Union of India and Others

Vs

S. L. Dutta and Another

Civil Appeal No. 5349 of 1990

(M.H. Kania, L.M. Sharma JJ)

16.11.1990

JUDGMENT

KANIA J

1. The question raised in the Special Leave Petition is of some importance and hence we grant Special Leave, as prayed for.

2. We have heard Counsel for both the parties and we propose to dispose of the appeal at this stage.

3. The appellants before us are the Union of India, Chief of Air Staff and the Secretary to the Government of India, Ministry of Defence, respectively. Respondent No. 1 was commissioned in the Indian Air Force on July 17, 1954 and had an unblemished service record. In course of time he was promoted to the post of Air Vice-Marshal. He belonged to the Navigation Stream of the Indian Air Force. When he was due to be considered for promotion to the post of an Air Marshal, the policy for promotion to the posts of Air Marshals in the Indian Air Force was changed by the Ministry of Defence Government of India, by its Memo dated October 9, 1987. As per this revised policy which we shall consider in some detail a little later, the prospects of an officer in the Navigation Stream of the Air Force earning a promotion to the post of an Air Marshal were substantially reduced. At the relevant time respondent No. 1 was the seniormost Air Vice-Marshal in the Navigation Stream. Probably, on account of the change in the policy, respondent No. 1 was unable to secure promotion to the post of an Air Marshal and he retired as an Air Vice Marshal on October 31, 1988. Before he retired, respondent No. 1 filed a writ petition in the Gauhati High Court on September 5, 1988, challenging the new promotion policy in respect of the posts of Air Marshals. On September 16, 1988, an interim order was made by the Gauhati High Court directing the Union of India to constitute a Selection Board and consider the case of respondent No. 1 for promotion on merits without reference to the new policy. The appellants challenged this order by way of a Special Leave Petition. This Court granted Special Leave and allowed the appeal of the. appellants on October 4, 1988, holding that the interlocutory order passed by the High Court was erroneous and setting aside the same. On October 31, 1988, respondent No. 1 retired as an Air Vice-Marshal. On February 15,1990, a Division Bench of the Gauhati High Court allowed the writ petition filed by respondent No. 1 holding, inter alia, that the new promotion policy was not framed after an in depth study and directed that the case of respondent No. 1 be considered on the basis of the previous policy. It is this decision which is assailed before us in this appeal.

4. It is submitted before us by learned Additional Solicitor General appearing for the appellants that,

normally speaking, the court should be reluctant to interfere where the validity of a policy is concerned. It was submitted by him that it is primarily for the Government to determine the policy and to change it; and unless it can be shown that the change was mala fide or for an ulterior purpose or that the change had been made without application of mind, the court would not interfere. It was not for the court to consider the merits of the change of policy nor whether it was a desirable change or not. It was urged by him that this would be all the more so in regard to a policy like the one which we have in question before us, namely, the promotional policy in the Indian Air Force, because the determination of such a policy would involve technical considerations regarding modern weaponry, the degree of sophistication available in navigational aids and several other factors which are of a highly technical nature and which, by their training and experience, Judges of a court are not likely to be familiar with. He strongly contended that it was not for the court to enter upon a consideration of the merits or demerits of a change in policy of the kind involved in this appeal and the High Court had been in error in doing so.

5. In order to consider these submissions, it is necessary to have certain data regarding the relevant posts in the Indian Air Force. At the relevant time, there were 15 posts of Air Marshals, being the highest posts in the Air Force, save and except, the post of the Air Chief Marshal, and three rotational posts of Air Marshals which were held in rotation by members of the three Wings of the Armed Forces, namely, the Army, the Navy and the Air Force. Under the earlier policy, out of these 15 posts of Air Marshal, 13 were open to officers in the flying Branch and so also the three rotational posts. There are seven branches in the Indian Air Force and these are :

1. Flying

2. Aeronautical Engineering

3. Administrative

4. Logistic Branch

5. Accounts

6. Education

7. Meteorological Branch

6. It may be mentioned that the maximum number of posts of Air Marshals available to a single branch were and continue to be open to officers in the Flying Branch, probably because of the nature of the experience which they have. Under the previous policy most of these posts open to the officers in the Flying Branch were open to officers in' Navigation Stream of Flying Branch. The number of posts of Air Marshal available to the Navigation Branch has admittedly been substantially reduced by the change of policy in question.

