

(19)

OA 1572/201

with

OA 121/201

OA 2180/201

30-9-2002

All the OA's have been  
discussed by a bench comprising of  
Hon'ble the Chairman & Hon'ble Sh. M.P.  
S.P.I. M.C.A. original orders have been  
placed in Part 'A' of OA 1572/01 and  
duly attested copy of ~~the~~ orders placed  
in Part 'A' of OA 121/01 and OA 2180/01  
respectively.

By order  
of the  
Court

Central Administrative Tribunal,  
Principal Bench

O.A. No.1572/2000  
WITH  
O.A. No.121/2001  
WITH  
O.A. No.2180/2001

New Delhi this the 30<sup>th</sup> day of September, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. M. P. Singh, Member (A)

O.A. No.1572/2000

Dharmvir sharma S/o Sh. Ram Singh  
R/o: RZF - 539, Gali No.42,  
Sadh Nagar, Palam Colony, New Delhi.

(By Advocate : Shri V.P. Sharma) - Applicant

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. The Director General, Border Security Force, CGO Complex, Lodhi Road, New Delhi.
3. The Inspector General (Pers) Directorate General Office, BSF CGO Complex, Lodhi Road, New Delhi.
4. The Chief Engineer, Border Security Force, Air Wing, Safderjung, Air port, New Delhi.

(By Advocate : Shri Inderjit Singh for  
Shri Rajinder Nischal) - Respondents

O.A. No.121/2001

1. Madan Jeevan S/o Sh. Chandra Dwivedi
2. Hari Om Gaur S/o Sh. N.R. Gaur
3. B.N. Shukla S/o Sh. S.D. Shukla
4. All are working as S. Aircraft Mechanic in Air Wing, B.S.F., Safdar Jung Airport, New Delhi.
5. Dharanvir Sharma S/o Ram Singh, working as Junior Aircraft Radio Mechanic in Air Wing B.S.F... R/o RZF-539

(By Advocate : Shri V.P. Sharma) Gali No.42, Palam Colony, Sadh Nagar, N.D.

VERSUS ....Applicants

1. Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.

2. The Director General,  
Border Security Force,  
CGO Complex, Lodhi Road,  
New Delhi.
3. The Inspector General (Pers)  
Directorate General Office, BSF  
CGO Complex, Lodhi Road,  
New Delhi.
4. The Chief Engineer,  
Border Security Force,  
Air Wing, Safderjung, Air Port,  
New Delhi.
5. Shri K.B. Batra  
Chief Engineer  
Border Security Force,  
Air Wing, Safderjung, Air Port,  
New Delhi.
6. Shri J.S. Bhatnagar,  
Deputy Chief Engineer,  
C/o The Chief Engineer,  
Border Security Force,  
Air Wing, Safderjung, Air Port,  
New Delhi. .... Respondents

(By Advocate : Mrs. Promila Safaya)

O.A. No.2180/2001

Hari Om Gaur S/o Sh. N.R. Gaur  
R/o RZF-8/40 (117/20) Street No.40,  
Sadh Nagar, Palam Colony, New Delhi-45. .... Applicant

(By Advocate : Shri V.P. Sharma)

VERSUS

1. Union of India through the Secretary  
Ministry of Home Affairs, North Block,  
New Delhi.
2. The Director General  
Border Security Force, CGO Complex,  
Lodhi Road, New Delhi.
3. The Inspector General (AIR)  
Border Security Force, CGO Complex,  
Lodhi Road, New Delhi.
4. The Chief Engineer  
BSF Air Wing, I.G.I. Airport,  
Terminal-I, New Delhi.
5. Sh. K.B. Batra  
The Chief Engineer  
BSF Air Wing IGI Airport,  
Terminal-I,  
New Delhi-37. .... Respondents

(By Advocate : Shri N.K. Aggarwal with  
Mrs. Promila Safaya)



O R D E RShri M.P. Singh, Member (A) :

The facts and law involved in all the three OAs are identical and, therefore, we proceed to dispose of all the OAs by passing a common order.

2. For the sake of convenience, the facts mentioned in OA No.1572 of 2000 are discussed in this case. By filing this OA, the applicant is claiming the following reliefs:-

- A) That the application of the applicant may be allowed with the cost.
- B) That the Hon'ble Court may graciously be pleased to pass an order of quashing the action of respondents in not calling the applicant by way of considering of his case alongwith the Junior Persons than the applicant who were appointed on the basis of Notification dated 18.6.1991, and calling the Service Records of the Junior Persons vide order No.17/36/99/AW/BSF/3935 dated 10.7.2000. (The copy of the order dated 10.7.2000 can not be placed on the file of the reason the same is not supplied to the applicants due to service reasons) and consequently the applicant is also entitled for the consideration for his promotion to the Post of Senior Aircraft Radio Mechanic Grade Rs.2000-3200 (PR)/Rs.6500-10500, after fixing the seniority of all Junior Aircraft Radio Mechanic mainly those who are appointed prior to Notification dated 18.6.1991 and those who are appointed after the Notification dated 18.6.1991.
- C) That the Hon'ble Tribunal may be further please to pass an order of declaration to the effect that the post of which were notified vide Notification dated 18.6.1991 (Annexure A-7) are Civil Post for the wants of Notification which is required to be published by Govt. of India and consequently the applicant is also entitled to be considered alongwith his Junior Aircraft Radio Mechanic for the promotion of Senior Aircraft Radio Mechanic.



