

Supreme Court of India

Col. D.D. Joshi And Others vs Union Of India And Others on 1 March, 1983

Equivalent citations: 1983 AIR 420, 1983 SCR (2) 448

Author: D Desai

Bench: Desai, D.A.

PETITIONER:

COL. D.D. JOSHI AND OTHERS

Vs.

RESPONDENT:

UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 01/03/1983

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

ERADI, V. BALAKRISHNA (J)

CITATION:

1983 AIR 420 1983 SCR (2) 448

1983 SCC (2) 235 1983 SCALE (1) 226

CITATOR INFO :

R 1990 SC1086 (10)

ACT:

Ante-dating the commission-Meaning of- Army Instruction No. 78/78 dated 4th November 1978 prescribing an upward revision in the period of benefit by ante-dating whether discriminatory and violative of Articles 14 and 16 of the Constitution-Army Instruction No. 78/78 clause (d) and Note appended thereto scope of Interpretation of Statutes - Necessary party - Joinder of.

HEADNOTE:

Under the Army Instruction No. 3115/48 dated August 16, 1948, applicable to the Army Medical Corps, the commissioned officers appointed to the service were held eligible for the benefit of ante-dating their commission at the time of entry into AMC to the extent as follows: (a) he held an approved whole time appointment in a recognised civil hospital for a period of six months or more an ante-date for six months; (b) he had a postgraduate Diploma requiring 9 months to qualify the same, an antedate not exceeding six months; (c) he had any post graduate higher qualification, an antedate for a period of twelve months and subject to the maximum limit of 18 months; (d) if he is covered by (a+b+c) or (a+b)

or (a+c) or (b+c) above. This was reduced to twelve months from 1-1-1966 but enlarged to thirty months from 1-4-78 by the impugned Army Instruction No. 78178 dated November 4, 1978. By the said Instruction, while the concession at clause (a) remained unchanged ante-dating under clause (b) was revised to 12 months if the course for Post Graduate Diploma involved 12 months study and under clause (c) the ante-dating was raised to 24 months. Under the Note appended, not only the provisions were brought into force with effect from 1-4-78 but the seniority of officers who joined with Postgraduate qualifications between 1.10.76 and 31-3-78 were protected by grant of requisite ante-date so that they do not become junior to officers joining on or after 1-4-78.

The petitioners who joined AMC between 1954 and 1963 and on March 15, 1970 and who had Post Graduate qualifications in different specialities at the time of obtaining Commission, being aggrieved by the amendment introduced by Army Instruction 78/78, challenged it under Article 32 complaining of discriminatory treatment in the matter of granting ante-dating benefit, which is directly linked to seniority and promotion prospects, inasmuch as the choice of date, viz., 1-4-78 is arbitrary.

Dismissing the petitions, the Court,

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HELD: 1. Reckoning seniority in service from a deemed date of commission in respect of the officers with P.G. qualifications or previous service in Civil hospital etc. as prescribed in the Army Instruction is styled as benefit of ante-dating. [455P-G]

2.1. If the language of a provision is clear, unambiguous and inelible, and does not admit of two meanings, the court is bound to construe in its ordinary sense because it is well recognised that language used speaks the mind and reveals the intention of the framers. If the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible it would be wrong to discard the plain meaning of the words used in order to meet a possible injustice. In such a situation, it would be impermissible to call an aid any external aid of construction to find out the hidden meaning. The cardinal rule of construction of a statute is that it should be construed according to the intention expressed in the statute itself. [457 D-E]

Commissioner of Income Tax Madras v. M/s. T. V. Sundaram Iyengar (P) Ltd. [1976] 1 S.C.C. 77 @ p. 84-85; Capper v. Beldwin [1965] 2 Q.B. 53 @ 61 referred to.

