

Karnail Singh

Vs

Union of India and Others

Civil Appeal No. 2372 of 1978

(D. A. Desai, Ranganath Misra JJ)

17.04.1984

JUDGMENT

DESAI, J. -

1. Appellant Shri Karnail Singh joined on March 23, 1955 India Air Force as Clerk-cum-Pay Accountant in Group III. He was promoted to the rank of Corporal. Air Field Safety Operators ('AFSO' for short) constitute a technical branch in Group II in the India Air Force. The posts in this branch carry better pay scales and swifter promotions compared to post in Group III. The appellant applied for and obtained enrolment in Air Field Safety Operators branch in the year 1961. This movement by change of trade is styled as remustering in the technical parlance of the Air Force. The appellant was thus remustered on July 1, 1961. The appellant alleged that in the matter of seniority, he was entitled to get credit for the service rendered by him prior to his remustering in Group II and if his seniority is thus correctly reckoned he has become eligible for promotion to the rank of Flight Sergeant, a cadre now redesignated as junior Warrant Officer long before many persons junior to him have been promoted. The appellant alleged that persons junior to him have already been promoted as Junior Warrant Officers in violation of Regulation 265 and 282 of the Regulations for the Air Force ('Regulation' for short), read with the instructions contained in A. F. I-12/s/48. As he failed to get his promotion, the appellant filed a Writ Petition No. 1474 of 1977 in the Allahabad High Court inter alia contending that promotions given to the persons who are junior to him in the seniority list is violative of his fundamental right under Article 16 of the Constitution and that therefore, writ be issued directing the respondents to promote him as Junior Warrant Officer from a retrospective date when persons junior to him were promoted.

2. The respondents in the affidavit in opposition contended that when the appellant was permitted to change the trade, he had given an undertaking that he would not claim any benefit of his previous service in the trade of clerk. It was submitted that when remustering is permitted from a lower group, such a person is not entitled to get credit for his service in the lower group while reckoning his seniority in the higher group. It was pointed out that the appellant belonged to Group III when he was remustered and on remustering he was placed in Group II and therefore, he was not entitled to get credit for his service in the lower group for adjusting his seniority in the higher group. It was stated that the appellant was remustered on July 1, 1961 and restored to the rank of Corporal on June 1, 1963. He was promoted to the rank of Sergeant on November 1, 1969. It was also contended that in view of the instructions contained in the Communication RD/600 dated November 20, 1959, the appellant was not entitled to promotion as Flight Sergeant until he completed a total period of 12 years of service or 4 years' service as Sergeant which in the case of appellant would be as July 1, 1973 or November 1, 1973 respectively.

3. The High Court held that in view of the provisions contained in Regulation 265 unless a specific provision is made for giving benefit of service in the former trade for reckoning seniority in remustered higher group, the same is not available. It was further held that the appellant was not entitled to get credit for any portion of his service in the earlier trade for adjusting his seniority in the remustered trade, more so because before remustering he was in Group III while on remustering he was brought to Group II and two trades were not alike. The High Court rejected the contention of the appellant that his case would be covered by paragraph 282 holding that it covers the cases of promotion of direct entrants to a particular trade and were to be promoted in the same trade. The claim advanced by the appellant for promotion relying upon Communication No. HO/40653/56/PA-III dated September 10, 1970 was rejected holding that it applies to the case of future promotion in Group I so as to give full benefit of period of service in Group II as well as the period spent in the course for remustering in Group II and as the appellant was originally mustered in a trade in Group III and later on remustered in Group II he was not entitled to the benefit of it. Accordingly, the High Court rejected his writ petition. Hence this appeal by special leave.

4. Mr. Pramod Swarup, learned counsel for the appellant strenuously urged that the respondents committed an error in determining the seniority of the appellant in the cadre of Sergeant in AFSSO by not giving him credit for the service rendered by the appellant in Group III trade before his remustering to Group II. It was further urged that the respondents were in error in fixing the date on July 1, 1973 when the appellant will become eligible for promotion to the cadre of Flight Sergeant (now redesignated as Junior Warrant Officer, 'JWO' for short). It was lastly urged that at any rate, the respondents have promoted juniors ignoring the case of the appellant and he has thus been denied equality of opportunity in the matter of promotion guaranteed by Article 16.

