
(2002) 08 DEL CK 0274
In the Delhi High Court
Case No : C.W.P. No. 2811 of 1985

Sgt. M.S. Kang

APPELLANT

Vs

Chief of the Air Staff and Others

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Air Force Act, 1964 — Section 191
Constitution of India, 1950 — Article 14, 226

Citation : (2002) 08 DEL CK 0274

Hon'ble Judges : S.B. Sinha, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Sanjeev Ralley, for the Appellant; Jayant Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The writ petitioner herein has questioned a policy formulated for promotion of Airmen as contained in a circular letter bearing No. Air HQ/40651/3/PA-III dated 07.12.1979.

2. The petitioner was appointed as Aircraftsman in Group II. There were five groups containing various types of trades. All technical trades are in Groups I and II; all clerical and other non-technical trades are in Groups III and IV; and non-technical trades where academic qualifications requirement is below metric are placed in Group V.

3. According to the petitioner, normally the most technical tradesmen are first enrolled in Group II and upon undergoing training and obtaining experience therein for the requisite period and upon passing requisite examinations he is re-mustered to the allied trade in Group I. Very few tradesmen, according to the petitioner, are recruited directly in Group I. The petitioner further contends that Group I is the best technical trade and carry the highest pay scale whereas Group V is the lowest step in the ladder and carries the lowest pay scale.

4. It is not in dispute that the Airmen may, however, be transferred from one trade to another subject of course to his attaining requisite qualification and experience. Such transfer from one Group to another is known as re-mustering. This is to be done in terms of following guidelines :-

- (a) To an allied trade in the same or a higher Group in the normal course of career;
- (b) Voluntarily to another trade, normally of a higher Group;
- (c) Voluntarily to an aircrew category;
- (d) Voluntarily because of redundancy of the trade;
- (e) Voluntarily, because of medical unfitness for duties of his trade (as an alternative to discharge).
- (f) Because of inefficiency or general unsuitability for the duties of his trade.

5. Some relevant dates with regard to the petitioner's career in Indian Air Force as follows :-

- (a) 19.10.1963 : Petitioner joined as Aircraftsman as Technician I Group - II
- (b) 01.02.1974 : Petitioner passed Sargent Promotion Examination
- (c) 02.11.1974 : Petitioner was placed in Group I after he cleared the departmental examination and thus became eligible for promotion to the rank of Sargent
- (d) 01.01.1980 : Total Trade Experience of the Petitioner as Instrument/ Photo Fitter, was 16 years and 2 months oh, the date when the promotion policy letter became effective
- (e) 01.06.1981 : Petitioner was promoted to the rank of Sargent as a result of various representations made by him to the respondents.

6. Citing an example of one Airman Sargent B.S. Sandhu, who was promoted from 01.01.1980, the petitioner claimed that he too should have been promoted from the said date, on the premise that the aforementioned Shri Sandhu was junior to him. The relevant details of Shri Sandhu, according to the petitioner, are in the following terms :-

- (a) 01.05.1964 : Date of Initial Enrollment in India Air Force
- (b) Sargent Sandhu at the time of his enrollment was placed in Group - V being non-technical and the lowest Group
- (c) He was re-mustered in Group - II on 08.06.1975 whereas the petitioner by that time had completed about 12 years in the Group - II in he was recruited in 1963
- (d) Sargent Sandhu was reclassified in Group - I as Photo Fitter on 01.02.1979,

whereas the Petitioner was placed in Group - I on 02.11.1974.

(e) Sargent Sandhu passed Sargent promotion examination in February, 1979, whereas petitioner cleared this exam in February, 1974.

(f) Sargent Sandhu, but for the impugned promotion policy letter, became eligible for being considered for promotion to the rank of Sargent on 02.02.1979, whereas the petitioner attained such eligibility on 02.11.1974.

7. The petitioner, Therefore, contends that whereas he had been waiting for his promotion to the rank of Sargent since 03.11.1974, Shri Sandhu, who was in the lowest technical Group V and had also much lesser experience than the petitioner, was promoted earlier. He, Therefore, contends that having regard to the said policy decision that One must pass the examination within a period of 8 years cannot stand as a bar for consideration of his promotion.

