dated 20-02-2006 (Annexure A-7)., whereby the entry of the petitioner was changed from SSC-70 (Non Tech) to SSC-13 (Tech) and he was given two years ante date seniority i.e. from 02-09-2000 ( i.e. the date of passing out) to 02-09-1998. However, the petitioner in his fifth year of service, vide certificate dated 28-03-2005 (Annexure A-4) did not opt for Permanent Commission, rather opted for extension of service only, which was considered by No.5 Selection Board and he was accordingly granted extension of service of another five years from 03<sup>rd</sup>. September 2005 to 02 September 2010. Since the petitioner opted for grant of Permanent Commission in eighth year of his service, his case was considered by No.5 Selection Board and accordingly he was granted Permanent Commission. On grant of Permanent Commission, his seniority was fixed as 06 November 1999

at par with the officers of SSC-13 (Technical) who opted for PC in the eighth year of service.

It is the further stand of the respondents that the seniority of the petitioner has been fixed in accordance with the Army Instructions 10/2000 (Annexure R-2) and he has not been discriminated in any manner. While fixing his seniority, neither any rule or instruction has been violated.

It is also the case of the respondents that after grant of Permanent Commission in the year 2008 and after completion of 10 years of service, he filed a Statutory complaint dated 02-06-2011 (Annexure A-9) praying for fixation of seniority as 06 No. 1998 at par with officers of SSC-13 (Tech) who had opted for PC in their fifth years of service. Although the petitioner had an opportunity for opting Permanent Commission in the 5th year of service, but he chose to opt for extension of service. As such, the petitioner has no valid reason or ground for claiming seniority from 06 November, 1998. The statutory complaint was rightly rejected vide Government of India order dated 25-10-2011 (Annexure A-10) as per Army Rules. On these pleadings, the respondents have prayed for the dismissal of the present petition.

The petitioner has filed the rejoinder to the aforesaid reply in which he has almost reiterated his averments made in the petition.

We have heard the learned counsel for the petitioner as well as the respondents and have gone through the documents placed on record.



In the case in hand, the applicant, who joined Officers' Training Academy, Madras, at his own volition, joined Short Service Commission (Non Technical) Course -70 in November, 1999. While undergoing training, the applicant applied for change of entry from Short Service Commission (Non Technical) Course -70 to Short Service Commission (Technical) Course-13. The applicant was holding a Bachelor's Degree in Metallurgical Engineering and was qualified for such a change. The case was forwarded by OTA vide their letter No. 190/5/SSC-70/GS dated 14 December 1999. The applicant was commissioned as a SSC (Non Technical) Officer from the OTA on 02-09-2000 with Short Service Commission (Non Technical) Course- 70.

On 12-02-2002 the applicant received a reply from OTA (Annexure A-2) to his letter dated 01 Feb 2002 wherein the request of the applicant for change of entry forwarded on 14 December, 1999 was turned down. It is pertinent to reproduce Annexure A-2, letter dated 12-02-2002 from Officers Training Academy, St Thomas Mount, Chennai addressed to the petitioner which reads as under:-

*"1. Ref your letter No. 38620/RS/Pers-1dt 01 Feb 02.*

*2. A case had been taken up with Rtg. Dte for change of entry vide our letter No. 190/5/SSC-70/GS dt 14 Dec 99. The same has been turned down based on the under mentioned reason by Rtg Dte (TGC Entry) vide their HQ letter No. B/60405/13 SSC (Tech)/RTG dt. 21 Jan 2000:-*

*"No. 20374 GC Ritesh Srivastava is not eligible for transfer as he is having*

*Metallurgical degree, which is not acceptable in any technical stream”*

The first thing we notice in Annexure A-2 is the curious reason for rejection “No. 20394 GC Ritesh Srivastava is not eligible for transfer as he is having Metallurgical degree, which is not acceptable in any technical stream.” The reason for rejection is illogical and defies common sense and contrary to SAI 7/S/66 (Annexure A-11) and AI 1-2/93 (Annexure A-12) which clearly mention that Metallurgical Degree in Engineering is an acceptable discipline. We note that the applicant himself kept silent from December, 1999 to upto 01 Feb 2002 i.e. 2 years and 1 month and 18 days regarding the pending decision on his application. However, there is no doubt that the applicant was unfairly denied the change from Non Technical Course 70 Course to Technical Course-13.

