

SUPREME COURT OF INDIA

Union of India

Vs.

Atul Shukla

C.A.Nos.4717-4719 of 2013

(T.S.Thakur and C.Nagappan JJ.)

24.09.2014

JUDGMENT

T.S. THAKUR, J.

1. These appeals arise out of separate but similar orders passed by the Armed Forces Tribunal, Principal Bench, New Delhi, whereby the Tribunal has allowed the petitions filed by the respondents holding them entitled to continue in service upto the age of 57 years in the case of officers serving in the ground duty branch and 54 years in the case of those serving in the flying branch of the Indian Air Force. The solitary question that falls for our consideration, therefore, is whether the respondents who at the relevant point of time held the rank of Group Captain (Time Scale) in the Indian Air Force were entitled to continue in service upto 54 and 57 years depending upon whether they were serving in the flying or ground duty branch of the force. The question arises in the following backdrop:

2. Post Kargil War, the Government of India constituted a Committee headed by Ajay Vikram Singh, former Defence Secretary (hereinafter referred to as AVS Committee) to study ways and means that would help ensure a younger age profile for the commanding officer in the Indian Armed Forces. The Committee made its recommendations in regard to all the three wings of the armed forces which were considered and accepted by the Government culminating in the issue of separate orders regarding re- structuring of the officers cadre in the Army, Navy and the Air

Force. In so far as the Indian Air Force was concerned, the Government of India by an order dated 12th March, 2005 revised the terms and conditions applicable to Air Force Officers excluding officers serving in the medical and dental branch. The order was to the following effect:

ANNEXURE P-2 No.2(2)/Us(L)/D(AIR-III)/04 Bharat Sarkar/Government of India Raksha Mantralay/Ministry of Defence New Delhi-110011 March 12, 2005 To The Chief of Air Staff Air Headquarters, Vayu Bhawan, New Delhi.

Subject: Restructuring of the officers cadre of the air force.

Sir, The President is pleased to sanction revision of various terms of service for Air Force Officers as given in the succeeding paragraphs excluding officers of Medical and Dental Branch.

Substantive Promotion:

To reduce the age profile and supersession levels in the Air Force as also to improve vertical mobility, promotion to the substantive ranks of officers will be made on completion of reckonable commissioned service as indicated below:

Rank	Reckonable commissioned service
Flying officer (FG Offr)	ON commissioning
Flight lieutenant (Flt Lt.)	2 years
Squadron leader (Sqdn Ldr)	6 years
Wing Commander (Wg Cdr)	13 years
Group Captain (Gp Capt) (Time Scale)	26 years

Promotion accruing from Para 2 above shall also be subject to the officers fulfilling other criteria to be notified immediately by the Air Headquarters: through Air HQ Human Resource Policy. Loss of seniority for non qualification in promotion examinations already awarded will continue to hold good.

Those serving in the rank of Wg Cdr (Time Scale) will now be eligible for grant of the substantive rank of Wg Cdr. On grant of substantive rank of Wg Cdr these officers would become eligible for consideration for Gp Capt (Select)/Gp

Capt (Time Scale) provided that;

Those who have attained the rank of Wg Cdr (Time Scale) on completion of 20 years of service before the date of implementation of the order and who have been found suitable for grant of Wg Cdr (Time Bound) based, on the new Human resource policy notified by Air HQ will be eligible for consideration to the rank of GP Capt (Select). These officers would reckon their seniority immediately below the junior most select Wg Cdr who has already been promoted ahead of him prior to Implementation of this order.

Those who have attained the rank of Wg Cdr (Time Scale) on completion of 20 years of service, before the date of implementation of the order and who have been found unsuitable for grant of Wg Cdr (Time Bound) based on the new Human resource policy will be ineligible for consideration to the rank of GP Capt (Selection) but will be eligible for grant of rank of Gp Capt (Time Scale).

GP Capt (Time Scale) Officer not promoted to the rank of Gp Capt by selection, may be granted that substantive rank of Gp Capt (Time Scale), irrespective of vacancies, provided they are considered fit in all other respects. The terms and conditions governing the rank of Gp Capt (Time Scale) are as under:

Pay Scale. As applicable to Gp Capt (Select) Grade which currently is Rs. 15,100-450-17,350.

Rank Pay. Officers will be entitled to rank pay of a Wg Cdr which currently is Rs. 1,600/- p.m. Other Allowances & Perks. Officers holding the rank of Gp Capt (Time Scale) will be eligible for all allowances and other perks as applicable to Gp Capt (Select) Grade.

Age of Superannuation. The age of superannuation for Gp Capt (time Scale) would be same as it is for the rank of Wg Cdr in respective, branches. Therefore, there is no change in the retirement age of a Wg Cdr on being promoted to the rank of Gp Capt (Time Scale).

Medical Criteria. The present provisions contained in the policies and amendments thereto, applicable so far for the rank of Wg Cdr (Time Scale) will

now be applicable to the new grade of Gp Capt (Time Scale):

Officers holding the rank of Gp Capt (Time Scale) will be held against the authorization of Wg Cdr. Such officers shall, in precedence, rank junior to the following officers:-

Substantive Gp Capt (Select).

Acting Gp Capt (Select).

Detailed criteria and procedure for grant of substantive rank of Gp Capt by Time Scale will immediately be notified by the Air Headquarters through HRP.

Revision in pay and pension due to promotion, where applicable, to officers who have retired, during the intervening period between 16 Dec 04 and date of issue of this letter will be reviewed with retrospective effect from 16 Dec 04.