8. In the aforementioned premise, he has prayed for the following reliefs :-

(a) issue a writ of certiorari quashing the provisions of paras 3, 4 and 5 of the policy letter issued by respondent No. 1 vide Air HQ/ 40651/3/PA-III dated 7 Dec. 1979 (Annexure "A-1") as being unreasonable, arbitrary, unfair, discriminatory, illegal and unconstitutional;

(b) issue a writ of mandamus commanding the respondents to restore the seniority of the petitioner by promoting him to the rank of Sergeant with effect from 1st January, 1980, in pursuance of the provisions of paras 10, 11 and 12 of respondents No. 1's letter No. Air HQ/40651/3/PA-III dated 7th Dec. 1979 (Annexure "A-1"), and to grant him any other relief, including promotions, if any, on the restoration of such seniority;

(c) award the costs of this writ petition in favor of the petitioner and against the respondents;

(d) pass such other or further orders or give such other relief as this Hon'ble Court may deem fit, just and proper in the circumstances of the case."

9. The respondents in the counter affidavit inter alias contended :-

"6. In reply to para - 6, I say that the petitioner's contention that he was aggrieved on two counts is not correct. Air HQ's letter No. Air HQ / 40651 / 3 / PA - III dated 29th August 1980 clearly states that a few direct entrants lost their seniority due to becoming Cpls later than eight years after enrolment will be superseded by a few re-mustered airmen. This point was also illustrated from a live case shown at appendix to this letter. In the instant case, the petitioner had become Group I Cpl after 11 years and 15 days. Another airman i.e. Sgt Sandhu whom he is referring in the succeeding paragraphs even though re-mustered to photo II trade in August 75 had a required length of service of 14 1/4 years as on 1st December, 1979 and hence promoted to the rank of Sgt with effect from 1st January 1980. If the petitioner would have had the normal career profile, he would have been promoted to the rank of Sgt w.e.f. 1st May 1978 Along with his

entrymates."

10. The categorical contention of the respondent is that there cannot be any comparison between an Airman who did not have a normal career graph and another who had one. The respondents contend that if the petitioner had passed the requisite examination before completion of 8 years of service, he would have been promoted to the rank of Sargent from May, 1978 along with his contemporaries, but as he could not do so, he was not promoted.

As regards Shri Sandhu, it was contended that he was re-mustered to Photo II trade during August, 1975 and became Group I Corporeal on 02.02.1979 and thus having passed the test became entitled to be promoted to the rank of Sargent w.e.f. 01.01.1980 having regard to its total length of service in terms of para 3 of Air HQs letter No. Air HQs/40651/3/PA-III dated 07.12.1979.

According to the respondents, having regard to the existing policy decision, the seniority of the petitioner was to be counted from 03.11.1974 whereas that of the direct entrants was to be counted from 11.07.1974.

11. Mr. Sanjeev Rally, the learned counsel appearing on behalf of the petitioner, at the outset submitted that his client has since retired and, in the event, he is directed to be promoted w.e.f. 01.01.1980 instead and place of 01.06.1981, his promotion to other Groups could be pre-paned and thus he would be getting only monetary benefits and higher pension.

The learned counsel would contend that for the purpose of reckoning seniority, the date of passing of the examination although -may have some relevance but thereby the experience gained by him in his trade cannot be completely wiped out where for the entire period of service should be considered.

The learned counsel would urge that in this writ petition, it was not necessary even to implead Shri Sandhu having regard to the fact that herein the petitioner has questioned only the validity of promotion policy and has inter alias prayed that he should also have been promoted w.e.f. 01.01.1980.

12. Mr. Jayant Bhushan, the learned counsel appearing on behalf of the respondents, would however contend that promotion policy being based on rational criteria the criteria of being normal career profile, which has been adopted by the respondents, cannot be said to be bad in law.

13. The relevant provisions of the policy decision are as under :-

Seniority of Remoistened Airmen.

"3. All Remoistened Cpl who completed a minimum service of 14 years and 6 months on 1 December 79 are being included in the list of airmen being promoted to Sgt rank while implementing the first phase of the plan for upgradations sanctioned by the Government.

4. Career profiles of all remoistened airmen holding various ranks are being

examined in depth by a board of officer with a view to determine the extent of benefit of service in earlier trades for promotion in remoistened trades.