On 26-12-2002, 10 months after he received the rejection letter from OTA, the applicant again applied to the MS Branch for conversion based on AI 1/93. His request was again turned down on 05-02-2003 (Annexure A-3). The same is reproduced below:-

- “1. *Reference your letter No.20801/Est-1 dated 26 Dec 2002.*
2. *The request of Capt Ritesh Shrivastava has been examined in consultation with AG/Rtg. As laid down in AI 1/93 the officer possesses degree in Metallurgical Engineering. In this regard it is mentioned that AI, though serve as a guideline is not the sole criteria, Induction is purely based on the vacancies rereleased for various discipline of*

*engineering by... MP-2 for various courses, which are also notified in the advertisement for the courses. No vacancy for Metallurgical Engg. Stream was released for SSC (T)-13 Course by ...MP/2. Accordingly, no vacancy of Metallurgical stream of engineering was notified in the advertisement for the SSC (Tech) 13 course. In view of the foregoing, the case of the officer for transfer from 70 SSC (NT) to 13 SSC (Tech) is not accepted.*

*3. The officer may please be informed accordingly.”*

We note that the reasons for this rejection this time are different i.e. “No vacancy for Metallurgical Engineering Stream was released for SSC (Technical) 13 Course by MP-2. Accordingly, no vacancy of Metallurgical stream of engineering was notified in the advertisement for SSC (Technical)-13 Course. The MS Branch took one year to reply and the applicant also remained silent for one year after he received the rejection letter.

On 12-02-2004 one year after he received the second rejection letter, the applicant forwarded a detailed Non Statutory complaint to the Chief of the Army Staff once again pressing his case for change from SSC (Non Technical) Course- 70 to SSC (Technical)-13 Course. In the complaint he highlighted the fact that one of his junior was given the transfer from Non Technical to Technical Course even when no vacancy for the Metallurgical Discipline, in which the concerned officer was qualified, was published in the advertisement of

the course concerned. We note that his Non Statutory Complaint was made on 12.02.2004 one year after he received the second rejection letter and as per Rules the same was expected to be decided within six months. The applicant received no reply to his statutory complaint for 11 months. As the applicant was about to complete 5years of service, he was required to exercise his option for grant of Permanent Commission or seek five years' extension of service. This option was required to be exercised in March 2005 in a time bound manner.

The applicant fully knowing the implications exercised the option for extension of five years service rather than Permanent Commission. As per the applicant, this was done as his future career prospects, seniority and career advancement depended on the transfer Non Technical to Technical entry for which the above mentioned Non Statutory Complaint dated 12-02-2004 was already pending for over a year with the respondents. Nothing stopped the applicant from exercising the option for Permanent Commission. It appears that he wanted to keep his option open for leaving the Army after five years' extension in case his complaint was rejected. He was well aware of the rules that if he exercised the second option for a Permanent Commission again in his eighth year he would lose one year seniority as per the laid down policy.

It is pertinent to mention that the Technical stream gets two years ante date seniority vis-a-vis the Non-Technical stream. However, we note that the delay in processing the statutory complaint in respect of the applicant's transfer from Non-Technical to Technical

stream and his exercising the option for Permanent Commission or Extension of Service are independent of each other. The applicant's current status was that of Short Service Commission (Non Technical) Course-70 and he, on his own volition, exercised the option of five years extension of service instead of a Permanent Commission. This is a universal policy which is applicable to all the officers of his batch. Thus the applicant's contention/perception that he was exercising a conditional option, subject to the outcome of his statutory complaint, does not withstand scrutiny. The option certificate is given at Annexure A-4 and it reflects choice of the officer for extension of service without any reservation.

