

AIR VICE MARSHAL S.L. CHHABRA VSM (RETD.)

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v.

UNION OF INDIA AND ANR.

MAY 11, 1993

[KULDIP SINGH AND N.P. SINGH, JJ.]

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Selection by Selection Board for promotion to rank of Air Vice Marshal—Adverse remarks in Appraisal report for 1986 communicated in 1988, and expunged in 1989—Whether appellant entitled to promotion since selection in 1987 and moderation of appraisal report for 1987.

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Appellant had been cleared for all selection grade promotions up to rank of Air Commodore. Selection Board for promotions to rank of Air Vice Marshal considered the appellant in 1987, but did not recommend him for promotion as only one appraisal report was available. The Board decided that appellants performance be watched at least for a year more. Appellant not selected by Selection Board in 1988 also, but no reasons on record as to why he was not recommended for promotion. Adverse remarks in appraisal report for 1986, were communicated to the Appellant in 1988 and on representation by him, adverse remarks were expunged in 1989. Appellant cleared for promotion by the Selection Board in 1989. Appellant filed writ petition in High Court seeking directions for promotion since selection in 1987 and also moderation of appraisal report for 1987 and consequential extension of service for one year w.e.f. the date of his retirement i.e. 31.10.1990. The High Court held that appellant was entitled to promotion to rank of Air Vice Marshal by Selection Board in 1988 with all consequential benefits and directed the respondents to fix appropriate date of promotion on basis of the selection by the Selection Board in 1988.

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On appeals, filed by special leave petitions, by both parties, this Court,

HELD : That the Selection Board while considering suitability of an officer for promotion to a higher post takes into consideration several factors and its decision is not based solely on appraisal report of Controlling Officer. As the Selection Board had decided in 1987 that performance of the appellant be watched for at least one year more, it was neither possible for the High Court nor this Court to act as a court of appeal against the decision of the Selection Board. Public interest should be the primary consideration of all selection Boards constituted for selecting candidates for promotion to higher

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A posts. The court cannot encroach over this power by substituting its own view and opinion. There is no scope to interfere with the decision of the selection board for 1987. (672-F, 673-B)

B The appellant would have been promoted to the higher post in 1988, in the normal course. It appeared that he was not promoted because of the adverse remarks in 1986. No other explanation was furnished by the respondents. The Court directed that the appellant be reconsidered for promotion with reference to the year 1988, as the adverse remarks had been expunged. (673-E-F)

C This Court, further held that neither the High Court nor this Court can moderate the appraisal and grading of the appellant for a particular year. While exercising the power of judicial review, Court shall not venture to assess and appraise the merit or the grading of an officer. This Court did not give any direction for moderation of appraisal report of 1987, and concluded that the appellate was not entitled to extension of service for one year, claimed by him. (675-A)

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2811-2812 of 1993.

E From the Judgment and Order dated 16.11.1990 of the Delhi High Court in C.W.No. 1711 of 1990.

S.L. Chhabra-in-person.

F Altaf Ahmed, Addl. Solicitor General, K. Lahiri, Mrs. Sushma Suri, T.C. Sharma, C.V.S. Rao and S.N. Terdol for the Respondents.

The Judgment of the Court was delivered by

G N.P. SINGH, J. Leave granted.

H The appellant, while holding the post of Air Vice Marshal, filed a writ application, questioning the validity of the decision of the Union of India, refusing to moderate the Appraisal Report of 1987; to promote the appellant to the rank of Air Vice Marshal from a prior date, and to grant extension of the service of the appellant for one year, in the rank of Air Vice Marshal.

There is no dispute that the case of the appellant had been cleared for all selection grade promotions up to the rank of Air Commodore. A meeting of the Selection Board, to consider the cases for promotion to the rank of Air Vice Marshal, was held in February, 1987. In that meeting, the case of the appellant was also considered, but his name was not recommended for promotion, on the ground that there was only one report available by that time. A decision was taken by the Selection Board to watch the performance of the appellant for at least a year more, to assess his potentiality and suitability, for discharging the higher responsibility attached to the rank of Air Vice Marshal. He was also not found fit for promotion by the Selection Board of 1988.

