

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%
Date of Reserve : 29.02.2008
Date of Decision : 14.03.2008

+1. **WP(C) No.9109/2005**

Sqn. Ldr. Himanshu Goswami F (P) Petitioner
S.NO. – 22728 (L)
88 Pocket B, Phase II,
Ashok Vihar, Delhi – 52

Versus

1. UOI, Secretary,
Ministry of Defence
South Delhi Block,
New Delhi
2. Chief of Air Staff,
Vayu Bhawan,
New Delhi ... Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Rajiv Shakdher, Sr.Advocate with
Mr.Rakesh Gosain, Advocate

For the respondents : Ms.Jyoti Singh, Advocate

2. **WP(C) No.20269/2005**

Sqn. Ldr. V. Shukla Petitioner

Versus

1. Union of India
Secretary, Ministry of Defence,

South Delhi Block,
New Delhi

2. Chief of Air Staff,
Vayu Bhawan,
New Delhi Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Rajshekhar Rao and Mr.Akashdeep
Singh.

For the respondents : Ms.Jyoti Singh

3. **WP(C) No.11359/2005**

Sqn. Ldr. P. Bakshi Petitioner

Versus

1. Union of India
Secretary, Ministry of Defence
South Delhi Block,
New Delhi
2. Chief of Air Staff,
Vayu Bhawan
New Delhi Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Manmohan, Sr.Advocate with
Mr.Rakesh Gosain,

For the respondents : Ms.Jyoti Singh,

CORAM :
HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE J.M. MALIK

- | | | |
|-----|---|-----|
| (1) | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| (2) | To be referred to Reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest? | Yes |

J.M. MALIK, J.

*

1. The core issue in all the abovesaid three petitions is whether all the petitioners who are working as pilots/Sqn. Leaders are entitled to discharge from service/pre-retirement from Indian Air Force. The facts and questions of law are almost identical hence this judgment would dispose of all the three petitions.

2. Case of Sqn. Leader Himanshu Goswami (F) WP (C)No.9109/2005.

The petitioner in response to a public notification in the year 1990-1993 applied and was selected for the flying branch of Indian Air Force. After successful training he was commissioned as pilot and rose to the rank of Sqn. Leader having specific duty of flying Transporter Aircraft and other secondary duties as per the directions and orders of the respondents as NDA candidate.

Thereafter, the petitioner carried out his duties with full zeal and zest for a period of nine years. The mother of the petitioner, who was employed with a Bank, suffered with arthritis, migraine attacks with hyper tension and cholesterol problem. She had to resign her job in 2001. The doctors had certified her to be a case of total disability. She is bed-ridden and needs constant care and attention. The petitioner is her only child. The father of the petitioner is aged about 65 years, suffers from a host of old age related diseases and is unable to do the needful. He is jobless since 1996 and is totally dependent upon the petitioner. It is also pointed out that nowadays the life of the old couples and senior citizens in the cosmopolitan city is not safe due to law and order position prevalent here. Keeping in view the above-said circumstances, the petitioner filed an application for premature discharge/release from service on compassionate grounds with effect from 20th January, 2005. The said application of the petitioner was duly recommended and verified by the medical officer of the department and Air Officer Commanding of the respondents. However, contrary to their policy dated 7th March, 2003 the respondent rejected the prayer of the petitioner vide

letter dated 18th March, 2005.

3. Case of Sqn. Ldr V.Shukla WP (C) No.20269/2005. The petitioner in response to a public notification in the year 1992-1996 applied and was selected for the flying branch of Indian Air Force. After successful training he was commissioned as Pilot in the Indian Air Force and rose to the rank of Sqn. Leader having specific duty of flying Transport Aircraft and other secondary duties as per the directions and orders of the respondents. Thereafter, he carried out his duties with full zeal and zest. The petitioner applied for premature discharge on the following compassionate grounds. Firstly, in the year 2002, his mother was diagnosed for suffering with acute depression, sugar and hypertensive. She was operated upon thrice. Secondly, the petitioner is a resident of a village situated within the areas of Allahabad and Dehradun. His brother has been non-cooperative. The above-said property is unsafe. Lastly, the younger sister of the petitioner is not getting married and now she is over age. During the pendency of his above-said application his mother suffered an eye haemorrhage and lost her vision. The father of the petitioner is also stated to be old who suffers with multiple

diseases and is unable to render any help to his mother. On 24th August, 2005, the petitioner was interviewed by Mr. K.D. Singh, ACS PO AVM at Air Head Quarter and his application was referred for sympathetic consideration. But Mr.Singh displayed his inability to help the petitioner in this context. His application for premature release was ultimately rejected on 26th August, 2005 without assigning any reason.