2.2. On a plain grammatical construction of para 6 (a) (b) and (c) of Army Instruction No. 74 of 76, it is clear that the benefit of ante-dating the commission will be available at the time of being commissioned as an officer of the Army Medical Corps i.e. at the time of appointment and

the qualifications must have been acquired prior to joining the AMC. The expressions "at the time of appointment" and "higher qualifications obtained prior to appointment" provided a terminus a quo for the eligibility of the benefit when the benefit of ante-dating can be granted and claimed. [457 C-D]

2.3. The object, the purpose and the intention underlying the provisions was to compensate for the extra time, money and energy spent in acquiring post graduate qualification equipped with which the men enter service and this object, purpose or intention underlying the provision is clearly manifest in the language used in the relevant paragraphs of the Army Instruction bearing on the subject by providing that eligibility for gaining the benefit of ante-dating the commission, namely, having a post graduate qualification shall be taken into account at the time of entering the service. Two pre-conditions have to be fulfilled before the benefit can be acquired i.e. (1) the candidate must have a post-graduate qualification obtained prior to appointment, and (2) that such qualification must have been acquired and must be available at the time of appointment. Therefore, not only the language of the relevant provision leaves no room for doubt but the object and intention underlying the provision clearly buttressed the meaning of the provision. [458 P-H, 459 A]

3.1. The enlarged period of ante-dating the commission introduced from April 1, 1978 and made admissible to only those entering on or after 1-4-78 cannot be said to be either violative of Article 14 or 16 of the Constitution. [463 D-B]

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3.2. An employer has a right to grant incentive for attracting better qualified persons to the service offered by the employer. If the incentive is devised with a view to offering inducement to those wavering whether to enter a certain service or not those who were already in service and had that benefit once, cannot be heard to say that this new incentive should be retrospectively enforced so as to give them the same benefit. No incentive can be retrospective, though conditions of service can be retrospectively made. [460 P-H, 461 B]

3.3. The Note appended to the amended Army Instruction No. 78/78 providing the benefit of enlarged period of ante-dating being made available to new entrants only will have no pernicious tendency of dividing a homogeneous class. In the matter of incentive offered at the time of entering the service, there is no homogeneous class. The new comers may become members of the class after being commissioned. They are outside the cadre before entrance. They do not belong to the class of existing members of the AMC. They derive the benefit of ante-dating simultaneously with becoming the members of AMC. They do not get any benefit denied to others after becoming the members as benefit of ante dating

is available at the time of appointment only. Recruitment and Retirement are a continuous process. Those who are recruited at the relevant time will have to satisfy the conditions for recruitment then in force and would be entitled to the benefits that may be available to the new entrants. [462 B-D, F-G]

3.4. In *Union of India and Anr. v M/s. Parameswaran Match works Etc.* [1975] 2 SCR 573, the Supreme Court held that the choice of a date as a basis of classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the Circumstances of the case. In the present case, the object underlying the benefit extended to the new entrants determines the choice of date. Inducement for attracting fresh recruits from the market must come into force by a certain date. The employer can legitimately determine keeping in view the demands of public service, from which date the inducement will be available. In such a situation choice of date is not wholly arbitrary and has not the tendency to divide a homogenous class. There is no differential treatment. The district possibility is that there would be vertical splitting of a homogenous class.

[462 H. 463A-D]

3.5. The benefit of ante-dating was devised long before the recommendations of the Third Pay Commission were formulated and each petitioner got the benefit consistent with the Army Instruction in force at the time of being commissioned in the AMC. A subsequent enlargement of the period, not pursuant to the recommendation of the Pay Commission and held out as an inducement for recruitment, from the market cannot be claimed as a matter of right by those who have already availed of the benefit of earlier occasion. [464 A-C]

Purshotam Lal Dhingra and Ors v. Union of India AIR 1973 SC. 1088. referred to.

3.6. The contention that limited retrospectively is given by impugned Army instruction, is not correct. It is infact a case of marginal adjustment showing fair play in action. [465 E-F]

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4. Impleading of proper and necessary parties to an adjudication will arise only in cases of individual claim or claim of seniority by one person against specified others, but a question of interpretation could be given because it would be binding on the Union of India, the presence of others is unnecessary. Union of India would have merely to give effect to the decision of the Supreme Court. Therefore, the absence of those who may by the Supreme Courts' interpretation of a provision be adversely affected in the facts and circumstances of the case need not be necessarily here, and if the relief could have been granted the same would not have been denied on the ground that proper parties

were not before the Court. [465 G-H, 466 A-B]

JUDGMENT :

ORIGINAL JURISDICTION : Writ Petitions Nos. 3685-91 of 1982 and 5636 of 1980.

