

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00110/2016

Date of Order: This, the 06th day of February 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Shri Chandra Bhushan Prasad Madhukar
 S/o Late Lala Prasad
 Presently working as Executive Engineer
 O/o Inspector General
 Ftr. Hqr. Sashastra Seema Bal
 G.S. Road, Guwahati, Assam
 Pin – 781022.

...Applicant

By Advocates: Mr. M. Chanda, Mr. S. Nath & Mr. G.J. Sharma

-VERSUS-

1. The Union of India
 Represented by the Secretary
 To the Government of India
 Ministry of Home Affairs
 Government of India, North Block
 New Delhi – 110001.
2. The Director General
 Sashastra Seema Bal
 East Block-V, R.K. Puram
 New Delhi – 110066.
3. The Secretary
 Department of Personnel and Training
 Ministry of Personnel and Training
 North Block, New Delhi – 1.
4. The Secretary
 Cabinet Secretariat
 Govt. of India, New Delhi.

5. The Superintending Engineer
 Sashastra Seema Bal, East Block-V
 R.K. Puram, New Delhi – 110066.

... Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC

O R D E R (ORAL)

MANJULA DAS, MEMBER (J):

Being aggrieved with non-consideration the date of acceptance of offer for combatisation and antedate seniority, the applicant has preferred the instant O.A. under Section 19 of the Administrative Tribunal Act, 1985 seeking the following main reliefs:-

- “8.1 That the Hon'ble Tribunal be pleased to direct the Respondents No. 1 and 2 to put on hold the recruitment process initiated vide circular dated 02.02.2016 and 12.02.2016 to fill up the posts of Commandant (Engineer) and Deputy Inspector General (Works) on deputation/absorption till the option submitted by the applicant on 05.11.2009 and 03.06.2011 for combatisation is acted upon.
- 8.2 That the Hon'ble Tribunal be pleased to direct the Respondents No. 1 and 2 to consider the date of acceptance of officer for combatisation and antedate seniority to the applicant i.e. with effect from the date of initial acceptance of offer by the applicant on 05.11.2009.
- 8.3 Direct the Respondents to review the cadre of the Applicant immediately for creation of promotional avenues in the existing cadre or adjustment against posts in combatised cadre acting on option submitted by the applicant on 05.11.2009.”

2. Mr. M. Chanda, learned counsel appearing on behalf of the applicant submitted that applicant is a Central Government civilian employees of Sashastra Seema Bal (for short SSB) serving in Engineering Cadre. His service condition is governed by Central Civil Services Rules under Ministry of Home Affairs, Government of India. The applicant is a Bachelor in Civil Engineering (B.E.). He was initially appointed as Assistant Engineer in SSB in the year 1989 and promoted as Executive Engineer on 26th November 1997. According to Mr. Chanda, in his entire career spanning more than 27 years, the applicant has been promoted only once. The applicant is holding the post of Executive Engineer since 26.11.1997 without any further promotion. The Sashastra Seema Bal was earlier known as Special Service Bureau (SSB) under Cabinet Secretariat, Government of India. Prior to 2001, said Organisation i.e. Special Service Bureau was under Administrative Control of Directorate General Security [DG(S)] of the Cabinet Secretariat. In January 2001, the administrative control of SSB has been shifted to Ministry of Home Affairs with defined Role, as one of the Border Guarding Force of Union of India. The name of Special Service Bureau was changed to Sashastra Seema Bal with effect from 27.03.2004. Accordingly, the Sashastra Seema Bal Act, 2007 came into force on 20.12.2007.

3. Mr. Chanda further submitted that the Engineering cadre of the Sashastra Seema Bal, before transfer of the administrative

control from the Cabinet Secretariat to the Ministry of Home Affairs, was governed by the Cabinet Secretariat, Special Service Bureau (Engineering Service), Recruitment Rules, 2000. This Recruitment Rules structured the engineering cadre of the SSB as per their extent hierarchy. However, said Recruitment Rules have not been reviewed and re-structured since then and after the SSB placed under administrative control of the Ministry of Home Affairs. The service prospect of the applicant has been adversely affected and the applicant has been placed to stagnation because of the Special Service Bureau (Engineering Service) Recruitment Rules, 2000 has no force in the eye of law after the Sashastra Seem Bal Act, 2007 came into force.