4. Case of Sqn. Ldr. P.Bakshi WP(C) No.11359/2005. The petitioner was commissioned as Pilot in the Indian Air Force and rose to the rank of Sqn. Leader having specific duty of flying Helicopter during the years 1989-1993. Thereafter, within the span of nine years he carried out his duties with full zeal and zest. He was transferred four times. His father suffered a Heart attack and was operated for triple vessel bypass surgery at Escorts Heart Institute, New Delhi on 14th February, 2002. The petitioner's father did not recover fully and further suffered other multiple health problems. In February, 2004, his gall bladder had to be removed. His health deteriorated and he was re-admitted in ICU where he was diagnosed with an acute form of pancreatitis. In April, 2003 the father of the petitioner suffered

from repeated loss of consciousness and fainted for no apparent reason on four occasions. He was medically treated and had been on regular medication for “syncope” to prevent seizure. The father of the petitioner, who is aged 63 years, is not able to look after himself. Petitioner's mother suffered from arthritis and B.P. She is also not able to render much of assistance. The health of the father of the petitioner further deteriorated as he is now also ailing from hyper tension and cervical spondalitus. He needs constant care and attention with medical aid. For security reasons they cannot be left alone because the life of old couples and senior citizens nowadays are in danger due to law and order position prevalent in the city.

Common Facts

5. It was averred in all the petitions that the similarly situated officers were given the premature retirement. The petitioners have furnished the list of seventeen to twenty such like officers who were given the pre-retirement. It was pointed out that this Court, too, vide its order dated 17th February, 2002 had discharged one Sqn. Leader Gautam Banerjee, in Writ Petition No. 7825/2001. On these grounds, the present writ petitions were

filed with the prayer that the respondents be directed to discharge the petitioners from service on the aforesaid grounds.

6. The respondents have listed the following defences in their counter affidavits. Pursuant to the selection of the petitioners, they underwent three years training at the cost of the State. This was followed by the flying training, the cost of which is in crores of rupees, which was fully borne by the State. Lakhs and crores of rupees are spent over a pilot to train him for the said purpose. The petitioners' training has cost the public ex chequer substantially. To train another officer and to meet his service requirements would be an additional liability both financially as well as operationally. The request made by the petitioners were considered on merits and though their request was rejected, yet they were advised that they could seek a posting near their hometowns for resolving their problems. The applications of the petitioners were considered in accordance with the guidelines of the existing policies by the competent authority. The respondents have placed on record a copy of the human resource policy dated 7th March, 2003 as Annexure R-1, which according to the respondent provides broad guidelines in respect to premature

retirement/release of officers and has been sincerely adhered to in the case of the petitioners. It is explained that the actual purpose for seeking premature retirement is not infirmity of parents but to seek employment for better prospects. Had the intention of the petitioners been to look after their parents, they were offered with an opportunity to seek a posting near their hometown while continuing in service but the same was not availed. It is contended that the facts of the above-said seventeen/twenty officers are different from the facts of the instant case. It is explained that as a matter of fact petitioner P.Bakshi has brother and sister. Despite this fact the petitioner was advised to apply for a posting so as to enable him to continue in service and to look after his father. As per the terms and conditions of service of the Indian Air Force, all personnel are to serve in any part of India or abroad. It is alleged that in the shield of father's illness the petitioner wants to be discharged so that he can join the private service and earn monetary benefits without appreciating the factum of expenses borne by the Government to give him such an extensive training of a pilot. It is admitted that though the petitioner's application was

recommended by the Commanding Officer, yet it was not approved by the competent officer, Air Head Quarter due to lack of merit. The petitioner was advised vide letter dated 4th May, 2005 that he could seek a posting of his choice so as to enable him to resolve his difficulties.