On 29-10-2005, 7 months after exercising his option, the applicant addressed a Demi-official letter to the Chief of the Army Staff, wherein he highlighted that his genuine request for transfer from Non-Technical Course-70- to Technical Course -13 has unfairly been rejected twice and now the Non Statutory complaint dated 12.02.2004 is pending final decision. He also mentioned that in January 2005 he had to opt for either for Permanent Commission or extension of service. As his future career prospects depended on the outcome of his statutory complaint, he had opted for extension of service. He also highlighted that since there had been a long delay in deciding the said Non Statutory complaint, he should be given a chance to exercise his option de novo as a first option without any loss of seniority in case his transfer to the Technical stream is approved. On 30-11-2005, he received a reply from the MS Branch

giving reference of his DO to the Chief of the Army Staff and mentioning that the Non Statutory Complaint of the Officer has been processed by the MS Branch and forwarded to the Complaint Advisory Board on 21-03-2005. We note that no commitment has been made either by the Chief of the Army Staff or by the MS Branch in respect of the applicant being given a second chance to exercise his option for Permanent Commission without any loss of seniority. We also note that apparently the Non Statutory complaint of the applicant has been converted to a Statutory Complaint. On 24-04-2006 the applicant received an order dated 20<sup>th</sup> April 2006 issued by the Ministry of Defence. This order is reproduced below:-

*“SS-38620A Capt Ritesh Shrivastava, EME, has submitted a statutory complaint dated 12 Feb 2004 against his non transfer from non-tech to tech entry and grant of ante date seniority. The officer has brought out that he passed out from OTA, Chennai on 02 Sept 2000 as a Short Service Commissioned officer with SSC N)-70 Course. He was BE, Metallurgical Engg from Malviya Regional Engg College, Jaipur in 1996. Due to unawareness about technical entry, he joined OTA, Chennai as a SSC (NT) entry. After joining OTA, he learnt about the technical entry and applied for transfer from SSC (NT) -70 to SSC (Tech)-13 course which was parallel course to SSC (NT)-70. This was turned down by Army HQ (AG/Rtg) on ground that ‘he was having qualification in Metallurgical Engg, which was not acceptable in any technical stream. He contends that this is incorrect since it is included in*

*the qualifications for grant of SSC (Tech) commission in the Corps of EME, as per AI 1-2/93, Para 2 (c)(iii). He infers that he was, thus denied justice. After commissioning, he again took up a case with Army HQ (MS Branch) which was also rejected on the grounds that 'No vacancy was released for Metallurgical Engg to SSC (Tech)-13 Course. This he has attempted to counter by citing example of two officers i.e. IC 6197F Capt AD Kulkarni (BE in Metallurgy and Material Sciences), 603 EME Bn who was transferred to 92 TGC from 109 RC in IMA and IC 61170A Capt HS Sikka (BE in Industrial Engg) (Tech 89) who was accepted as tech entry even when no vacancies of their respective branches were published in the advertisements of their courses. The officer has also referred to the direction of the COAS at PARA of Army HQ letter No. 08044/10+2/MP-2 dated 27 Oct 2003 pertaining to similar cases of ante date seniority for technical graduates allotted non tech arms/services to augment and strengthen his argument to grant him technical entry and resultant seniority and pay.*

2. *The officer has requested the following:-*

- (a) *Entry conversion from SSC-70 (Non Tech) to SSC-13 (Tech)*
- (b) *2 yrs of ante date seniority, associated benefits and arrears.*

3. *The Statutory Complaint of the officer has been examined after taking into account relevant rules and other documents. After consideration of all aspects of the complaint and viewing it against the redress sought, it emerges that there is merit in*

