IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2751/2007

Wg. Cdr. R V R Prasad ...Petitioner through Mr. V. Sekhar, Sr. Adv. with Ms. Prasanthi Prasad, Adv.

Versus

Union of India & Ors. ...Respondent through Ms. Jyoti Singh, Adv.

Date of Hearing:November 12, 2007

Date of Decision:December 20, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the Judgment should be reported in the Digest? Yes

: VIKRAMAJIT SEN, J.

J U D G M E N T

1. In this writ petition the Petitioner prays for the issuance of a writ of mandamus or any other appropriate writ, order, or direction, quashing and setting aside the Order dated 8.3.2007 by which his application for

Resignation of Commission had not been acceded to, on the ground that it is arbitrary, illegal and violative of the Fundamental Rights guaranteed under Article 226 of the Constitution and also being violative of the provisions of the statutory policies of the Respondent. We are unable to appreciate any manner in which the Petitioner's Fundamental Rights enshrined in Article 21 of the Constitution have been transgressed. If punctilious approach were to be adopted the Petition could be dismissed for this narrow reason. This Petition is one amongst the batch of petitions where the request for premature retirement and/or resignation has been declined by the Respondents. However, in other petitions a Writ of Certiorari has been prayed for.

2. This distinction between writs of mandamus and certiorari is relevant for the reason that the impugned Order is indubitably a cryptic one and does not contain the reasons on which the decision is predicated. In all other similar matters where certiorari has been prayed for we

have also called for the records for our perusal. Mr.V. Sekhar, learned Senior Counsel for the Petitioner, however, contends that since reasons are not contained in the impugned Order itself, it must be set aside on that short ground.

3. The following observations found in the celebrated decision in *Mohinder Singh Gill -vs- The Chief Election Commissioner, New Delhi*, AIR 1978 Supreme Court 851 are relevant to this question:

> "8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):
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> > "Public orders publicly made, in exercise of a statutory authority cannot be construed in the

> light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".
>
> Orders are not like old wine becoming better as they grow older.

In somewhat similar vein, in *Babu Verghese -vs- Bar Council of Kerala*, (1999) 3 SCC 422, the Apex Court was called upon to consider a case under the Advocates Act. While doing so it applied the same principles earlier enunciated in *Taylor -vs- Taylor*, (1875) 1 Ch D 426 and in *Nazir Ahmad -vs- King Emporer*, AIR 1936 Privy Council 253. The Apex Court observed as follows:

> "It is the basic principles of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule traceable to the decision in Taylor Vs. Taylor which

was followed by Lord Roche in Nazir Ahmad Vs. King Emperor."

What these pronouncements prescribe is that the records should contain the reasons on which the decision is predicated, and that these reasons or justifications cannot be added upon. No prescribed prescriptions as to the format of a decision on the dispute before us exists. We cannot ignore the wisdom of not giving full details in the rejection Order where, in doing so, sensitive information may pass into public domain.

4. Mindful of the above precedents we had asked for the personal records of the Petitioner to be made available for our perusal and consideration. Whilst reasons have not been disclosed or stated in the impugned Order, a reading of the records bears out that the Respondents are not attempting to add to the grounds or arguments as the case progresses. The reasons for rejection are available on the record itself. Wherever Certiorari is an appropriate relief it is advisable to call for the records of the case. A Division Bench of this Court had considered this conundrum in

great detail in WP(C) No.15557/2004 titled S.K. Aggarwal, Ex. Brig. -vs- Union of India decided on 24.8.2000 wherein it was inter alia opined that so long as there is some relevant material available on the record on which the action can be sustained, the Writ Court should be slow to exercise its extraordinary jurisdiction. We are in respectful agreement with this exposition of the law. The argument of Mr. Shekhar, that the Order should itself contain all the grounds which have led to the rejection of the application, is accordingly rejected.

5. Regarding the subject matter of this Petition we will merely record the contention of Ms. Jyoti Singh, learned counsel for the Respondent, that one of the reasons for rejection of the Petitioner's request for premature retirement/resignation of Commission is the shortage of manpower/officers. Learned counsel for the Petitioner has strenuously relied upon the statements made before Parliament, as recently as in May, 2006, giving details of as many as 275 pilots/officers of the Indian Air Force (IAF)

who have been released from service during the period January, 2003 to April, 2006. The Report reads as follows:-

Thursday, May 11, 2006

Ministry of Defence

EXODUS OF TRAINED PILOTS

Rajya Sabha

A statement indicating cost of initial training of a pilot in the Indian Air Force is annexed.