4. Mr. Chanda further submitted that the Ministry of Home Affairs approved combatisation of all civilian cadres. As such, the Respondent No. 2 vide Memorandum No. 30/SSB/A2/99/(12)/5319-66 dated 22.05.2007 and Corrigendum dated 23.05.2007 initiated the process of combatisation of the Sashastra Seema Bal. In the said Memorandum dated 22.05.2007, it has been stated that the MHA has already approved combatisation of all Civilian Cadres, as such, it was proposed to seek options of the entire Engineering and Cipher Computer Cadres of SSB in the equivalent pay scales of the combatised GD set up. The respondent No. 2 vide Memorandum No. 42/SSB/Pers-I/2006 (18) 7393-7418 dated 06.10.2009 again

proposed to seek options from the personnel of Engineering Cadre. In response to the Memorandum dated 06.10.2009, the applicant submitted his application dated 05.11.2009 to the respondent No. 2 along with acceptance of offer for combatisation. However, till date, the application dated 05.11.2009 has not been acted on by the respondents for the reasons best known to them.

5. Mr. Chanda further submitted that in the month of June 2010, 32 Battalions, 9 Sector Hqrs, and 3 Ftr. Hqrs along with one post of IG (Engr.), 2 posts of Deputy Inspector General's (Engr.) and component of Engineering Wing (total posts created in Engineering cadre-177 posts) were sanctioned by Government of India. In the year 2011, Restructuring of SSB was conveyed by MHA vide their letter No. 27013/17/2007.PF.IV dated the 19th April, 2011. In the said letter dated 19.04.2011, it has been stipulated that the restructuring will be implemented only after modalities of combatisation of non-combatised posts are approved by the competent authority. According to Mr. Chanda, in Engg Cadre, 281 posts created in combatised cadre against 299 existing posts combatised. The respondents initiated the process of combatisation of the Sashastra Seema Bal and as the organization had a large number of civilian employees, options were sought from the civilian employees for combatisation number of times i.e. 2007 and 2009. Thereafter, the respondent No. 2 vide Memorandum No. 42/SSB/P-V/2011/(1) 747-

846 dated 23.05.2011 sought fresh options from all the civilian incumbents. The applicant had accepted the offer of combatisation as and when asked for since 2009. Lastly in response to the memorandum dated 23.05.2011, the applicant submitted his option on 05.06.2011 which was forwarded by the I.G. (Admn.) vide letter dated 07.06.2011. Thereafter, in the year 2011, the respondents started carrying out the restructuring keeping in view the combatisation policy and issued the letter dated 19.12.2011 wherein at para c, it is stated that 28 incumbents have opted for combatised shall be combatised but the same shall be implemented after deciding on the equivalence for such 28 incumbents in the combatised cadre.

6. According to Mr. Chanda, the respondents have not reviewed and restructured the SSB Engineering cadre since 2000 and have not combatised the applicant on the basis of option submitted by him since 2009. Due to unexplained delay and lapses on the part of the respondents, applicant has suffered a lot and he has been debarred from applying for advertised posts. He has been also financial loss due to the stagnation in a post for more than 18 years continually. The applicant made several requests not only for deputation to other Department in higher grade but also for career progression within the Department by way of Restructuring and review of existing Engineering Cadre of SSB. However, no action has

been taken by the respondent Nos. 1 & 2 on the said requests of the applicant. The respondents have notified the Sashastra Seema Bal Group 'A' Combatised Engineering Cadre Recruitment Rules, 2015 (for short referred as RR of 2015) on 04.12.2015 and by bringing into effect the recruitment rules, the respondents have created so many ambiguities to the present civilian Engineering cadre officer and applicant in particular.