7. We have heard the counsel for the parties and gone through the written notes filed by them. The counsel for the petitioner Sqn. Ldr Himanshu Goswami argued with vehemence that the position of the mother of the petitioner is precarious. It was submitted that she took VRS in the year 2001. The father of the petitioner, who is aged about 69 years, is also sick. It is explained that while deciding the case of the petitioner the concerned authority did not apply its mind and did not give any reason for rejecting the application. It was also submitted that the other similarly situated persons were given the release/discharge order. The petitioner furnished a number of such cases and the respondents have failed to give any satisfactory reply. Again, the petitioner has already completed fourteen and a half years of service and this fact should have been taken into consideration. It was argued that the posting

tenure in Delhi is only two years and posting in Delhi would not serve any purpose. It was also pointed out that the petitioner does not have any vested right and he is ready to give undertaking to the Court that he will not join any other private job. The petitioner has made a query under the RTI Act. The following opinion was supplied to him:

“(a) Per Capita cost of Training of PC Pilot (1992-93) (Rs. In lakhs)

Streams	NDA Cost	Non-NDA Cost
Fighter	221.54	221.86
Transport	193.29	193.61
Helicopter	110.43	110.75

(b) SSC Helicopter Pilot for 1992-93 The cost of training of PC & SSC is same as the syllabus of PC and SSC pilot is same. Hence, the cost as mentioned above for helicopter stream can be applicable both for PC and SSC.

(c) SSC (Women) Helicopter Pilot for 2005-06 As the syllabus for PC and SSC pilot is same, the cost of training for both is also same. Per capita cost (Rs in lakhs) of Helicopter pilot of NDA and Non NDA stream is Rs. 239.88 and Rs. 240.90 respectively”

It was brought to the notice of the Court that a lot of pilots (example of five were cited) of varying seniority were arbitrarily released by Air Force over the period running upto five years during and after the process of petitioner’s application on almost the same grounds and a few on frivolous ones such as Sqn.

Leader J.S. Ahuja on the ground, “Evincing lack of interest in service” and four others whose cases were not covered in the abovesaid policy. Father of Mukesh Sehgal was suffering from arthritis and he was released. However, in case of petitioner it was stated that the petitioner’s case was not meritorious enough. The respondents have failed to cite a single case of “only child” whose application was turned down. The petitioner was treated discriminately and partially.

8. The learned counsel for Sqn. Leader V. Shukla made the following submissions. The petitioner was interviewed on his application for premature release on 24th August, 2005 where he was dissuaded from leaving the services. It was submitted that no alternative posting was ever suggested to him during the said interview as alleged in the counter affidavit. The application of the petitioner was rejected vide impugned order dated 26th August, 2005. The relevant portion of the impugned order runs as follows:

“Request for premature retirement for service on compassionate grounds in respect of the above mentioned officer has been considered at an

appropriate level at this HQ and has not been agreed to.”

It is argued that this is completely a non-speaking order containing no reasons in support thereof. The petitioner has filed CM No. 7012/2007 seeking a direction to the respondents to consider the recent medical records pertaining to his parents which clearly establish that the petitioner’s request for pre-retirement is genuine one and he is covered by the above-said policy. It was further explained that the above-said request was not responded. It was also submitted that the petitioner was offered a posting to either Allahabad or Dehradun. But when the petitioner moved a formal application dated 14th November, 2006 for his posting close to his home town in order to be nearer to his parents, he was instead posted further away to Hyderabad despite the existence of vacancy against which he could be adjusted in Hindon, Ghaziabad. It was also argued on behalf of the petitioner that he has recently gone through a divorce. Again he has been placed in low medical category and therefore rendered unfit for flying itself since 19th March, 2006 which has

added further mental and emotional trauma suffered by him. In his written submissions the petitioner has named six persons, who according to him, are similarly situated. According to him, they do not satisfy the requirement of a pre-retirement policy but have been granted premature retirement. It is alleged that arbitrary discrimination has been meted out to the petitioner. The application of the petitioner is not considered in accordance with the aforesaid policy.