The requests for acceptance of premature retirement/resignation from the pilots are considered as per the Government instructions. The details of the pilots who have been released from the service during the last three years (from Jan 2003 to April 2006) as indicated below:-

Flying Officer	-	01
Flight Lieutenant	-	18
Squadron Leader	-	31
Wing Commander	-	166
Group Captain	-	55
Air Commodore	-	03
Air Vice Marshal	-	01
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Total		275
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Most of the pilots, who have been released from service had completed more than 1000 flying

hours. The premature retirement/resignation of pilots has not affected the operational status of the squadron. Sustained efforts are made to review and augment the manpower requirements of the Indian Air Force on a continuous basis.

(emphasis added)

The job profile and job requirements of the pilots in the Indian Air Force (IAF) and the pilots in commercial airlines are different and not comparable. The sanctioned strength of pilots in the IAF is 3236 and the actual strength is 2922 (as on 1-8-2005). The improvement in the job profile of the IAF pilots is a continuous phenomenon keeping in view the job specific requirements and operational necessity.

236 pilots of the Indian Air Force proceeded on premature retirement in the last three years. The main reasons are supersession, low medical fitness or compelling personal reasons. Information about these pilots joining private airlines is not available with the Government.

6. The argument that statements made before Parliament need not be accurate has only to be stated to be rejected. Accurate statements are required to be made in

Court as well as before Parliament. Both the Forums require candid, precise and truthful statement. However, the Petition can be decided *de hors* this contention and, therefore, we do not propose to delve further into this point. There can be no gainsaying that while judicial Review is available against every administrative order, its exercise would be unjustified if the Writ Court merely substitutes its own preferred reasoning with that of the Administration. In other words, in order to justify the exercise of the extraordinary powers under Article 226 of the Constitution, where an administrative decision is being set aside, it must be perverse or suffer from Wednesbury unreasonableness, rendering it akin to a decision which no reasonable person would arrive at. It is within these parameters that we must review the impugned Order.

7. Having perused the records as well as the documents available on the records of this Court it is quite evident that the Petitioner was duly counselled and was granted an Interview at the highest echelon of the IAF, nay at its very

pinnacle, that is, by the Chief of Air Staff. It has rightly been contended that so far as the Petitioner is concerned it is premature to contend that his career prospects have been adversely affected. This is for the reason that he is eligible for consideration for promotion to the next rank of Group Captain only in the year 2010 by PB2/2010.

8. No person can be permitted to take advantage of his own wrong. This legal dictum can be extrapolated to the facts of the present case inasmuch as it is the Petitioner who had sought compassionate posting at Hyderabad for various reasons which we need not go into any further. In fact, two adverse Career Certificates have been furnished by the Petitioner, referring to his application for requesting a posting on compassionate grounds and stating that he was fully aware that if his request was acceded to, it may have an adverse effect on his career. In the event, the Petitioner has enjoyed a posting at his instance at Hyderabad for five years, commencing from the year 2000. Indeed, the Petitioner possesses extraordinary assessments

as a Fighter Pilot and as an Instructor of younger pilots. The records are replete with these commendations. The grievance that he has been assigned Prithvi Missile System (PMS) is attributable to his own request as it is contemporaneous to his request for compassionate posting. Since the Petitioner wanted to remain in or in close proximity to Hyderabad, the Respondents cannot be faulted for assigning him to whatever duties were then available. It has been argued by Mr. Shekhar that the Petitioner had thereafter been posted to a Fighter Unit, but this decision was withdrawn by the Respondents themselves. These are exigencies of service stemming from the Petitioner's request for compassionate posting, which the Writ Court must be loathe to venture into. It is incorrect for the Petitioner to contend that he was assigned to PMS contrary to his desire. It could well be that this was the only avenue available to the Respondents to accommodate the Petitioner so far as his request for compassionate appointment was concerned. We have been supplied with a list of Officers trained in the PMS with an analysis drawn

by the Petitioner that there is surplus of such trained officers. The Petitioner is presently posted at Air Headquarters in a non-flying assignment for the simple reason that all officers and pilots cannot always be assigned flying duties throughout their career. It is indeed speculative that the Petitioner shall continue henceforward either as a Prithvi Missile Specialist or in a non-flying posting.

9. The decision of the Respondents not to accede to the Petitioner's request for premature retirement or for that matter for resignation cannot be seen as perverse. Wherever the Armed Forces are concerned the Writ Court must be constantly mindful of the fact that discipline is the foremost consideration. An eloquent argument was put forward that the Petitioner is quite willing to forgo all his pensionary and other benefits. This argument, however, assumes that these rights have already come into force in his favour, which is a fallacious assumption. The Petitioner must serve for twenty years before any such entitlement

enure to his benefit.

10. This is not a case where it would be appropriate to exercise the extraordinary powers under Article 226 of the Constitution of India. Petition is without merit and is dismissed.

December 20, 2007
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(VIKRAMAJIT SEN)
JUDGE

(S.L. BHAYANA)
JUDGE