

(1990) 10 DEL CK 0007

In the Delhi High Court

Case No : Criminal Writ Appeal No. 2141 of 1989

S.N. Chaturvedi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-10-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 43 DLT 22

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : P.L. Sharma and Vipin Sanghi, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) Rule D.B.

(2) The might of the bureaucratic attitude is clearly evident in the present case. We are sorry to note that senior officers of the Armed Forces who have rendered commendable service for the country have been driven to Court in order to seek redress against apparent injustice which has been done to them.

(3) Briefly stated, the facts are that the petitioner, as on 1st January, 1986, was serving as an Air Vice Marshal in the Indian Air Force. On that date his pay had been fixed at Rs. 5900.00 . There were two officers who were junior to him, namely. Air Commodore P.D. Adlakha and Air Commodore M.W. Desai. They were, prior to 1st January, 1986, getting less pay than the petitioner.

(4) With effect from 1st January, 1986 the Fourth Pay Commission Report was given effect to by a decision of the Central Government, with certain modifications. As a result thereof the pay of different category of officers had to be fixed. As a result of the decision of the Central Government, which was taken in respect of Armed Officers, modifying the recommendations of the Fourth Pay Commission to some extent, the pay of the petitioner was fixed at Rs, 5900.00

while the pay of the two serving officers, who were junior in rank to the petitioner, viz. Air Commodore P.D.Adlakha and Air Commodore M.W. Desai, was fixed at Rs. 6150.00 . A representation was made to the Central Government to the effect that the pay of an officer in a higher rank should not be less than the officers who were junior to him. The representation, however, was not accepted.

(5) At this stage, we may note two clauses of the Special Air Force Instruction dated 26th May, 1987 which had been issued by the Government with regard to the revision of pay scales and pay fixation. Clauses 6(g), relating to fixation of initial pay in the revised scale, provided as follows :

"WHERE in the fixation of pay under this paragraph the pay of an officer who, in the existing scale was drawing immediately before 01 Jan 86 more pay than another officer junior to him in the same cadre gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior".

Clauses 9 related to the stepping up of pay of a senior officer if the junior promoted after 01 Jan 86 drew more pay and the same reads as under :

"9.In cases where a senior officer promoted to a higher rank before 01 Jan 86 draws less pay in the revised scale than his junior who is promoted to the higher rank on or after 1 Jan 86, the pay of the senior officer should be stepped up to an amount equal to the pay as fixed for his junior in that higher rank. The stepping up should be done with effect from the date of promotion of the junior officer, subject to the fulfillment of the following conditions, namely :-

(A)both the junior and senior officers should belong to the same cadre, and the rank to which they have been promoted should be identical in the same cadre.

(B)the pre-revised and revised scale of pay of the lower and the higher ranks in which they are entitled to draw pay should be identical, and

(C)the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22-C or any other rule or order regulating pay fixation of such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this para need not be invoked to step up the pay of the senior officer.

WHERE the pay of the senior officer has been stepped up in accordance with the above provision, he will be entitled to the next increment on completion of his required qualifying service with effect from the date of re-fixation of pay."

(6) As already noted, the two officers. Air Commodore Adlakha and Air Commodore Desai as a result of fixation of their pay pursuant to the aforesaid Instruction dated 26th May, 1987, were getting more pay than the petitioner. With effect from 1st August, 1988 Air Commodore Adlakha was promoted to the rank of Air Vice Marshal. His pay was then fixed at Rs. 6500.00 . By invoking

clause 9 of the aforesaid Instruction, the petitioner's pay was stepped up to Rs. 6500.00 with effect from 1st August, 1988.

(7) As would be evident from the above, the grievance of the petitioner is that between 1st January, 1986 and 1st August, 1988 he was drawing pay which was less than the officers who were junior to him. The pay of the petitioner was increased only because an officer junior to him had been promoted to hold an equal rank to that of the petitioner. In our opinion, the decision of the Government not to remove the anomaly which had resulted while fixing pay with effect from 1st January, 1986 is clearly arbitrary and without any reasonable basis. It is now well accepted that there has to be equal pay for equal work. It is also accepted that person discharging duties as a senior officer should not get salary less than what his juniors get. The Instructions which have been issued, relevant portions of which have been quoted hereinabove, clearly take care of ensuring that the officers in the equal rank are not discriminated in the sense that junior officer does not get more pay than his senior but this reasoning, which is logical and valid, has not been extended to a case where the ranks of the two officers are different. We fail to understand as to why this is so. If on promotion Air Commodore Adlakha was to get the same salary as that of Air Vice Marshal Chaturvedi, the petitioner, it does not stand to reason that the petitioner should be getting lesser salary than what Air Commodore Adlakha was getting before the latter's promotion. If on the promotion of Air Commodore Adlakha to the rank of Air Vice Marshal the salary of the petitioner could not be less than that of A. V. M. Adlakha, there is no reason as to why the salary of the petitioner should have been less when Mr. Adlakha had not been promoted from the rank of Air Commodore. If the petitioner had not been promoted as Avm before 1st January, 1986 he would have got more pay as an Air Commodore than what Air Commodore Adlakha was getting, while in the same rank of Air Commodore, and he would have continued to get more pay than what has been fixed as Air Vice Marshal with effect from 1st January 1986.

(8) In our opinion, the stand of the respondents in not revising the pay of the petitioner with effect from 1st January, 1986 to be not less than the salary of the Air Commodores is clearly without any basis or reason and is unreasonable, unjust and unfair.

(9) For the aforesaid reasons, we allow this writ petition and issue a writ of mandamus directing the respondents to fix the pay of the petitioner with effect from 1st January, 1986 at Rs. 6150.00, which was the salary which was being paid to Air Commodore Adlakha and Air Commodore Desai, and then to revise the petitioner's pay to Rs.6300.00 with effect from 31st May, 1986, which was the pay which had been fixed for Air Commodores Adlakha and Desai. A writ of mandamus is further issued for the revision of the petitioner's salary by granting him annual increments on the basis that his pay as A.V.M. on 31st May, 1986 was Rs. 6300.00. The respondents are also directed to fix the petitioners pensionary and other post-retirement benefits, the petitioner having retired on

31st October, 1989, on the basis of the revised pay to be fixed by the respondents. The petitioner would also be entitled to the arrears of pay and pension. It is directed that the respondents will complete the exercise of fixing the pay and pension within a period of three months from today and will also pay the amount due to the petitioner within a month thereafter. The petitioner will be entitled to costs.