9. Counsel for the P.Bakshi submitted that the petitioner has got one married brother who is settled in Romania and a married sister who is settled in Dubai. The father of the petitioner is an old man of 64 years. He was retired from BHEL, a public sector company. He draws no pension and has no source of income. It was argued that the petitioner's appeal for reconsideration of his discharge was also turned down. The petitioner had filed an application under the Right to Information Act. He came to know that the respondent had obtained information regarding his father's ailment of heart by pass and syncope from Doctor (Aviation Mission). Though the father of the petitioner was not examined, yet an opinion was given that a heart patient of sixty

four years with syncope seizure and cervical spondylitis requires no medical attention. However, the same doctor opined that the medical conditions and surgeries stated by the petitioner are genuine. It was also stressed that a number of officers are applying for release on vague reasons such as :

- Failing business of father.
- Looking after property of grandfather.
- Feeling of discontentment.
- Better prospects in civil.
- Grounds of in-laws.
- Cases of release to officers who were in relation/proximity of Senior Air Ranks.

Again, some officers were trained on particular type of aircraft, given time to clear their civil license and then given premature release. It was further submitted that the cost incurred on the training of a pilot of Indian Air Force is recovered in ten years. The Short Service Commissioned Officers have a fixed tenure of ten years and/or free to leave after the expiry of that term. If the petitioner is discharged he will lose the benefit of pension which would be in excess of Rs. 30 lakhs. Again, no Airlines would take a helicopter pilot to fly its passenger

WP(C) No.9109/2005 Page 15 of 38

airliner. The petitioner himself has been out of flying for two years. The learned counsel for the petitioner lastly pleaded that the petitioner is ready to give an undertaking to the effect that in case he is discharged from service, he will not join any such like service in any private airline.

10. In order to embolden their respective cases the learned counsel for the petitioners have cited few authorities. In *Major S.K. Jain Vs. Union of India and Ors.* [2000 (54) DRJ 188], the judgment given by one of us (HMJ A.K.Sikri), it was held,

“The competent authority, on the basis of para 4, observed that as grounds advanced by the officer were not covered under the laid down criteria, his application may be rejected. The aforesaid record shows that the authorities were influenced mainly by the consideration that the examples in para B of the guidelines dated 20.1.1979 did not specifically stipulate the grounds mentioned by the petitioner. Thus the approach adopted by the Central Government was clearly erroneous. As already pointed out, the examples in para B are only illustrative. The application of the petitioner was rejected only on the basis that the reasons given by the petitioner are not covered by specific instances mentioned therein and the authorities did not look into this aspect as to whether the grounds mentioned by the petitioner could be considered as 'extreme compassionate grounds'. The Army Hqrs. had recommended the case of the petitioner which clearly implies that reasons given by the

petitioner were treated as falling under 'extreme compassionate grounds' by Army authorities. Therefore it was necessary for the competent authority to examine whether the recommendation of the COAS treating the reasons given by the petitioner as 'extreme compassionate grounds' was proper or not, instead of confining the consideration to the specific instances mentioned in para B and coming to the conclusion that the case of the petitioner did not fall in those specific instances. Competent authority thus committed an error in treating these specific instances as exhaustive rather than illustrative."

11. In *Union of India Vs. Mohan Lal Capoor and Ors.* [1974 1 SCR 797], it was held,

"A place on the approved select list certainly confers a right to be appointed, according to Rules 8 and 9, to cadre posts. Although, the process of assessment by the Selection Committee, and, thereafter, approval by the Union Public Service Commission does not involve observance of the "*audi alteram partem*" rule in all its rigour and with all its implications, yet, it seems unfair to deprive a person suddenly of either an expectation to be placed, and, even more, of a place on a finalised select list, which confers certain valuable rights on him, without informing him of even the reasons for his proposed supersession before its approval. At any rate, Article 16 of our Constitution gives rights to Govt. servants to be treated fairly and squarely, reasonably and impartially in matters relating to service."

It was further held,

“We next turn to the provisions of Regulation 5(5) imposing a mandatory duty upon the Selection Committee to record "its reasons for the proposed supersession". We find considerable force in the submission made on behalf of the respondents that the "rubber-stamp" reason given mechanically for the supersession of each officer does not amount to "reasons for the proposed supersession". The most that could be said for the stock reason is that it is a general description of the process adopted in arriving at a conclusion. This apology for reasons to be recorded does not go beyond indicating a conclusion in each case that the record of the officer concerned is not such as to justify his appointment "at this stage in preference to those selected".