7. Mr. Chanda further submitted that the Director General, SSB (Respondent No. 2) has advertised the posts to be filled by Deputation for the sanctioned post of combatised Engineering cadre so notified vide Sashastra Seema Bal Group 'A' Combined Engineering Cadre Recruitment Rules, 2015 in two spells i.e. for Commandant (Engr.), 02 posts, vide impugned Circular dated 02.02.2016 with direction that the application should reach within 10 days from the date of publication of the Circular and remaining posts from Inspector General (Works) to Deputy Commandant (Engr.) vide letter dated 12.02.2016 with further direction that the application should reach within 60 days from the date of publication of the advertisement in the 'Employment News'. Last date of receipt of application for the posts of Commandant (Engr.) has been extended by 60 days i.e. up to 12.04.2016 without change of content of advertisement.

8. The applicant submitted application dated 05.11.2009 and 03.06.2011 to the respondent No. 2 along with acceptance of offer for combatization. He also made reminder application dated 04.10.2011. Thereafter, the applicant submitted representation dated 09.02.2012 to the respondent No. 1 for next grade pay in the pay band of approved restructured SSB, Engineering cadre and to count past services, so rendered by him in the civilian cadre and to maintain parity of status as an Engineer with counterpart of CPWD on acceptance of his offer for combatisation. But till date, the respondents have neither replied to the said representations nor the applicant has been combatised.

9. Mr. R. Hazarika, learned Addl. CGSC appearing on behalf of the respondents submitted that the name of the Special Service Bureau was changed to Sashastra Seema Bal. Hence Special Service Bureau (Engineering Service) Recruitment Rules, 2000 has no force in the eye of law after the Sashastra Seema Bal Act, 2007 came into force. According to Mr. Hazarika, question of stagnation of the applicant in his service career is not true inasmuch as he was promoted from the post from Assistant Engineer to the post of Executive Engineer in 1997 and he belongs to civilian group.

10. Mr. Hazarika further submitted that as per the approval of the Ministry of Home Affairs, the option for combatisation was invited

from non combatisation Cipher Computer Cadre and Engineering Cadre personnel vide OM dated 22.05.2007 for combatisation of all civilian cadres wherein equivalent rank in the combatised stream as per the pre-revised (5th CPC) pay scale was proposed. Further vide O.M. dated 06.10.2009, option for combatisation from non-combatised Engineering cadre personnel was invited proposing equivalent rank in the combatised stream as per revised pay structure of 6th CPC. But the option submitted by the applicant for combatisation dated 05.11.2009 was opened only for six months and as such, the option was conditional in nature and the applicant has no locus standing to claim that the option must be considered by the respondents beyond the limitation period. The Ministry of Home Affairs vide OM dated 23.05.2011 sought fresh option for combatisation explaining the criteria and terms & conditions of combatisation wherein period of limitation was also fixed.

11. Mr. Hazarika further submitted that combatised and non-combatised personnel have not yet been implemented due to non approval of rank equivalency by the Ministry of Home Affairs. The application of the applicant for deputation outside the organization have also been considered from time to time. Cadre clearance for his deputation to NIT, Jamshedpur was requested from Ministry of Home Affairs which was not accorded. Hence, the applicant cannot claim deputation outside the organization. According to Mr.

Hazarika, consolidated review proposal of all non-combatised cadres including Engineering cadre has already been submitted to the Ministry of Home Affairs. As per provisions contained in the recruitment rules, the posts of Deputy Commandant (Engineer) to IG (Works) are to be filled up by promotion, failing which, by deputation. Since there were no officers in the feeder grades available for promotion, vacancy circulars to fill up these posts on deputation basis were circulated. The process initiated to fill up 2 posts of Commandant Engineer on deputation basis is as per the provision contained in the Recruitment Rules and filling up the said 2 posts on deputation basis, application of eligible departmental candidates i.e. non combatised engineers have also been invited. As such, the promotional prospect of the applicant has not been hampered.

12. We have heard the learned counsel for the parties. Perused the pleadings and all the materials placed on record. The applicant is a Central Government civilian employee of Sashastra Seema Bal (for short SSB) serving in Engineering Cadre and his service condition is governed by Central Civil Services Rules under the Ministry of Home Affairs, Government of India. The applicant is a Bachelor in Civil Engineering (B.E.). He was initially appointed as Assistant Engineer in SSB in the year 1989 and promoted as Executive Engineer on 26th November 1997. The applicant made his grievance

that in his entire career spanning more than 27 years, the applicant has been promoted only once. He is holding the post of Executive Engineer since 26.11.1997 without any further promotion.