By a letter dated 22nd February, 1988, the appellant was informed of the adverse remarks made in his Appraisal Report for the year 1986. The following remarks were communicated to him :-

“One gets the impression that he is constantly trying to get round his superiors, by sweet talk/visits/gifts, to get what he wants—by way of good reports, postings, courses, decorations etc.”

The appellant made statutory complaints to different authorities. On basis of the representation made, the aforesaid remarks were expunged sometime in January/February, 1989. His request for moderation of the Appraisal Report for 1987 was, however, not accepted. As the adverse remarks aforesaid made in his Appraisal Report of 1986 were expunged, he was cleared for promotion by Selection Board of 1989.

According to the appellant, because of the aforesaid adverse remarks made in his Appraisal Report of 1986, he was denied promotion to the post of Air Vice Marshal in the years 1987 and 1988. As such, when the said adverse remarks were expunged in the year 1989, the question of his promotion to the post of Air Vice Marshal should have been considered afresh with reference to the year 1987. It was asserted that the adverse remarks, given in his Appraisal Report of 1986, did create a bias against the appellant. It was pointed out that although the adverse remarks aforesaid had not been communicated to the appellant, still they had been placed before the Selection Board in the year 1987.

According to the respondents, the aforesaid remarks were never treated as adverse and because of that it was not considered necessary to communicate them to the appellant, before they were placed before the Selection Board. The learned

A Additional Solicitor General, however, could not give any explanation as to why those remarks were later communicated to the appellant for his comment and explanation. Apart from that, it is an admitted position that later, those remarks have been expunged. We fail to appreciate as to how remarks in the Appraisal Report, saying that the officer concerned “is constantly trying to get round his superiors, by sweet talk/visits/gifts, to get what he wants—by way of good reports, postings, courses, decorations etc.”, could be considered to be not adverse remarks, especially in context with Indian Air Force, where an officer is expected to be straightforward, upright, conscious of the fact that his recognition and promotion are dependent, only on the merit and the service, he has rendered to the nation.

C The High Court has come to the conclusion that in view of the remarks, having been expunged in the year 1989, the case of the appellant has to be reconsidered. It has been held, that the appellant was entitled to be promoted, to the rank of Air Vice Marshal by the Selection Board of 1988, with all consequential benefits. A direction has been given to the respondents to fix the appropriate date of the promotion of the appellant on basis of his selection by the Selection Board of 1988.

E But, according to the appellant, a direction should have been given to promote the appellant to the rank of Air Vice Marshal by the Selection Board of 1987 instead of 1988, when it has been established that the adverse remarks, made in the Appraisal Report of the year 1986, were placed before the Selection Board of 1987 and those adverse remarks have been later expunged.

F It is well-known that a Selection Board, while considering the suitability of an officer for promotion to a higher post or rank, takes into consideration several factors and it is not solely based on the Appraisal Report of the controlling officer. The learned Additional Solicitor General produced the proceedings of the Selection Board of 1987 and pointed out that the Selection Board had postponed the promotion of the appellant on the ground, that only one report was available by that time and as such decision was taken to watch the performance of the appellant at least for a year more, to assess his potentiality and suitability for discharging the higher responsibility attached to the rank of Air Vice Marshal. The aforesaid fact has been mentioned in the proceedings of the Selection Board of the year 1987. In such a situation, it was neither possible for the High Court, nor is possible for this Court to act as a court of appeal against the decision of the Selection Board, which has been vested with the power of selection of an officer for being promoted to the rank of Air Vice Marshal. No oblique motive has been suggested on behalf of the

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appellant against any of the members of the Selection Board and there is no reason or occasion for us to infer such motive on the part of the members of the Selection Board for denying the promotion to the appellant with reference to the year 1987. Public interest should be the primary consideration of all Selection Boards, constituted for selecting candidates, for promotion to the higher posts, but it is all the more important in respect of Selection Boards, meant for selecting officers for higher posts in the Indian Air Force. The court cannot encroach over this power, by substituting its own view and opinion. According to us, there is no scope to interfere with the decision of the Selection Board of 1987, merely on the ground that adverse remarks, in the Appraisal Report of 1986, which were placed before the Selection Board in the year 1987, were later expunged.

So far the direction to fix the appropriate date of promotion of the appellant with reference to the selection Board of 1988 is concerned, the learned Additional Solicitor General took a stand that only a direction to consider the case of the appellant for promotion with effect from 1988 should have been given, instead of directing the respondents to fix the appropriate date of his promotion on basis of selection being made by the Selection Board of 1988. The High Court has pointed out, that reason given for not promoting the appellant in the year 1987 was that there was only one Appraisal Report of the appellant in February, 1987, but no reason has been furnished for ignoring him for the year 1988. As per the guidelines for promotion, the appellant had minimum of three '7's in the preceding five years and two '7's in the preceding three years. In normal course he should have been promoted in the year 1988, in view of the guidelines framed by respondents themselves. It appears, he was ignored for promotion in the year 1988, because of the adverse remarks in the Appraisal Report of the year 1986. No other explanation has been furnished on behalf of the respondents. Accordingly, we direct the respondents to reconsider the case of the appellant for promotion to the post of Air Vice Marshal with reference to the year 1988, in view of the fact that adverse remarks aforesaid have been expunged in the year 1989.

The question as to whether the appellant was entitled for one year extension w.e.f. the date of his retirement i.e. 31.10.90. has to be examined with reference to the criteria laid down for the same. The age of retirement fixed for the Air Vice Marshal is 55 years. The guidelines for extension of service, say in clear and unambiguous terms that extension will not be granted automatically but will be subject to fulfilling the requisite conditions, to be determined separately by the Ministry of Defence in consultation with Ministry of finance (Defence) and Air Headquarters. On the relevant date the criteria fixed for considering the extension of service beyond the retirement age was :-

A “(a) The Officer should be medically fit for the rank in which extension in service is granted.

(b) The performance of officer in the rank should be of a sufficiently high order, as laid down.

B (c) The retention of the officer in service should not seriously block promotion of deserving junior officers.

(d)

C 2. It has also been decided that the following gradings should be adopted for the grant of extension of service in various ranks :

(a) *For Group Captains.....*

D (b) *For Air Commodores.....*

(c) *For Air Vice Marshals.* During the last 5 years, there should be at least 3 gradings of ‘7’ and no grading below ‘6’.

E In addition to the numerical gradings, the pen picture of the officers, i.e. IO, RO and SRO’s remarks will also be taken into account.”

F On behalf of the respondents, it was pointed out that it is an admitted position, that appellant did not have the gradings, which are necessary for extension of service, During the last five years not only he should have at least three gradings of 7 but no grading below ‘6’ (emphasis supplied). Our attention was drawn that his grading for the year 1987 was ‘5.3’, as such below ‘6’. From the records, it appears that numerical gradings of the appellant from 1983 upto 1988 were as follows :-

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<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
7	7.4	7.5	7	5.3	7

H The appellant, who appeared in person, did not contest the stand of the respondents that because of his getting ‘5.3’ in the year 1987, no extension could have been given to him, in view of the criteria fixed for consideration of the

extension, to be given to Air Vice Marshal, after his retirement. But according to the appellant, the High Court should have and now this Court can moderate the grading for the year 1987, in view of the fact that adverse remarks for the year 1986, in view have been expunged. According to us, neither the High Court not this Court can moderate, the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a Court shall not venture to assess and appraise the merit or the grading of an officer. If the Appraisal Report of the year 1987 giving the appellant '5.3' stands, then according to the criteria fixed, the case of the appellant could not have been considered for extension.

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The appellant fairly conceded that unless an extension for a year is granted to him, he could not have been considered for the post of Air Marshal, because no post of Air Marshal was available till 31.10.90. when the appellant retired.

Accordingly, taking all facts and circumstances into consideration, we direct the respondents to consider the case of the appellant for promotion to the post of Air Vice Marshal with reference to the year 1988, ignoring the adverse remarks which have already been expunged. Any such decision should be taken within four months from the date of this judgment. The appeals filed on behalf of the appellant as well as Union of India are disposed of in terms of the order passed above.

I.S.G.

Appeal disposed of.