*the officer's contention that he was not allowed transfer from SSC (Non Tech)-70 Course to SSC (Tech)-13 Course based on an incorrect premise. The officer's entry is, therefore, corrected from SSC -70 (Non Tech) to SSC-13 (Tech) with ante date seniority and financial effects as applicable to officers of SSC-13 (Tech) Batch but without any retrospective effect on pay and allowances and other consequential financial benefits.*

4. *Subject to the partial relief ordered as above to SS-38620A Capt Ritesh Shrivastava, EME Central Government disposes his Statutory Complaint dated 12 Feb 2004 submitted against his non transfer from non tech to tech entry and grant of ante date seniority."*

We note that the complainant has received the redressal of his grievance and the Government order is categorical that the officer's entry is corrected from SSC -70 (Non Tech) to SSC-13 (Tech) with ante date seniority and financial effects as applicable to the officers of SSC-13 (Technical) but without any retrospective pay and allowances and other consequential financial benefits.

We also note that in the Non Statutory Complaint dated 12.02.2004 there is no mention that the officer had not sought any other relief particularly related to exercising his option for Permanent Commission or extension of service.

In the eighth year of service i.e. in 2008 the applicant like all other batch-mates, who had opted for extension of service, were given a second chance of option for Permanent Commission or



extension of service or release from service. This time, the applicant opted for Permanent Commission. He was granted Permanent Commission, but his seniority was fixed as 06-11-1999 after deducting one year seniority for opting for Permanent Commission in second chance. This is, as per the rules applicable to all the affected Short Service Commissioned Officers.

The applicant again filed a Statutory Complaint for restoration of his seniority requesting that his second chance of opting for Permanent Commission, should be considered as defacto first chance giving the peculiar circumstances of his case. However, the same was rejected vide the impugned order dated 25-10-2011 (Annexure A-10).

There is no doubt that there was an inordinate delay from December 1999 to 20-4-2006 in deciding the applicant's request for transfer from SSC (Non Technical) Course -70 to SSC (Technical) Course -13. However, in March 2005, the officer exercised the option for extension of 5 years of service fully knowing the implications of the same. He was well aware of all Rules and Regulations that if he exercised the option for Permanent Commission in a second chance in the 8<sup>th</sup> years of service, he will lose one year's seniority. These are the provisions of the Policy which are applicable to all Short Service Commissioned Officers and as such no exception can be made in his case. The applicant has relied upon the inordinate delay in deciding his case and his being unfairly denied the transfer to SSC (Technical) Course-13 and also that he had written to the Chief of the Army Staff

that his seniority should be protected in case the final decision in respect of his transfer case goes in his favour.

We find that the applicant's contention does not withstand scrutiny. The delay in deciding his complaint and exercising the option for Permanent Commission or extension of service are two different things and are not related to each other. The applicant exercised the option for extension of 5 years service fully knowing the consequences that if he exercised the option for Permanent Commission in the second chance in the 8<sup>th</sup> year of service he will stand to lose one year's seniority. The Ministry of Defence Order dated 20<sup>th</sup> April 2006 has only adjudicated on the issue of transfer from Non-Technical to Technical stream and has not given any decision on whether the seniority of the applicant will be protected in relation to exercising his option for Permanent Commission in 8<sup>th</sup> year of service. He was also not given any assurance by the Chief of the Army Staff or by the MS Branch that his seniority would be protected. Had he opted for grant of Permanent Commission in March 2005, he would have suffered no loss of seniority. It is pertinent to mention that though the decision in respect of his transfer took nearly six years, but out of this period he himself is responsible for a delay of 3 years 11 months and 18 days due to delay before filing subsequent complaints. Thus, we find that there is no discrimination against the officer and the decision of the respondents is strictly based on Rules, Regulations and instructions which are applicable to all the similarly placed officers.

Keeping in view the facts and circumstances of the case, we do not find any merit in this application and the same is dismissed. No order as to costs.

**(Justice Vinod Kumar Ahuja)**

**(Lt Gen (Retd) HS Panag)**

**30.05.2013**

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Whether the judgment for reference to be put up on website- Yes /No