

**(1999) 02 KAR CK 0023**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 1084 of 1996**

Air Marshal Amarjeet Singh Sethi

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 11-02-1999

**Acts Referred:**

Air Force Act, 1950 — Section 191, 58 (1), 7 (2)  
Constitution of India, 1950 — Article 14, 226

**Citation :** (1999) 3 KarLJ 336

**Hon'ble Judges :** H.L. Dattu, J

**Bench :** Single Bench

**Advocate :** Smt. Geetha Menon for Smt. Pramila M. Nesargi, for the Appellant;  
Sri Pape Gowda, Central Government Standing Counsel, for the Respondent

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## Judgement

1. A retired Air Force Officer after a distinguished service in the Indian Air Force is before this Court with his second writ petition inter alia seeking a declaration, to declare that the policy letter No. 7(1) 79(D) AIR III Volume II, dated 30-8-1986 has no statutory force and the same is arbitrary and unreasonable or in the alternative to hold that the said policy is not applicable to the training and maintenance command. Secondly, for a writ to quash the impugned communication dated 29-12-1995 issued by respondent. Consequently, to direct the respondents to grant notional status of AIR Officer Commanding in Chief (AOC-in-C) w.e.f. 31-5-1995.

2. On an earlier occasion, petitioner was before this Court in W.P. No. 24396 of 1995 inter alia seeking a direction to the respondents to appoint him to the post of AOC-in-C in Bangalore or in the alternative to accord him the status of AOC-in-C from 31-5-1995 notionally. The claim of the petitioner had been resisted by respondents solely depending upon the policy laid down in the letter dated 30-8-1986 issued under the signature of the Deputy Secretary to the Government of India, Ministry of Defence and communicated to the Chief of the AIR staff setting out the procedure to be followed in regard to the appointment of

Vice-Chief of the AIR staff or AIR officer Commanding-in-Chief of an AIR command. Petitioner's assertion before this Court was that the policy guidelines issued by the Ministry of defence would be applicable only to Vice-Chief of AIR staff or AIR officer Commanding-in-Chief of an operational command and not in respect of training command or maintenance command but the stand of the respondents even then was that the policy indicated in the letter dated 30-8-1986 is applicable both to operational commands and other commands. The Court while disposing off the petition by its order dated 14-11-1995 was pleased to observe as under:

"But, perusal of the orders of appointment of the petitioner posting would indicate that the respondents have maintained a distinction between different kinds of commands and they are indicated whenever needed and the letter dated 30-8-1986 sent to the Chief of AIR staff does not make it clear that it is applicable to commands other than operational command. Therefore, it becomes necessary to direct the respondents to examine the case of the petitioner as to whether he is entitled to the relief sought for in the petition namely to appoint him to the post of AOC-in-C training command at Bangalore or to accord such status from 31-5-1995. Respondents are directed to consider this aspect of the matter within a period of four weeks from today".

3. Pursuant to the directions issued by this Court, respondents have framed the impugned order dated 29-12-1995 rejecting the claim of the petitioner solely on the ground that petitioner is not eligible for promotion to the rank of AOC-in-C in any of the commands of the Indian Air Force, since he had less than 1 year of residual service. The thinking and reasoning of the respondents is reflected in their order and that order is extracted and the same is as under:

"Tele: 3010231/7334

Air Headquarters Vayu Bhavan New Delhi-11.

Air HQ/21901/5682/PO2(A)

29th December, 1995

Air Mshl A.S. Sethi Commandant National Defence Academy Khadakwasla Pune - 411 023.

Court Case: Air Mshl A.S. Sethi (5682) F(P)

1. Reference is invited to the orders dated 14-11-1995 of the High Court of Karnataka in the Writ Petition No. 24396 of 1995 - Air Mshl A.S. Sethi v Union of India and Others.

2. It is intimated that in accordance with the directions of the Court, the case of Air Mshl A.S. Sethi (5682) F(P), Commandant, National Defence Academy was examined again by the Government. The relevant records relating to the issue of Government policy letter No. 7(1)/79/D (Air-III) Vol. II, dated 30-8-1986 were also examined. After considering all the relevant facts on record, the Government

has come to the conclusion that the condition of having a minimum of one year of residual service left before attaining the age of retirement from the date of appointment as AOC-in-C is applicable even for HQRS Maintenance and Training Commands and the Air Officer, Air Mshl A.S. Sethi (5682) F(P), is not eligible for promotion to the rank of AOC-in-C in any of the Commands of the IAF as he has less than 1 year of residual service.

Sd/- (S.N. Rathour) Air Mshl. Air Officer i/c Personnel".

4. It is this order which is called in question by the aggrieved officer in this petition filed under Article 226 of the Constitution of India on the ground that the order is illegal, invalid and highly arbitrary.

5. Smt. Geetha Menon, learned Counsel for the petitioner submits that the impugned order framed by respondents is contrary to the observations made by this Court between the same parties and therefore the reasoning of the respondents while rejecting the case and claim of the petitioner is not only illegal but also would amounts to contempt of the Court. Secondly, it is contended that the action of the respondents is highly discriminatory and opposed to Article 14 of the Constitution for the sole reason that one Air Marshal G. Gururani, who had only 9 months of residual service is promoted as AOC-in-C to maintenance command by relaxing guidelines in the policy laid down in the letter dated 30-8-1986 and lastly it is submitted, that assuming the policy laid down in the communication dated 30-8-1986 would apply to all the commands including the Training Command, the same has no statutory force and is only executive instructions given by the Government to Chief of Air Staff about the procedure to be followed in respect of promotions to AOC-in-C etc. Since the said policy is neither a rule nor a regulation for the reason the same is not published in the Official Gazette as required u/s 191 of the Air Force Act, 1950, which governs the service conditions of the petitioner. Therefore, a request is made to declare that the impugned policy as having no statutory force.

6. Per contra, Sri Pape Gowda, learned Counsel for respondents ably justified the orders made by respondents dated 29-12-1995.

7. Re. Contention I: Petitioner's learned Counsel contends that this Court while disposing the earlier writ petition filed by the petitioner was clearly of the opinion that there is a distinction and difference between operational commands and training and maintenance commands in Indian Air Force by taking into consideration the orders of appointment and other transfer orders issued to the petitioner and therefore respondents could not have denied the genuine claim of the petitioner by pressing into service the policy laid down in the communication of Ministry of Defence which is not applicable to an officer serving in the training and maintenance command. In my opinion, the assertion of the learned Counsel has no merit whatsoever. A careful reading of the operative portion of the observations made by this Court would only indicate that it was a mere passing observation without a positive finding on that aspect of the matter. After such

observation, the Court was pleased to direct the respondents to reconsider the matter and pass fresh order. This Court having remitted the matter to the respondents had reserved the freedom to them to independently exercise its mind as to correctness or otherwise of the claim made by the petitioner keeping in view all the factors including the orders of appointment of petitioner's posting at Training Command and the policy guidelines issued by the Ministry of Defence and pass appropriate orders thereafter.

8. Pursuant to the directions so issued, the respondents have now framed the impugned order and while doing so, have given their anxious consideration to the claim and case of the petitioner and they have also clearly brought out in their order that there is no distinction whatsoever between various commands including Training and maintenance commands and the policy laid down in the Defence Ministry communication dated 30-8-1996 would equally apply to all the commands in the Indian Air Force Service. In my opinion, these are all matters which are the exclusive domain of the respondents and Ministry of Defence and this Court would be least competent in the face of scanty material to decide whether there is any difference and distinction between operational commands and the training and maintenance commands in the Indian Air Force and whether the same has been done keeping in view the policy decision, exigencies of circumstances and administrative necessity. In view of this, it is not possible to grant the first prayer of the petitioner by declaring that the policy guidelines laid down in the Defence Ministry's communication would not be applicable for the promotional post of AOC-in-C in the training command.

9. Re. contention that the action of the respondents is arbitrary and violative of Article 14 of the Constitution of India: Petitioner's learned Counsel contends that one Air Marshal G. Gururani, who had only 9 months of residual service has been promoted as AOC-in-C to maintenance command, Nagpur, and that petitioner as on 31-5-1995 had 10 months of residual service but the policy not promoting Air Staff to the post of AOC-in-C to any command unless they have a minimum of one year residual service has been relaxed in the case of Air Marshal G. Gururani, while the petitioner has been discriminated and that the said action is violative of Article 14 of the Constitution. While resisting this contention of the learned Counsel for the petitioner, the respondents in their objections have stated as under:

"4. It is submitted that it is true that Air Marshal G. Gururani, AVSM, VSM (6387) Aeronautical Engineering (Mechanical) had nine months service left at the time of his appointment as AOC-in-C, Maintenance Command. The post of AOC-in-C, Maintenance Command can be filled only by one officer of Technical Branch. Since no officer of Technical Branch was found suitable to hold the post of AOC-in-C, Maintenance Command IAF and this post of vital importance could not have been left vacant for 9 months, are exception to the stipulation of 1 year residual service has been made by the Government in this case, in public interest.