In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections if that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based

and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5(5) were not complied with. We think that reliance was rightly placed by respondents on two decisions of this Court relating to the effect of non-compliance with such mandatory provisions. These were : *Associated Electrical Industries (India) Pvt. Ltd. Calcutta v. Its Workmen* [AIR 1967 SC 284] and *the Collector of Monghyr and Ors. v. Keshav Prasad Goenka and Ors.* [1963 (I) SCR 98]."

12. In *Badrinath Vs. Government of Tamil Nadu* [2000 (8) SCC 395], the Apex court was pleased to hold,

"88. We may, however, point out that it is not as if there are no exceptions to this general principle. The occasions where the Court issued a writ of certiorari and quashed an order and had also issued a mandamus at the same time to the State or public authority could be very rare but we might emphasise that the power of this Court to mould the relief in the interests of justice in extraordinary cases cannot be doubted. In *Comptroller & Auditor General of India v. K.S. Jagannathan*, (1986) 2 SCC 679, such a power on

the part of this Court was accepted by a three Judge Bench, Madan, J. referred to the observations of Subba Rao, J. (as he then was) in *Dwarkanath v. ITO*, AIR 1966 SC 81, wherein the learned Judge explained that our Constitution designedly used wide language in Article 226 to enable the Courts to 'reach justice wherever found necessary' and 'to mould the reliefs to meet peculiar and complicated requirements of this country'. Justice Madon also referred to *Rochester Corpn. v. R*, 1858 EB & E 1024, *R. v. Revising Barrister for the Borough of Hanley* 1912 (3) KB 518, *Padfield v. Minister of Agriculture, Fisheries and Food*, 1968 AC 997 and to a passage from *Halsbury's Laws of England*, 4th Edn. Vol. 1, p. 59. Finally Madon, J. observed:

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to

prevent injustice resulting to the concerned parties, the court *may itself pass an order or give directions which the government or the public authority should have passed or given* had it properly and lawfully exercised its discretion.”
(emphasis supplied)

We emphasise the words underlined in the above passage to the effect that the Court may in some rare situations itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion. The same view was expressed by another three Judge Bench in *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, even regarding disciplinary cases. Verma, J. (as he then was) observed (at SCC p. 762, para 18) as follows:

“The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, *it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.*” (emphasis supplied)

The underlined words reiterate the powers of this Court in rare and exceptional cases.”

13. In *Major Rahul Shukla Vs. Union of India and Ors.*[59 (1995) *Delhi Law Times* 573 (DB)], it was held,

“11. An application for resignation may be rejected if it is not based on adequate and justifiable reasons. The over-riding consideration is whether the officer's continuance in service for a specific period is necessary to meet exigencies in a service and alternative arrangements cannot be made. Even in such a case the application for resignation cannot be rejected. It can only be held in abeyance. In the case at hand it is not the case of the respondent that the facts stated by the petitioner in his application for resignation were false or were not adequate or not justifiable. That finding could not have been arrived at in as much as the Colonel Commanding Officer having personally reviewed the application, was satisfied of the validity thereof. Any higher authority to form an opinion different from the one expressed by the Colonel Commanding Officer must have been possessed of material concrete enough to form a different opinion which it is not so.”

14. In *Bidi Supply Company Vs. Union of India* [AIR 1956 SC 479], Justice Vivian Bose while agreeing with the then Hon'ble Chief Justice has observed,

“14. It is elementary that no two things are exactly alike and it is equally obvious many things have features that are common. Once the lines of demarcation are fixed, the resultant grouping is capable of objective determination but the fixing of the lines is necessarily arbitrary and to say that governments and legislatures may classify is to invest them with a naked and arbitrary power to discriminate as they please. Faced with the inexorable logic of this position, the learned Judges who apply this test are forced

to hedge it round with conditions which, to my mind, add nothing to the clarity of the law. I will pass over the limitations with which the classification test is now judicially surrounded, namely that it must be "reasonable", it must not be "discriminatory" or "arbitrary", it must not be "hostile"; there must be no "substantial discrimination" and so forth, and will proceed at once to a rule that is supposed to set the matter at rest. The rule is taken from the American decisions and was stated thus in *The State of West Bengal v. Anwar Ali Sarkar* [[1952] S. C. R. 284, 334.] :

"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".