As a consequence of the implementation of the above orders the appointments in which Sqn. Ldrs and Wg Cdrs can be posted are given at appendices ~ATM and ~BTM to this letter, mutatis mutandis Unit Establishments of units,TM formations and Establishments will stand modified to the above extent till their] revision in due course. Various orders and instructions affected by the above decisions would be amended in due course.

These orders will take effect from 16 Dec 2004.

This issues with the concurrence of Integrated Finance vide their Dy No.636/Dir (Fin/AG/GS) dated March 11, 2005.

Yours faithfully, (Bimla Julka) Joint Secretary to the Govt. of India

3. It is evident from the above that a Squadron Leader can, under the new dispensation, be promoted as a Wing Commander upon his completing 13 years reckonable commissioned service in the force. He can be further promoted as Group Captain (Time Scale) after he has to his credit reckonable service of 26 years. The position prevalent pre-AVS Committee recommendations, was that a Squadron Leader

Gp Capt	-	-	-	-	52	54	57	57	
(TS)									
Gp Capt	52	57	57	57	52	57	57	57	
(Select)	(Extendable to				(Extendable to				
	54)				54)				

4. The chart makes it clear that post-AVS CommitteeTMs report and recommendations the Wing Commander (Time scale) rank was abolished and the bar for time scale promotion to officers who did not make to the next rank raised to Group Captain (Time Scale). To that extent the issue of stagnation in the Air Force was addressed by providing avenues for upward mobility of Wing Commanders. There was at the same time a flip side to the Government decision inasmuch as the advantage in terms of upward movement was, to an extent, neutralised by the Government retaining the retirement age of Group Captains (Time Scale) at 52 years in the case of flying branch and 54 years in the case of officers serving in the ground duty branch. This is evident from a reading of clause 5(d) extracted above which denied to the Group Captains (Time Scale) the benefit of a higher retirement age applicable to Group Captains (Select) who could serve upto 54 years of age in the flying branch and 57 years in the ground duty Education and Met branches of the force. The Government Order in effect classified officers holding the rank of Group Captains in two categories one comprising officers who rise to that rank by time scale upon completion of 26 years of service and the other who got there by promotion on the basis of merit. This classification of officers serving in the air force holding the same rank but governed by different standards for purposes of their superannuation was assailed by the respondents who were Group Captain (Time Scale) in petitions filed by them before the Armed Forces Tribunal, Principal Bench, New Delhi. The grievance made by them was that Group Captains in the Air Force constituted one class regardless whether they were promoted to that rank by time scale or on inter se merit. The respondents alleged that they were discharging the same kind of duties as were being

performed by Group Captains (Select). They were wearing the same ranks and drawing the same emoluments and other allowances and were regulated by the same conditions of services in all other respect. Classifying officers who were similarly situate on the basis of the method of appointment to the rank of Group Captain when everything else was the same, was violative of Articles 14 and 16 of the Constitution argued the aggrieved officers.

5. The petitions were contested by the appellant-Union of India primarily on the ground that although the respondents held the same rank as Group Captains (Time Scale) and were similar in all other respects including emoluments and other conditions of service and although they were treated to be equivalent to Group Captain (Select) yet the nature of duties and the operational employability of officers promoted to Group Captain (Select) rank was better in comparison to those holding the rank of Group Captain (Time Scale). The rank of Group Captain (Time Scale) was, according to the appellant, a new rank created under Government Order dated 12th March, 2005 (supra) subject to the condition that the retirement age of Group Captain (Time Scale) would remain the same as was applicable to Wing Commanders retiring in that branch. The objective behind creating the rank of Group Captain (Time Scale) was to provide continued motivation even such officers as may not have made it to the rank of Group Captain (Select). It was alleged that post implementation of AVS Committee recommendations, Group Captain (Time Scale) Officers were being posted against positions earlier given to Wing Commanders apart from the fact that the sanctioned strength of such Time Scale ranks officers was held against Wing Commander (Time Scale) ranks that existed earlier.

6. The Tribunal has, upon consideration of the rival submissions, come to the conclusion that while the purpose underlying the creation of time scale post of Group Captain on completion of 26 years of service was laudable, classification of Group Captains (Time Scale) and Group Captains (Select) into two categories was not constitutionally permissible. The Tribunal recorded a finding that Group Captains (Time Scale) wear the same rank and get the same salary, grade pay and draw the same benefits as Group Captains (Select). Posting of Group Captains (Time Scale) against posts earlier manned by Wing Commanders was, according to the Tribunal, an administrative matter which did not justify the classification made by the Government for purpose of prescribing a different retirement age for the two categories. The Tribunal held that the only difference between Group Captains (Time Scale) and

Group Captains (Select) is that the latter get promoted to the post of Group Captains in a shorter period whereas Group Captains (Time Scale) can get to that rank only after serving for not less than 26 years. Select officers by that process become senior to the Time Scale Promotees. The Tribunal held that providing avenues for promotion for Wing Commanders who do not make it to the rank of Group Captains by selection was meant to avoid stagnation in the officers rank besides providing incentives to such officers to continue serving the force subject to their maintaining the required level of professional ability and proficiency and physical fitness to be promoted to the next rank against a time scale vacancy. Such officers could not, therefore, be deprived of the benefit of higher retirement age that would accrue to them by reason of their continued good performance required for such promotion to the next rank. The Tribunal observed:

