A RAVINDERA SADASHIO KSHIRSAGAR
V.
UNION OF INDIA & ORS.
Civil Appeal No. 1611 of 2009

MARCH 16, 2009

B **[LOKESHWAR SINGH PANTA AND B. SUDERSHAN REDDY , JJ.]**

Service law: Seniority – Inter se seniority – Armed Forces – Ministry of Defence (Navy) made detailed scheme providing C *that for maintaining inter se seniority, Commanders (Time Scale) and Lieutenant Commanders who were finally superseded became eligible for promotion to Captain (Time Scale) only after all erstwhile acting Commanders (Select List) were promoted to Captain (Select List)/Captain (Time Scale)/* D *retired – Contention that the scheme if implemented then no Commander (Time Scale) would ever be considered for promotion to the rank of Captain (Time Scale) for a long time as most of them would retire before they could be considered for promotion to the rank of Captain (Time Scale) – Held: Not* E *tenable – The scheme protected the inter se seniority amongst officers as per Navy list, which provided that Commander (Select) and acting Commander would rank senior to Commander (Time Scale) even if Commander (Time Scale) has put in more years of service as Commander (Time Scale).*

F **The AVS Committee considered the issues of cadre stagnation and mobility in Armed Forces and made certain recommendations. The Army and Air Force duly promoted all its commissioned officers who had completed 20 years reckonable commissioned services in compliance of** G **recommendation of the AVS report. Pursuant thereto, by communication dated 14.3.2005, the Ministry of Defence (Navy) made a detailed scheme providing promotions to non-select ranks. It provided that in order to maintain**

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existing inter-se seniority, Commanders (Time Scale) and Lieutenant Commanders who were finally superseded would became eligible for promotion to Captain (Time Scale) only after all erstwhile acting Commanders (Select List) are promoted to Captain (Select List)/Captain (Time Scale)/retired.

Appellant joined Indian Navy in 1978 as a Commissioned Officer and was serving in the rank of Commander (Time Scale) w.e.f. 10.1.1999. Aggrieved by the stipulations contained in the communication dated 14.3.2005, appellant and others made representation which were rejected. Thereafter appellant filed writ petition, which was dismissed.

In appeal to this Court, it was contended for the appellant that if the impugned Naval policy is implemented then no Commander (Time Scale) could ever be considered for promotion to the rank of Captain (Time Scale) for a long time as most of them would retire before they could be considered for promotion to the rank of Captain (Time Scale).

Dismissing the appeal, the Court

HELD: 1. It is not correct to say that the Navy under the garb of 'service specific requirements' rendered the entire policy and the AVS report which was accepted by the government of India nugatory. The AVS report itself makes it explicitly clear that its primary focus was on the restructuring of the officers' cadre of the Army, while making it applicable to the other two services including the Navy which has to work out its service specific requirements including the additional vacancies. The Government's directive dated 11.3.2005 and the criteria and guidelines for grant of rank of Captain (Time Scale) dated 2.11.2005 were evolved by Integrated Headquarters, Ministry of Defence (Navy) in the light of the observations so made in the AVS Report. In the criteria and guidelines

A so evolved it has been noticed that immediate grant of promotion to Commanders (Time Scale) with 26 years of commissioned service to the rank of Captain (Time Scale) is untenable since it would have an impact on the sanctity of the inter se seniority. The Navy Headquarter was B conscious that the implementation by the two other services was based on mitigating circumstances such as their geographical dispersion and selective placement. The Indian Navy policy is practical and based on time tested, functional and traditional norms followed even pre-C AVS Committee. The guidelines clarified that the new regulations do not preclude promotion of erstwhile graded Lt. Commanders (subsequently not placed on select list for promotion to Captain) or as to one Commanders (Time Scale) and Lt. Commanders (N D graded) finally superseded to the rank of Captain (Time Scale), but only appropriately deferred till such time the provisions of para 3 (c) of the guidelines are complied with. [Para 11] [443-G-H; 444-A-E]

2. There is no dispute about the fact that as on the E date of communication dated 11.3.2005, there were 1300 Commanders (Select List) who were senior to the Commanders (Time Scale). There is also no dispute that Commander (Select List) is always by selection and the Commander (Time Scale) is automatic on completion of F 26 years of service subject to other requirements. The High Court is right in coming to the conclusion that if the communication is to be read as suggested, it would result in all Commanders (Time Scale) though in the Navy list are juniors to Commanders (Select List) or acting G Commanders (Select) have to be considered for promotion to the post of Captain(Time Scale). Precisely for that reason the Headquarter (Navy) came to the conclusion that it would affect the command and control structure in the Indian Navy. [Para 14] [445-E-G]