Mukherjea, J. (as he then was) said at page 321 *ibid* that

"the classification should never be arbitrary, artificial or evasive. It must rest always upon real and substantial distinction bearing a reasonable and just relation to the thing in respect to which the classification is made; and classification made without any reasonable basis should be regarded as invalid".

In another case, *Ram Prasad Narayan Sahi v. State of Bihar* [[1953] S. C. R. 1129.], the same learned Judge said at page 1139 -

"but such selection or differentiation must not be arbitrary and should rest upon a rational basis, having regard to the object which the legislature has in view".

Ivor Jennings puts it another way :

"Among equals the law shall be equal and shall be equally administered and that like shall be treated alike".

xxx xxx xxx

23. After all, for whose benefit was the Constitution enacted? What was the point of making all this poth about fundamental rights? I am clear that the Constitution is not for the exclusive benefit of governments and States; it is not only for lawyers and politicians and officials and those highly placed. It also exists for the common man, for the poor and the humble, for those who have business at stake, for the "butcher, the baker and the candlestick maker". It lays down for this land "a rule of law" as understood in the free democracies of the world. It constitutes India into a Sovereign Democratic Republic and guarantees in every page rights and freedom to the individual side by side and consistent with the overriding power of the State to act for the common good of all."

15. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar* [(2003) 4 SCC 579], it was held,

13. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there

is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See State of U.P. and Ors. v. RenuSagae Power Co. and Ors. (AIR 1988 SC 173(SIC))). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. IN general a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

xxx xxx xxx

18. Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

19. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

".....Judicial review has I think, developed to a stage (SIC) when, without reiterating (SIC) analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality" as follows:

"By 'irrationality' I mean what can by now be succinctly referred to as Wednesbury unreasonableness'. It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

16. He has also cited an authority reported in *Tandon Brothers Vs. State of W.B. and Others* [(2001) 5 SCC 664] which is also to the same effect.

17. All these arguments carry no conviction. It must be borne in mind that it cannot be laid down as a rule of thumb that every army man or pilot has to be given pre-retirement/discharge. Every case has to be decided on its own merits. Reality should dominate the court's mind. The Court is bound to approach the problem more gingerly and realistically. The service jurisprudence applicable to the Civil Services cannot be ipso facto extended and applied to the Defence Forces which are a class by themselves and therein considerations of secrecy and of safety, security and sovereignty of the country have vital role to play enabling personal interest to be scrutinized for or giving way to the larger interests of the nation. The right of army personnel to resign from his commission or Army cannot be wide and absolute

as it may be in Civil Services. An application filed by an army man for resignation may be rejected if it is not based on adequate and justifiable grounds. The overriding consideration is whether the officer's continuance in service for a specific period is necessary to meet exigencies in a service and alternative arrangements cannot be made. This is an indisputable fact that during the previous years the respondents were liberal in granting the discharge or premature retirement but that position has undergone a tremendous change. The number of pilots is reducing day by day, there is exodus of pilots, and therefore, the respondents are not that liberal in granting their applications.

18. The paramount consideration is the national interest and whether the application made by the applicant is genuine. The petitioners were informed time and again that they could be transferred near their hometowns. The explanation given by the petitioners that they are not willing to come near their hometowns as the maximum stay at the transferred place cannot be more than two years, is by no means satisfactory. The petitioners could have taken the chance to serve their parents and should have got themselves transferred to their hometowns. After the

lapse of two years, they could have made another request in this respect. To my mind, their lies no rub and in such circumstances the stay of a pilot in Delhi or other hometown can be extended for more than two years. It is clear that the petitioners do not want to make avail of the said opportunity which was offered to them time and again. The counsel for the petitioners themselves admitted that the petitioners cannot attend to their mother or father for twenty four hours. It is not humanly possible to sit with the patient for the whole of your life. They will have to do some work to earn their livelihood. It is, therefore, easy to cull out the malafide intention of the petitioners. The counsel for the respondents argued that even if they make applications for their transfer to their hometown in future those will be considered. In addition, we further direct that in case such an application is made the same shall be considered favourably.