13. The Ministry of Home Affairs approved combatisation of all civilian cadres. As such, the respondent No. 2 vide Memorandum No. 30/SSB/A2/99/(12)/5319-66 dated 22.05.2007 and Corrigendum dated 23.05.2007 initiated the process of combatisation of the Sashastra Seema Bal. In the Memorandum dated 22.05.2007, it has been stated that the Ministry of Home Affairs has already approved combatisation of all Civilian Cadres and as such, it was proposed to seek options of the entire Engineering and Cipher Computer Cadres of SSB, in the equivalent pay scales of the combatised GD set up. The respondent No. 2 vide Memorandum No. 42/SSB/Pers-I/2006(18) 7393-7418 dated 06.10.2009 again proposed to seek options from the personnel of Engineering Cadre. In pursuance to the said Memorandum dated 06.10.2009, the applicant submitted his application dated 05.11.2009 opting to be combatised as Deputy Commandant (Engineer) which appears at Annexure-5 to the O.A.

14. In the year 2011, Restructuring of SSB was conveyed by Ministry of Home Affairs vide their letter No. 27013/17/2007.PF.IV dated the 19th April, 2011. In the said letter, it has been stipulated that the restructuring will be implemented only after modalities of

combatisation of non-combatised posts are approved by the competent authority. In Engineering Cadre, 281 posts created in combatised cadre against 299 existing posts combatised. The respondents thereafter initiated process of combatisation of the SSB and as the organization had a large number of civilian employee, options were sought from the civilian employees for combatisation number of times i.e. 2007 and 2009. The respondent No. 2 vide Memorandum No. 42/SSB/P-V/2011/(1)747-846 dated 23.05.2011 again sought fresh options from all the civilian incumbents. In response to the said Memorandum dated 23.05.2011, the applicant submitted his option on 05.06.2011 for combatisation. The I.G. (Admn) vide letter dated 07.06.2011 has forwarded option of the applicant dated 05.06.2011 to the SSB, Headquarter, New Delhi.

15. From the perusal of record, it is seen that 28 incumbents have opted for combatised but the same shall be implemented after deciding on the equivalence for such 28 incumbents in the combatised cadre. The applicant is one of the candidates among 28 incumbents. But till date, option submitted by the applicant has not been acted upon for combatisation as a result further promotional aspect of the applicant has been adversely affected. The Sashastra Seema Bal Group 'A' Combatised Engineering Cadre Recruitment Rules, 2015 published on 04.12.2015 provides method of recruitment, age limit, qualification etc. to the post of Group 'A' at

column 5 to 13 in the schedule. Sl. No. 1 specifies the name of the post i.e. Inspector General (Works) where the post is Selection post and method of recruitment provides as under:-

'By promotion failing which by deputation'.

In case of Promotion, it is provided as here under:-

'Promotion: Deputy Inspector General (Works) of Sashastra Seema Bal (possessing degree in Civil Engineering) in Pay Band-4 (Rs. 37400-67000) and grade pay of Rs. 8900/- with two years regular service in the grade and minimum twenty-four years Group 'A' service and has undergone promotional course as prescribed by the Director General, Sashastra Seema Bal from time to time.'

In regards to the Commandant (Engineer) which is concerned in this case, at column 3, it has been specified that the post is a 'Selection Post'.

Column 10 of the schedule provides as here under:-

'By promotion failing which by deputation/absorption'.

Column 11 of the schedule provides as here under:-

'Promotion: Deputy Commandant (Engineer) of Sashastra Seema Bal (possessing Degree in Civil Engineering) in Pay Band-3 (Rs. 15600-39100) and Grade Pay of Rs. 6600/- with ten years regular service in grade and minimum fifteen years Group 'A' service and has undergone promotional courses as prescribed by the Director General, Sashastra Seema Bal from time to time.'