On the one hand they have granted them a benefit for serving Indian Air Force for more than 26 years and on the other hand they want to deprive them by retiring them at the age of 54 years. There appears to be no rational basis in this. When both the persons wear the same rank, draw the same salary and get the same grade pay and then to say that one Gp Capt (TS) will retire at the age of 54 and the other Gp Capt (Select) at the age of 57 years. This distinction which is sought to be made has no rational basis whatsoever. It is true that Government can have mini and micro classification but there has to be some rational basis for certain object which is sought to be achieved. In this case all rationale which has been given is this only that since the Gp. Captain (TS) are posted against the post of Wg Cdr and age of retirement of Wg Cdr is 54 years, therefore, they should be retired at 54 years is no rationale. Once a person who has been promoted from Wg Cdr to Gp Captain, he wears his uniform as Gp Captain and he draws same salary of Gp. Capt he gets same Grade Pay of Gp. Capt., he performs same duties of Gp Capt as others Gp Capt performs except the flying branch, then to make a distinction that he should retire at the age of 54 years because the post against which he has been appointed is that of a Wg Cdr, therefore, he will still be treated as Wg Cdr for the purpose of superannuation is no rationale.

7. Appearing for the appellants, Mr. R. Balasubramanian strenuously argued that the Tribunal had fallen in error in holding that there was no rational basis for classifying Group Captains (Time Scale) and Group Captains (Select) in two different categories

for purposes of their retirement age. The fact that the Group Captains (Select) were promoted to that rank on the basis of their merit was, according to the learned counsel, by itself a sufficient reason that would justify their classification as a separate and distinct group for purposes of prescribing a different retirement age apart from the method of appointment to that rank itself being different. It was also contended that although Group Captains (Select) and Group Captains (Time scale) were in all respects including the ranks that they wear, salary they receive, and other service benefits they are entitled to similar to Group Captains (Select), yet the nature of duties which Group Captains (Time Scale) performed were substantially if not entirely different from those that are assigned to Group Captains (Select). The deployability of Time Scale Officers was, according to the learned counsel, limited which put them into a different bracket for purposes of superannuation. It was submitted that even when the recommendations made by the AVS Committee as applicable to the Indian Army had not made a distinction between a Colonel (Select) and Colonel (Time scale) in terms of the retirement age yet the very fact that the Government had not made such a distinction in the Army did not mean that the same could not be made in regard to the Air Force. The classification made by the Government for purposes of different ages of retirement between officers in the Select and Time Scale categories was thus sought to be justified by the appellants on what was according to them an intelligible differentia that fully justifies the classification.

8. On behalf of the respondents it was, on the other hand, contended that the classification made by the Government of India in the matter of age of retirement of Select and Time Scale officers was wholly impermissible and hostile to the Time Scale Officers who were holding the same rank, drawing the same salary and allowances and for all intents and purposes, discharging the same duties as any other officer holding that rank was doing. Just because Time Scale Officers came to be promoted by a different route than officers in the select category did not justify the classification brought about by the Government Order in the matter of age of superannuation. It was also contended that there was no intelligible differentia between Group Captains whether they came to hold that rank based on Selection or Time Scale so long as the officers held the same rank and enjoyed similar service benefits. It was urged that there was no real basis for the appellants to argue that upon promotion as Group Captain (Time Scale) the appellants were discharging functions that were, in any way, inferior or less onerous to those discharged by Group Captain (Select). The Tribunal had also recorded a finding to that effect and held that the

posting of an officer after he is promoted as Group Captain (Time Scale) or Group Captain (Select) was an administrative matter which could not provide a reasonable basis or an intelligible differentia to treat them differently so as to justify a different treatment.

9. It was also contended that the Government had by accepting the AVS Committee Report opened avenues for upward mobility of officers who fulfil the minimum requirement prescribed for such upward movement which was earlier restricted to a Wing Commander level but now raised to the rank of Group Captain. There was, in any case, no nexus between the object sought to be achieved in terms of the AVS Committee recommendations and the Government Order on the one hand and the classification of officers on the other. This was true even when the claim made by the appellants that the classification and the lower age of retirement for Group Captain (Time Scale) was meant to keep a lower age profile for commanding officers in the Air Force.

10. The seminal question that falls for our determination in the above backdrop is whether classification of Group Captains in the Indian Air Force for purposes of age of superannuation, is offensive to Article 14 of the Constitution. A long line of decisions of this Court that have explained the meaning of equality guaranteed by Articles 14 and 16 of the Constitution and laid down tests for determining the constitutional validity of a classification in a given case immediately assume importance. These pronouncements have by now authoritatively settled that Article 14 prohibits class legislation and not reasonable classification. Decisions starting with *State of West Bengal v. Anwar Ali* (AIR 1952 SC 75) down to the very recent pronouncement of this Court in *Dr. Subramanian Swamy v. Director, CBI and Anr.* (AIR 2014 SC 2140) have extensively examined and elaborately explained that a classification passes the test of Article 14 only if (i) there is an intelligible differentia between those grouped together and others who are kept out of the group; and (ii) There exists a nexus between the differentia and the object of the legislation. Speaking for the Court Das J., in *Anwar Ali*TMs case (supra) summed up the essence of what is permissible under Article 14 in the following words:

The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but

those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

The differentia which is the basis of classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.