19. However, the case of Sqn. Ldr Vs. Shukla is somewhat different. The counsel for the respondents assured the court that his request for transfer near his hometown will be considered. We hereby give one more opportunity to the petitioner to move a fresh application in this context which must be decided

favourably. At the same time it will not be necessary to give him a station of his choice like Ghaziabad. Allahabad or Dehradun will be a better place and enable the petitioner to serve his parents.

20. It must also be noticed that the problems faced by the petitioners are similar to most people of their seniority in their Department.

21. Moreover, the above-said comparisons with other officers, if any, would be odious. The exact facts of the above-said seventeen/twenty officers are not before us. They were not arrayed as respondents. The Court cannot make any comparison with those officers. The parents' infirmity of every officer differs from the other. Nothing was brought on record which may go to show that the cases of the petitioners are similar to the case of other seventeen/twenty officers.

22. Again, in the instant case reasons were specified. The learned counsel for the petitioner himself argued that the petitioner was told that his case was not meritorious enough for grant of premature release (see the written synopsis on behalf of the Sqn. Leader Himanshu Goswami). It is also an admitted fact that certain candidates were heard and interviewed. Again it can

be well assumed that there cases did not fall within the said policy. There is no evidence of apparent hostility or enmity or malice or bias. The respondents appear to have no guile. A Division Bench of this court in *WP(C) No. 15557/2004* decided on 24th August, 2007 titled as *S.K.Aggarwal, Ex. Brig. Vs. Union of India and Ors.* was pleased to hold,

“19.....While the show cause notice does not specify the reasons why trial of the petitioner by a general court martial was inexpedient or impracticable, the official record produced by the respondents before us contains those reasons which we have already extracted in the earlier part of this judgment. It is not, therefore, a case of no reasons having been recorded. It is fairly well settled that so long as the contemporaneous official record bears the reasons on the basis of which the authority passing the order has arrived at this conclusion, it does not matter whether the same were enumerated in the formal expression of that order.....”

23. A Division Bench of this Court in *WP(C) No.10630/2006* titled as *Major Gen B.D. Wadhwa, AVSM Vs. Union of India and Ors.* decided on 17th October, 2006 was pleased to observe,

“For a decision not to be hit by Rule of Wednesbury, it is essential that there should be patently no infirmity in the decision-making process and it ought not to have been arbitrary. The relevant materials must not have been ignored by the authorities nor should they have taken into consideration the irrelevant materials

to create an edge in favour of one and against the other. Over-emphasizing a particular aspect of the criteria, would certainly not be in consonance with the doctrine of fairness. The absence of detailed reasoning may be tolerable but there has to be at least some iota of reasoning on record to support the decision-making process and the ultimate decision. A decision which has been taken in bad faith on extraneous consideration or under extraneous circumstances or there has been a disregard of public policy, would be liable to be assailed before the Court."

24. In *Union of India and Ors. Vs. E.G. Nambudiri* [(1991) 3 SCC 38], it was held that *where* a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. Where a vested right is adversely affected by an administrative order, or where civil consequence ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for the decision as there is no general rule that reasons must be given for administrative decision. Order of an

administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice, that reasons should be given for decisions. However, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of the citizen. It is therefore desirable that reasons should be stated. If any challenge is made to the validity of an order on the ground of its being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the Court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records.

25. Now we turn to the shortage of pilots faced by this country where unemployment is the biggest problem. The facts of WP(C) No. 10279/2006 titled as *Sunil Kumar Vs. Union of India* [DB]

decided on 31st August, 2006 by a Division Bench of this Court are almost similar. In this case, it was held,

“The fact which cannot be disputed and in fact has not been disputed is that the petitioner was deputed in Army quota seat in the IIT for completing M.Tech in ‘Laser and Electro Optics’ at the Government cost. The admission to that college was given to the petitioner from the seats reserved for army officers and the petitioner could have hardly got a seat on his own in that college to do such a specialized course. Having taken the benefit of being allotted seat in a college of great repute to do his post graduation at Government expense and after filling up a bond in favour of the respondents, would by itself be a sufficient ground for the respondents not to accept the request of petitioner for resigning from permanent commission. It is specifically pleaded in the case of the respondents that there is shortage of graduate/post graduate engineers in the Core of EME and the request of the petitioner cannot be accepted in view of exigencies of service and in public interest.”

