

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
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O.A. NO. 2217/1989

DATE OF DECISION : 24.4.92

SHRI R.K. MAHAJAN

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SHRI E.X. JOSEPH

FOR THE RESPONDENTS

...SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J)

The applicant, now working as Deputy Director, Aviation Research Centre (ARC) is aggrieved by the fact that he has been denied equal treatment in respect of fixation of his pay in the post of Assistant Director to which he was appointed on 11.1.1977. The pay scale of the post of Assistant Director was Rs.1100-1600. Before his appointment to this post, the applicant was working as Junior Captain and he was drawing a basic pay of Rs.2000 and a flying pay of Rs.375. The applicant made repeated representation and the Cabinet Secretariat by

the letter dt.30.8.1985 conveyed the sanction to the protection of the pay of the applicant at Rs.2000 p.m. from 1.8.1985. The applicant, however, requested for giving him protection of his pay of Rs.2000 which he was drawing as Junior Captain w.e.f. 11.1.1977. The respondents by the letter dt.29.7.1989 rejected the representation and the decision was conveyed to the applicant by a Memo dt.9.8.1989 by ARC. The applicant, therefore, has challenged this decision to deny the protection of the pay and the grant of consequential benefits to him w.e.f. 11.1.1977 as unfair, unjust and unreasonable.

2. The applicant has prayed for the following reliefs:-

- (a) A declaration to the effect that the applicant is entitled to protection of maximum of the pay scale which he was drawing as Junior Captain when he was appointed as Assistant Director on 11.1.1977 with a direction to the respondents to fix the basic pay of the applicant at Rs.2000 w.e.f. 11.1.1977 and to pay him the arrears of pay and consequential allowances for the period from 11.1.1977 to 31.7.1985.
- (b) A further direction to the respondents to refix the pay and allowances of the applicant w.e.f. 1.8.1985 taking into account the fixation of his pay at Rs.2000 w.e.f. 11.1.1977 with consequential reliefs.

3. The brief facts of the case are that the applicant was holding a substantive post as Junior Intelligence Officer in the Intelligence Bureau and in June, 1963,

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Air Wing called Aviation Research Centre (ARC) was formed in the Intelligence Bureau and the applicant was selected for flying training for commercial pilots licence and was sent for flying training in October, 1964. In March, 1968, the applicant was promoted to the rank of DCIO (Flying) in the pay scale of Rs.400-900. In January, 1969, the applicant was appointed as Junior Captain (now designated as Captain) in the then pay scale of Rs.900-1200 (Third Pay Commission pay scale of Rs.1200-1600) in the ARC. In January, 1972, after completion of probation, the applicant was appointed in the senior time scale of Rs.1800-2000. The applicant was drawing the maximum of the pay scale, i.e. Rs.2000 from 1.1.1973. Subsequently, a flying allowance of Rs.375 was also given to him.

4. The applicant met with a serious accident on 4.10.1975 and as a result of that in September, 1976, the applicant was declared unfit for flying duties. On 10.1.1977, the applicant who was posted as Junior Captain on the strength of ARC, was given verbal directions to take over charge as Assistant Director and proceed to Doon Dooma after relinquishing charge of the

post of Junior Captain and as a consequence, the applicant joined as Assistant Director on 11.1.1977. The controversy arises regarding the fixation of the pay of the applicant on the post of Assistant Director which carries a pay scale of Rs.1100-1600 which was revised as Rs.1200-1700 from 1.12.1984. The applicant continued to hold the same post until he was promoted to the rank of Deputy Director on 9.9.1988. Before this in April, 1983, the applicant was given a substantive appointment as Assistant Director in a permanent post. The applicant agitated the matter of protection of his pay which he was drawing as Junior Captain on the date of joining as Assistant Director at Doon Dooma on 11.1.1977 and the applicant was informed by the order dt.30.3.1985 that the protection of the pay of the applicant at Rs.2000 has been sanctioned by the President w.e.f. 1.8.1985. The applicant still persisted for the grant of benefit from 1.1.1977 which was disallowed by the impugned order. The ground taken by the applicant for the grant of the reliefs mentioned above is that the applicant was grounded and his appointment as Assistant Director was in the ARC itself and was done in the public interest. When he was grounded, it only meant that he is disqualified from flying.