5. Detailed position will be separately intimated."

Promotions against up-gradations.

"9. Promotion against upgradation recently sanctioned by the Government are being authorised after the preparation of seniority rolls on the above stated lines.

Revised Policy

11. Revised policy is on the following lines :-

(a) An airmen will be required to pass last part of promotion examination before being considered for the promotion to the rank of Sgt/JWO

(b) An airmen who passed the last part of the examination during a promotion year will be considered for promotion in the following year.

(c) As long as the condition at sub para (a) is met, he will be considered for promotion and the date of passing the examination will not (R) will not effect his seniority.

(d) If an airmen does not pass the, promotion examination at the time of consideration for promotion, he will not be promoted. Subsequently he will be considered for promotion only if he passed the examination. Those airmen, who though" junior to him but are promoted after fulfilling the condition of passing the examination and making the requisite grade, will become senior to him for all purpose including conversion of acting paid rank into substantive rank and higher promotions.

Promotion against Upgradations

12. While authorizing promotion against upgradations recently sanctioned by the Government, revised policy stated at para 11 are being kept in mind.

14. We may notice a comparative statement of the petitioner and Sargent Sandhu, which is as follows :-

Sat. M.S. Kang Sgt. B.S.

(petitioner) Sandhu

(a) Date of initial enrolment in IAF 19.10.63 1.5.1964

(b) Trade of enrolment Technician in Group II ACH / GD in Group V

(c) Remastered 8.6.75

(d) Reclassified to LAC Group I Inst / Fit (P) Trade in 2.11.74 1.2.1979

(e) Became Group I Cpl in Inst / Fit (P) Trade and became eligible for promotion to Sgt, 3.11.74 2.2.79

(f) Passed Sgt. Promotion Examination 1 Feb. 74 N/K

(g) Awaiting promotion to rank of Sgt. in Inst / Fit (P) Trade since 3.11.74 Was still an ACH / GD in Group V.

(h) Total trade experience as Inst (Fit) (P) as on 1.1.80 16 years 2 months 4 years 6 months

(i) Promoted to Sgt. in Inst / Fit (P) Trade 1.6.81 1.1.80

15. From the said Rules, it would appear that normal career profile of the Airman plays an important role. In the event, an Airman does not pass his examination within the stipulated period he may become junior to those who had passed earlier. Only because such Rules may cause hardship to individual persons, the same by itself may not be held to be bad in law. In this connection, we may notice that in a circular letter dated 29.08.1980, it is stated :-

"3. In view of certain queries regarding the mode of re-fixation of seniority of re-mustered airmen vis-a-vis direct entrants, procedure followed for promotion from Cpl to Sgt is explained below : -

(a) To provide much needed relief to re-mustered airmen it was decided to promote all those re-mustered Cpls who had put up a minimum of 14 years and 6 months service since date of enrolment and were otherwise fit for promotion in all respect.

(b) In any trade while promoting re-mustered airmen, the basic principle followed is that the total service put in by a re-mustered airmen should not be less than the total service put in by a direct entrant having a normal career i.e. a direct entrant who become GP I Cpl within eight years of total service.

(c) Since promotion of re-mustered airmen is on the basis of total service after enrolment and is not dependent on the length of service in re-mustered trade, the date of becoming Cpl in re-mustered trade is no longer a criterion for the promotion of re-mustered airmen. However, the inter-seniority of direct entrants as on 31 Dec. 79 on the basis of attaining substantive Cpl's rank will continue to determine their relative positions.

(d) A few direct entrants had lost seniority due to becoming Cpls later than eight years after enrolment. They will continue to become junior to other tradesmen who had superceded them. It is possible that in some cases they may become junior to even those re-mustered airmen who have put in less total service. This point is illustrated from a live case shown at the appendix. Obviously, the airman "Z" has lost seniority because of his own omissions i.e. taking six years to become LAC in group II and attaining Cpl's rank in group I after a total service of 11 years."

The illustration given in clause (d) aforementioned tallies with the case of the petitioner.

