

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**

O.A. No. 12 of 2014

Tuesday, the 31<sup>st</sup> day of March, 2015

The Honourable Justice V.Periya Karuppiah  
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

Lt Col Santhosh J Varughese  
S/o John Varughese  
R/o Type V, 9/5 HVF Estate, Avadi  
Chennai – 600 054

...Applicant

By Legal Practitioners:  
M/s V.Vijay Shankar and N.Balamuralikrishnan

vs

1. Union of India  
Through The Secretary  
Ministry of Defence, South Block  
New Delhi – 110 011
2. The Chief of Army Staff  
South Block, New Delhi
3. Military Secretary  
Military Secretary's Branch  
Army Headquarters, DHQ PO  
New Delhi
4. Additional Directorate General  
Recruiting CDSE Entry  
Adjutant General's Branch  
Army Headquarters, West Block III  
R.K.Puram, New Delhi – 110 066
5. Headquarters  
Southern Command  
Pune – 1

...Respondents

Mr.S.Haja Mohideen Gisthi, SCGSC

**ORDER**

[Order of the Tribunal made by  
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Lt Col Santosh J Varughese, in his Original Application has sought to quash the impugned order of the 1<sup>st</sup> respondent dated 15.12.2009 and to grant him ante-date seniority of two years and additional 8 months to compensate for seniority lost on account of having been converted to Non-Technical permanent commissioned officer rather than a Technical permanent commissioned officer with all attendant and consequential benefits and pass such other orders as may be deemed fit.

2. Briefly, the applicant joined SSC-56 non-technical course at OTA, Chennai, in October 1992 and was commissioned in the Army in September 1993. The applicant, at the time of joining the OTA, had acquired M.Sc.(Physics with specialization in Electronics) in May 1991. He had applied for Combined Defence Services Examination in June 1991. He further avers that on passing the written examination, he was called for SSB interview in August 1992. He states that he had completed his M.Sc. degree almost 7 months prior to the said interview and was issued Provisional Degree certificate prior to the interview. He would further state that at the time of his joining OTA, Chennai, there was no SSC (Technical Entry)

Scheme as the said scheme was started in October 1993. In June 1997, the 3<sup>rd</sup> respondent had asked all SSC (Non Technical) officers with requisite technical qualifications to submit their applications for grant of ante-date seniority, as is applicable to the other Short Service Commission (Technical Entry) officers. Accordingly, the applicant applied for the same but was not informed of the result of his application for almost two years. He states that at that stage he was also detailed for the Signal Officers Degree Engineering Course 1982 (SODE 82). While attending SODE 82 course, in CME, Pune, the 3<sup>rd</sup> respondent asked him to provide proof of his acquiring technical qualification, which he forwarded on 14 August 1999, i.e., the original degree certificate and mark list. The applicant submits that the 3<sup>rd</sup> respondent, vide their letter of 26 August 1999 rejected his claim for grant of ante-date seniority on the ground that the qualification had been acquired by him after the last date of receipt of application for CDSE and, therefore, he was ineligible for the said ante-date seniority. Even though the applicant was interviewed, at his request, by Col M.S, MS-13, Army Headquarters, on 22 August 2000, his request for ante date seniority was turned down. He had also made personal application to the MS Branch in July 2002; however vide their letter dated 29 July 2002, his request was again rejected.

3. The applicant submits that he had appealed to the Central Government (First Respondent) vide his Statutory Complaint dated 04 February 2008. The 1<sup>st</sup> respondent, vide their letter dated 15 December 2009, rejected the applicant's claim for ante-date seniority on the ground that the applicant did not acquire the technical qualification on the last date of the submission of his application to UPSC which according to this order was 10 June 1991. The applicant would claim that as he had requisite qualification and the fact that he is serving in the Corps of Signals, a technical Arm, he ought to have been given the ante-date seniority, as was done with all other similarly placed officers. He would further submit that even the call letter for the SSB interview clearly stated that the original certificates are to be submitted within two weeks of completion of SSB interview and not later than 30 September 1992, for training at Officer's Training Academy, Chennai. The applicant would aver that even otherwise, he had given his last examination prior to the date of the last date of receipt of application in UPSC, i.e., 10 June 1991. Further, he was issued with mark sheet on 30 December 1991, well prior to his joining the OTA, Chennai for training in October 1992. To buttress his claim, the applicant would cite the Hon'ble Apex Court's judgment in the case of Chhotu Ram vs State of Haryana & others as reported in (2000) 10 SCC 399, relying upon the observation that *a person must be considered to be eligible with reference to the date of*