5. The uncontroverted facts are that the appellant was recruited on March 23, 1955 as Clerk-cum-Pay Accountant which is a cadre in Group III and was promoted as Corporal with effect from March 23, 1960, in the same group. Earlier, there were five trade groups in the Air Force. Briefly, they were : (1) Group I Trade comprising technical as well as non-technical trades and the remaining three Groups namely, III, IV and V comprising only non-technical trades. On reorganisation, the five trade groups were reduced to four groups by transferring all belonging to Group IV to Group III and Group V was redesignated as Group IV. There is a cadre of AFSSO and admittedly it belongs to Trade Group II. The relevant regulations in the Air Force permit moving from the trade to another trade group on fulfilling certain conditions technically styled as remustering. Admittedly, the appellant was remustered as AFSSO and thereby moved into Group II Trade effective from July 1, 1961. The Air Force Record Office Signal No. RD/600 dated November 20, 1959 prescribed the conditions governing promotion in respect of the remustered Airmen. They read as under :

(a) Promotion to the rank of Corporal will be on the basis of total length of service or 3 years as Leading Aircraft hand in the remustered trade whichever is earlier as per AFI. 12/s/48.

(b) Corporals who are remustered will be restored to their former rank on attaining LAC classification.

(c) Promotion beyond the rank of Corporal will be based on the requisite length of service in a particular rank and not on the total length of service.

The appellant attained Leading Aircraft Classification ('LAC for short) in the remustered trade on June 1, 1963 and thereupon he was restored to the rank of Corporal in the remustered trade effective

from June 2, 1963. He was promoted as Sergeant on November 1, 1969.

6. To be eligible for promotion from the rank of Sergeant to JWO, and Airman has to fulfil the prescribed conditions which read as under :

(a) 12 years' total service or 4 years as a Sergeant whichever is earlier.

In the case of remustered Airmen, the time span of 12 years is counted from the date of commencement of remustering training.

(b) The date of passing the requisite promotion examination.

If the promotion examination is passed within the time frame of 12 years' total service, then the eligibility date for promotion is counted on completion of 12 years but where the date of passing the examination is beyond the period of 12 years' service, the eligibility date is also postponed correspondingly to coincide with the date of passing the examination.

(c) Scoring the minimum grading marks in the Marking System for the next higher promotion based on assessment of record of service.

It thus appears that in order to be eligible for promotion from the cadre of Sergeant to JWO, the candidate must have passed the prescribed examination and must have requisite length of service completed as prescribed. The appellant has admittedly cleared the prescribed examination in September, 1970. The dispute pertains to reckoning the length of service and its starting point. To be precise, the dispute is whether the appellant is entitled to take credit for his service in Group III before his remustering to Group II for reckoning his length of service.

7. The respondents contended that as the appellant was remustered in Group II on July 1, 1961 on completion of 12 years of total service as a Sergeant, he would be eligible for promotion as JWO on July 1, 1973 and specifically he is not entitled to get credit for his service in lower Group III. It is also contended that as the appellant was promoted as Sergeant with effect from November 1, 1969, he would complete four years of service as Sergeant on November 1, 1973. However, he was assigned the eligibility date for promotion as July 1, 1973 on the basis of clause (a) in that he completed 12 years of service from the date of remustering which was July 1, 1961. So far there is no dispute.

8. It was contended on behalf of the appellant that the service of the appellant rendered before his remustering must and ought to be taken into account for the purpose of determining his seniority and therefore, he would become eligible for promotion as JWO in September, 1970. We were at a loss to understand how the appellant arrived at this date and no light was shed on it but that is not material.

9. The first question therefore is : whether the respondents committed any error in assigning July 1, 1973 as the date on which the appellant would become eligible for being considered for promotion to the post of JWO ? According to the appellant in view of para 265 of the Regulations for the Air Force issued by the Government, on remustering he is entitled to either whole or half of the service in the former trade. Para 265 provides for retention of rank on remustering for reasons other than efficiency and misconduct or medical unfitness. Sub-para 265 provides that on remustering those who have attained Leading Aircraftman will be allowed to count their past service towards promotion in the remustered trade as therein provided, viz. if the remustering is to an allied trade in

the same group one half of their service as Leading Aircraftman in the former trade will be admissible for determining seniority and for promotion in the remustered trade. The appellant presumably relied on the second condition and thereby seeks half of his service as Leading Aircraftman which position he acquired in the remustered trade on June 1, 1963. The High Court declined to accept this contention on two grounds : (i) that compared to Clerk-cum-Pay Accountant, AFSO is not an allied trade and (ii) the remustering was from Group III to Group II, and therefore, the case of the appellant would neither be covered by eligibility criterion 1 nor eligibility criterion 2. A bare perusal of the relevant clauses of para 265, would convincingly establish that the view taken by the High Court appears to be in consonance with the relevant provisions.