16. There cannot be any doubt that direct entrants may have a direct career profile, but the petitioner did not have one. The details in the promotional policy, which is otherwise covered by the provisions of the Air Force Act, 1964 and the Regulations framed u/s 191 thereof, in our opinion, cannot be said to be bad in law. In fact, no valid contention has been raised as to how the same can be said to be ultra vires Article 14 of the Constitution of India.

The petitioner herein has not been able to show (although a feigned attempt was made to argue) as to how the impugned policy decision comes in conflict with the statutory provisions or the regulations framed there under. It even, does not appear that such a ground has been taken in the writ petition and as such the petitioner cannot be permitted to raise the said contention in this petition.

The learned counsel appearing on behalf of the petitioner has placed reliance upon a decision of the Apex Court in Karnail Singh Vs. Union of India (UOI) and Others, . The fact situation obtaining therein was completely different as therein the post of Clerk-Cum-Pay Accountant in Group III and Air Field Safety Operators (AFSO) was not an allied trade and the re-mustering in that case was not in consonance with the paragraphs 285 of the Regulations. The Apex Court in that case was concerned with interpretation of Para 282(a)(iii) of the Regulations. It was in the aforementioned situation held :-

"10... ..It was urged that on reading para 265 and para 282, the appellant will become eligible for promotion in September, 1970. This contention has to be negatived for the obvious reason that para 282 caters to a situation where a vertical movement by way of promotion is being considered in respect of persons who were direct recruits in the same trade and have to be promoted in the same trade. The High Court declined to accept the submission of the appellant that para 282 also governs the case of re-mustered airmen which approach would render para 265 redundant and may even introduce a conflict with the provisions contained in Para 282. We are in agreement with the view taken by the High Court. However, the contention of Mr. Pramod Swarup can as well be rejected for the additional reason that even if Para 282 (a) (iii) would comprehend the case of the appellant, yet his eligibility date for promotion would not be advanced before July 1, 1973 because the relevant paragraph provides that before a Sergeant becomes eligible for promotion as Flight Sergeant (JWO) he has to render total service of 12 years and service as Sergeant for a period of 4 years. The expression "total service" would mean service in the group or trade to which the airman was re-mustered and not earlier group or trade, which cannot be taken into account for any purpose. Therefore, the appellant cannot get the benefit of Para 282. In fact the case of appellant is specifically covered by Para 265. For this additional reason also the contention of Mr. Pramod Swarup has to be rejected."

The said decision, Therefore, cannot have any application in the instant case.

17. There is another aspect of the matter, which cannot be lost sight of.

Admittedly, Shri Sandhu was promoted on 01.04.1980. According to the petitioner, he had been discriminated against viz. a viz. the aforementioned Shri Sandhu, but he had not been impleaded as a party.

It may be noticed that the petitioner claims his promotion w.e.f. 01.01.1980 but has also claims his seniority inter alias on the ground that his entire service period should be considered for the purpose thereof. In the event such a plea is accepted, the petitioner even it be directed to be promoted w.e.f. 01.01.1980 would have claimed seniority over Shri Sandhu. He, Therefore, was a necessary party.

Furthermore, although the petitioner must be aware that Shri Sandhu was promoted w.e.f. the said date and the petitioner was promoted 1 1/2 year later," he made a representation, as it appears from the records, only in the year 1984 and has filed a writ petition in the year 1985.

We are not satisfied, in the facts and circumstances of this case, that the petitioner should have waited for such a long period to move this Court, particularly when he had alleged discrimination viz a viz Shri Sandhu. The petitioner inter alias has questioned the policy decision relating to Airmen's promotion evidently by way of an after thought.

18. As indicated hereinbefore, even the arguments advanced in this case are not raised in the pleadings. Furthermore, it is idle to contend that the petitioner would be getting promotion automatically, even if the relief sought for by him is granted. The promotional posts being selection posts, the petitioner was required to compete with others. As he had accepted his promotion from a later date without any demur, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India at this late stage cannot direct that although the promotional posts were selection posts, he should be given promotion with retrospective effect. The reliefs sought for, Therefore, will, thus, have a cascading effect.

19. For the reasons aforementioned, we are of the opinion that it is not a fit case where this Court in exercise of its jurisdiction under Article 226 of the Constitution should interfere with the matter. This writ petition is accordingly dismissed, but without any order as to costs.