
(1997) 12 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Petition No.310 of 1997

Air Commodore V.K. Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 46 DRJ 37

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mrs. Avnish Ahlawat, Adv Mr. P.N. Mishra, for the Appellant; Mr. K.T. Anantharam, for the Respondent

Judgement

Dalveer Bhandari, J.—Air Commodore V.K. Sharma, the petitioner, has approached this court with the prayer that the respondents be directed to consider the case of the petitioner for seniority and promotion to the rank of Air Vice Marshal before giving promotion to respondent no.4, G.V. Bhatt. He has also prayed that the proceedings wherein Air Commodore G.V. Bhatt has been cleared for promotion be quashed because according to the petitioner, respondent no.4 cannot be retrospectively promoted in the 1989 Board.

2. Brief facts as disclosed in the pleadings and which are necessary to dispose of this writ petition are recapitulated as under:-

The petitioner joined the Indian Air Force as Pilot officer on 26.12.1965. He was promoted as Wing Commander in 1984. The petitioner was awarded Vashisht Sewa Medal on 26.1.1996. Thereafter, the petitioner was promoted to the rank of Group Captain. It is mentioned in the petition that for three available vacancies to the rank of Group Captain for the period 1st April, 1989 to 31st March, 1990, the Selection Board 1989 met and considered 50 Wing Commanders for promotion. It is alleged that in the merit the petitioner herein was no.1 and respondent no.4 at Serial no.10. While preparing the Select Main List for notified vacancies, the individual seniority was protected. The Select Main List in the

order of seniority and Select Reserve List in order of merit was announced on 22.8.1989, wherein names of three officers appeared in the Main List and two in the Reserve List.

3. It is also incorporated in the petition that the promotion orders for three officers from the Main List and one from the Reserve List were issued on 20.10.1989 with effect from 6.11.1989, the fourth post fell vacant due to the retirement of an officer.

4. It is also mentioned in the petition that for one vacancy falling due from 1st April, 1990 to 31st March, 1991, the Select Board met in February/March, 1990 and for the Accounts Branch the Select Main List based on merit (in order of seniority) and Select Reserve List (in order of merit) was announced in February, 1991, almost after one year. It is alleged in the petition that in order to give undue advantage to respondent no.4 the list was announced only in February, 1991, although the Board met in February/March, 1990. Because of this delay in announcing the result, individual officers at Serial no.1 and 2 retired on 31.12.90 and 28.2.1991 respectively, awaiting their promotion as Group Captain, giving undue advantage to respondent no.4, G.V. Bhatt. As such, G.V. Bhatt was appointed as Group Captain on 10.6.1991, only after his name appeared in the Select List of 1990 Board and two officers above him were made to retire at the age of 52. Otherwise, those officers would have been entitled to retire at the age of 55 years. The Government of India vide letter dated 26.10.1990, sanctioned additional posts at various ranks because officers were facing stagnation. The Government of India on 26.10.90, sanctioned 138 personal ranks of Group Captains. As per the sanction, three more posts became available for promotion to the post of Group Captain (Accounts) in 1989 and four in the year 1990. In the letter it was also mentioned that the vacancy calculation is in the ratio of 1:8 and in no circumstances it should exceed that ratio. As a result of following this directive, many vacancies in different branches which exceeded 1:8 ratio, were surrendered.

5. It is also mentioned that Wing Commander J.S. Chimni was granted promotion to the rank of Wing Commander with effect from 1.11.1990 but this rank was an unpaid rank in spite of the fact that Government of India sanctioned the extra three posts in October, 1990 and Wg. Cdr. Chimni being next on the extended Reserve List after Sheshadri, was entitled to the next vacancy. According to the allegation of the petitioner, he was not given the post of Group Captain as paid and as a result, he was made to retire at the age of 52. All the three posts in fact were filled up by promotion of Wg. Cdr. Sheshadri, Wg. Cdr. Chimni and Wg. Cdr. Venkatachary. According to further allegation of the petitioner, this team was out to bring respondent no.4, G.V. Bhatt in the list of 1989 Board, which the office of respondent no.1 succeeded by deliberately not conferring the paid rank to Wing Commander Chimni and on his retirement on 31.12.1990. It is mentioned that initially, Wing Commander Chimni represented against injustice but later he lost his heart because of sudden demise of his only son. It is alleged in the petition