So the basic pay of Rs.2000 which he was drawing at Charbatia should have been protected. It is further stated that in the Airforce when pilot is found medically unfit for flying duties, he is transferred to ground duty branch and such an officer retains the rank and the last pay drawn by him without the flying pay. It is further stated that the service of the applicant in the ARC is a continuous service whether in the executive service or Air Wing. The transfer from the Air Wing to the executive cadre was a decision of the authorities and the pay being drawn by the applicant at the time of his transfer could not be reduced and had to be protected. The own letter of the respondents dt.30.8.1985 which protected the pay w.e.f. 1.8.1985 should have been extended to the entire period from 11.1.1977 when the applicant was appointed as Assistant Director in the public interest. It is further stated that the applicant is the most sufferer as his contemporary, Shri R.K. Malhotra who was appointed as the Junior Captain on the same date as the applicant, was drawing basic pay of Rs.2400 in August, 1977 when the basic pay of the applicant fell to Rs.1403. It is further stated that in July, 1981, the applicant was asked to submit the option for permanent absorption in ARC (Air Wing) as Junior Captain w.e.f. 15.3.1977 and he gave his option for

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such absorption. However, subsequently he was asked to give his option for permanent absorption as Assistant Director and he gave the same option on the specific condition that the same is without prejudice to his service interest. The very fact that the entitlement was conceded w.e.f. 1.8.1985 shows that he had a legitimate claim for the period from 11.1.1977 to 31.7.1985.

5. The respondents contested the application and took the plea that the present application is hopelessly barred by time and the axim 'vigilantibus et non dormientibus jura subveniunt' has been stretched in the reply along with a

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number of \*authorities. It is further stated in the reply that the applicant was medically declared unfit for flying duties in September, 1976 due to road accident when he was holding the post of Junior Captain in the pay scale of Rs.1800-2000 and was drawing a pay of Rs.2,000 with a flying bounty of Rs.375. For such grounded civilian pilots, the provision has been made in the ARC/SFF (Executive Service ) for their appointment as Assistant Director by transfer of civilian pilots of ARC grounded for medical and other reasons. The applicant was, therefore, appointed as Assistant Director

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1. Surrender Misra Vs. Union of India, 1986 (2) SLJ 115 and 116.
2. Mohindra Chokarborthy vs. Union of India, 1986 (3) SLJ 439 , 442 and 443.
3. Mangan vs. Chief Secretary Officer, 1986 (3) SLJ 136 (Page-138).
4. V.P. Rego Vs. Union of India, 1987 (2) SLJ 604.
5. Hublal vs. Union of India, 1989 (1) SLJ 639.
6. P.L. Shah vs. Union of India, 1989 (2) SLJ (SC) 49.

w.e.f. 11.1.1977. The scale of the post of Assistant Director then was Rs.1100-1600. The applicant had not been absorbed in any of the posts in ARC. The Cabinet Secretariat issued sanction fixing the applicant's pay on his appointment as Assistant Director at Rs.1450+personal pay of Rs.150 in the pay scale of Rs.1100-1600 w.e.f. 11.1.1977 for giving him the benefit of an increment for each completed year of service in the grade of Junior Captain. The applicant represented requesting for protection of his pay at Rs.2000 w.e.f. 11.1.1977. The Cabinet Secretariat on the representation of the applicant was asked to protect the applicant's pay at Rs.2000 by allowing a maximum of Additional Director's scale of Rs.1600+Rs.400 as personal pay in relaxation of the normal rules on the ground that Air Wing of the ARC was patterned on Indian Air Force where the pilots on being grounded lose only flying bounty.

6. In the meantime, the Cabinet Secretariat in their letter dt.30.8.1985 sanctioned the protection of the pay of the applicant as Assistant Director at Rs.2000 w.e.f. 1.8.1985. However, in the meantime, the