*the examination if the examination had been conducted before the cut-off date.* The applicant would, therefore, claim that he had the requisite qualifications before the last date of receipt of applications in UPSC, i.e., 10 June 1991. Therefore, he ought to have been given ante date seniority as applicable to all other similarly placed candidates. Since the claim of the applicant was denied by the 1<sup>st</sup> respondent, vide their letter dated 15 December 2009, he had no other option but to approach this Tribunal for grant of relief, i.e., grant of ante-date seniority.

4. The respondents, in their reply statement, have stated that the applicant applied for the Combined Defence Services Examination in October 1991 for Short Service Commission in OTA, Chennai which is a non-technical entry at that time. The respondents would submit that SSC (Technical) Entry Scheme was discontinued during the period between March 1982 to October 1993. Thereafter, when the SSC (Technical) Entry Scheme was reintroduced in October 1993, a large number of representations were received from officers with technical qualification who were commissioned through SSC (Non-technical stream) during the period 1982 to 1993, for transfer to SSC (Technical) stream and for grant of consequential benefits. Therefore, a decision was taken, as a one time measure, to allow conversion of such officers to SSC

(Technical) stream provided the applicants satisfy the following two parameters:

(a) the degree obtained by the individual makes him eligible for technical entry;

(b) the applicant had acquired the degree before the anticipated last date of receipt of application in UPSC.

5. They would state that the applicant's representation for ante date seniority was rejected on the ground that he did not have the requisite qualification on the last date of submission of the UPSC application and further the applicant does not even meet the education requirements as laid down vide AI 1/93 which states that the candidates possessing an Engineering or equivalent degree from a recognized University in specified disciplines will be eligible for commissioning in the Corps of Engineers, Signal and EME. Relevant extracts for Corps of Signals is reproduced below:

“(i)       xx                       xx                       xx

(ii)       **Corps of Signals**

(aa)       Associate Membership of the Institution of Engineers (India) in Telecommunication Engineering or Electronics as is accepted by the Institution in exemption of passing sections “A” and “B” of its Associate Membership Examination.

(ab)       Any degree or diploma (granted in place of degree) in Telecommunication or Electronics recognized by the Ministry of Education for recruitment to superior posts and services under Central Government.

(ac)       Engineering (Electrical) Graduates from Indian Institution of Technology with specialization in Telecommunication and Electronics.

(ad)       BE/B Tech/B Sc (Engineering) in Computer Science / Engineering Technology

or

(ae) BE / B Tech/B Sc (Engg) in Electronics

or

(af) BE / B.Tech /B.Sc (Engineering) in  
Telecommunication, M.Sc (Computer  
Science)."

6. Since the applicant had only M.Sc (Physics with specialization in Electronics) which does not figure in the list of qualifications laid down vide AI 1/93, he cannot be considered for transfer to SSC (Technical) and grant of ante date seniority. In addition, the last date for submission of Application was 10 June 1991 which had already passed, when the applicant received his mark sheet and the degree, on 30 December 1991. In view of the foregoing, the applicant was not eligible, on both counts, for the grant of ante-date seniority. Hence, the respondents submit that the O.A. be dismissed as devoid of any merit and thus render justice.

7. We have heard the arguments of Mr.N.Balamuralikrishnan and Mr.V.Vijay Shankar, learned counsel appearing on behalf of the applicant and Mr.Haja Mohideen Gisthi, SCGSC, assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) representing for the respondents and perused all the documents that were made available to us.