that after 2 years by an order dated 26.8.1991, without any information to the petitioner or others officers above respondent no.4 in the merit list of selection list of 1990 retired. Further manipulations were made and respondent no.4 vide an order dated 26.8.1991 was brought at serial no.5 of the extended Reserve list of 1989 Board and thereafter granted him ante-dated promotion. Since he was brought in 1989 Board List, therefore, even though he was at Serial no.10 as per the merit, but he being senior gets his seniority above the petitioner who was at Serial no.1 as per merit but otherwise junior to him in service. The petitioner aggrieved by this filed a representation and his representation was rejected at the Director's level only and the same was not sent to the Chief of Air Staff. When the petitioner did not receive any satisfactory reply and his representation was not considered by the Chief of Air Staff, he sent another representation on 12.4.1993 with a request for interview.

6. The petitioner has also alleged that according to para 164 of the Regulation of the Indian Air Force, after 21 days, unpaid rank Group Captain, automatically starts getting paid rank with retrospective effect but in the case of Group Captain Chimni, he was not deliberately given the paid rank even after two months of his holding of unpaid rank of Group Captain and fulfilling all other conditions. When the petitioner when did not get redressal of his grievances, he submitted a statutory representation u/s 27 of the Air Force Act on 28.12.1995.

7. It is mentioned in the petition that in January, 1996, for one post of Air Vice Marshal, the Selection Board for promotion to the rank of Air Vice Marshal met in February/March, 1996 and since all the three officers had not earned a single Annual Confidential Report in the feeder cadre i.e. Air Commodore, the Board decided to meet and consider the case of all three after the receipt of Annual Confidential Reports. It is mentioned that one vacancy ratio of consideration is 1:3. As such, three eligible officers were required to be considered but the respondents have deliberately, in spite of the fact that the petitioner's ACR was also available, only considered Air Commodore V. Anjanavulu and Air Commodore G.V. Bhatt and deliberately did not consider the petitioner. It is submitted by the petitioner that he was not deliberately considered for mala fide intentions because in case he would have been considered along with the other two, he was sure to be selected because he had an excellent record. He otherwise being senior would have attained top position on merit. It is further alleged that in the case of a petitioner, the order granting substantive rank was passed only on 8.1.1997 with retrospective effect from 1.1.1996. This order was deliberately delayed. The petitioner made a number of representations but those were not considered. During this period, the petitioner alleged further mala fides to respondent no.3 and according to him, the mala fides are evident from the fact that the moment on receipt of reminder dated 16.12.1996, vide letter dated 24.12.96, the petitioner was transferred to Headquarters Maintenance Command, Nagpur, cancelling his deputation in between. The abrupt withdrawal of petitioner from this deputation post, again was done with mala fide intention. Again, the petitioner's representation did not yield any result and after

exhausting all possible quarters, the petitioner approached this court.

8. This Court issued Show cause notice and in pursuance thereof, a short counter-affidavit was filed on 29.1.1997, and thereafter, in this counter-affidavit, strangely, the respondents have mentioned that the petitioner has not complied with the statutory administrative remedies before approaching this court. In fact, his statutory representation has not yet been disposed of for extraneous considerations.