(Under article 32 of the Constitution of India). MR. Ramamurthi and Mrs. Indra Sawhney for the Petitioners.

N.C. Talukdar and V.B. Sahariya and Miss A. Subhashni for the Respondents.

The Judgment of the Court was delivered by DESAI, J. Commissioned officer belonging to Army Medical Corps ('AMC' for short), having post graduate qualifications in different specialities at the time of obtaining commission have approached this Court under Article 32 complaining of a discriminatory treatment in the matter of granting antedating benefit which is directly linked to seniority and promotional prospects.

Petitioners in the first batch of petitions were granted commission in AMC between 1954 and 1963. Petitioner in the second petition was commissioned as a regular officer in AMC on March 15, 1970. There are in all 154 commissioned officers including the petitioners belonging to AMC who are similarly situated and who according to the petitioners suffered the same discriminatory treatment. The petition is not in a representative capacity. Petitioners assert that the decision in this group of petitions would affect roughly 147 other officers.

Petitioners held post graduate qualifications in different branches of medical science and some of them held an approved wholetime appointment in a recognised civil hospital for a period of six months or more prior to being commissioned in AMC.

There is a provision for giving the benefit of ante- dating the commission for varying periods, if the commissioned officer at the time of entry fulfils prescribed qualification. The earliest available reference is to Army Instruction No. 31/S/48 dated August 16, 1948 which provided as under:

"(a) An officer who has held an approved wholetime appointment in a recognised civil hospital for a period of six months or more will be eligible for an ante date of six months.

(b) A candidate will be eligible for the grant of an ante-date not exceeding six months if he, at the time of selection, is in possession of a post graduate Diploma in any branch of medical science recognised by the Indian Medical Council, provided that the candidate has to attend a course of Instruction in a recognised institution for at least 9 months to qualify for such Diploma

(c) At the time of appointment a candidate will be eligible for the grant of an ante-date not exceeding 12 months in respect of higher qualifications obtained prior to appointment. This will normally be granted for qualifications such as Doctor of Medicine, Master of Surgery. Fellow of the Royal College of Surgeons, Member of the Royal College of Physicians or an equivalent qualification obtained by examination from recognised Universities or colleges.

(d) In the case of a candidate who is eligible for an antedate under more than one of the preceding sub- para graphs, the maximum period of ante-date will be limited to eighteen months."

It appears that prior to December 31st, 1965 maximum period of ante-dating benefit was 1. 1/2 years which was reduced to one year from January 1, 1966. It was enlarged to maximum 2-112 years from April 1, 1978. Thus the period varied but the conditions for eligibility remained-more or less constant.

By Army Instruction No.74 of 1976, the period of ante- dating under clauses (a), (b) & (c) remained unchanged but the period under clause (d) was raised to 18 months in the aggregate.

By the impugned Army Instruction No. 78 of 78 dated November, 4, 1978, a further upward revision in the period of ante-dating the commission by amending Army Instruction No. 74 of 76 was prescribed. By this amendment, the period prescribed in clause (a) above remained unchanged. The period of ante-dating prescribed in clause (b) was revised from 6 months to 12 months and the period of instruction was revised from 9 months to 12 months. In clause (c), the period of 12 months was revised to 2 years and in clause

(d), the aggregate was upward revised from 12 months to 2-

112. years. A note was appended to this amendment which according to the petitioners introduces the discrimination. It reads as under:

"The above provisions are effective w.e.f. 1.4.78. However, the seniority of officers who joined with PG. qualifications during 1 to 1-1/2 years prior to 1.4.78 will be protected by grant of requisite ante-date so that they do not become junior to officers who have joined later with equivalent PG qualifications."

Petitioners contend that denial of the benefit of longer period of ante-dating the commission introduced by the amended Army Instruction No. 78 of 78 which became effective from April 1, 1978 to those commissioned officers who had requisite post graduate qualifications when they were commissioned prior to April 1, 1978, is grossly discriminatory and the choice of date is arbitrary It is alleged that those officers who had post graduate qualification at the time of being commissioned in AMC whether they were commissioned prior to 1.4.78 or thereafter for the purpose of conditions of service and treatment from one homogenous class and by the arbitray choice of date, this homogenous class is divided to pick and choose arbitrarily for the benefit of longer period of

ante-dating the commission and the classification is not based on any intelligible differentia and if there be any, it does not have any rational nexus to the objects sought to be achieved. It is further alleged that the choice of date for granting the benefit being thoroughly arbitrary and is not explainable on any rational hypothesis and therefore, on these grounds, the denial of benefit of extended period of ante-

dating to those who were commissioned prior to 1.4.78 is discriminatory and it is a denial of an equality of opportunity in the matter of employment and thereby violative of Art. 16 of the Constitution. It is alleged that in the matter of ante-dating the commission, there is no difference between those who had post graduate qualification when commissioned prior to 1.4.78 and those who were commissioned subsequent to that date and therefore, the earlier entrants have been treated with an evil eye and unequal hand and therefore this treatment is violative of the guarantee of equality in the matter of employment. Petitioners have averred in the petition that the benefit of antedating the commission to those who were commissioned after obtaining post graduate qualification irrespective of whether they have commissioned prior to a certain date or subsequent to that date, in the matter of conditions of service, cannot differently treated and they are entitled to same treatment irrespective of the date on which the commission was granted.

In the return filed on behalf of the respondents, it was specifically contended that the benefit of ante-dating is granted at the time of being commissioned in AMC and it is an incentive for attracting persons who applied for being commissioned after obtaining post graduate qualification. It is further averred that if even the old commissioned officers are given benefit of larger period of ante-dating, it would adversely affect a large number of officers of the AMC and would disturb the seniority of number of persons. It was further alleged that promotions are given on the basis of seniority. It was averred that those commissioned officers of AMC who have either acquired the post graduate qualification while in the service or who were merely M.B.B.S. at the time of being commissioned and those who had post graduate qualification when commissioned are all brought on a common seniority list and on the basis of this common seniority list, promotion to the higher rank is given. It was therefore, contended that if the earlier entrants are now given benefit of longer period of ante-dating, it would disturb the seniority and promotional prospects of a large number of persons and this is unjust and unfair. Number of charts have been annexed to the written submissions by the learned Additional Solicitor General showing that giving of benefit of longer period of ante-dating the commission to the petitioners and those similarly situated would give them an underserved advantage of jumping over a number of senior officers and the promotional prospect of many such persons would be adversely affected. The note at the foot of the Army Instruction No. 78 of 78 was explained by saying that since by the impugned Army Instruction the maximum period of ante-dating the commission is revised to 2-1/2 years, if those just above the marginal line meaning those who were commissioned shortly prior to 1.4.78, if not protected, would be adversely affected by those entering just after the date and would score a march over the earlier entrants and to protect them, it was provided that the seniority of officers who joined with PG. qualification during the 1/2 years prior to 1.4.78, will be protected by grant of requisite antedate so that they do not become junior to officers who have joined later with equivalent P.G. qualifications. It was said that there is rationale behind the note and it is incorrect to say that limited retrospective effect is given to the impugned Army Instruction No. 78 of 78.

At the outset, it is necessary to clear the ground by understanding what constitutes ante-dating the commission. It appears that the basic minimum entry qualification for being commissioned in AMC is graduate degree such as M.B.B.S. Those who enter service with post graduate qualification such as post graduate diploma or post graduate degree or those who enter after having held an approved whole time appointment in a recognised civil hospital for a period of not less than 6 months will be given a deemed date of commission prior to the actual date of commission depending upon the period for which under the relevant Army Instruction such person is qualified. In other words, such person would be deemed to have been commissioned at a date earlier than the date on which he is actually commissioned. This deemed date would be the date on which person concerned is deemed to have been commissioned and his seniority would be reckoned from such deemed date. This is what is styled in the relevant Army Instruction as benefit of antedating.

The commissioned officers in the AMC fall into three recognised divisions: (1) those who enter with post graduate qualification, (2) those who acquire post graduate qualification after being commissioned, and (3) those who enter as M.B.B.S. and never acquire any further post graduate qualification. It is not disputed that all the three are borne on the common seniority list because they formed one class of commissioned officers in AMC. Further upward promotion is generally based on this common seniority list.

The benefit of ante-dating is given to those who enter AMC with post graduate qualification and the benefit of ante-dating the commission is given at the time of being commissioned and not later on. The learned Additional Solicitor General pointed out that this benefit of antedating commissions is in vogue from 1948 but the period has varied according to the decision of the Government of India to provide incentive for entering AMC depending upon market conditions of recruitment. It appears that prior to December 1, 1965, maximum ante-dating admissible on account of post graduate qualification and for whole time hospital appointment was 1-1/2 years. From January 1, 1966, it was reduced to one year. Government of India was again approached for enlarging the period of ante-dating admissible on account of the post graduate qualification. Accepting the proposal, the maximum period for ante-dating the commission was revised from one year to 2 years with effect from April 1, 1978 with the marginal adjustment to avoid any undeserved benefit being given to the later entrants over earlier entrants to be adjusted as set out in the note appended to the impugned Army Instruction. It was however, strenuously urged that this benefit of ante-dating was admissible at the time of appointment because it was an incentive and not a benefit being conferred for all those who have already entered AMC. This submission is borne out by the language of the relevant Army Instruction.

Let us turn to the Army Instruction dated August 16, 1948. Para (b) which is relevant for the present purpose provided that 'A candidate will be eligible for the grant of ante-date not exceeding 6 months if he, at the time of selection is in possession of a post graduate Diploma etc.' The words 'at the time of selection' clearly connote the stage when benefit is admissible and reveals the object underlying the benefit of ante-dating. Similarly para 6(b) of Army Instruction No. 74 of 76 dated September 18, 1976 clearly provides that 'a candidate will be eligible for the grant of an ante-date not exceeding 12 months if he, at the time of appointment is in possession of a post graduate diploma in any branch'. Again attention should be focussed on the expression 'at the time of

appointment'. By the impugned amendment by Army Instruction No. 78 of 78 dated November 4, 1978 what is revised is the period, in para 6(b) and 6(e) raising it to 12 months and 2 years respectively retaining the condition of eligibility, namely, 'at the time of appointment'. In this connection, one can advantageously refer to para 6(c) of Army Instruction No. 74 of 76 which provided that 'at the time of appointment, a candidate will be eligible for grant of ante-date not exceeding 2 years (now revised) in respect of higher qualifications obtained prior to appointment'. The expressions 'at the time of appointment' and 'higher qualifications obtained prior to appointment' provided a terminus a quo for the eligibility of the benefit when the benefit of antedating can be granted and claimed. On a plain grammatical construction of para 6(a), (b) and (c) of Army instruction No. 74 of 76, there is no room for doubt that the benefit of ante-dating the commission will be available at the the lime of being commissioned as an officer in AMC, i.e. at the time of appointment and the qualification must have been acquired prior to joining AMC. If the language of a provision is clear, unambiguous and intelligible, and does not admit of two meanings, the Court is bound to construe it in its ordinary sense because it is well recognised that language used speaks the mind and reveals the intention of the framers. If the language of the statute is clear and unambiguous, and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used in order to meet a possible injustice. (See *The C.I.T., Madras v. M/s. T.V. Sundram Iyengar (P) Ltd.*(1). In such a situation, it would be impermissible to call in aid any external aid of construction to find out the hidden meaning. The cardinal rule for construction of a statute is that it should be construed according to the intention expressed in statute itself (see *Capper v. Bledwin*).(2) It would be presently pointed out that the underlying intention object and purpose for granting the benefit of antedating clearly bears out the meaning deduced by literal construction.

It is therefore necessary to go into the genesis of extending this benefit of ante-dating the commission. It is well known those who pursue study for higher qualification in any branch of medicine after acquiring the graduate degree had to put in formerly two years and now nearly three years in acquiring post graduate qualification. If the employer meaning the Union Government would get the benefit of person who has put in 2 to 3 years of advanced learning and training and is, therefore better equipped, he or she must be compensated in some measure. There would be qualitative difference in the service rendered by a graduate entrant and an entrant with post graduate qualification. The time, money and energy expended in acquiring higher qualification is sought to be compensated by grant of ante-dating benefit, therefore the benefit of ante-dating was devised and has been in vogue. Obviously, this benefit is to be given at the time of entering service. The recognition for the time, money and energy spent by an entrant with postgraduate qualification, compared to a graduate who enters AMC because of this minimum eligibility qualification is implicit in devising this benefit of ante-dating the commission. If the Union Government were to treat one who has the graduate degree on par with one who has a post graduate degree both are brought on the common seniority list for further promotion, obviously the person who spent sometime in acquiring post graduate qualification, the benefit of which would be available to the employer, would be at a comparative disadvantage in the matter of seniority and future promotion compared to one who came with only graduate qualification. It is this difference between a graduate entrant and entrant with post graduate qualification which was sought to be compensated by granting the benefit of ante-dating the commission. The object, the purpose and the intention underlying the

provision was to compensate for the extra time, money and energy spent in acquiring post graduate qualification equipped with which the men enter service and this object, purpose or intention underlying the provision is clearly manifest in the language used in the relevant paragraphs of the Army Instruction bearing on the subject by providing that eligibility for gaining the benefit of ante-dating the commission, namely, having a post graduate qualification shall be taken into account J at the time of entering the service. Two pre-conditions have to be fulfilled before the benefit can be acquired i.e. (1) the candidate must have a postgraduate qualification obtained prior to appointment, and (2) that such qualification must have been acquired and must be available at the time of appointment. Therefore, not only the language of the relevant provision leaves no room for doubt but the Object and intention underlying the provision clearly buttressed the meaning of the provision.

If the benefit of ante-dating the commission is not to be granted at the time of enacting the AMC to those who enter with post graduate qualification, how would their case be differentiated or distinguished from those who acquire post graduate qualification while in service. There is no qualitative difference in the relative merit of a person entering service having acquired post graduate qualification and one who acquires the same after entering the service, of course, since after acquiring the qualification. Yet the benefit of ante-dating is given to those who enter AMC with post graduate qualification, and not to those who acquire such qualification after being commissioned. It may be recalled that at present out of approximately 4,400 commissioned officers of AMC, there are about 154 commissioned officers who were commissioned after having acquired post-graduate qualification. As against this there are about 1227 officers of the AMC who acquired post-graduate qualification while in service. The quality of service rendered by both having identical qualification would not be materially different, and yet in the case of first, the benefit of ante-dating the commission is extended by the relevant Army Instruction while in the case of latter, no such benefit is given. This clearly establishes that the benefit of antedating the commission is to be made available only to those who had acquired post graduate qualification before being commissioned into the AMC. The recipient of the benefit gets seniority over earlier entrants and the seniority is determined, in the absence of another rule from the date of entry in the service or cadre. The seniority so acquired will enable such persons to be considered for promotion earlier than those over whom they score a march by ante-dating the commission. It is thus abundantly clear that the benefit of ante-dating the commission is available only at the time of entering the AMC. A subsequent enlargement of the benefit cannot be retrospectively made available to those who had already entered service and once availed of the benefit because their case thereafter would not be different from those who acquired post-graduate qualification after being commissioned as members of AMC.

It was strenuously contended on behalf of the petitioners that all commissioned officers of AMC who entered AMC after acquiring post graduate qualification formed one homogeneous class and by artificially selecting the date of April 1, 1978 for entitlement of enlarged period of ante-dating compared to those who had entered prior to that date has the pernicious tendency of dividing a homogeneous class into two compartments. It was urged that this classification is not based on any intelligible differentia and it has no rational nexus to the objects sought to be achieved by enlarging the period of entitlement. It was therefore, contended that the note at the foot of the amended Army Instruction No. 78178 which introduces discriminatory treatment in the matter of longer period of

ante-dating the commission by denying the same to those who entered prior to that date and extending it only to those who entered subsequent to that date, is violative of the guarantee of equality enshrined in Article 14 and is a denial of equality of opportunity in the matter of employment as guaranteed under Article 16 all therefore, being unconstitutional deserves to be struck down. A good number of decisions of this Court were read to us. The decisions on the scope and content of Article 14 are legion and to recall and of them would be merely an 'idle parade of familiar learning'. It is well-settled and not controverted on behalf of the respondents that Article 14 forbids class legislation but does not forbid classification for the purpose of legislation. It is equally well settled that in order to meet the least of Article 14, (i) the classification must be based on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) the differentia must have a rational nexus to the objects sought to be achieved by the legislative or executive action under challenge.