H 3. The appellant like most other Commanders would

retire before they could be considered for the promotion to the rank of Captain (Time Scale). No Commander (Time Scale) would be eligible for consideration till 2015 by which time most of them would have retired. It was, however, explained that about 420 Officers (130 erstwhile Commanders (Time Scale) and 290 'N' graded Lt. Commanders (Lt. Commanders who were not select listed for Commanders) would continue to be eligible for promotion. It was further explained that para 3 (a) of the Government letter dated 11.3.2005 was aimed to bring the implementation of the AVS Report in consonance with Regulation 151 of Navy Regulations. The whole idea as is evident from para 3 (a) of the communication dated 11.3.2005 of the Government of India was to protect the inter se seniority amongst officers as per Navy list. Regulation 151(5)(d) of Regulations for Navy Part-III provides that Officers promoted by time scale to the rank of Commander shall retain on the 'non-selection' list and their inter-se seniority as before their promotion. It is thus clear that the Commander (Time Scale) would continue to be junior to all Commanders (Select) including the acting Commander (Select). If the policy as suggested by the appellant is to be implemented the rank structure in the Navy which determines the command and control structure would get radically altered. The Naval list provides that Commander (Select) and acting Commander would rank senior to Commander (Time Scale) even if Commander (Time Scale) has put in more years of service as Commander (Time Scale). If the guidelines and the policy dated 11.3.2005 are understood as suggested by the appellant the entire protection given to the Commander (Select List) in order to maintain inter-se seniority in the naval list would get disturbed. In the circumstances, the High Court came to the right conclusion to repel the submission based on Article 14 of the Constitution of India. [Para 16] [446-B-H; 447-A]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1611 of 2009

From the Judgement and Order dated 19.10.2007 of the Hon'ble High Court of Judicature for Bombay, in Writ Petition No. 1503 of 2006.

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L. Nageshwar Rao, Anish Dayal, Nikhil Mehra, Rashmi Nandakumar, Anitha Shenoy, for the Appellant.

Gopal Subramanium, ASG Satyakam, B.K. Prasad, D.S. Mahra, for the Respondent.

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The Judgement of the Court was delivered by

B.SUDERSHAN REDDY, J.

1. Leave granted.

D 2. This appeal arises from the judgment and order dated 19.10.2007 of the High Court of Judicature at Bombay dismissing the Writ Petition No. 1503 of 2006 filed by the appellant herein.

E 3. Brief facts needed for disposal of this appeal are as under :

4. The appellant joined the Indian Navy on 1.1.1978 as a Commissioned Officer and is at present serving in the rank of Commander (Time Scale) w.e.f. 1.1.1999. In or about May, 2001 F the Army Headquarters formulated certain proposals and forwarded them to the Ministry of Defence drawing attention to certain shortcomings and imbalances in the organizational structure of the Officer Cadre. After examining the proposals so made, the Ministry of Defence constituted a Committee in July, G 2001 under the Chairmanship of the then Secretary, Ministry of Non-Conventional Energy Sources, Shri Ajai Vikram Singh (hereinafter referred to as "the AVS Committee") to examine the issues and make recommendations within three months. However, the AVS Committee submitted its report to the Ministry of Defence in January, 2003. The main issue considered by the H

AVS Committee was Cadre stagnation and mobility. The AVS Committee after extensive deliberations inter alia recommended:- (a) to grant time based rank of Lieutenant Colonel at 13 years of service as per the criteria drawn by the Army Headquarters; (b) corresponding reduction in age profile of junior officers through grant of substantive ranks of Captains and Majors early to make it compatible with the overall aim of brining down the age profile of officers. The Committee also recommended that the rank of Colonel (Time Scale) be granted at 26 years of service. The Military Secretary Branch, Army Headquarters, New Delhi issued guidelines for implementation of the recommendations so made by the AVS Committee on 21.12.2004. The Army and Air Force duly promoted all its Commissioned Officers who had completed 26 years reckonable commissioned service as on 16.12.2004 in compliance of the recommendations made by the AVS Committee.

5. As regards the Navy, the Ministry of Defence, Government of India vide its communication dated 11.3.2005 addressed to the Chief of Naval Staff conveyed the sanction of the President of India for revision of the various terms and conditions of service of Naval Officers, except Medical and Dental Officers. The communication dealt with the details about substantive promotions. In the said communication it was further stated that the detailed criteria and procedure for grant of substantive rank of Captain (Time Scale) to be notified by the Integrated Headquarters of Ministry of Defence (Navy).