16. Now the grievance arises to the applicant that despite clearly specified in the Recruitment Rules 2015 for the post of Commandant (Engineer) on promotion basis, however, the

respondent No. 2 i.e. the Director General, SSB, New Delhi has advertised against 02 posts of Commandant (Engineer) to be filled up by deputation basis for the sanctioned post of combatised engineer cadre on 02.02.2016 and 12.02.2016 which are impugned herein.

17. The second grievance of the applicant is that had the option submitted by him on 05.11.2009 and 03.06.2011 been accepted by the respondents in time, he would have been eligible for promotion to the post of Commandant (Engineer) in the combatised cadre.

18. Admittedly in pursuance of offer of option for combatisation in SSB vide Govt. letter dated 06.10.2009 and 23.05.2011, the applicant gave option for combatisation by submitting application dated 05.11.2009 and 05.06.2011 respectively. Moreover, the applicant did make application before the authority on 09.02.2012 with a request for combatisation. However, matter is pending long before the appropriate authority. As the matter of option for combatisation of the applicant is pending long, this Tribunal earlier made query to the respondents as to why delay occurred, the respondent authorities vide their affidavit dated 15.11.2018 stated in paragraphs 3.1 & 3.2 as here under:-

“3.1 The proposal for rank equivalence of Non-combatised post for combatisation was initially sent

by SSB to MHA in the year 2007. Consequent upon receipt of approval of MHA vide their UO dated 19.05.2011 for combatisation of 28 incumbents, a proposal for rank of equivalency of all Non-combatised post corresponding to combatised post was sent to MHA vide SSB UO dated 28.10.2012 for approval. The matter of rank equivalency remained under correspondence time and again between SSB and MHA. The matter is still under process with MHA, and as such, the combatisation of Non-combatisation personnel has not yet been implemented.

3.2 The Sashastra Seema Bal Group 'A' Combatised Engineering Cadre Recruitment Rules, 2015, were notified on 04.12.2015. As per the said recruitment rules, 2 posts of Commandant (Engineer) are sanctioned in SSB. The post of Commandant (Engineer) is to be filled up by promotion failing which by deputation/absorption."

19. The respondents in the written statement as well as affidavit filed later on stated that the post of Deputy Commandant (Engineer) is feeder post for promotion to the rank of Commandant (Engineer). Nine posts of Deputy Commandant (Engineer) are authorized in SSB and all these 09 posts are lying vacant. According to the respondents, since no incumbent was/available in the feeder post of Commandant (Engineer), as such, the advertisement for filling up the post of Commandant (Engineer) by deputation was initiated.

20. Noticeably the applicant has not yet considered for combatisation in SSB. However, the matter is pending disposal since 2009 before the respondents i.e. Ministry of Home Affairs. On the other hand, the recruitment rule provides for residency period of 10

years in the grade of Deputy Commandant for promotion to Commandant. At the same time, there are no such eligible candidates in the feeder cadre for promotion to Commandant

21. We have also seriously noted that there is a lapse on the part of the respondent authority for keeping pending long years the case of the applicant for combatisation as opted in pursuance of the respondents' offer of option for combatisation. For coming to a logical conclusion, we prefer best option for a direction upon the respondent authorities i.e. Ministry of Home Affairs i.e. respondent No. 1, who is the competent authority, to take a decision for the case of combatisation of the applicant as he was submitted his option for combatisation vide application dated 05.11.2009 and 05.06.2011 in pursuance of respondents' offer of option dated 06.10.2009 and 23.05.2011 respectively. Ordered accordingly.

22. So far the other relief (s) prayed for by the applicant in this O.A. including antedated seniority with effect from the date of his initial acceptance of offer on 05.11.2009, he is at liberty to make a comprehensive representation before the respondent No. 1 through proper channel highlighting his grievances within a period of fifteen days from the date of receipt of a copy of this order which will be decided by the Ministry of Home Affairs (Respondent No. 1) together along with the issue of pending combatisation of the applicant.

23. The entire exercise shall be carried out by the respondent No. 1 within a period of four months from the date of receipt of a copy of this order. Till such time, interim order passed by this Tribunal on 07.04.2016 shall continue.

24. With the above observations and directions, O.A. stands disposed of accordingly. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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