9. The respondents have filed a detailed counter-affidavit. The counter-affidavit was filed by V.K. Verma, Air Officer, I.C. (Personnel), Air Headquarters, New Delhi on 18.3.1997. He mentioned in the affidavit that two vacancies of Air Vice Marshal in Accounts Branch were available during the promotion year 1996-97. Since no Air Commodore was eligible with requisite service in February, 1996, the Board was reconvened in October, 1996 to consider the eligible Air Commodores for promotion to the rank of Air Vice Marshal in the Accounts Branch. All the three, Air Commodore V. Anjaneyulu and Air Commodore G.V. Bhatt and Air Commodore V.K. Sharma, in their order of seniority were eligible in October, 1996 for consideration for promotion to the acting rank of Air Vice Marshal. The Board examined their Annual Confidential Reports and found two seniormost Air Commodores, V. Anjaneyulu and Air Commodore G.V. Bhatt fit for promotion and empanelled them to the rank of Air Vice Marshal. The petitioner V.K. Sharma was not considered being the junior most Air Commodore, for promotion to the rank of Air Vice Marshal by the Board. Government approval has already been obtained and Air Commodore V. Anjaneyulu has been promoted to the rank of Air Vice Marshal as Director of Accounts with effect from 24.12.1996. Air Commodore G.V. Bhatt has been promoted as Air Vice Marshal w.e.f. 1.4.1997. His tenure is going to be over on 31.3.1998.

10. In the counter-affidavit, it is admitted by the respondent that between Air Commodore G.V. Bhatt and Air Commodore V.K. Sharma, Air Commodore G.V. Bhatt as Wing Commander was senior to Air Commodore V.K. Sharma. In Promotion Board II, 1989 both G.V. Bhatt and V.K. Sharma as Wing Commander were considered for promotion along with Wing Commander Chimni who retired on 31st December, 1990 as Group Captain. Wing Commander V.K. Sharma was placed in the Main Select List and Wing Commander Chimni and Wing Commander G.V. Bhatt in the Reserve Select List in that order for promotion to the rank of Group Captain.

11. It is mentioned in the counter-affidavit that because of lack of promotional avenues a case was taken up with Government in 1989 to create some additional posts designated as personal rank of Group Captains. The approval of the Government for creation of these posts came only on 26th October, 1990. As per the Government orders, the additional posts of Group Captains are to be created in such a manner that the total number of officers promoted remains in the ratio of 1:8 to the number of officers considered in a particular year by the Promotion Board for that year. In practice, in case of fractions and decimals, it has to be

rounded off to the next higher number. As such the Ministry of defense had asked Air Headquarters to calculate year wise number of additional posts to be created with effect from 1989 and take their approval before promoting the affected officers. On the basis of calculation for the year 1989, three additional posts in Accounts Branch could be created. Government approval for promoting the officer against P.R. Vacancies of 1989 could be obtained in February, 1991. To provide some amount of satisfaction to a retiring officer, Wg. Cdr. Chimni was given local unpaid rank of Group Captain at 3 BDR, Chandigarh and reposted as Senior Accounts Officer.

12. When approval from the Government for promoting the officers of 1989 and 1990 Reserve Select List was obtained in February, 1991, Wg. Cdr G.V. Bhatt was promoted against an available additional vacancy of 1989, as no one senior in merit to him was there in the Select Reserve List of 1989. The main list officers had already been promoted earlier. As per policy, Wg. Cdr. G.V. Bhatt was senior to Wg. Cdr. V.K. Sharma and as both were promoted on the basis of the results of Promotion Board II, 1989, Wg. Cdr. G.V. Bhatt retained his seniority as Group Captain. As such G.V. Bhatt remained senior to the petitioner not only as Wg. Cdr. but as Group Captain and Air Commodore also.

13. A rejoinder to the counter-affidavit was also filed. It is mentioned in the rejoinder-affidavit that in January-February, 1996, when the Board met to consider the officers for selection to the post of Air Vice Marshal, it met for one vacancy only. All the three officers, namely, Air Commodore V. Anajanevellu, Air Commodore, G.V. Bhatt, and Air Commodore V.K. Sharma, were considered by the Board. The Board then decided to meet in September- October, 1996 again, as none of the three eligible officers' Annual Confidential Reports were written and made available to them. When the Board met in September-October, 1996, it had the Annual Confidential Reports of all the three officers but cleverly respondents added next year's vacancy in this Board, which in fact was a Review Board for January-February, 1996 and allowed consideration of only two officers for two posts. The petitioner was not considered for the Board which was also against the decision taken by the Board in January-February, 1996. In other words, the case of the petitioner ought to have been considered in September-October, 1996 Board because this Board was in fact a review Board of January-February, 1996 in the case of the petitioner was to be considered along with two other officers mentioned above.