6. Thereafter, the Integrated Headquarters of Ministry of Defence (Navy) vide its communication dated 14.3.2005 made a detailed scheme providing promotions to non-select ranks. The Communication makes it clear that the fundamental tenet for implementation of the scheme is to protect *inter-se* seniority among officers as per Navy list. The objective sought to be achieved is to lay down the modalities with minimum impact on command and control structures and traditional naval ethos. It further provides that in order to maintain existing *inter-se*

A seniority, Commanders (Time Scale) and Lieutenant Commanders who have been finally superseded will become eligible for promotion to Captain (Time Scale) only after all erstwhile acting Commanders (Select List) had been promoted to Captain (Select List)/Captain (Time Scale)/retired.

B 7. Being aggrieved by the above said stipulation of the conditions the appellant herein and as well as the other similarly situated Naval Officers made several representations to the respondents pointing out that such stipulation makes the Presidential Order null and void. The representations were C rejected. Thereafter the appellant herein challenged the policy decision of the Integrated Headquarters of the Ministry of Defence (Navy) by filing the writ petition No. 1503 of 2006 before the High Court raising several contentions. The High Court vide the impugned order dated 19.10.2007 came to the conclusion D that the petition has no merit and accordingly dismissed the Writ Petition. Hence this appeal.

8. We have heard the learned counsel for the appellant as well as the respondents and perused the impugned judgment and the material made available on record.

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9. Before adverting to the submissions made by the learned senior counsel Shri L. Nageshwar Rao and as well as Shri. Gopal Subramanium, learned Additional Solicitor General it is required to notice that the AVS report is primarily focused F on the restructuring of the officer cadre of the Army. It is no doubt true, the report is made applicable in nearly equal measure to the other two services also. However, the Navy and the Air Force are required to work out their service specific requirements including the additional vacancies, which will be required at G various ranks on operational/functional grounds. The report makes it clear that the vacancies that may be necessary to meet service specific requirements are to be pursued by the individual service Headquarters separately.

10. Be that as it may, the Government of India/Ministry of H Defence vide its communication referred to herein above

addressed to the Chief of Naval Staff while conveying the sanction of the President of India for revision of various terms and conditions of service of Naval Officers, except Medical and Dental Officers which inter alia provides as under:

"2 - Substantive Promotion: To reduce the age of profile and supersession levels in the Navy, as also to improve vertical mobility, promotion to substantive ranks will be made based on eligibility criteria indicated below:

Rank	Eligibility Criteria
a) sub Lieutenant	On commissioning
b) Lieutenant	02 years as Sbt.
c) Lieutenant	04 years from date of promotion to substantive Lt.
d) Commander	11 years from date of promotion to substantive Lt.
e) Captain (time scale)	26 years of reckonable commissioned service"

Clause 5 of the same provides as under:

"Those serving in the rank of Commander (Time Scale) will now be eligible for grant of substantive rank of commander. The existing rank of Commander (Selection) shall remain applicable till the existing Commanders (Selection) are either promoted to the rank of Captain (Selection) or Captain (Time Scale) or are retired. No further promotions to Commander (Selection) shall be made."

11. We must make it clear at the threshold that we are not impressed by the contention that the Navy under the garb of 'service specific requirements' rendered the entire policy and the AVS report which was accepted by the government of India nugatory. The report itself makes it explicitly clear that its primary focus was on the restructuring of the officers' cadre of the Army,

A while making it applicable to the other two services including the Navy which has to work out its service specific requirements including the additional vacancies. The Government's directive dated 11.3.2005 and the criteria and guidelines for grant of rank of Captain (Time Scale) dated 2.11.2005 were evolved by
B Integrated Headquarters, Ministry of Defence (Navy) in the light of the observations so made in the AVS Report. In the criteria and guidelines so evolved it has been noticed that immediate grant of promotion to Commanders (Time Scale) with 26 years of commissioned service to the rank of Captain (Time Scale) is
C untenable since it would have an impact on the sanctity of the *inter se* seniority. The Navy Headquarter was conscious that the implementation by the two other services has been based on mitigating circumstances such as their geographical dispersion and selective placement. The Indian Navy policy is
D practical and based on time tested, functional and traditional norms followed even pre-AVS Committee. The guidelines clarified that the new regulations do not preclude promotion of erstwhile graded Lt. Commanders (subsequently not placed on elect list for promotion to Captain) or as to one Commanders (Time Scale) and Lt. Commanders (N graded) finally
E superseded to the rank of Captain (Time Scale), but only appropriately deferred till such time the provisions of para 3 (c) of the guidelines are complied with. Para 3 (c) of the guidelines reads as under:

F "Erstwhile R1/R2 graded Lt Cdrs. subsequently not placed on Select List for promotion to Captain and erstwhile Cdrs. (Time scale) and Lt Cdrs. (N graded) (finally superseded), will become eligible for promotion to Captain (Time Scale) only after all erstwhile Ag. Cdrs. (Select List) (PB 3/04)
G have been promoted to Capt. (Select List/Capt (Time Scale)/or have retired."