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3. The brief facts of the case as stated by the applicant are that he was appointed as Junior Aircraft Radio Mechanic in Border Security Force (Air Wing) in the pay scale of Rs.1320-2040 on 3.7.1991. According to the applicant, there are two categories of persons employed in Force, namely :

- (i) Those employees who are governed by the BSF Act, 1967/ rules framed thereunder and are member of the BSF under Section (2) (k) of the Act. (Combatised)
- (ii) Civilian employees who are appointed under the rules framed by the President of India under the proviso of Article 309 of the Constitution of India. (Non-combatised)

4. It is stated by the applicant that the Ministry of Home Affairs vide Notification dated 4.8.1980 declared the post of Air Wing Officers as combatised posts for the purpose of equation of the post held by BSF. It is further stated by the applicant that Ministry of Home Affairs vide their notification dated 18.6.1991 created additional posts of Technician and other staff in which senior Aircraft Radio Mechanic post was upgraded to Rs.2000-3200 (PR) and the post of Junior Radio Mechanic was also upgraded. The aforesaid notification did not disclose that these posts in question are combatised post and, therefore, it can be safely submitted that these posts are civilian posts. According to the applicant, the respondents had stated considering the

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senior persons for promotion to the post of Senior Aircraft Mechanic /Senior Aircraft Radio Mechanic in the grade of Rs.2000-3200. Since the applicant has been ignored for the aforesaid promotion to the above post, he made several representations to the respondents, but no reply has been received by the applicant. Aggrieved by this, the applicant has filed the present OA seeking the aforesaid relief.

5. Respondents in their reply have stated that the Respondent No.1 had sanctioned two posts, one each, for Senior Radio Mechanic and Radio Mechanic in the pay scale of Rs.550-900 and Rs.380-560 respectively. The applicant was appointed as Junior Aircrafts Radio Mechanic in BSF w.e.f. 3.7.1991 in the pay scale of Rs.1320-2040 against the existing vacancy of above Radio Mechanic, which was non-combatised post. The Respondent No.1 had sanctioned 200 additional posts for BSF Air Wing vide notification dated 18.6.1991 including the post of Senior Aircrafts Radio Mechanic and four posts of Junior Aircrafts Radio Mechanic in the pay scale of Rs.2000-3200 and Rs.1400-2300 respectively. On specific querry of BSF, Air Wing, the Respondent No.1 had clarified on 10.7.1991 that all these posts were combatised posts except the post of Saction Officer. Thereafter all non-combatised personnel were asked to give their option for combatisation vide letter dated 16.6.1992, but the applicant did not reply to the said letter. Now in the present OA, the applicant is requesting to consider him for promotion to the post of Senior Aircrafts Radio

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Mechanic (combatised) whereas the post of Senior Aircrafts Radio Mechanic in his stream i.e. (non-combatised) is already occupied. The applicant is not eligible for the post of Senior Aircrafts Radio Mechanic (combatised post) due to the fact that he is a non-combatised employee who did not opt for combatisation when he was asked to do so. According to the respondents while the function/execute by both combatised and non-combatised personnel are same but the responsibilities, obligations and other working conditions are not similar at all, as the combatised personnel are bound by far more onerous and difficult working conditions, duties and responsibilities than those of non-combatised personnel. The retirement age of the person of combatised cadre is three years less than those in the non-combatised cadre, as the retirement age of personnel of combatised cadre is 57 years and the retirement age of personnel of non-combatised cadre is 60 years. The terms and conditions of these two cadres are also different as in the case of combatised cadre, they are bound with stringent provisions of BSF Act and rules as the combatised personnel. The pay scales of Senior Aircrafts Mechanic and Junior Aircrafts Mechanic (combatised) are Rs.6500-10500 and Rs.4500-7000 respectively whereas the pay scales of Senior Radio Mechanic and Junior Radio Mechanic (non-combatised) are Rs.5500-9000 and 4000-6000 respectively. This is the clear distinction between combatised and non-combatised. In view of the above submissions, OA ~~is~~ deserves to be dismissed.



6. We have carefully considered the rival contentions of the parties and perused the material placed on record.

7. It is an admitted position that there are two different streams i.e. combatised and non-combatised. The persons who are holding the post of combatised are bound to wear uniform, undergo physical/arms training regularly. They also attend daily morning parade, annual firing, physical test etc, whereas the persons who are holding the post of non-combatised are not bound to wear uniform and do not come under the purview of BSF Act and rules. It is also the fact that there are separate recruitment rules for the combatised and non-combatised posts and the pay scale for the post of combatised persons and non-combatised persons are also different. It is not in dispute that as per the circular dated 16.6.1992 issued by the D.G., BSF, the additional posts created are combatised posts. The options had been invited from the personnel who were holding the posts of non-combatised for their willingness for combatised posts. The applicant has not given his option for changing the cadre from non-combatised to combatised. Learned counsel for the applicant has also failed to establish this fact by giving any documentary proof that he had sent his willingness for change of cadre from non-combatised to combatised, as required under the aforesaid circular. In view of the above facts, the applicant cannot claim his promotion for the post which form part of



combatised stream. He can only claim his promotion in his own stream i.e. non-combatised.

8. For the reasons recorded above, we do not find any merit in the present case and <sup>is</sup> ~~is~~ dismissed. Accordingly O.A. No.121/2001 and O.A. No.2180/2001 are also dismissed. No costs.

9. Let a copy of this order be placed in OA No.121/2001 and OA No.2180/2001.

( M.P. Singh )  
Member(A)

( V.S. Aggarwal )  
Chairman

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Attested  
I.D and co.  
31/10/02