14. It is further mentioned in the rejoinder-affidavit that for the promotion year 1996-97, only one vacancy of Air Vice Marshal was available in the Accounts Branch. The next vacancy on the retirement of an officer on 31st March, 1997, would be available only on 1st of April, 1997. In the year 1997-98, the respondents have admitted in para 3, that the vacancy created due to retirement of an officer on 31st March is available for promotion on 1st April of the next year. It is, however, submitted that the vacancy of the year 1997-98 could not have been placed before the Board for 1996-97. It is also mentioned in the

rejoinder that since the case of the petitioner was not considered for promotion, this court should direct the respondent to hold a fresh promotion Board for promotion to the rank of Air Vice Marshal. In the rejoinder affidavit, it is mentioned that if respondent no.4 is not promoted, he would retire on 31.4.97. The whole exercise of promoting respondent no.4 before his retirement is taken up only to help the respondent no.4 as there are records full of instances that when the officers retire only for the reason that the Boards have not met or that the results of the Boards have not been declared in time. This is an exceptional case where the respondents have decided in advance. Any other officer would have just retired on 30th April, 1997, if there were none to help him. It is submitted that this is not a ground for promotion only because an officer is retiring on 30th April, 1997. It is further mentioned in the rejoinder-affidavit that respondent no.4 has no claim to the post as he is definitely junior to the petitioner and all along there has been efforts on the part of the respondents to give vague, incomplete and delayed replies so that the petitioner loses his grievance by the efflux of time. It is also mentioned by the petitioner in the rejoinder that in the policy has not been applied uniformly for promotion in case of all branches. The petitioner has given the instances that in case of Group Captain Chimni and Wg. Cdr. S.S.M. Razvi, this policy was not followed. As a matter of fact, Group Captain J.S. Chimni though brought on the reserve list of 1989 promotion Board, was not given acting paid promotion and allowed to retire on 31st December, 1990. This has happened primarily because there has been enormous delay in declaring the results. Similarly Wg. Cdr. S.S.M. Razvi was not given any promotion and retired on 31st December, 1990, though extra vacancies announced by the Government of India were available from 26.10.1990. All this was deliberately done to give benefit to respondent no.4 who was at Serial no.10 in the merit list. As per the policy, the main list declared is of the officers who have got clear vacancies and the reserve list is prepared of the officers, who are to be promoted in case any unforeseen vacancy arises in that particular year. Respondent no.4 was never in the Reserve List of Promotion Board, 1989, but Wing Cdr. J.S. Chimni was. In the present case, if there was one vacancy, the petitioner being at no.1 would have been promoted. But since there were three vacancies and the other two in the merit i.e. Wg. Cdr. C.M. Aggarwal and Wg. Cdr. V. Anajanevellu, though below in the merit list, but because promotion was to be made for three posts, all the three were given promotion by declaring the select list, which placed the seniormost at no.1 of the Main List and the second senior most at no.2 and the petitioner being junior at no.3, though he was no.1 in the merit list. It is submitted that respondent no.4 was nowhere near the petitioner. He was at Serial no.10 in the merit list and would have got promotion only if there had been 10 vacancies. The petitioner also mentioned that respondent no.4 lost his seniority as he was not selected in the Promotion Board 2 of 1989 and he was promoted only against selection of Promotion Board 2 of 1990. It is also mentioned that Wg. Cdr. seniority is not relevant when the promotion is for Group Captain for the reason that even Wg. Cdr. J.S. Chimni and Wg. Cdr. SSM Razvi, were senior to the petitioner and

respondent no.4. But they could get their promotion after the petitioner when their names were brought in the Reserve List.