5. It is further submitted that in the case of Air Marshal A.S. Sethi (5682) Flying

(Pilot) when his turn came up for consideration to the post of AOC-in-C Training Command, a number of officers were available who met the criteria of the Government letter. Thus, his case is clearly distinguishable from that of Air Marshal G. Gururani where no other officer suitable to fill the post of AOC-in-C Maintenance Command was available and the post could not have been left vacant as only after 9 months (viz., in August 1997) an officer was coming up for consideration for the said post".

10. Before I advert to the contention canvassed by the learned Counsel for the parties to the lis, it is relevant to notice the observations made by Supreme Court in the case of Ramesh Prasad Singh Vs. State of Bihar and Others, . That was a case where the competent authority had created a temporary post of an Executive Engineer (Telecommunication) and Sri R.P. Singh, who was working in the establishment had been selected for the post. This was questioned by some of the Engineers working in the organisation on several grounds including that the case of similarly qualified Engineers is ignored and therefore, the action of the respondents is not only arbitrary but highly discriminatory, thereby contravening Article 14 of the Constitution. The Apex Court while repelling the contention of the aggrieved persons, was pleased to observe:

"It must always be remembered that though the concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension, it has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals, that is to say, those who are similarly placed are entitled to an equal treatment, but this guarantee cannot be carried beyond the point".

11. In view of that, the Apex Court was pleased to hold that creation of a temporary post of an Executive Engineer (Telecommunication) which was absolutely essential for ensuring reliability and continuity in power supply and the maintenance of sophisticated equipments and selection of the appellant (Sri R.P. Singh), who was specially trained, when other persons were not so qualified to fill up the post.

12. The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by the Supreme Court in catena of decisions. The Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , clearly has laid down that:

"Though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz.,

(i) that the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group, and,

(ii) that differentia must have a rational relation to the objects sought to be achieved by the statutes in question. The other proposition held well established in that Article 14 is certainly attracted where equals are treated differently without any reasonable basis".

(emphasis supplied)

13. Affirming and explaining this view, the Apex Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , held that legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The state, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate to the object sought to be achieved. Further, the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

14. The Supreme Court in the case of *Sankaraiah Rattaiah and Others v State of Andhra Pradesh and Others*, in a slightly different context was pleased to observe that where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach its lethal arm and strike down the decision of the Government.

15. Having seen the important decisions bearing on the question of Article 14 of the Constitution, let me now advert to the stand of the respondents while justifying their action while promoting Air Marshal G. Gururani, to the promotional post of AOC-in-C in training command by relaxing the policy laid down in the communication of Ministry of Defence in their letter dated 30-8-1986.

16. Respondents on oath assert, that the policy laid down in the letter dated 30-8-1986 had to be relaxed in the case of Air Marshal G. Gururani though he had nine months of residual service before his retirement. The reason was that the post of AOC-in-C, Maintenance Command can be filled only by one officer of Technical Branch and since no officer of the Technical Branch was found suitable to hold the post of AOC-in-C, Maintenance Command, IAF and since this post is of vital importance could not have been left vacant for 9 months and in the case of petitioner they assert that when his turn came for promotion to the next promotional post, a number of officers were available, who met the criteria laid in the communication dated 30-8-1986. This factual assertion is not disputed by the petitioner. In my opinion, the action of the respondents was dictated by policy decision, exigencies of circumstances and administrative necessity. In over all view of the matter, I am of the firm opinion that though equals are treated differently but the same has been done for good, valid and sufficient reasons.

Therefore, it cannot be said that the action of the respondents is either discriminatory or in violation of constitutional provisions. Therefore, the second contention of the learned Counsel is rejected.

17. Re. contention that policy laid down in the letter dated 30-8-1996 has no statutory force: The learned Counsel for the petitioner relying upon Section 191 of the Indian Air Force Act submits that the policy laid down by the Government has no statutory force, since the said policy is neither a rule nor regulation and that policy is not published in the Official Gazette and therefore, the policy should be declared as having no statutory force. In support of this contention, the learned Counsel relies upon Section 191 of the Air Force Act, 1950, since the service conditions of the petitioner is governed by the said Act. To appreciate the contention of learned Counsel, it is required to extract the provisions of Section 191 of the Act and the same reads as under:

"Section 191. Publication of rules and regulations in Gazette.--All rules and regulations made under the Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act".