8. Flowing from the arguments of the counsel for both sides, the following issues emerge for consideration:

- (a) *Does the applicant have the necessary qualification for grant of ante-date seniority?*
- (b) *Can the last date of the final examination be deemed as the date of acquiring the requisite educational qualification?*
- (c) *Is the impugned order dated 15.12.2009 liable to be quashed?*
- (d) *What relief, if any, the applicant is entitled to?*

9. The fact that the applicant had joined OTA, Chennai in October 1992 and was commissioned in the Army in September 1993 and that at the time of commissioning, he had already acquired the degree of M.Sc (Physics with specialization in Electronics) and that he was commissioned into the Corps of Signals, is not disputed. Short Service Technical Entry Commission was reintroduced in October 1993. Later, Officers who had requisite technical qualifications and who had got commission prior to this date were also made eligible to get ante-date seniority provided they possessed the requisite degree and that the degree was obtained prior to the date of receipt of the application in the UPSC. Therefore, these two issues, i.e., having requisite qualifications and obtaining the degree prior to the date of receipt of the



application in the UPSC are the two principal conditions for the grant of ante-date seniority.

10. Point Nos 1 & 2 & 3: From an examination of the documents and pleadings before us, it is evident that the applicant had appeared for final examination of M.Sc (Physics with specialization in Electronics) from the University of Kerala and that the final examination was held in May 1991 and this has not been disputed by the respondents. In the meantime, the applicant had also applied for Combined Defence Services Examination in June 1991, the last date for receipt of application being 10 June 1991. He was called for SSB interview in August 1992 by which time, the applicant had already completed the final examination in M.Sc degree and he was also issued a Provisional Degree certificate. The Technical Entry Scheme in the SSB was restarted in October 1993 and this was made applicable with retrospective effect to those who had requisite qualifications vide Army Headquarters letter dated 10 June 1997. The applicant had applied for the said ante-date seniority in the belief that he had the requisite qualification. However, he was informed that he was not eligible for ante-date seniority, since he had obtained the degree after the cut-off date, i.e., the date of receipt of application for the CDS examination in the UPSC. The respondents would contend that the applicant had made no mention of the said degree, i.e., M.Sc., in

his application form. He was also detailed for attending the Signal Officer's degree Engineering course in 1999. It is surprising that the Army Headquarters have sent the officer on a basic degree course for technical Arm officers who did not have equivalent qualification prior to joining the Army. At the same time, while considering the applicant's request for ante-date seniority, they have not, at any stage, disputed the claim of the applicant that the said degree – M.Sc (Physics with specialization in Electronics) is an equivalent degree in terms of Army Instruction 1/93. The only reason for rejecting the said claim as given by the respondents was that the degree was obtained after the cut-off date. However, in the pleadings before this Tribunal, the respondents have now stated that the M.Sc.,(Physics with specialization in Electronics) was not an equivalent degree in terms of AI 1/93. We are constrained to note that this sudden change of stance after many years and that too after the applicant had filed this Application before this Tribunal is a facile argument and an afterthought, and does not inspire confidence. It is also contrary to the orders passed by the respondents, from time to time, on the subject. If the said contention of the respondents is true, there would be no question of considering the applicant for grant of ante-date seniority at all. On the other hand, in the order issued by the 1<sup>st</sup> respondent, dated 15.12.2009, the rejection of the applicant's representation for grant of ante-date seniority was based on the premise that he had not

acquired the said qualification prior to the cut-off date for applying to UPSC, i.e., 10 June 1991. The respondents claimed that the applicant had obtained the qualification on 30 December 1991, i.e., after the cut-off date for application to UPSC, which was 10 June 1991. For a better understanding, the relevant extracts of the said Order dated 15.12.2009 is reproduced:

"1-2.       xx                   xx                   xx                   xx

3. *The officer has requested for the following:*

(a)       *He be granted ante date seniority equivalent to parallel Direct Entry (Technical) Course. The new date of seniority should be 22 Oct 91 (10 months training at OTA plus two months loss of seniority to make it at par with Direct Entry (T) course, whose duration is 12 months).*

(b)       *He be paid arrears with effect from the date his application for ante-date seniority has been rejected.*

4. *The statutory Complaint of the officer has been examined in the light of his career profile, relevant records and analysis / recommendations of Army Hqs. It is observed that the prescribed technical qualification has been acquired by the Officer on 30 Dec 1991. The last date of submission of application forms for SSC (NT)-56 Course to UPSC was 10 Jun 1991. As per policy, for grant of ante-date seniority, he should have been in possession of the technical qualification on the last date of submission of the said application. Hence, the non grant of ante-date seniority to the complainant is as per rules. No injustice has been done to the Officer.*

5. *The Central Government, therefore, rejects the Statutory Complaint dated 04 Feb 2008 submitted by IC-55084Y Lt Col Santhosh J Varughese, Signals, against non grant of ante-date seniority, being devoid of merit."*

[Emphasis supplied by us]

11. In view of the admission made by the Government itself, vide their Order dated 15.12.2009 (Supra), we will have to accept that the officer had possessed the prescribed technical qualification at the time of commissioning in the Army itself.