pay scale of Assistant Director was revised to Rs.1200-1700 with special pay of Rs.100 w.e.f. 1.12.1984, On this ARC requested the Cabinet Secretariat to fix the applicant's basic pay at Rs.1700 plus special pay of Rs.100 and personal pay of Rs.200 w.e.f. 1.12.1984. The Cabinet Secretariat, however, fixed the applicant's pay at Rs.1600 with special pay of Rs.100 and personal pay of Rs.300 to be absorbed in future increments on increases of pay w.e.f. 1.8.1985. It was also clarified that the applicant was not entitled to draw special pay of Rs.100 over and above the pay of Rs.2000. It is further stated that as per option available in Aviation Research Centre record, the applicant did opt for absorption in Air Wing cadre as Junior Captain, but could not be confirmed as he was not holding the post of Junior Captain on the crucial date, i.e., 15.3.1977. It is also stated by the respondents that the Indian Air Force pilot when grounded retains the pay, but not the flying pay, but in ARC, the position is different. In that, the last pay drawn as Junior Captain was more than the maximum of the pay scale of AD+SP and hence the protection of last pay drawn as Junior Captain was not covered by the normal rules. This could

be done only by special dispensation which has been done by the Government w.e.f. 1.8.1985. The ARC Air Wing cadre Rules came into force w.e.f. 15.3.1977. Thus on the crucial date, i.e., on 11.1.1977, the applicant was not holding a post in the Air Wing cadre and was not, therefore, eligible for absorption in the Air way cadre as per Air Wing Cadre Rules. The pay protection has been given in relaxation of the normal rules w.e.f. 1.8.1985. Thus the respondents have prayed that the application be dismissed with costs.

7. I have heard the learned counsel for the parties at length. The case of the applicant is that his pay should have been protected while he was ordered to join without giving him an option as Assistant Director in ARC. The respondents in the counter have admitted in reply to ground (A) that no prior willingness of the applicant was taken for his appointment as Assistant Director in ARC/SFF (Executive Service) and he was called to ARC Headquarters for accepting the assignment and a report to Doon Dooma from Charbatiya. Now the question is whether it was open to the applicant to deny the offer and quit the service or to accept the terms and conditions of the appointment to the post of Assistant

Director in ARC. The applicant, however, was not told the terms and conditions, though the applicant must be aware of the pay scale of Rs.1100-1600 at the relevant time. In fact, the pay of the applicant was also subsequently fixed. It was only by the order dt.15.1.1977 that the applicant was directed to proceed to Doon Dooma immediately to take over the charge of the post of Assistant Director. It was by the letter dt. 9.2.1977 that the Cabinet Secretariat fixed the pay of the applicant on his appointment as Assistant Director as Rs.1450 plus Rs.150 as personal pay. The personal pay was to be absorbed in the future increments. Thus the applicant was totally in dark about the emoluments, he will get as Assistant Director. The respondents have admitted in reply to ground(B) that when Indian Air Force pilot is grounded, he retains his pay and only loses the flying pay. However, at p-5 of the counter, the respondents have admitted that Director, ARC sent a D.O. dt.25.5.1978 to protect the applicant's pay on the ground that Air Wing of ARC was patterned on Indian Air Force. The difficulty with the respondents appears to be that the applicant was drawing as Junior Captain more than the maximum of the

pay scale of Assistant Director plus special pay and so the protection of the large pay drawn was not covered by the normal rules. In fact, the ARC/SFF (Executive Service) Rules came into effect from 30.6.1976 and it is admitted to the respondents in reply to para 'F' of the grounds that the applicant was appointed in accordance with these rules. In the Recruitment Rules for the post of Assistant Director, the appointment can also be made by transfer of civilian pilots to ARC grounded for medical or other reasons. Though this has been deleted from the rules w.e.f. 31.10.1988, but this was in force at the time when the applicant was appointed as Assistant Director. In July, 1981, the applicant was also asked to submit his option for absorption as Junior Captain in ARC w.e.f. 15.3.1977. In May, 1983, he

was again asked to give option for permanent absorption in the post of Assistant Director and he was confirmed as Assistant Director w.e.f.

13.8.1981. The applicant could not be considered for absorption in Air Wing cadre at the initial constitution of the service w.e.f. 15.3.1977 as he was not holding any post in the cadre on the crucial date.

8. The applicant, therefore, cannot be equated with the Indian Air Force pilots grounded on medical grounds. On 11.1.1977 he had no permanent lien in Air Wing of ARC. His option for absorption in Air Wing given in July, 1981 has not been accepted. He has not assailed that non absorption in any forum and gave first option for absorption in ARC/AD. Thus he cannot claim parity with the grounded pilots of Air Force and cannot be granted relief of protection of pay before 1.7.1981 as the same has become barred by time. His pay, therefore, was fixed when he joined the service after accident on the post of Asstt. Director at the maximum <sup>of</sup> Asstt.