11. The principle was reiterated in *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors.* (AIR 1958 SC 538) in the following passage:

It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupation or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

12. In *Lachhman Das v. State of Punjab*, (AIR 1963 SC 222), this Court while reiterating the test to be applied for examining the vires of an Act on the touchstone of Article 14 sounded a note of caution that over- emphasis on the doctrine of classification may gradually and imperceptibly deprive the Article of its glorious content. This Court observed:

..the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to the said doctrine. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the article of its glorious

content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the doctrine of classification.

13. The content and the sweep of Article 14 of the Constitution was once more examined in *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3, where this Court laid bare a new dimension of Article 14 and described its activist magnitude as a guarantee against arbitrariness. Speaking for the Court, P.N. Bhawati, J. as His Lordship then was said:

85. xxxxxx Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.

Xxxxxxx Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would

be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and

16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

14. The dimensions of Article 14 were further enlarged by this Court in *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, where Bhagwati, J. once again speaking for the Court described the guarantee against arbitrariness as a great equalising principle, a founding faith of the Constitution, and a pillar on which rests securely the foundation of our democratic republic.

15. It is unnecessary to burden this judgment with reference to several indeed numerous other pronouncements that have reiterated and followed the ratio of the decisions to which we have referred hereinabove for we would remain content with a reference to a recent Constitution Bench decision in *Dr. Subramanian Swamy v. Director, CBI and Anr.* (AIR 2014 SC 2140) where this Court was examining whether Section 6A(1) of the PC Act, 1988 was constitutionally valid insofar as the same required approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the said Act where such allegations related to employees of the Central Government of the level of Joint Secretary and above and officers as are appointed by the Central Government in Corporations established by or under any Central Act, Government companies, societies etc. Speaking for the Court Lodha, CJI observed:

Can it be said that the classification is based on intelligible differentia when one set of bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under Section 6-A while the same level of officers who are working in the States do not get protection though both classes of these officers are accused of an offence under PC Act, 1988 and inquiry / investigation into such allegations is to be carried out. Our answer is in the negative. The provision in Section 6-A, thus, impedes tracking down the

corrupt senior bureaucrats as without previous approval of the Central Government, the CBI cannot even hold preliminary inquiry much less an investigation into the allegations. The protection in Section 6-A has propensity of shielding the corrupt. The object of Section 6-A, that senior public servants of the level of Joint Secretary and above who take policy decision must not be put to any harassment, side-tracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants. The CBI is not able to proceed even to collect the material to unearth prima facie substance into the merits of allegations. Thus, the object of Section 6-A itself is discriminatory. That being the position, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

16. Time now to test the validity of the classification in the case at hand; in the light of the legal position enunciated in the decisions of this Court juxtaposed with the rationale which the appellant-Union of India has advanced to justify its action. As noticed earlier, there are in substance two main reasons which the appellant has advanced in support of the classification made by it. The first and foremost is that officer who get promoted to the rank of Group Captains on the basis of merit constitute a class different from the ones who do not make it to the next rank on that basis. That officers who fail to make the grade in merit selection on three occasions admissible to them are eventually promoted to the rank of Group Captains based on the length of their service does not, according to the appellant, make them equal to their colleagues who have stolen a march over them by reason of their superior merit. The second and the only other ground called in aid of the classification is that Group Captains (Time Scale) do not discharge the same functions as are discharged by Group Captains (Select). The deployability of time scale Group Captains being limited, they can, according to the appellants, be classified as a different group or category even when in all other respects they are equal to the officers promoted on merit.

17. The Tribunal has rejected both the reasons aforementioned and, in our opinion, rightly so. Classification of employees based on the method of their recruitment has long since been declared impermissible by this Court. There can be no differential treatment between an employee directly recruited vis-a-vis another who is promoted. So long as the two employees are a part of the same cadre, they cannot be treated differently either for purposes of pay and allowances or other conditions of service,

including the age of superannuation. Take for instance, a directly recruited District Judge, vis-a-vis a promotee. There is no question of their age of superannuation being different only because one is a direct recruit while the other is a promotee. So also an IAS Officer recruited directly cannot for purposes of age of superannuation be classified differently from others who join the cadre by promotion from the State services. The underlying principle is that so long as the officers are a part of the cadre, their birth marks, based on how they joined the cadre is not relevant. They must be treated equal in all respects salary, other benefits and the age of superannuation included.

18. In the case at hand, Group Captains constitute one rank and cadre. The distinction between a Group Captain (Select) and Group Captain (Time Scale) is indicative only of the route by which they have risen to that rank. Both are promotees. One reaches the rank earlier because of merit than the other who takes a longer time to do so because he failed to make it in the three chances admissible to them. The select officers may in that sense be on a relative basis more meritorious than time scale officers. But that is bound to happen in every cadre irrespective of whether the cadre comprises only directly recruited officers or only promotees or a mix of both. Inter se merit will always be different, with one officer placed above the other. But just because one is more meritorious than the other would not by itself justify a different treatment much less in the matter of age of superannuation.

19. It is common ground that Time Scale Officers do not get to the higher rank only because of the length of service. For purposes of time scale promotion also the officers have to maintain the prescribed minimum standard of physical fitness, professional ability, commitment and proficiency. Rise to the next rank by time scale route is, therefore, by no means a matter of course. It is the length of service and the continued usefulness of the officer on the minimal requirements stipulated for such promotion that entitles an officer to rise to higher professional echelons. Suffice it to say that while better inter se merit would earn to an officer accelerated promotion to the Group CaptainTMs rank and resultant seniority over Time Scale Officers who take a much longer period to reach that position, but once Time Scale Officers do so they are equal in all respects and cannot be dealt with differently in the matter of service conditions or benefits. All told the submission of the Time Scale Officers that because of their long years of service and experience, they make up in an abundant measure, for a relatively lower merit cannot be lightly brushed aside. That Group Captains (Time

Scale) wear the same rank, are paid the same salary and allowances and all other service benefits admissible to Group Captains (Select) supports that assertion for otherwise there is no reason why they should have been equated in matters like pay, allowances and all other benefits including the rank they wear if they were not truly equal. Once it is conceded that the two are equal in all other respects as indeed they are, there is no real or reasonable basis for treating them to be different for purposes of age of retirement.

