

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 231/89

DATE OF DECISION: 6.3.1992.

SHRI R.K. MAHAJAN

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM:

HON'BLE MR. T.S. OBEROI, MEMBER (J)

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI E.X. JOSEPH, COUNSEL

FOR THE RESPONDENTS SHRI M.L. VERMA, COUNSEL

1. Whether Reporters of the local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)

6.3.1992.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2231/89
SHRI R.K. MAHAJAN

DATE OF DECISION:6.3.1992.
...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS
...RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI E.X. JOSEPH, COUNSEL.

FOR THE RESPONDENTS SHRI M.L. VERMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri R.K. Mahajan, in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 has challenged the order No.10/1/83/-DO-II-1902 dated 27.7.1989 conveyed through memorandum No.ARC/6/65(23)-IV dated 9.8.1989, advising the applicant that:

(i) he cannot be absorbed as Junior Captain at the initial constitution of the ARC (Air Wing), as on the appointed day viz. 15.3.1977 he was not holding any post in the Air Wing.

(ii) He cannot be granted protection of pay retrospectively w.e.f. 11.01.1977.

2. The necessary facts of the case are that while working in the rank of DCIO (Flying) in 1968 in the Aviation Research Centre (ARC) he was appointed as Junior Captain (now designated as Captain) w.e.f. 16.1.1969. He met with a serious accident on 4.10.1975 and was declared as unfit for flying duties in

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September, 1976. Thereafter he was assigned ground duties in the Air Wing in the ARC. The said ARC was organised in an Executive Wing and an Air Wing with separate Service Rules. The Service Rules for the ARC/SFF(Executive) Service Rules came into force w.e.f. 30.6.1976. The ARC (Air Wing Staff) Rules, however, were promulgated later on 15.3.1977. The applicant was appointed as Assistant Director, ARC (Executive) Doom Dooma vide order No.EA/ARC-Estt.5/27 dated 15.2.1977 which charge he assumed on the afternoon on 11.1.1977.

The ARC Executive Service Rules, 1976 in addition to other modes of recruitment made a provision for appointment by "transfer of civilian Pilots of ARC grounded for medical or other reasons". The said Rules also made the provision that "all persons holding as on the appointed day any one of the categories of posts specified in Rule-4 whether in a permanent or temporary or officiating capacity or on deputation basis shall be eligible for appointment to the service at the initial constitution thereof." Those who are not included in the initial constitution stage as above would have to be considered for appointment in the service at the maintenance stage. The seniority at the time of initial constitution of the service in each grade was to be in the order in which the officers are shown in the relevant list prepared in accordance with the provisions of Rule-6. The seniority in a particular grade was to be reckoned in the service with reference to the date of appointment to the post in that grade by direct recruitment or promotion. The rules for Air Wing Service were notified on 15.3.1977 made also similar provisions for initial appointment in the service at time of initial constitution. The rules further provided that "every person holding as on the

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appointed day a permanent post in any grade in the ARC shall without prejudice to his being considered for appointment to a permanent post in the higher grade or to his continuance in such higher grade in officiating or temporary capacity be absorbed in his respective substantive grade against the permanent post available as on the appointed day."

3. Against the above background, the short issue raised for our adjudication in this O.A. is whether the applicant can be denied absorption in the Executive Service at the stage of its initial constitution for the reason that he was not holding any one of the categories of posts specified in the said Rules on the appointed day viz. 30.6.1976 - simultaneously depriving him of absorption in the Air Wing at the initial constitution of that service, as he was not in position in the Air Wing on 15.3.1977 - the date on which those rules were promulgated.

4. The applicant has been absorbed at the maintenance stage in the Executive Service, assigning him seniority w.e.f. 11.1.1977 - the date on which he assumed charge of Assistant Director, Doom Dooma. This in effect his antedated service of about 17 years has not been reckoned for assigning him seniority.

5. The facts of the case are not disputed by the respondents. The plea taken by them in their counter is that since he was not in position either in the Executive Service on the appointed day viz. 30.6.1976, in the Air Wing Service on the appointed day viz. 15.3.1977 in any of the specified capacity he could not be appointed to the post of Assistant Director or in the post of Junior Captain. The respondents seem to have

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recommended to the competent authority that the applicant should be considered for confirmation in the post of Junior Captain at the initial constitution of the ARC (Air Wing Staff) service w.e.f. 15.3.1977. The Cabinet Secretariat, however, advised that the options from the civilian officers should be obtained before any further action is considered. The applicant opted for absorption as Junior Captain in the Air Wing cadre which was forwarded by his office on 8.1.1982 to the Cabinet Secretariat. This, however, did not help the applicant, as he was not holding the post of Junior Captain on the appointed day i.e. 15.3.1977. He was later asked to give his option for confirmation in the Executive Service at the Maintenance stage which he did, adding the condition that the option is "without prejudice to my service interest." He was confirmed as Assistant Director w.e.f. 13.8.1981 but his seniority was reckoned from 11.1.1977.

5. We have heard the learned counsel Shri E.X. Joseph, for the applicant and Shri M.L. Verma for the respondents and perused the record. We are not satisfied by the reasons advanced by the respondents justifying the denial of the benefit of service, rendered by the applicant prior to 11.1.1977 in the Air Wing, merely on the ground that he was not in position in that cadre in any of the category specified in the rule on the appointed day viz. 30.6.1976 when those rules were notified. The respondents have, however, stated that the Executive Service Rules have been amended w.e.f. 31.10.1988, deleting the provision for transferring medically unfit civilian Pilots to the Executive Service and consequently the proposal to assign seniority to the grounded Pilots on transfer, reckoning their previous equivalent service has

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accordingly been dropped. All this, however, does not help in mitigating the grievance of the applicant who is being denied the benefit of absorption in either of the two services at the time of initial constitution on the ground that 'on the appointed day, he was not in position in either cadre.

Be that as it may the applicant was in the flying branch and was medically certified fit for ground duties. He was posted as Assistant Director on the Executive side w.e.f. 11.1.1977 and has been continuing in that branch since then. He has thus acquired adequate experience in the Executive cadre. We, therefore, consider it fair and just that the applicant should be deemed to be a member of the Executive Service w.e.f. 30.6.1976 from the date the service was initially constituted, duly reckoning his antecedent service. He has since given him willingness for absorption in the Executive cadre on 13.5.1983. His seniority in the Executive Service shall also be reassigned after reckoning his antecedent service, rendered in the Air Wing. We have not been shown any rule which enables the respondents to deprive the applicant of the benefit of his earlier service in the Air Wing.

In the above conspectus of the case we order and direct that the applicant shall be deemed to have been included in the Executive cadre at the initial stage of constitution viz. 30.6.1976, duly reckoning his antecedent service in the ARC (Air Wing). His career progression shall be made accordingly by holding review DPCs as necessary. Subject to his being found fit, he shall also be entitled to payment of differential in salary and allowances for the period and for the post, which he would have been entitled to hold, in accordance with the revised seniority.

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We further direct that the above order shall be carried out by the respondents most expeditiously but preferably within 6 months from the date of communication of this order.

We also consider this as a fit case where the applicant is entitled to payment of costs. Accordingly we order the respondents to pay Rs.2,000/- to the applicant as costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

6/3/92

T.S. Oberoi 6.3.92
(T.S. OBEROI)
MEMBER(J)

March 6, 1992.

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