Therefore, we are inclined to conclude that the said degree M.Sc (Physics with specialization in Electronics) is an equivalent degree in terms of AI 1/93 and no further discussion is necessary on the subject.

12. The only other issue that remains is whether the applicant had acquired the said qualification prior to the last date for submission of the application, i.e., 10 June 1991.

13. Firstly, we note that at the time of commissioning of the applicant in the Army, there was no Short Service Technical Entry Scheme and the applicant was admitted under the Non-Technical stream, SSC (NT)-56. The Technical Entry Scheme for the SSC was introduced only in October 1991. On introduction of the Technical Entry Scheme, there were a number of representations from officers who have had the requisite technical qualifications and were posted to technical arms, i.e., Engineers, Corps of Signals and EME, and they too had pleaded that they should be given ante-date seniority as is applicable to SSC Technical Entry starting from October 1993. The Government considered these requests and made the scheme applicable to previous entrants also who had requisite qualifications, vide their letter dated 10 June 1997. For a better understanding, the said letter is reproduced below:

CONSIDERING OF CASES FOR GRANT OF TWO YEARS ANTE  
DATE SENIORITY TO THE OFFICERS OF SSC (NON TECH) /  
REGULAR COURSES POSSESSING TECHNICAL QUALIFICATION

1. A few officers who have undergone pre-commission training under the provisions of SS (NT) / Regular Course have represented that they should be considered for ante date seniority under the provisions of AI 2/93/SAI 1/S/94 applicable to SSC (Tech) / TGC officers since they possess technical qualification as per these AI /SAI.
2. It is proposed to take up a case with Government for the same as a one time measure.
3. While the relevant AIs / SAs should be referred to for details, it is reiterated that the officers should have been in possession of the technical qualification specified for the particular Arm / Service and they should have also been in possession of the same before the anticipated last date for receipt of application for entry to the corresponding SS (Tech) / TGC course.
4. Eligible officers including those who have represented on the subject earlier must forward their application in the format attached through respective controlling groups so as to reach MS 8B by 01 Oct 97 after which no application will be entertained.
5. The contents of this letter may be disseminated to all concerned. This letter is no guarantee that the Govt will approve the ante date seniority.  
[Emphasis supplied by us]

14. From para 3 of the above letter, it appears that an officer should have been in possession of the requisite technical qualification specified for the particular Arm / Service before the anticipated last date for receipt of application for entry to the corresponding SS (Tech) / TGC course. The objective of having a SS (Tech) commission, as we understand, is to get qualified engineers into the technical Arms of service so that they can be employed without consuming time and effort on training the officers to obtain requisite Engineering degree at Government expense. And since such candidates would have spent more time in studying in civil at their own expense, ante-date seniority is given

as a compensation and to make the scheme more attractive for such candidates. In other words, the applicants who join the Technical Scheme ought to have been qualified as Engineers prior to joining the OTA, Chennai/Indian Military Academy, Dehra Dun. Therefore, applying an arbitrary cut-off date with retrospective effect for a scheme which did not exist prior to October 1993 and insisting on that date appears to be against the principles of natural justice. However, even if we accept the argument of the respondents on the validity of the cut-off date, the applicant has claimed that he had his final examination in May 1991 prior to the cut-off date, i.e., 10 June 1991, and this has not been contested by the respondents. The counsel for the applicant would argue that the Hon'ble Apex Court, in the case of Chhotu Ram vs State of Haryana [(2000) 10 SCC 399] ruled that the date of final examination should be considered as the date of obtaining the qualification. For better understanding, the relevant portion of the Hon'ble Apex Court order is reproduced below:

"1-4           xx                           xx                           xx                           xx

*5. It is true that Rule 9 of the Haryana Service of Engineers Class II (Public Works Department, Irrigation Branch) Rules says that the cut-off date will be the 1<sup>st</sup> of January of the year concerned and here the cut-off date will be 1-1-1980. In a situation where a person takes an examination before the cut-off date and the result is declared after the cut-off date the above said administrative order dated 23-7-1973 clarifies as to what is to be done. In our view the said clarification is not in conflict with the statutory rules, inasmuch as it only states that whereby the date on which the Departmental Promotion Committee meets, the result is also declared, - may be subsequent to the cut-off date, - the person must be considered to be eligible with reference to the date of the examination if the examination had been conducted before the cut-off date. We do not, therefore, see any conflict*

between the clarification dated 23-7-1973 and the statutory rules. Giving effect to the above said clarification, it must be held that the appellant was qualified as on September 1980 when DPC met. We, therefore, order that the case of the appellant be considered on the basis that he was qualified by the cut-off date, 1-1-1980. If he is considered fit for promotion as in September 1980, he shall be given the necessary promotion and other consequential benefits. In case the Department feels that any other persons are likely to be affected in the seniority it will be open to the Department to give notice to those candidates before finalizing the case of the appellant. The appeal is allowed. However, in the circumstances there shall be no order as to costs." [Emphasis supplied by us]

15. In the extant case, the applicant had appeared for the final examination in May 1991, i.e., prior to the cut-off date of 10 June 1991. The degree and mark sheet were received by the applicant on 30.12.1991, well before he was admitted to OTA, Chennai. Therefore, the order of the Hon'ble Apex Court (Supra) is squarely applicable to the applicant. We also observe that, the Army Headquarters in its policy letter on grant of substantive ranks of Captain, Major and Lt. Colonel dated 16 February 2005, has endorsed similar principles, i.e., the date of passing promotion examination is taken as first day of the examination and not the date of declaration of results. An extract of relevant para is reproduced below:

1-6      xx              xx              xx

"Loss of Seniority Due to Late Passing of Promotion Examination (PE) Part D

7. All Officers who have passed PE pat DD later than the prescribed years of service for their Arm/Service but before 16 Dec 2004, have been / will be granted substantive rank of Maj from the date of passing such examination (the date of passing is taken as the first day of the examination and not the date of declassification of results). Those officers, who have not passed PE Part D before 16 Dec 2004, will be eligible for grant of substantive rank of Maj with effect from 16 Dec 2004 provided they meet the other criteria, since passing of PE Part D

*is no longer a mandatory requirement for grant of substantive rank of Maj. “*  
[Emphasis supplied by us]

8. xx                      xx                      xx

In view of the foregoing, both points 1 and 2 go in favour of the applicant and the impugned order (Point 3) issued by the respondents dated 15.12.2009 is liable to be quashed.

16. Point No. 4: From the discussions and findings above, we are inclined to agree with the contention of the applicant that he is eligible for grant of ante date seniority, as he fulfills the conditions laid down under Army Headquarters letter dated 10 June 1997.

17. In fine, the OA is allowed. The applicant is eligible for grant of ante-date seniority, as entitled to similarly placed officers in accordance with Army Instructions 2/93, SAI 1/S/94 and Army HQ letter dated 10 June 1997. The respondents are hereby directed to refix the seniority of the applicant within three months from the date of this order and to grant all consequential benefits arising out of refixing of the said seniority, as ordered. No order as to costs.

Lt Gen K Surendra Nath  
Member (Administrative)

Justice V.Periya Karuppiah  
Member (Judicial)

**31.03.2015**

**Member (J)** – Index : Yes/No

Internet : Yes/No

**Member (A)** – Index : Yes/No

Internet : Yes/No

ap



To

1. The Secretary  
Ministry of Defence, South Block  
New Delhi – 110 011
2. The Chief of Army Staff  
South Block, New Delhi
3. Military Secretary  
Military Secretary's Branch  
Army Headquarters, DHQ PO  
New Delhi
4. Additional Directorate General  
Recruiting CDSE Entry  
Adjutant General's Branch  
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R.K.Puram, New Delhi – 110 066
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Pune – 1
6. M/s V.Vijay Shankar and N.Balamuralikrishnan  
Counsel for applicant
7. Mr.S.Haja Mohideen Gisthi, SCGSC  
Counsel for respondents
8. O i C, Legal Cell,  
ATNK & K Area,  
Chennai-600009.
9. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah  
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath  
(Member-Administrative)

O.A.No.12 of 2014

Dated : 31.03.2015