18. It is very surprising that the respondents in their objection statement does not say anything on this aspect of the matter.

19. Section 191 of the Act mandates that all rules and regulations made under the Air Force Act requires to be published in the Official Gazette and it is only after such publication they shall have effect as if they are enacted under the Act.

20. In the instant case, it is an admitted position that policy laid down in the letter dated 30-8-1986 is neither a rule nor a regulation but it is a communication issued under the signature of the Deputy Secretary to the Government of India, Ministry of Defence Services setting out the procedure to be followed in dealing with appointment of Vice-Chief of the Air Staff/Air Officers Commanding-in-Chief of Air Command. It is also not the case of the petitioner that the Central Government exercising its power under the Act has framed any rule or regulation prescribing the procedure which requires to be followed while appointing Vice-Chief of the Air Staff/Air Officer Commanding-in-chief of Air Command. Therefore, power to frame rules or regulations does not necessarily imply that no action can be taken administratively in regard to a subject-matter on which a rule or regulation can be framed, until it is so framed. At this stage, it is useful to refer to certain observations made by the Supreme Court in the case of V.T. Khanzode and Others Vs. Reserve Bank of India and Another, . That was a case where Central Board of Directors of Reserve Bank had not framed staff regulations exercising their powers u/s 58(1) of the Act but had issued administrative directions and circulars for regulating service conditions. When the efficacy of those administrative directions were questioned, the Supreme Court was pleased to observe:

"So long as staff regulations are not framed u/s 58(1), it is open to the Central Board to issue administrative circulars regulating the service conditions of the

staff, in exercise of the power conferred by Section 7(2) of the Act. The power to frame rules or regulations does not necessarily imply that no action can be taken administratively in regard to a subject-matter on which a rule or regulation can be framed, until it is so framed. There is no doubt that a statutory corporation can do only such acts as are authorised by the statute creating it and that the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication. If an act is neither expressly or impliedly authorised by the statute which creates the Corporation, it must be taken to be prohibited. This does not, however, mean that the Central Board of Directors of the Reserve Bank is not competent to issue administrative directions or circulars regulating the conditions of service of the Bank's staff and that the Central Board must frame Staff Regulations u/s 58(1) only. Section 58(1) is in the nature of enabling provision under which the Central Board may make regulations in order to provide for all matters for which it is necessary or convenient to make provision for the purpose of giving effect to the provisions of the Act. This provision does not justify the argument that Staff Regulations must be framed under it or not at all. The substance of the matter is that the Central Board has the power to frame regulations relating to the conditions of service of the Bank's staff and it may exercise it either in accordance with Section 58(1) of the Act or by acting appropriately in the exercise of its general power of administration and superintendence. Section 7(2) confers upon the Central Board the power of general superintendence over the affairs and business of the Bank. The Central Board, therefore, is authorised by the statute to regulate the service conditions of the Bank staff by issuing administrative instructions".

21. In *Sant Ram Sharma Vs. State of Rajasthan and Another*, , the Supreme Court has held that it is open to the Government to regulate matters relating to conditions of service by means of administrative instructions so long as the statutory rules had not been made. These instructions, however cannot amend or supersede statutory rules. But if the rules are silent on any matter, the Government can fill up the gaps with instructions.

22. Having noticed the law on the point, let me now advert to the fact situation in the instant case. Under the Indian Air Force Act, the Central Government may make rules and regulations for the purpose of carrying out the provisions of the Act. These rules are required to be published in the Official Gazette as prescribed u/s 191 of the Act and it is only on such publication shall have effect as if it is enacted in the Act. It is not the case of the respondents that the policy laid down in the letter dated 30-8-1986 is either the rules or the regulations framed under the Act. They only say that the instruction contained in the letter is in the nature of administrative instructions. Therefore, question of declaring whether the policy laid down in the letter has any statutory force or not does not arise. It is now well-settled that in the absence of any statutory rules or regulations, the administrative instructions on matters relating to conditions of service of the personnel in the "Force" can be laid, provided it is not arbitrary or capricious and not inconsistent with the rules in that regard. Lastly, since it is not the case of

the petitioner that there are any rules or regulations prescribing the procedure or the condition to be followed in regard to the appointment of Vice-Chief in Air Staff or Air Officer Commanding-in-Chief of an Air Command the instructions contained in the letter dated 30-8-1986 cannot be held as void. Therefore, the last contention canvassed by the learned Counsel for the petitioner requires to be rejected. Accordingly, it is rejected.

23. In the result, petition is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.