Director's scale under the rules. His seniority in the rank of Assistant Director was also fixed from the date of his appointment as Assistant Director under the normal rules. The Government, however, protected his last pay drawn in the rank of Junior Captain w.e.f. 1.8.1985 and not from 11.1.1977, and this pay protection has been given in relaxation of the rules w.e.f. 1.8.1985. The learned counsel for the applicant stressed that he should be given the benefit with retrospective effect of protection of pay, i.e., from 11.1.1977, as there is no reason adduced in the order as to why this date 1.8.1985 has been chosen.

9. According to ARC/SFF (Executive Service ) Rules, 1976 the applicant was appointed on transfer basis of civilian pilots of ARC grounded for medical or other reasons to the post of Assistant Director. Though the applicant applied for being absorbed in the Air Wing of ARC and he gave his option, but he could not be absorbed because he was not borne on the cadre when the rules came into force w.e.f. 15.3.1977. Since he was not holding the post of Junior Captain on the relevant date of constitution of service, he could not be confirmed as Junior Captain. The case of the respondents is that he has been granted protection of pay w.e.f. 1.8.1985 solely on the basis of

the relaxation of the rules. However, there appears to be no justification in the case of the applicant that when he was called after he met with an accident in October, 1975, sometimes in 1976 he was not told specifically that the pay he was drawing at the time shall not be protected otherwise the applicant would have in his own right either joined the post of Assistant Director or would have contended himself by reverting to the substantive post in the Intelligence Bureau. What the applicant could have done cannot be visualised, but the respondents should have given him the option on 10.1.1977 when the applicant was directed to relinquish the charge of Junior Captain and directed to take charge of the Assistant Director in the pay scale of Rs.1100-1600 w.e.f. 11.1.1977. It was subsequently that his pay was fixed at Rs.1450 plus Rs.150 as special pay, i.e., total of Rs.1600 which was the maximum of the scale and still the applicant was suffering a loss of Rs.400 as he was drawing the salary of Rs.2,000 plus flying allowance of Rs.375. The applicant made another representation in 1985 that since the scale of the Assistant Director was changed to Rs.1200-1700, so he had a case of fixation of pay at Rs.1700. This revised scale

of pay has come into effect w.e.f. 1.12.1984. This relief was also not allowed to the applicant. The ARC also requested the Cabinet Secretariat to fix the applicant's basic pay at Rs.1700 plus special pay of Rs.100 and personal pay of Rs.200 w.e.f. 1.12.1984. However, the Cabinet Secretariat vide their letter dt.17.7.1987 fixed the basic pay of the applicant as Rs.1600, special pay as Rs.100 and personal pay as Rs.300 to be absorbed in future increments increases of pay w.e.f. 1.8.1985. It was also clarified that he was not entitled to draw special pay of Rs.100 over and above the pay of Rs.2,000. This order of the Cabinet Secretariat may be in relaxation of the rules, but cannot be passed to the prejudice of the applicant giving him a recurring loss of pay. Why the Cabinet Secretariat has chosen to give the benefit of protection of pay w.e.f. 1.8.1985 is not evident from the pleadings filed in this case by the respondents nor from the annexure nor from any other document.

10. When the applicant has given his option for absorption in ARC/SFF (Executive Service) and the option has been accepted and the applicant was confirmed as Assistant Director w.e.f. 13.8.1981, so

the protection of the pay of the applicant should have been done from that date, i.e., from 13.8.1981. This is more just and equitable.

10. Taking all these facts into account and giving a careful consideration, the application is partly allowed with a direction to the respondents that the protection of pay given to the applicant w.e.f. 1.8.1985 shall be w.e.f. 1.8.1981 when the applicant has been confirmed in the post of Assistant Director. The applicant shall be entitled to all the consequential benefits and arrears of pay w.e.f. 1.8.1981 to 31.7.1985 on the basis that applicant's pay of 1.8.1981 shall be fixed at Rs.2,000. The respondents to comply with the directions within three months from the date of receipt of a copy of this order. Costs easy.

*forwards*  
(J.P. SHARMA) 24.4.92  
MEMBER (J)