

PETITIONER:
UNION OF INDIA AND OTHERS

Vs.

RESPONDENT:
S.L. DUTTA AND OTHERS

DATE OF JUDGMENT 16/11/1990

BENCH:
KANIA, M.H.
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SHARMA, L.M. (J)

CITATION:
1991 AIR 363 1990 SCR Supl. (3) 173
1991 SCC (1) 505 JT 1990 (4) 741
1990 SCALE (2) 1051

ACT:
Air Force Services--Promotions of Air Vice Marshals as
Air -Marshals--Change in Policy--Whether valid.

HEADNOTE:

Respondent No. 1 was commissioned in the Indian Air Force on July 17, 1954 and in course of time was promoted to the post of Air Vice-Marshal. He belonged to the Navigation Stream of the Indian Air Force and was the senior most officer in his cadre. When he was due for promotion as Air-Marshal, the Ministry of Defence, Govt. of India, by its memo dated October 9, 1987, changed the policy governing promotions, with the result the prospects of an officer in the Navigation Stream of the Air Force earning a promotion to the post of an AirMarshal were substantially reduced. Due to the change in the promotional policy, respondent No. 1 was unable to get promotion as AirMarshal and he retired as an Air Vice-Marshal on 31.10.1988. However, before his retirement he filed a writ petition in the Gauhati High Court challenging the validity of new promotion policy. On 16.9.1988, an interim order was made by the 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 the said interim order before this Court by means of a special leave petition. The Court granted special leave, allowed the appeal of the appellants on 4.10.1988 and set aside the interim order passed by the High Court holding that the interim order was erroneous. On 16.2.1990, the High Court allowed the writ petition filed by respondent No. 1 holding, inter alia, that the new promotion policy was not flawed after an indepth study and directed that the case of respondent No. 1 be considered on the basis of the previous policy. Hence this appeal by the Union of India and others.

The main thrust of the argument advanced by the Union is that the Court should be reluctant to interfere where the validity of a policy is concerned, as it was primarily for the Government to frame a policy and to change it unless it could be shown that the change was mala fide or for an ulterior purpose or that the same had been made without application of mind. On the other hand respondent No. I

inter alia

174

contended that the change of policy affected the conditions of his service; and that it was arbitrary.

Allowing the appeal, this Court,

HELD: 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. [181E]

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 is of a highly technical or scientific nature. These are matters regarding which judges and lawyers can hardly be expected to have much knowledge by reason of their training and experience. [182A-C]

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. [182D]

As the proposed change of policy 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. On the basis of this circumstances alone, the court cannot hold that the change of policy was arbitrary. [182E-F]

Vincent Panikurlangara v. Union of India and Ors., [1987] 2 SCC 165 at 173 and 175; Liberty Oil Mills and Others v. Union of India and Others, [1984] 3 SCC 465 at 478; M/s. Shri Sitaram Sugar Co. Ltd. and Anr. v. Union of India and Ors., [1990] 1 Judgment Today SC 462 at 484; Railroad Commission of Texas v. Rowan and Nichols Oil Co., 311 US 570-577, 85 Led. 358, 362; State of Maharashtra and Anr. v. Chandrakant Anant Kulkarni and Ors., [1981] 4 SCC 130; K. Jagadeesan v. Union of India and Ors., [1990] 1 Judgment Today 247; A.S. Sangwan v. Union of India and Others, [1980] Suppl. SCC 559 at 561, referred
175

JUDGMENT: