

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

**T.A. No. 681 of 2009
(Delhi High Court W.P (C) No. 7452 of 2000)**

IN THE MATTER OF:

Wg Cdr K K Sinha**Applicant**
Through Mr VS Tomar counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Ms Jyoti Singh counsel for the respondents

CORAM:

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

JUDGMENT

Date: 30-06-2010

1. The applicant filed a writ petition (civil) No. 7452/2000 in the Hon'ble Delhi High Court. The applicant has prayed that the new promotion policy issued vide Air HQ letter dated 17/09/99 (Annexure P-5) be quashed. He has further prayed that results of promotion board – 2 (old) be restored with consequential benefits. The same was transferred to the Armed Forces Tribunal on 21/10/2009 on its constitution.

2. The brief facts for just disposal of this case are that the applicant was commissioned in the Indian Air Force (IAF) on 13/7/74. He was promoted to the rank of Wing Commander on 20 Sep 93. On 22/7/96 a policy for promotion of Wg Cdr to Group Captain (Gp Capt) was announced by the Govt of India which ruled that officers under consideration should have minimum 23 years of service and have held the rank of Wing Commander for four years. The applicant submits that Para 125 of the Air Force Regulations lays down the said promotion policy.

3. The applicant contends that he was considered for promotion to the rank of Gp Capt in March 1998 on completion of 23 years service and declared selected by Air HQ signal dated 01/4/98 (Annexure P-2) wherein he is reflected at Ser No 3 in the "Select Main List".

4. The applicant further contends that Air HQ on 28/1/98 cancelled the promotion list of 01/4/98. It was announced that the length of qualifying service had been increased by two years for promotion of all ranks vide revised policy dated 17/9/99 (Annexure P-5). It is alleged by the applicant that there was no amendment to Para 125 therefore the Air Force authority was not having the power to alter the conditions of service by an executive order.

5. On 01/3/99 the results of the promotion board No 2 (PB-2), with the revised eligibility criteria of having 25 years service, were announced. The applicant was not considered as he did not have 25 years service. The applicant contends that due to change in service policy, the 18 Wg Cdrs who had already been over looked three times became eligible and were considered for promotion. They were much lower in merit than the applicant in the promotion board, held earlier, before the age of retirement was enhanced. Thus the revised policy was against service norms and public interest.

6. The applicant contends that the promotion policy was changed without obtaining the approval of the Govt of India. It was also made with retrospective effect. This was illegal because delegated legislation cannot be applied retrospectively as held in the case of **Hukum Chand Vs UOI AIR (1972) SC 2427.**

7. It is submitted that consequent to the change in policy the applicant was considered for promotion to the rank of Group Captain and did not figure in the "Select list". The applicant represented against the revision of promotion policy on 09/5/2000 (Annexure P-7) but was informed by Air HQ on 19/7/2000 that

change in eligibility criteria did not tantamount to change in terms and conditions of service (Annexure P-8). The applicant has averred the change of promotion policy had resulted in advantage to some officers, who were promoted but who had been very low in the merit vis a vis the applicant in the earlier selection.

8. The applicant has prayed that the new promotion policy dated 17/9/99 (P-5) be quashed and the clause restricting the number of chances to only three for promotion be declared unconstitutional and the results of promotion board declared on 01/4/98 (P-2) be restored and he be granted the rank of Gp Capt w.e.f 1998 with all consequential benefits.

9. The respondents in their counter affidavit have stated that the applicant was selected to the rank of Wg Cdr in Sep 93. In the promotion board for Group Captain in 1998 the applicant was at Serial 3 of the "Select Main List". However before the applicant could be promoted the Government, in May 1998, sanctioned increase of retirement age by two years. The vacancies that were anticipated to take place in 1998 however would not be available and, therefore, it became necessary to review the promotion

policy for promotion to Gp Capt. The proposal of increasing the qualifying service by two years was approved by the Central Govt (Annexure R-1). There was no change in the qualifying service for promotion to the rank of Wg Cdr as despite the two years increase in retirement age, sufficient vacancies were available to promote officers in the select lists. The earlier select lists for promotion to the rank of Gp Capt were cancelled in toto. Fresh merit lists were drawn after deleting the names of those officers who had now become ineligible. Since the applicant did not have the requisite qualifying service, as per revised promotion policy his name was deleted from the select panel.

10. The respondents maintain that increasing the qualifying service was done with the approval of the Central Govt in the best interests of the organisation and was uniformly applicable to all officers of the Indian Air Force in the zone of consideration. This was not tantamount to change in terms and conditions of service.

11. The respondents have denied that officers on the revised select lists had been over looked thrice for promotion. They figured in the revised select lists after names of ineligible officers were deleted and they were meeting all the criteria for promotion.

The applicant cannot compare his merit with the officers promoted since with the minimum qualifying service he was no more eligible for consideration as he did not meet the criteria of having the qualifying service.

12. It is contended that there was no violation of the Air Force Regulations as the amended promotion policy had the approval of the Government and it was mentioned that Regulations of the Air Force would be amended in the course of time. Para 162 of the Regulations clearly stated that the qualifying service limits are subject to revision from time to time (Annexure P-3). The revised promotion policy mentioned that it would be effective from Promotion Board of 1999 (i.e. from 01 Apr 98 to 31 Mar 99) and was not retrospective.

13. The respondents aver that one of the conditions laid down while declaring Select Lists was that promotions would be subject to availability of vacancies. The anticipated vacancies however did not arise as officers expected to superannuate in 1998 continued in service and thus there were no vacancies. The respondents have recommended that the application be rejected.

14. In a rejoinder affidavit the applicant has contended that the officers promoted in the revised select list were much lower in merit than the applicant and the respondents have not been able to justify the rationale of increasing eligibility age by two years. The new promotion policy was issued on 19 Feb 1999 and vacancies occurring for the period from 01/04/98 to 18/02/99 should have been filled by applying the old policy in force. The applicant contended that a select list once declared cannot be cancelled. The names of such officers should be carried forward and promoted later in case they could not be promoted in the year of the promotion board.

15. In a subsequent application dated 6/2/03 the applicant has stated that the Indian Air Force had again rolled back the qualifying service for promotion to Gp Capt by two years on 16 May 2002. The applicant was thus denied the benefit of the change for the second time.

16. We have heard the arguments and perused the records. The applicant's promotion was subject to availability of vacancies. He was at **ser 3** of the select main list for promotion to Group Capt in the list of 01/4/98 (Annexure P-2). There were however no vacancies and thus there was no possibility of promoting the

applicant. Mere name in the selection panel does not confer any right to promotion. This list was cancelled in toto on 28/01/89 by the IAF, after Govt approval, because of non availabilities of normal anticipated vacancies due to superannuation brought about by increase of retirement age by two years. Indian Air Force, with Govt approval, also revised its promotion policy increasing the length of qualifying service to 25 years for Wing Commander. We find justification in the change in policy. It was not applied retrospectively. It also did not change the condition as the old list was cancelled as admitted to by the applicant himself. Ineligible officers were deleted from the original list and fresh merit list was drawn. The applicant did not have the required qualifying service as per revised promotion policy and officers lower than him in the merit moved up into the "Select Main List". These officers were otherwise fully qualified and eligible for promotion. They must not be compared with applicant.

17. Subsequently the applicant was considered by three successive promotion boards but did not figure in the select main list. The revision of the promotion policy was done with the approval of the Govt of India and was necessitated by the increase in retirement age ordered by the Govt subsequent to the IVth Pay Commission. The contentions raised by the applicant in this respect are not having force of law. We have also considered the

judgement given in Tamil Nadu Computer Science BeD Graduate Teachers Welfare Society Vs Higher Secondary School Computer Teachers Association and others (2010) 1 Supreme Court Cases (L&S) Page 367 but this was on a different issue and does not help the applicant. In that case candidates who secured less than 50% were declared unsuccessful. They were called by subsequent amendment in the policy that was found illegal. In this case however the selection list in toto had been cancelled due to change of qualifying age criteria.

18. We have also considered the contentions raised in the rejoinder and subsequent applications. The impugned policy had been approved by the MOD and in cases of change in policy certain persons have to be affected. The change in policy was however justified due to enhancement of retirement age.

19. On the basis of aforesaid discussion there is no illegality in the impugned policy and there is no justification to set aside or restrain the implementation of that policy. Application rejected. No costs.

MANAK MOHTA
(Judicial Member)

Z.U.SHAH
(Administrative Member)

Announced in the open court
Dated: 30-6-2010