20. Two significant features need to be noticed at this stage. The first and foremost is that before AVS Committee recommended the raising of bar for time scale officers, from the rank of Wing Commanders (TS) to Group Captains (TS), the age of retirement for Wing Commanders (TS) and Wing Commanders (TS) was the same. In other words, the pre-AVS Committee regime did not recognise any distinction between time scale and select officers to justify a different age of retirement for them. Not only that while implementing the AVS-Committee recommendations in regard to the Indian Army the Government have not made any distinction between Cols (Select) and Cols (TS) for purposes of the age of retirement as both retire at the same age. When asked whether there is any difference in Time Scale and Select Officers serving in the Army on the one hand and Air Force on the other, learned counsel for the appellants was unable to provide any satisfactory explanation for the dichotomy. All that was argued was that Army being a bigger organisation there is no difficulty in suitably deploying Col. (TS) officers but Air Force being a smaller organisation as compared to the Army, it is not possible to do so in the Air Force. That is, in our opinion, hardly a reason for the classification brought about by the Government in regard to Air Force Officers. While it is true that Air Force is a smaller organisation in comparison to Army, the fact remains that the number of Time Scale Officers would also be proportionally smaller than those in the Indian Army.

21. It is trite that birthmark of an officer who is a part of the cadre of Group Captains cannot provide an intelligible differentia for the classification to be held valid on the touchstone of Articles 14 and 16 of the Constitution. We may in this regard gainfully refer to the decision of this Court in Col. A.S. Iyer & Ors. V. Bala Subramanian & Ors. (1980) 1 SCC 634, where Krishna Iyer J. as his Lordship then was rejected a somewhat similar argument to justify a classification based on the birthmarks of the members of a cadre. He said:

Let us eye the issue from the egalitarian angle of Articles 14 and 16. It is trite law that equals shall be treated as equals and, in its application to public service, this simply means that once several persons have become members of one service they stand as equals and cannot, thereafter, be invidiously differentiated for purposes of salary, seniority, promotion or otherwise, based on the source of recruitment or other adventitious factor. Birth-marks of public servants are obliterated on entry into a common pool and bur country does not believe in official casteism or blue blood as assuring preferential treatment in the future career. The basic assumption for the application of this principle is that the various members or groups of recruits have fused into or integrated as one common service. Merely because the sources of recruitment are different, there cannot be apartheidisation within the common service. (emphasis supplied)

22. In *Air India v. Nargesh Mirza and Ors.* (1981) 4 SCC 335, a three- Judge Bench of this Court was examining whether a rule that permitted retirement of Hostesses, within four years of her joining service, was reasonable. This Court held that if the factors or circumstances that are taken into consideration while fixing the age of superannuation are inherently irrational or illogical, the decision fixing the age of retirement will be flawed. The Court observed:

There can be no cut and dried formula for fixing age of retirement. It is to be decided by the authorities concerned after taking into consideration various factors such as the nature of the work, the prevailing conditions, the practice prevalent in other establishments and the like. But the factors to be considered must be relevant and should bear a close nexus to the nature of the organisation and the duties of the employees. So where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny.

23. In *Kamlakar and Ors. v. Union of India & Ors.* (1999) 4 SCC 756, this Court was examining whether a distinction could be made between direct recruits and promotees as regards equal treatment in the matter of pay scales admissible to them. Rejecting the contention that such distinction would be justified this Court held that once officers are placed in one cadre the distinction between direct recruits and promotees disappears. The birthmarks have no relevance for classification of Data Processing

Assistants who are directly recruited and others who are promoted. This Court observed:

12Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given is concerned. The birthmarks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale ” which were matters common to all of them before the impugned order of the Government of India was passed on 2-7- 1990, ” then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible. We, therefore, reject the respondentsTM contention..

24. The principles stated in the above decisions lend considerable support to the view that classification of Group Captains (Select) and Group Captains (Time Scale) in two groups for purposes of prescribing different retirement ages, is offensive to the provisions of Articles 14 and 16 of the Constitution of India. These appeals must, on that basis alone, fail and be dismissed, but, for the sake of a fuller treatment of the subject, we may as well examine whether the classification has any nexus with the object sought to be achieved by the Government decision taken in the wake of the AVS Committee recommendations.

25. The AVS Committee was tasked to examine two main issues namely (i) achieving optimal combat effectiveness by bringing down the age profile of Battalion/Brigade Commanders and (ii) making the organisation more effective in fulfilling individual career aspirations by their officers. This is evident from the report of the Committee in para 5 whereof it has said:

5. According to the AHQ Paper, the following areas needed to be addressed:

Organisational Imbalances. Arising out of seep paramedical structure of the cadre. The issues mentioned in the Paper under this heading were high age profile, physical fitness and need for giving wider exposure to officers in todayTMs high technology environment.

Individual Aspirations. Left unfulfilled due to:

Inadequate career progression.

Disparity with Class ~A civil services.