26. Again, it must be borne in mind the above mentioned amount spent on training etc. is incurred from the coffers of govt. Ex Chequer. The court is not supposed to encourage those pilots who want to leave Indian Air Force for their own material benefits. In *Sqn. Ldr. Shkul Tyagi Vs. UOI and Ors. [2006(86) DRJ 1 (DB)]*, it was held,

“9.....True, the petitioner averred in his petition that cases of officers of identical problems were considered by the authorities and they were given premature retirement but as we have noticed in the policy dated 7th March, 2003, that cases of premature retirement on compassionate grounds shall be determined on the circumstances of the each case.

10. The petitioner, on whom the Government of India had spent huge amount by imparting flying training to him and had undergone three years extensive flying training while in National Defence Academy and other academies now wants to quit abruptly because of the stated family problem. We would not hesitate in stating that at the time of joining the elite force the petitioner was aware of the exigencies of serving as an Air Force Officer and cannot now be permitted to cite reasons of conjugal bliss. We may further state that at the time when cadets pass out they take oath to make a supreme sacrifice if the occasion arise and even otherwise having joined Indian Air Force, and having received expensive training at the cost of the State exchequer, he should not have thought of quitting Air Force particularly abruptly when he has a long and enthusiastic career ahead. Domestic problems do come in the way of armed personnel. These forces are trained to overcome these difficulties and not to succumb to these problems which we would call tiny problems in comparison to the interest of the nation.

11. Even otherwise we are not satisfied if the petitioner is quitting because of family problems. The possibility that the petitioner desires to go for better prospects in terms of money as there is a growing need of commercial pilots because of induction of numerous private airlines cannot

be ruled out. We do not say so on surmises but the petitioner has himself stated in clause D of grounds of writ petition that the right to employment for better prospects is available to the petitioner and same cannot be denied by the authority having no power to do so. This gives an indication that the possibility that the petitioner may join some other airlines or some other employment for better prospects cannot be ruled out. We cannot lose sight of the fact that the petitioner was trained at considerable public expense to serve his motherland.

13. The respondents had offered to place the petitioner at a station closest to his wife's place of working. Notwithstanding the dismissal of this petition if the petitioner makes a request for such a posting within six weeks from today, the respondents shall grant such a request as per the offer made in court for a transfer to a station proximate to his wife."

. Aggrieved by order of this court the petitioner in the abovesaid case namely Shkul Tyagi had approached the Apex Court which vide its order dated September 19, 2006 in Civil Appellate Jurisdiction Civil Appeal No. 4197/2006 was pleased to hold,

"This apart, while ordering notice in the Special Leave Petition, this court has ordered limited notice on the question as to why the petitioner should not be permitted to take premature release on full reimbursement of the money spent by the Union of India on his training. The learned senior counsel appearing on behalf of the appellant herein submitted that the appellant

is not willing to take premature release on full reimbursement of the money spent by the Union of India on his training. This Court by ordering limited notice has rejected the request of the appellant of premature release from service. We see no ground to interfere with the order passed by the High Court. The appeal is accordingly dismissed. There shall be no order as to costs.”

30. Again, in a recent case decided by a Division Bench of this Court in WP(C)No. 2751/2007 titled as *Wg. Cdr. R V R Prasad Vs. Union of India and Ors.* decided on 20th December, 2007, it was held,

“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.”

31. After having subjected the abovesaid aspects to a closet

scrutiny, we find that the claims made by the petitioners in their respective petitions are lame of strength. The petitions are therefore dismissed but there shall be no orders as to costs.

However, it is mentioned here that the above said petitions were filed in the year 2005. Enough time has since elapsed. There may be change of circumstances consequently nothing will debar the petitioners to move fresh applications for discharge, if necessary, for re-consideration by the respondent.

The respondent will be at liberty to decide their applications, if moved, as per above said policy, law and rules.

J.M. MALIK, J.

March 14, 2008
dc

A.K. SIKRI, J.