12. It was further contended by the learned senior counsel for the appellant that paragraph 3 of the communication dated 11.3.2005 cannot have the effect of deferring the promotion of
H Commander (Time Scale) who have already completed 26

years of service. It was also submitted that if the impugned Naval policy is implemented then no Commander (Time Scale) could ever be considered for his promotion to the rank of Captain (Time Scale) for a long time as most of them will retire before they can be considered for promotion to the rank of Captain (Time Scale). A B

13. In reply, the learned Additional Solicitor General based on the material made available on record submitted that if the Commanders (Time Scale) are to be promoted to the rank of Captain (Times Scale) immediately as claimed by the appellant, it would result in supersession of 1300 Commanders (Select List) in a single stroke who were senior to the appellant. The learned Additional Solicitor General highlighted that the terms and conditions of service of the Indian Navy are different from the Army and the Air force. It was also submitted that it is not as if the Commander (Time Scale) has been denied promotion to the rank of Captain (Time Scale) but it has only been deferred. C D

14. In our considered opinion, the High Court before whom the similar submissions were made rightly rejected the same. There is no dispute about the fact that as on the date of communication dated 11.3.2005 there were altogether 1300 Commanders (Select List) who were senior to the Commanders (Time Scale). There is also no dispute that Commander (Select List) is always by selection and the Commander (Time Scale) is automatic on completion of 26 years of service subject to other requirements. The High Court is right in coming to the conclusion that if the communication is to be read as suggested, it would result in all, Commanders (Time Scale) though in the Navy list are juniors to Commanders (Select List) or acting Commanders (Select) have to be considered for promotion to the post of Captain(Time Scale). Precisely for that reason the Headquarter (Navy) came to the conclusion that it would affect the command and control structure in the Indian Navy. Obviously, that is not the object sought to be achieved by implementing the AVS report. E F G H

A 15. Whether the Communications dated 14.3.2005 and 2.11.2005 have the effect of denying the chance of promotion to the Commander (Time Scale)? Whether they are violative of Article 14 of the Constitution of India?

B 16. It appears from the material on record that the appellant like most other Commanders will retire before they can be considered for the promotion to the rank of Captain (Time Scale). No Commander (Time Scale) will be eligible for consideration till 2015 by which time most of them would have retired. It is, C however, explained that about 420 Officers (130 erstwhile Commanders (Time Scale)) and 290 'N' graded Lt. Commanders (Lt. Commanders who have not been select listed for Commanders) would continue to be eligible for promotion. It is further explained that para 3 (a) of the Government letter dated D 11.3.2005 was aimed to bring the implementation of the AVS Report in consonance with Regulation 151 of Navy Regulations. The whole idea as is evident from para 3 (a) of the communication dated 11.3.2005 of the Government of India is to protect the *inter se* seniority amongst officers as per Navy E list. Regulation 151 (5) (d) of Regulations for Navy Part-III provides that Officers promoted by time scale to the rank of Commander shall retain on the 'non-selection' list and their *inter-se* seniority as before their promotion. It is thus clear that the Commander (Time Scale) will continue to be junior to all F Commanders (Select) including the acting Commander (Select). If the policy as suggested by the appellant is to be implemented the rank structure in the Navy which determines the command and control structure would get radically altered. The Naval list provides that Commander (Select) and acting Commander G would rank senior to Commander (Time Scale) even if Commander (Time Scale) has put in more years of service as Commander (Time Scale). If the guidelines and the policy dated 11.3.2005 are understood as suggested by the appellant the entire protection given to the Commander (Select List) in order H to maintain *inter-se* seniority in the naval list would get disturbed.

In the circumstances, the High Court came to the right conclusion to repel the submission based on Article 14 of the Constitution of India. A

No other contention is urged.

17. For the aforesaid reasons, we find no merit in this appeal and the same is, accordingly dismissed. B

D.G. Appeal dismissed.