Harsh service conditions.TM

26. The Committee then examined various options in regard to both the issues mentioned above and made its recommendations. Apart from suggesting measures that could be taken to reduce the age profile of Battalion/Brigade Commanders, the Committee suggested introduction of Col.(TS) rank for the Army which recommendation when applied to Air Force resulted in introduction of the rank of Group Captain (Time Scale). These new creations were meant to meet the aspirations of the officers who did not make to the next rank on the basis of merit selection.

27. In the Air Force, the avowed objectives underlying the recommendations were achieved by the Government permitting a Wing Commander to pick up the next higher rank of Group Captain on merit after putting in a service of 13 years only and by creating the rank of Group Captain (Time Scale). This change has ushered in a new regime under which younger officers got promoted as Group Captains. Once promoted they gain an edge over others who do not make it to the next rank on merit but who reach there on time scale basis after 26 years of service. Group Captains (Select) who are invariably younger by many years to such Group Captains (TS) thus provide the human resource from out of which the Air Force picks up its commanding officers. Time Scale officers, would in the light of the change, be generally if not invariably in non-command positions in the Air Force, to which they have never raised any objection as was the submission of learned counsel appearing on their behalf. But to say that sending these time scale offices home on attaining the age of 52 years and 54 years depending upon whether they are serving in the flying or ground duty branch has any nexus with the object of having a younger age profile of commanding officers is not in our opinion correct. So long as Group Captains (Select) are senior to Time Scale Officers and so long as the former are younger in age as they are bound to be, the objective of having a younger age profile of commanding officers is achieved even if the Time Scale Officers are permitted to retire at the same age as Group Captains (Select). The second test applicable viz. existence of a nexus between the object

sought to be achieved and the classification made by the Government also fails rendering the classification bad.

28. The only other aspect that needs to be addressed is whether the classification of Group Captain (Select) and Group Captain (Time Scale) can be justified on the basis of nature of duties they discharge. It was contended on behalf of the appellants that nature of duties and functions were not identical for the two categories. A classification based on such a difference was, therefore, justified. The Tribunal has examined and rejected a similar contention urged before it. We may, in this connection, refer to para 10 of the Writ Petition filed by the respondents that came to be transferred to the Tribunal from the High Court for disposal. In para 10 the respondents-writ petitioners made the following averments:

10. That the nature of work duties and functions performed by time scale group captains are identical to that of group captains selection. Further, even the financial powers enjoyed by Group Captain selection are also vested with Group Captain time scale. The duties discharged by both Group captain selection and time scale are identical.

29. In the counter-affidavit filed on behalf of the appellants herein the appellants asserted as follows:-

9. In reply to Para 10, it is submitted that the nature of work, duties and functions performed by Time Scale Gp Capt is that of an officer of Wg Cdr rank. A Wg Cdr on not getting cleared for promotion to the rank of Group Captain is promoted on a time scale basis to Gp Capt on attaining 26 years of service. However the officer continues to perform the duties and work of a Wg Cdr. Financial powers of an officer are a function of the officerTMs appointment and not of the rank. Therefore equating the financial powers based on promotion by Time Scale or by Selection has no meaning.

30. A plain reading of the above reply would show that the appellants have not indicated how the work, duties and functions performed by Group Captain (Time Scale) are different from those discharged by Group Captain (Select). All that is stated is that Group Captains (Time Scale) when promoted after completing 26 years of service continue to perform the work and duties of Wing Commanders. We have not

been able to appreciate this line of reasoning. If a Wing Commander is promoted as a Group Captain on Time Scale basis, the nature of duties must, by reason of such promotion, be more onerous than those discharged by him as a Wing Commander. Promotion to a higher cadre invariably implies higher responsibilities even when the essential nature of work may continue to be the same. For instance, a Wing Commander in the flying branch may be required to fly fighter aircrafts on peace time training or when the country is at war. A Group Captain (Select) would also be doing the same work as indeed even the Group Captains (Time Scale) shall be required to do. Flying a fighter aircraft is thus essential part of the duties of an officer serving in the flying wing. But to say that since a Group Captain (Time Scale) continues to fly as he was flying as a Wing Commander, his promotion as a Group Captain (Time Scale) is inconsequential from the point of view of nature of work may not be correct. Nature of duties in such situations does not undergo any significant change even when an officer picks up a higher rank. It is only the addition of higher and more onerous responsibility attached to the office that fall on his shoulder. One could well say that if Group Captain (Time Scale) continues to work as a Wing Commander, what work are the Wing Commanders doing. That apart, allocation of work and duties is a matter left for the Air Force Authorities to determine. Lesser or higher allocation of such duties will not trivialise the promotion of a Wing Commander to the rank of Group Captain which progression must be treated to be a promotion for all intents and purposes. That is perhaps the reason why the Tribunal appears to have repeatedly asked the appellants to explain the basis on which a distinction was made between Group Captains (Select) and Group Captains (Time Scale) no matter they are wearing the same uniform, same rank, getting the same salary and the same grade pay. In the absence of any rational basis for such a distinction, the Tribunal was right in saying:

We asked learned counsel for the respondent repeatedly to tell us that what is the rationale for making this distinction when the both the officers, one selected by select and other by time scale they wear same uniform, they wear same rank, they get same salary and they get same grade pay and discharge identical duties (except flying branch) then why this distinction is sought to be made from their earlier birth mark. There is no rationale which has been brought up either in reply or by the learned counsel for the respondent. The only argument was that these are basically Wg Cdr and they continue to be wing commanders. Once they have been promoted as a Gp. Captain (TS) they cease to be Wg Cdr, it is there administrative arrangement that out of these Wg Cdrs, some posts are

upgraded in order to provide salary to these persons of Gp. Cap. Once they are drawing a salary of Gp. Capt and automatically post of Wg Cdr stand upgraded otherwise no salary of the Gp Capt will be given unless post of the Wg Cdr to which he is posted is upgraded.