15. Respondent no.4, G.V. Bhatt also filed a counter-affidavit. In the counter-affidavit, he has taken a number of preliminary objections. According to him, the writ petition deserves to be dismissed on the ground of laches. The petitioner has approached this court in December, 1996 in respect of a decision of Air Headquarters announced as early as 25.8.1991. It is also mentioned that the petitioner had represented on 16.9.91 against the said decision and his representation was rejected on 13.12.91. He submitted that in the matter of seniority, challenge of the same three years after the cause of action should not be entertained according to the law laid down by the Supreme Court.

16. Respondent no.4 in his counter-affidavit also submitted that the petition deserves to be dismissed on the ground of willful misrepresentation of facts. It is mentioned that the petitioner had made a statement in para 24 of the petition that the name of Group Captain Chimni was not on 1990 Board but he was promoted on 1989 vacancy. This is factually a wrong statement. It is also submitted in para 32 that the ratio of consideration is 1:3 and that as such three eligible officers were to be considered. This is factually wrong. Whilst there is no such ratio prescribed, promotions to the Air ranks are based on "seniority subject to minimum performance". He has also pointed in para 34 of the petition that the petitioner has made a deliberately false statement and there is no difference between an acting rank and substantive rank. Whereas the former is equivalent to officiating, the latter is equivalent to permanent/regular.

17. It is mentioned that there has been no deliberate mala fide manipulation of any sort and that whatever decision taken or cause of action adopted by them was bona fide, influenced by the ground condition and the larger service interest. Respondent no.4 has mentioned some data to demonstrate that he is in fact senior to the petitioner. The relevant data are as follows:-

Deponent

Respondt-4 Petitioner

- a) Date of commission/joining 26.6.65 26.12.65
- b) Promotion to the rank of 19.8.86 1.7.87 Wing Commander (Substantive)
- c) Promotion to the rank of 23.12.91 23.12.91 Group Captain (Substantive)
- d) Promotion to the rank of 20.10.95 1.1.96 (Acting) Air Commodore
- e) Promotion to the rank of 20.10.95 1.1.96 substantive Air Commodore

Peculiar features pertaining to the promotion Board of 1989 and 1990

18. The petitioner has filed a separate rejoinder to the counter-affidavit filed by respondent no.4. It is mentioned that respondents 1 to 3 have rightly not taken the plea of laches as all this while they had been considering the petitioner's

representation and his statutory complaint was rejected only in 1996, though communicated to the petitioner in January, 1997.

19. The petitioner has also mentioned that the name of Group Captain Chimni was not on the 1990 Board and he was promoted against 1989 vacancy only. In fact it is submitted that complete documents Annexure Z-7 at page 299 is the merit list of PB-1990, wherein Wg. Cdr. Rizvi's name is at serial no.1 of the Select Main List although he was junior to Wg. Cdr. Chimni in the merit of PB-89 whereas Wg. Cdr. Chimni's name is not there.

20. I have heard learned counsel for the parties at length and carefully considered documents and other material on record. The petitioner who is a senior official of the Air Force has a deep regret that his representation has not been properly considered at the highest level and there has been grave injustice with him.

21. The petitioner's other main grievance is that in January-February, 1996 when the Board met to consider the officers for selection to the post of Air Vice Marshal, it met for one vacancy only. All the three officers, i.e. Air Commodore V. Anajanevellu, Air Commodore, G.V. Bhatt, and the petitioner herein Air Commodore V.K. Sharma were considered by the Board. The Board then decided to meet in September-October, 1996 again as none of the three eligible officers' Annual Reports were available for that particular year. When the Board met in September-October, 1996, it had the Annual Confidential Reports of all the three officers. The case of the petitioner was not considered. His submission is that the September-October, 1996 Board was in fact a review board of January-February, 1996. When his case was put up for consideration along with the other two officers in January- February, 1996, then how can the case of the petitioner be ignored in a review board in September-October, 1996?