7. According to the appellants, this change of policy was adopted in October 1987 after a careful study of all relevant factors and after taking into account. various points of view. Briefly, it was submitted by them that with the introduction of modern aircraft in the Indian Air Force the importance of the Navigation Branch is considerably reduced because of the technological developments and advances in electronic navigational aids available on bombers and fighters in the Air Force. It was in view of these that the number of posts of Air Marshals available to the Navigation Branch was required to be curtailed. The correctness of these averments was strongly

disputed by respondent No. 1. In our opinion, we are not called upon to go into the consideration of the question whether the importance of the Navigation Branch in the Air Force has really been reduced as contended by the appellants because such consideration would involve several technical aspects which we are not competent to deal with and much of the material required to be considered might be of a sensitive and secret nature which it would not be proper to ask the Union of India or the Ministry of Defence to disclose, as such disclosure might adversely affect the safety and security of the country. It appears that the change of policy and reasons for the same Were discussed at a meeting of the Air Marshals and the Chief of Air Staff who hold the rank of Air Chief Marshal. The minutes of the meeting are not available in Court and we do not wish to call for them because some of the matters discussed in the meeting might be of a confidential or sensitive nature, as we have pointed out. Moreover, several of the matters discussed might be too technical for us to appreciate.

8. Before considering the merits of the submissions advanced by learned Additional Solicitor General for the appellants, reference can be usefully made to some of the decisions cited before us by the respective parties.

9. In Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165 at 173 & 175 : (AIR 1987 SC 990 at pp. 994 and 995) a writ petition was filed as in public interest regarding the maintenance of approved standards of drugs and banning of injurious and harmful drugs. A Division Bench of this Court presided over by Ranganath Misra, J. (as he then was) considered the scope of judicial review in matters of this kind. It was observed by the Court that (see para 15 of the Report):-

> "Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far-reaching implications of the total ban of certain medicines for which the petitioner has prayed, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determination of such matter."

10. The Division Bench went on to observe as follows (see paragraph 17):-

> "The technical aspects which arise for consideration in a matter of this type cannot be effectively handled by a Court. Similarly, the question of policy which is involved in the matter is also one for the Union Government - keeping the best of interests of citizens in view to decide. No final say in regard to such aspects come under the purview of the Court."

11. In Liberty Oil Mills v. Union of India (1984) 3 SCC 465 at 478: (AIR 1984 SC 1271 at p. 12791) certain questions were raised before this Court regarding the import and export policy followed in India. Chinnappa Reddy, J., speaking for the Court observed as follows (See para 6 of the Report):-

> "There must also be a considerable number of other factors which go into the making of an import policy. Expertise in public and political, national and international economy is necessary before one may engage in the making or in the criticism of an import policy. Obviously Courts do not possess the expertise and are consequently incompetent to pass judgment on the appropriateness or the adequacy of a particular import policy."

12. In M/s. Shri Sitaram Sugar Co. Ltd. v.Union of India (1990) 1 JT 462 at p. 484 : (AIR 1990 SC

1277 at p. 1298) the validity of certain notifications fixing prices of various grades of sugar with reference to geographical-cum-agro-economic considerations and average cost profiles of factories located in respective zones were impugned before this Court. The constitution Bench of this Court which decided the case held as follows (See para. 56):-

> "The Court has neither the means nor the knowledge to re-evaluate the factual basis of the impugned orders. The Court, in exercise of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence.

13. In the said judgment the Court cited with approval the following observations of Justice Frankfurter of the U. S. Supreme Court in Railroad Commission of Texas v. Rowan and Nichols Oil Company (1940) 311 US 570-577, 85 Law Ed 358, 362:

> "Nothing in the Constitution warrants a rejection of these expert conclusions. Nor, on the basis of intrinsic skills and equipment are the federal Courts qualified to set their independent judgment on such matters against that of the chosen state authorities. ..... When we consider the limiting conditions of litigation the adaptability of the judicial process only to issues definitely circumscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers it is clear that the Due Process Clause does not require the feel of the expert to be supplanted by an independent view of judges on the conflicting testimony and prophecies and impressions of expert witnesses."

14. In connection with the question as to whether the conditions of service of respondent No. 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni, (1981) 4 SCC 130 : (AIR 1981 SC 1990). There it was held by a Bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount a change in the conditions of service. A right to be considered for promotion is a term of service chances of promotion are not. (See para 16 at page 141) of the Report). Reference was also made to the decision of this Court in K. Jagadeesan v. Union of India, (1990) 1 JT 247 : (AIR 1990 SC 1072) where the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni, (AIR 1981 SC 1990) was followed.

