

SUPREME COURT OF INDIA

Union of India

Vs.

Mahesh K. Nag

(S. R. Babu and S.N. Variava JJ.)

13.02.2001

JUDGMENT

S. N. Variava, J.

1. Civil Appeal No. 845 of 1999 is against a Judgment dated 3rd November, 1997 passed by the High Court of Punjab & Haryana. Civil Appeal No. 389 of 2000 is against a Judgment dated 15th March, 1999 passed by the High Court of Rajasthan at Jodhpur.

2. Even though these two Appeals arise from two separate Judgments from two different High Courts they are being disposed off by this common Judgment as the point involved is same. Both these cases concern promotion of the Respondents (therein) from the rank of Flight Engineer - II to the rank of Flight Engineer - I.

3. It is an admitted position that Air Force Instruction 19/62 would apply. The relevant paragraphs of the Air Force Instruction 19/62 are as follows:

"(1) Terms and Conditions of Service for Air Crew Category of Flight Engineers.

In future the following terms and conditions of service will be applicable to the permanent Air crew category of Flight Engineer. XXX XXX XXX

XXX XXX XXX

(3). The status of Flight Engineers compared with ground tradesmen will be as below:

Flight Engineer U/t Substantive rank is ground trade

Flight Engineer III Corporal

Flight Engineer II Sergeant

Flight Engineer I Flight Sergeant

Warrant Flight Engineer Warrant Officer

Master Flight Engineer Master Warrant Officer

XXX XXX XXX

XXX XXX XXX

(8) Training-Airmen under training will be known as Flight Engineers U/t. Training will consist of such prescribed course of instruction as laid down by Air Headquarters from time to time. XXX XXX XXX

XXX XXX XXX

(10) Period of probations For the First six months as Flight Engineers III Will be treated as on probations. At the end of the probationary period:-

- a) Airman desirous of reverting to their basic trades will be given the option to do so.
- b) Airman found unsuitable for retention as air crew will be reverted to their basic trades.
- c) All other will be absorbed in the air crew category on permanent basis.

Airmen reverted to their basic trade at the end of the probationary period will be governed by the rules and regulations applicable to their ground trade.”

4. These Instructions suggest that even though all Air Force personnel are Airmen, there are separate categories called "Air Crew" and "Ground Tradesmen". This also suggests that Rules and Regulations applicable to "Ground Trade" are not the same as those for "Air Crew". These Instructions also show that designations/status of the "Air Crew" and "Ground Trade" are also different even though there are equivalent ranks in both categories.

5. The Instructions regarding promotions are as follows:

“(11) Substantive Promotions :- All substantive promotions will be subject to medical fitness.

(12) In addition to the conditions laid down in paragraphs 13 to 16 airmen must be considered suitable in all respects to hold the higher rank before they are promoted substantively.

(13) Promotion to Flight Engineer II will be against overall vacancies in the trade and will be confined to Flight Engineers III who:

a) Complete the period of probation and are selected for permanent absorption in the trade.

b) Complete 8 years of total service.

c) Pass the education tests and/or such other tests as prescribed for promotion by Air Headquarters.

(14) Promotion to Flight Engineer I will be irrespective of vacancies in the rank of Flight Engineer I and will be confined to Flight Engineers II who:-

a) Complete 12 years of total service or 4 years as substantive Flight Engineer II whichever is lesser.

b) Pass such proficiency test as laid down by Air Headquarters.

(15) Promotion to warrant Flight engineer will be by selection against vacancies in that rank and will be confined to Flight Engineers I who:-

a) Complete 2 years of service as substantive Flight Engineer I.

b) Pass such proficiency test as laid down by Air Headquarters.

(16) Promotion to Master flight Engineer will be selection against vacancies in that rank and will be confined to warrant Flight Engineers who complete four years of service as substantive warrant Flight Engineers."

6. The Respondents in these Appeals were not promoted from the rank of Flight Engineer - II to the rank of Flight Engineer - I on the ground that they had not obtained the required grade marks based on their ACRs for the last 5 years. This gradation was done in pursuance of a Circular dated 16th November, 1989. As the Respondents in C. A. No. 845 of 1999 were not promoted they filed a Writ Petition in Punjab & Haryana High Court. Similarly, as the Respondent in C. A. No. 389 of 2000 was not promoted he filed a Writ Petition in the High Court of Rajasthan at Jodhpur.

7. By the Judgment dated 3rd November, 1997 the High Court of Punjab & Haryana has made the Rule in the Petition, before it, absolute only on the basis of interpretation of Clause 14 set out above. The High Court held that this Clause provided for promotion irrespective of vacancies and thus the only requirement of promotion would be completion of 12 years of total service or 4 years as substantive Flight Engineer whichever is later and passing of proficiency test. The High Court held that Clause 12 would not apply in respect of promotion from Flight Engineer - II to Flight Engineer - I. Having read the Clauses it is clear that such a view is unsustainable. The wording of Clause 12 makes it clear that the conditions laid down therein are in addition to the conditions laid down in Clauses 13 to 16. Therefore, Clause 12 would apply even in cases of promotion from Flight Engineer - II to Flight Engineer - I.

There can be no doubt that such a promotion is a substantive promotion. Very fairly it was admitted that Clause 11 would apply even for promotion from Flight Engineer - II to Flight Engineer - I. This leaves no room for doubt that this is a substantive promotion. The High Court of Punjab & Haryana has not considered any other aspect apart from this.

8. In the High Court of Rajasthan, the question of the applicability of Circular dated 16th November, 1989 was also considered. It was held that Air Force Instruction 19/62 was statutory in nature. It was held that additional conditions which have the effect of amending AFI 19/62 could not be imposed by way of a Circular. On this reasoning Appellants were directed to promote the Respondent as conditions in Clause 14 were fulfilled. This view also is not sustainable. Undoubtedly Air Force Instruction 19/62 is statutory in nature. Under Clause 12 it is provided that "airmen must be considered suitable". In what manner they are to be considered suitable is left open. Thus the criteria for suitability can be imposed by the Chief of Air Staff or under his authority by way of a circular. Such circulars, laying down criteria for suitability, do not lay down additional conditions or vary or amend Air Force Instruction 19/62.

9. Before us another contention has been raised. It is submitted that the Circular dated 16th November, 1989 does not apply to the "Air Crew" category. It is submitted that this Circular only applies to the "Ground Trade" category. We have been shown various Circulars issued by the Air Force, wherein difference has been made between the "Air Crew" and "Ground Tradesmen". This aspect has not been considered by either of the High Courts and requires to be examined.

10. We, therefore, set aside both the impugned Judgments and remit the matters back to the respective High Courts to consider whether or not the Circular dated 16th November, 1989 applies to the "Air Crew" category of Airmen. We clarify that it will be open for the Appellants and the Respondents to file additional affidavits and to disclose and rely on additional material. The High Court should consider all aspects of the matter and dispose off the same on merits.

11. With the above observations, these Appeals stand disposed off. There will be no Order as to costs.