22. Yet another grievance of the petitioner is that he is senior to respondent no.4 because he was promoted to the rank of Acting Air Commodore on 20.10.95, whereas respondent no.4 G.V. Bhatt got promotion to the rank of Acting Air Commodore on 1.1.1996, though in the counter-affidavit filed by the Union of India, an endeavor has been made to show that respondent no.4 in fact is senior to the petitioner. The petitioner's apprehension is that the history of injustice which had taken place with J.S. Chimni may not be repeated. Some of these grievances of the petitioner have not been considered at the highest level.

23. Looking to the totality of the facts and circumstances of this case, instead of the court's giving its finding on the aforesaid grievances of the petitioner, I deem it appropriate to request the Chief of the Air Staff to personally look into the entire matter de novo and give his decision by a reasoned order within four weeks from the date of receipt of this judgment. While considering the case of the petitioner, he should take into consideration the case of respondent no.4 and in case he comes to the conclusion that there has been any injustice with the petitioner, he must ensure that his grievances are remedied. If necessary, he

may give direction to the Board, which is otherwise scheduled to meet in January-February, 1998 or even directing convening of a special board, to consider the case of the petitioner. In case the board finds the petitioner eligible for promotion then the petitioner must be given benefit of the same in its letter and spirit.

24. Respondent no.4 G.V. Bhatt is already functioning as Air Vice Marshal for quite sometime now and he is scheduled to retire on 31.3.98, and the vacancy would arise from 1.4.98. The petitioner is due to retire before that date. But in case the petitioner is selected as Air Vice Marshal, in that event, he be given an extension of a few days in his service or by adopting a pragmatic approach by devising a suitable method, so that the petitioner in fact gets the benefit of his selection.

25. The court strongly feels that people who spend their entire life in the service of the motherland and when need arises, they are even prepared to sacrifice their lives for the safety and protection of their country, are certainly entitled to have their grievances looked into by the respondents. All efforts must be made by the respondents to eliminate and remove injustice, if any, at the earliest. In all services, sincere efforts be made so that their employees feel contented and remain happy while in service and retire gracefully.

26. In this case the court has summarised the pleadings of the parties so that while considering the case of the petitioner, the Chief of the Air Staff can look into all the aspects comprehensively.

27. Before parting with this case, the Court would like to bring it to the notice of the respondents and particularly to the notice of the Chief of Air Staff and other senior officials of the armed forces that, of late, a very large number of cases of Armed forces are brought to the courts and in majority of the cases, the officers and other employees of the armed forces, approach the courts with the grievance that their representations have not been considered for months and years. Immediate steps must be taken to remove this grievance by the Chief and other senior officials.

28. The law courts lack expertise to adjudicate upon these matters in proper perspective and otherwise also because of the existing pendency of enormous cases in courts, it is not always possible to dispose of these matters expeditiously. Therefore, the respondents may consider the suggestion in right earnest of setting up of two permanent Boards of Senior Officials - one for considering the complaints of senior officials and the other for considering the complaints of other officers and non-commissioned officers or Jawans. The complaints must be disposed of as expeditiously as possible and in any event within three months from the date of receipt of those complaints by a reasoned order. Some complaints may have to be disposed of immediately looking to the nature of these complaints and special directions be given in this regard. Unless the outer limit is fixed for disposal of the complaints, the entire exercise of setting up of these permanent boards would prove totally futile. By this method,

majority of the officials would at least know why a particular decision has been taken in his or her case. In extreme cases, if the aggrieved personnel ultimately approach the courts, then, even the courts will have some material to properly appreciate the grievances of complainants and a better perception of the point of view of the armed forces. A copy of this judgment shall be sent to the Chief of the Air Staff through a special messenger within two days.

29. With these observations, this writ petition is accordingly disposed of. In the facts and circumstances of this case, I direct the parties to bear their own costs.