15. Additional Solicitor General also drew our attention to the decision of this Court in Col. A. S. Sangwan v. Union of India, (1980) Suppl SCC 559 at page 561: (AIR 1981 SC 1545 at P. 1546). In that case the Court was concerned with the competing claims of the petitioner, Col. Sangwan, and the third respondent, namely, Col. A. S. Sekhon to be promoted as Brigadiers in the Directorate of Military Farms. A submission was made that once a policy had been made in exercise of the general executive power of the Union of India and made known and acted upon, it would be arbitrary to depart from it overnight by making a fresh selection without an antecedent reformulation of policy and making that policy known to the concerned sector in the army. It was held :

> "The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive area of Defence, courts should be cautious although courts are not powerless. The Union of India having framed a policy relieved itself of the

charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy."

16. Mr. Datar, learned counsel for respondent No. 1 did not dispute that, normally, it was not for the court to consider the wisdom or appropriateness of a particular policy, particularly in cases where expert knowledge was required. in the formulation of the policy and considering the appropriateness of the policy. It was, however, submitted by him that once a policy was settled the Government was bound to follow that policy and that, if the policy had to be changed, this could be done only on a proper consideration of the relevant material and could not be resorted to for ulterior purposes or mala fide nor could the policy be changed arbitrarily. He placed reliance on the judgment of this Court in case of A. S. Sangwan (AIR 1981 SC 14), discussed earlier. What is, however, significant is that in that very judgment this Court held (See para 4 of the aforesaid Report) that a policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. That judgment, therefore, is of no avail to the appellant.

17. It was urged by Mr. Datar that, in the present case, by the change of policy the chances of an Air Vice-Marshals from the Navigation Stream of the Air Force to get promoted to the post of an Air Marshal were severely curtailed as the number of posts available to them for promotion was reduced to two apart from the two rotational posts. It was urged by him that this could, in law, be regarded as a change in the conditions of service of the officers in the Navigation Stream in the Air Force. We are not able to accept this contention. In our opinion, what was affected by the change of policy were merely the chances of promotion of the Air Vice-Marshals in the Navigation Stream. As far as the posts of Air Marshals open to the Air Vice Marshals in the said Stream were concerned, their right or eligibility to be considered for promotion still remained and hence, there was no change in their conditions of service.

18. It was next submitted by learned Counsel that no minutes of what transpired at the meeting of the Air Marshals which approved the change of policy, were produced before the court and hence,. the court was not in a position to decide whether the change of policy was justified. he contended that it was significant that one Air Marshal from the Navigation Branch had opposed the change in the policy. It was also pointed out by him that at one stage. the Government of India was not willing to adopt the change of policy but had changed its mind later on and the reasons for this change were not on record. It was submitted by him that these circumstances showed that the change of policy was arbitrary. It was urged by him that the impugned judgment of the High Court was correct, as it was based on these considerations. He, however, made it clear that he was not pressing any allegation of mala fide which might be contained in the petition. In our opinion, the High Court was in error in making the impugned order. As has been laid down more than once by this Court, the Court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers 'In the Navigation Stream of the Flying', branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which could require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and the lawyers of courts can hardly be, expected to have much knowledge by reason of their training and experience. In the present case there is no question of arbitrary departure from the policy duly adopted. because before the decision not to promote respondent No. 1 was taken, the policy had already been changed. The question is

therefore, whether this change can be said to be arbitrary or mala fide. As we have already pointed out, we are not in a position to hold that this change of policy was not warranted by the circumstances prevailing. As the matter was considered at some length by as many as 12 Air Marshals and the Chief of Air Staff of Indian Air Force, it is not possible to say that the question of change of policy was not duly considered. Mere non-availability of the minutes setting out the discussion, is of no relevance. In fact, it would perhaps be detrimental to the interest of the country if these matters were not kept confidential. We cannot assume that what was discussed at this meeting . was not relevant to the decision regarding the change of policy. It may be that at one time the Ministry of Defence was not agreeable to accept the proposal for this change of policy but on further consideration accepted it. However, this could well show that before accepting the change of policy the Ministry of Defence and the experts attached to it give full consideration to the requirements of the change. We cannot on the basis of the circumstance alone hold that the change of policy was arbitrary.

19. In view what we have held earlier, in our opinion, the Gauhati High Court was, with respect, in error. in allowing the writ petition and in giving directions regarding the consideration of the claim of respondent No. 1 to promotion as we have set out earlier. In the result, the impugned judgment of the High Court is liable to be set aside.

20. As far as the case of, respondent No. 2, Air Marshal Shri Sabhiki is concerned, no relief has been granted by the High Court and hence, we are not concerned with the same. The appeal is allowed as aforestated and the impugned judgment is set aside.

21. Looking to the facts and circumstances of the case, the parties shall bear their own costs throughout.

Appeal allowed.

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