10. Mr. Pramod Swarup, learned counsel for the appellant however, contended that para 282 of the Regulations provides that " promotion of Flight Sergeant will be made by selection within the authorised establishment and will be confined to Sergeants who have served in that rank for four years or who have completed twelve years' total service ". It was urged that on reading para 265 and para 282, the appellant will become eligible for promotion in September, 1970. This contention has to be negatived for the obvious reason that para 282 caters to a situation where a vertical movement by way of promotion is being considered in respect of persons who were direct recruits in the same trade and have to be promoted in the same trade. The High Court declined to accept the submission of the appellant that para 282 also governs the case of remustered Airmen which approach would render para 265 redundant and may even introduce a conflict with the provisions contained in para 282. We are in agreement with the view taken by the High Court. However, the contention of Mr. Pramod Swarup can as well be rejected for the additional reason that even if para 282 (a) (iii) would comprehend the case of the appellant, yet his eligibility date for promotion would not be advanced before July 1, 1973 because the relevant paragraph provides that before a Sergeant becomes eligible for promotion as Flight Sergeant (JWO) he has to render total service of 12 years and service as Sergeant for a period of 4 years. The expression "total service" would mean service in the group or trade to which the Airman was remustered and not earlier group or trade which cannot be taken into account for any purpose. Therefore, the appellant cannot get the benefit of para 282. In fact the case of appellant is specifically covered by para 265. For this additional reason also the contention of Mr. Pramod Swarup has to be rejected.

11. Their remains only one point. Mr. Pramod Swarup contended that accepting the position taken up the respondents that the eligibility date for promotion as Flight Sergeant (JWO) of the appellant would be, consistent with the Regulations, July 1, 1973 yet he has not been given promotion and the juniors are promoted over his head. Our attention was invited to Annexure II to the writ petition which sets out list of 58 Sergeants according to their rank in the seniority list. Pointed attention was drawn to the last column which specifies the date of promotion to the cadre of Sergeant who are enumerated in Annexure II appeared to have been promoted to the rank of Sergeant between January and March, 1971. After drawing our attention to these facts, it was urged that the appellant was promoted as Sergeant on November 1, 1969. It was further urged that if the date of promotion to the rank of Sergeant is determinative of inter seniority, the appellant would be senior to all the persons set out in Annexure II who appeared to have been promoted as Sergeants are listed in current select panel for promotion which will be operative till December, 1979 and yet the appellant is ignored or overlooked. There is no merit in this contention because if the eligibility date of the appellant for promotion to the post of Flight Sergeant (JWO) is correctly fixed at July 1, 1973, he cannot claim promotion over those who became eligible in 1971. The heading of the last column appears to be slightly misleading and has to be ignored. Therefore, we find no merit in the contention.

12. The only thing which we should like to clarify is that if the appellant even according to the stand taken by the respondents became eligible for promotion on July 1, 1973, he should have been considered from that date onwards according to his place in the seniority list whenever vacancy occurs. The material placed before the Court does not disclose that anyone in the cadre of Sergeant who became eligible for promotion after July 1, 1973 has been promoted over the head of the appellant by-passing him over. The material placed on record is too inadequate to grant a mandamus. We would, therefore, broadly state our view in this matter. Undoubtedly, it is true that the promotion is by the criterion of seniority-cum-merit. Therefore, when those who became eligible for promotion earlier than them or along with them. If therefore, anyone below the appellant i.e. any Sergeant who became eligible for promotion after July 1, 1973 is either promoted or is brought on the select penal by-passing over the appellant, it would be open to the appellant to move this Court for appropriate relief.

13. With the above observation, the appeal fails and is dismissed with no order as to costs.

</html