31. In the additional affidavit filed on behalf of the appellant-Union of India before us it was, inter alia, stated that upon consideration of the recommendations made by the AVS Committee, the Ministry of Defence had submitted to Government of India a detailed statement of case for the latterTMs consideration in which it was among other things pointed out that while superseded wing commanders who make the minimum eligibility criteria laid down by the Air HQ should be granted the rank of Group Captain (TS) on completion of 26 years of service, it would be preferable to have such superseded officers exiting early so as not to adversely affect efficiency in the cadre. It was also asserted that if the retirement age of Group Captain (TS) and Group Captain (Select) were to be at par this may adversely affect the Indian Air Force in many resultant situations. The following four issues of concern have been expressed by the appellants in the event of such parity being granted in the matter of retirement age.

(a) The operational fighting younger force will be depleted and effect the combat preparedness of the IAF.

(b) If there is no additional benefit of promotion based service to the officers who are selected on merit, the motivation incentive to the officers who make it to the select rank through merit is nullified.

(c) As per the felt requirements of the armed forces, which have now been accepted by the Government, the age profile of field unit commanders have been reduced to achieve optimum operational capabilities. If the superseded officers of older ages are retained further, their employability based on functional capacity under these younger officers would pose command and control hurdles.

(d) It will lead to a further demand for equating in status also, which will disturb the cadre structure of the entire Indian Air Force and affecting the operational efficiency and command and control structure of IAF.

32. The counter-affidavit further attempts to draw a comparison between Group Captain (TS) and Group Captain (Select) in the matter of posting profiles. The counter-affidavit under the heading "Posting Profile™" points out the following position:

POSTING PROFILE | 1. The list of Appointments Are posted in As laid down | established against which vacancies by the | posts (Since posted which are established | the same | authorised as appointment | contain | per wise vacancies | confidential | establishment applicable to | data, | for Group Wg Cdrs. | Petitioners | Captain Select | crave leave of rank officers | | this Hon™ble | Court to refer | to and rely | upon the same | | at the time of | arguments) | | 2. Specimen Sample Directors are Jt. Directors | Organisation Organisation Gp Capt are Gp Capt | Chart (A true chart with (Select) (Time Scale) | copy of a duties and | and Wg Cdrs | specimen responsibility | organisation es of a | chart is specific | | marked and directorate | annexed as | Annexure A6) |

33. The counter-affidavit also cites reduction in combat effectiveness as one of the possible fall outs of any parity in the age of superannuation between Group Captains (TS) and Group Captains (Select).

34. The respondents have, in the reply filed to the additional affidavit aforementioned, denied each one of the distinctions sought to be made between Group Captain (TS) and Group Captain (Select). It is asserted by them that while recommending the creation of Group Captain (TS) rank to provide upward mobility for officers who are unable to pick up the next rank on merit basis, the AVS Committee recommendations never envisaged any difference in the age of superannuation vis-a-vis Group Captain (Select). The AVS Committee which had examined the matter threadbare never thought that any such distinction or discrimination could be justified between the two. The concerns expressed by the Government as a possible fall out of a parity in retirement age has also been stoutly denied by the respondents in the following words:

a) The number of Group Captain(TS) is miniscule compared to the overall IAF cadre. IAF has been perpetually deficient in officers™ cadre. Owing to expansion of IAF both in terms of size, challenges, technology and capability

and creation of several new units and formations have further added to deficiency woes of the IAF. Time and again IAF has approached Government of India to enhance the IAF cadre both officersTM and personnel below officersTM rank. But for classified reasons the government has declined to enhance the IAF cadre barring some extremely limited revisions of cadre thus compelling the IAFTMs HR management to manage its manpower deficiencies from within the current cadre by adopting the following measures:

Creation of to be manned level and manning level to optimize sharing of the overall deficiency in IAF cadre.

To share the poverty of deficient manpower across various roles and responsibilities of diverse formations of the IAF, reduced manning level to the extent of approximately 70% of the establishment is enforced to keep the field and higher formations running at the optimum level of efficiency.

Retention of Group Captain (TS) for additional 3 years up to the age of 57 would not only fill the perpetual deficiency suffered by IAF over the years.

It is pertinent to mention here that minimum age of superannuation in Meteorology and Education Branch of the IAF is 57 and that of medical branch is 58.

b) It is incorrect to say that Group Captain(Select) officers would be demotivated if Group Captain (TS) are granted 57 years and that of medical branch is 58 years. These retirement ages are devoid of promotional limitations from Flying officer onwards to Air Marshal. Since the very inception of the IAF continuation of such officers up to the age of 57 regardless of merit, selection and/or supersession at the rank and has never demotivated the officers of the other branches who were selected on merit and retired at an equal age despite making to select rank through merit. All officers of similar categories in all groups of branches have co-existed in harmony and maintained efficient operational functioning and high levels of moral and motivation.

c) It is true that AVSC has mandated younger age profile of field unit and formation commanders. Reduction of functional capacity on retention of Group

Captain(TS) beyond 54 and up to 57 years of age is ill conceived due to the following facts

(i) Command and control is a so well structured in the IAF that it is the superior rank whose orders are to be obeyed devoid of age of the personnel placed below such commander;

(ii) It may be recalled that currently minimum age of superannuation in Meteorology and Education branch of the IAF is 57 years and that of medical branch is 58 years. IAF history is replete with the fact that there has never been any problem posed by these older age officers serving under commanders younger in age of such officers.

