

(1997) 04 DEL CK 0063

In the Delhi High Court

Case No : Civil Writ Petition No. 4868 of 1996

Air Commodore IJS Boparai, VM

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Air Force Act, 1950 — Section 27, 45
Constitution of India, 1950 — Article 226

Citation : (1997) 41 DRJ 474

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : P.K. Aggarwal, for the Appellant; K.C. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—The petitioner who was an Air Commodore has filed this writ petition for quashing the order of retirement dated 23.11.1995. The petitioner has also prayed that the respondents be directed to promote him to the rank of Air Vice Marshal from 1995, when he was first considered with notional seniority.

2. This Court issued a show cause notice in the writ petition and the petition of stay rejected as infructuous.

3. The brief facts which are necessary to dispose of this case are recapitulated as under:

4. The petitioner joined the Pilot Training Establishment in the year 1962-63 and got promotions up to the level of Air Commodore in the Air Force. The petitioner's main grievance before this Court is that the respondents arbitrarily have not promoted him to the rank of Air Vice Marshal.

5. It is also submitted in reply that these remarks in ARs existed even when the petitioner was promoted to the rank of group Capt and Air Commodore. But

when an officer comes up for consideration for promotion to the rank of Air Vice Marshal a much stricter criteria is applied and each and every aspect is examined in greater detail, because the post of Air Vice Marshal involves higher responsibilities and Therefore, only officers of proven utility can be promoted. It is because of this reason that the personal traits/qualities which the petitioner had and which were not held against him to deny him promotion to the rank of Group Capt and Air Commodore were scrutinised in greater detail and it was found that the petitioner was not suitable for further advancement in the service. It is mentioned in the reply that every officer has certain limitations. He may be good enough to hold a rank up to a particular level and not beyond that. That is exactly the case of the petitioner. He was good enough for appointment up to an Air Commodore but was not found fit for holding the higher responsibility of an Air Vice Marshal. It is also mentioned that the absence of adverse remarks in the ARs of a particular officer does not mean that an officer is fit for advancement up to the level of Air Vice Marshal.

6. In the reply it is also mentioned that before an officer is cleared for promotion to the rank of Air Vice Marshal, his past records are examined thoroughly to determine his suitability for such promotion as the responsibilities associated with the rank of Air Vice Marshal are much higher and varied. The petitioner failed to come up to the required standard.

7. In the reply it is categorically mentioned that the petitioner has been considered for promotion to the rank of Air Vice Marshal by a "Promotion Board" comprising of 13 Air Marshals of the Indian Air Force and the Promotion Board was presided over by the Chief of the Air Staff.

8. In the reply it is also mentioned that for promotion to the rank of Air vice Marshal, besides numerical grading, the pen picture and career profile as reflected from Appraisal Reports should also reveal that the officer is fit in all respects to hold the higher appointment. In this regard personal traits of an individual as reflected in Ars are also taken into consideration. After considering all these relevant factors the petitioner was not found suitable for promotion. It is also mentioned that the Promotion Board considered eligible officers of a particular branch for promotion in order of seniority against anticipated vacancies in that branch arising in the relevant year. Recommendations of the Board for empanelment/non empanelment of all such officers who were considered by the Promotion Board were forwarded to the Ministry of defense for their consideration. The recommendations of the Board were approved by the Ministry of defense and consequently the petitioner was not promoted. The petitioner had been superannuated on 31.12.1996 on attaining the age of superannuation in the rank of Air Commodore.

9. It is also incorporated in the reply that the plea of the petitioner to promote him to the rank of the Air Vice Marshal from 1995 is baseless. Promotion to the rank of Air Vice Marshal is based on selection and not on minimum performance. It is also mentioned in the concluding portion of the reply that the petitioner has

been rightly rejected for advancement in the service. If such individuals are promoted, service interest will suffer.

10. I have carefully perused all the relevant documents on record and heard learned counsel for the petitioner at length. Learned counsel for the petitioner has placed reliance on the judgment of RPS Dhillon delivered on 27.8.1996 in the writ petition No. 3086 of 1996 and the decision of the Division Bench in the Dhillon's case dated 30.1.1997. These cases have no application on the peculiar facts and circumstances of this case.

11. In the instant case, admittedly the petitioner's case has been considered by the Promotion Board consisting of 13 Air Marshals and presided over by the Chief of the Air Staff. This Court cannot sit as an Appellate Board to reevaluate the recommendations of the Promotion Board. It may be pertinent to observe that the petitioner has submitted statutory complaint u/s 27 of the Air Force Act, 1950 on 16.5.1996 against non promotion to the rank of Air Vice Marshal. The statutory complaint has been duly examined and the competent authority in the Central Government did not find any merit in the complaint and was accordingly dismissed.

12. On consideration of all the facts and circumstances of this case in which the case of the petitioner for promotion has been considered by a Promotion Board consisting of 13 Air Marshals and presided over by the Chief of the Air Staff and his statutory complaint has also been considered and rejected.

13. The writ petition and Civil Miscellaneous Petition are devoid of any merit and are accordingly rejected. In the facts and circumstances of this case, I direct the parties to bear their own costs.