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**COURT NO. 3,
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**T.A. NO. 218 OF 2009
(WP(C) No. 1028 OF 1992 of Delhi High Court)**

IN THE MATTER OF:

Sqn Ldr Anil Roy

.....Applicant

Through Sh. V.S. Tomar, counsel for the applicant

Versus

The Union of India and others

.....Respondents

Through: Ms Jyoti Singh, counsel for respondents

CORAM :

**HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Dated: 8-1-2010

1. The applicant had filed a Writ Petition (Civil) 1028 of 1992 in the Hon'ble Delhi High Court and the same was transferred to the Armed Forces Tribunal on 28.8.2009. The applicant had challenged the non grant of substantive promotion to the next higher rank of Wing Commander with retrospective effect from 1.7.1984 as accorded vide Government of India letter No. F(1)/83/DCFA/D (Air-III) dated 28.3.1985.

2. The salient facts of the application are given in the succeeding paragraphs.

3. The applicant was commissioned in the Indian Air Force (IAF) in the logistics branch on 21.12.1963. The petitioner requested voluntary retirement with effect from 1.1.1985 while holding the rank of substantive Squadron Leader (Sqn Ldr). The Government of India (GOI) approved his premature retirement with effect from 1.1.1985 combined with leave pending retirement (LPR) from August 1984. The applicant claims that during LPR an officer remains in service and Vide GOI Ministry of Defence (MOD) letter No. F(1)/83/DCRA/Air (III) dated 28.3.1985 and subsequent amendment the revised time frame for grant of substantive promotions by time scale were laid down from 24 years to 21 years with retrospective effect from 1.7.1984 (actually 31.7.1984 as confirmed by respondents). The applicant contends that he had completed 21 years of service in December 1984 and thus became entitled for promotion to the rank of Wing Commander substantive. On 19.9.1985 the applicant had made a representation to IAF Headquarters requesting for said promotion to the rank of Wing Commander with effect from 21.12.1984. He was however informed by the respondents that substantive promotion to the rank of Wing Commander was not admissible to officers during the period of LPR. The petitioner pointed out to the respondents that Para 14 of Air Force

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Instructions (AFI) 15/87 as it stood before 28.3.1985 did not mention non admissibility of promotion to officers during the period of LPR. The applicant contends that Air Headquarters were deliberately and wrongly quoting Air Force Instructions to deny him the benefit of the amendments.

4. The applicant also pointed out the provision in the amended version of Para 14 of AFI 15/71 discriminates between commissioned officers by differentiating a Sqn Ldr on LPR from the rest of commissioned officers on LPR. It was alleged that this is bad in law and needs to be struck down. It was further alleged that some commissioned officers of the IAF, who were on LPR and who took voluntary retirement were given benefit of promotion even three years after retirement.

5. It is revealed from the record that the applicant also filed Writ Petition (Civil) 21195 of 1987 in Allahabad High Court but the same was dismissed on 3.5.1991. The applicant subsequently preferred a Special Appeal No. 48/91 before a Division Bench of Allahabad High Court which was decided on 30.9.1991 and permitted him to withdraw his writ petition and appeal and it was left "open to the petitioner to pursue such remedies as are open to him in law". The records, however, indicate that subsequent to this decision the petitioner did not take legal recourse till the present writ.

6. The applicant has prayed for a writ in nature of mandamus direction or order to the respondents to promote him to the rank of Wing Commander with effect from 21.12.1984 in pursuance to amendment to AFI 15/71 and also strike down the amendment in Para 14 of AFI 15/71 as it is unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

7. The respondents by way of reply brought out that the officer had proceeded on LPR from 1.7.1984 to 31.12.1984 and he got voluntarily premature retirement from 1.1.1985. The applicant's entitlement to promotion to the rank of Wing Commander (TS) is governed by AFI 15/71 as amended vide AFI 38/74. The applicant had proceeded on LPR before issue of the revised order dated 28.3.1985 and before completion of revised period of 21 years. AFI 15/71 as reconstructed vide AFI 38/74 made him ineligible for grant of substantive Wing Commander as it stipulates that **"Substantive promotion by time scale upto the rank of Wing Commander will be admissible to officers during the period of LPR but it will not be admissible in case of premature voluntary retirement"**. It was admitted in reply that the revision of grant of substantive rank of Wing Commander was reduced from 24 years to 21 years with retrospective effect from 31.7.1984 vide GOI letter No. F. 1(1)/83/DOIA/ (Air III) dated 28.3.1985. However the provision of Para 14 of AFI 15/71 as reconstructed vide AFI 38/74 did not entitle the petitioner to promotion to the rank of Wing Commander (TS).

8. To pursue his personal ends the applicant chose to retire prematurely well before he completed the requisite period of service to become entitled for promotion to the rank of Wing Commander (TS). It was alleged that the applicant was well aware of the provisions of AFI 15/71 and AFI 38/74 while seeking premature retirement. There was thus no discrimination. Officers who seek premature retirement voluntarily and those who retire on superannuation are two distinct categories. The applicant had the choice of postponing/reducing his LPR with a view to completing the requisite service period, but did not do so. Officers who opt for LPR are relieved of duties and allowed to retire while on such LPR without further resuming duties.

9. We have perused the records and heard the arguments at length. We have considered the contending views of both parties. The applicant had opted for premature retirement voluntarily knowing all consequences. He can not be equated with those officers retiring on superannuation. There are no grounds for believing that there was discrimination. The interests of the service should be paramount. Thus we do not find that the said amendment is unjust or unconstitutional. The respondents had made it clear in the arguments that the policy on LPR was different for Sqn Ldr. The Air Force aims to discourage junior officers from seeking premature retirement in the interest of the service and is thus not discriminatory.

10. We have pursued the judgment cited by the petitioner given in *Lt Col B.R. Malhotra Vs. UOI & Ors by the Delhi High Court reported in 1998(2) SLR*

81. In that case the voluntary retirement was itself in dispute and case was related to disability pension and thus does not help the applicant's contentions.

11. We find that the officer proceeded on LPR with effect from 1.7.1984 and cannot claim that he was not aware of AFI 15/71 as amended vide AFI 38/74. Thus he was not entitled to the rank of Wing Commander (TS) as it was not admissible to the Sqn Ldrs during LPR in case of premature voluntary retirement.

12. No ground for interference is made of. Case is dismissed. No orders as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 8-1-2010