Even today a large no. of Group Captain(Select) superseded in next higher rank (Air Commodore) continue to work under Air Commodores who are both younger and junior in service to such superseded Group Captain(Select) officers, without causing any command and control hurdles. Similarly there are umpteen numbers of examples in higher ranks.

35. More importantly, the respondents have asserted that Group Captains (TS) and Group Captains (Select) perform the same functions and duties which are higher than the duties and functions performed by the Wing Commanders, they wear the same uniform and rank which is higher than the Wing Commanders apart from drawing the same pay scale as Group Captains, which too is higher than the one admissible to Wing Commanders. On the question of posting profile of Group Captains (TS) and Group Captains (Select), the respondents have, on affidavit, denied not only the alleged difference in the nature of duties and functions performed by the two but specifically claimed that Group Captains (TS) have been posted and have held positions and appointments that are ordinarily given to Group Captain(Select). In answer to para 11 of the counter- affidavit extracted earlier, the respondents have given the following instances, where Time Scale Officers have held appointments also held by Select Officers:

Gp Capt (Select)	Held by Gp Capt	Period	
Appointment	(TS)		

|Commanding Officer Air |Gp Capt (TS) |Not known |

|Force Intelligence School|Kapil Shukla | |

|Chief Logistics Officer, |Gp Capt (TS) |2005-2006 |

|No-3, Base Repair Depot |Vijay Narain | |

|Chief Logistics |Gp Captain (TS) |2007-2009 |

|Management Officer, HQ |VJ Narain | |

|Maintenance Command | | |

|Chief Logistics Officer, |Gp Capt (TS) |Not Known. |

|No-7, Base Repair Depot |Chander Shekhar | |

|Command Organisation |Gp Capt (TS) AS |07/20120 To |

|Officer, Western Air |Negi |6/2013 |

|Command | | |

|Command Intelligence |Gp Capt (TS) Y |6/2010 to |

|Officer, HQ Eastern Air |Bagga |02/2012 |

|Command | | |

|Director (Policy & |Gp Capt (TS) AK |08/2012 onwards |

|Co-ordination), |Chatterjee | |

|Directorate of Air Force | | |

Works, Air HQ.			
Director ECHS Regional	Gp Capt (TS) VK	04/2012 To	
Centre, Nagpur	Yadav	07/2013	
Director ECHS Regional	Gp Capt (TS)	06/2012 onwards	
Centre, Suler (TN)	Sajjan		
Director ECHS Regional	Gp Capt (TS) M	Not known	
Hyderabad	Mahapatra		
Director ECHS Regional	Gp Cap[t (TS) M	Not known	
Centre Bangalore	Mahapatra		
Wing Incharge Pension &	Gp Capt (TS) Ram	01/2011 to	
Welfare Wing Air Force	Pratap	06/2012	
Record Office			
Commanding Officer (Unit)	Gp Capt (TS) Ram	06/2008 to	
HQ Training Command	Pratap	10/2010	
Director Air Staff	Gp Capt (TS) AS	04/2009 to	
Inspectiopn (ATS),	Gill	03/2010	
Directorate of Air Staff			
Inspection, Air HQ			

36. The assertion of the appellant that a parity in the retirement age reduces the combat effectiveness of the force has been stoutly denied by the respondents who have asserted that if a Group Captain(Select) or for that an Air Commodore or an Air Vice Marshall gets superseded, his higher age neither automatically impedes the quality and standard of performance of his duties nor does the IAF summarily curtail his residual service as a consequence of his supersession, on the ground that his higher age group may impact combat effectiveness.

37. On the material placed before us and having regard to the rival assertions made by the parties in their respective affidavits the difference in employability of Group Captains (TS) is not borne out to justify the classification made by the Government. It is evident from the particulars given by the respondents that several Group Captains (TS) have held appointments which are also held by Group Captains (Select). If that be so, the difference in the employability of Time Scale officers vis-a-vis select officers appears to be more illusory than real. There does not appear to be any hard and fast rule on the question of deployment or employability of Group Captains (TS) or Group Captains (Select) for that matter. The Air HQ can, depending upon its perception, order deployment and post any officer found suitable for the job. Deployment remains an administrative matter and unless the same involves any reduction in pay, allowances or other benefits or reduction in rank or status of an officer legally impermissible, such deployment remains an administrative prerogative of the competent authority.

38. Suffice it to say that the basis for classification in question for purposes of age of superannuation which the appellant has projected is much too tenuous to be accepted as a valid basis for giving to the Time Scale Officers a treatment different from the one given to the Select Officers. We are also of the view that concerns arising from a parity in the retirement age of Time Scale and Select Officers too are more perceptual than real. At any rate, such concerns remain to be substantiated on the basis of any empirical data. The upshot of the above discussion is that the classification made by the Government of India for purposes of different retirement age for Time Scale Officers and Select Officers does not stand scrutiny on the touchstone of Articles 14 and 16 of the Constitution as rightly held by the Tribunal.

39. In the result, these civil appeals fail and are hereby dismissed but in the

circumstances without any order as to costs.