Does the enlarged period of ante-dating the commission made admissible to those who enter AMC after a certain date denying the same benefit to those who had already entered AMC prior to that date, has the pernicious tendency to divide a homogenous class based on arbitrary criterion and not relatable to any intelligible differentia one has to remember that an employer has a right to grant incentive for attracting better qualified persons to the service offered by the employer. If the incentive is devised with a view to offering inducement to those wavering whether to enter a certain service or, not, it is difficult to accept that such incentive should also be extended to those who have already entered service and have already taken full advantage of the benefit available at the time of entering service. In this case, it is clearly made out that the benefit of enlarged period of ante-dating the commission for persons joining AMC after having acquired post-graduate qualification was given as an incentive with a view to attracting more persons who have already acquired postgraduate qualification. Those who were already in service and had that benefit once, cannot be heard to say that this new incentive should be retrospectively enforced so as to give them the same benefit. It is difficult to conceive that an incentive can be retrospective though it is indisputable that conditions of service can be retrospectively made. And the unfairness of the approach of the petitioners becomes manifest from the fact that while maximum period of antedating prior to December 31, 1965 was 1-1/2 years when petitioners entered AMC, which was reduced to one year effective from January 1, 1965, none of them ever suggested that this being a condition of service must uniformly apply to those who would be covered by the conditions of eligibility and thereafter the period must be reduced. But subsequently when the period of ante-dating was enlarged by the impugned Army Instruction which became effective from April 1, 1978, it is now clamoured that this benefit must be extended to those who have entered AMC way back as early as November, 1949 and in the process give the petitioners and similarly situated persons a march over those who are already senior to them in the common seniority list.

The degree of unfairness of the claim of petitioners can be demonstrably established by working out the position of some petitioners on the footing that each one of them is entitled to longer period of ante-dating the commission. Ist petitioner Col. D.D. Joshi was commissioned on July 25, 1954 and after obtaining the benefit of ante-dating then available, he was put in the seniority list as if he had been commissioned on January 25, 1953. Now if he is given the benefit of ante-dating the commission by 2-1/2 years, his deemed date of joining the AMC would be January 25, 1952. Ia the

process, he would scope a march over 21 commissioned officers who are already senior to him in the seniority list. This is equally true of all the 7 petitioners but in the case of petitioner No. 3-Col. V.S. Sharma, he would score a march over 41 commissioned officers already senior to him. One M.B.L. Sexena who is not one of the petitioners but who is similarly situated, if now held entitled to benefit of 22 years ante-dating, he would jump over 50 commissioned officers senior to him. In the case of petitioner No. 7. he would supersede 65 officers already senior to him and a good number of them are persons who had acquired post graduate qualification, of course, after joining the service. Could one ever think of an incentive giving such an undeserved advantage ? The answer is obviously in the negative.

The next question is does this incentive divide a homogeneous class ? In the matter of incentive offered at the time of entering the service, there is no question of a homogeneous class. The new comers may become members of the class after being commissioned. They are outside the cadre before entrance. They do not belong to the class of existing members of the AMC. They derive the benefit of ante-dating simultaneously with becoming a member of AMC. They do not get any benefit denied to others after becoming the members as benefit of ante-dating is available at the time of appointment. There may be an enlargement of the cadre. There would be retirements. Recruitment and retirement are a continuous process. Those who are recruited at the relevant time will have to satisfy the conditions for recruitment then in force and would be entitled to the benefits that may be available to the new entrants. If the principle canvassed for on behalf of the petitioners is taken to the logical end, it would lead to a startling result. Suppose a rule is now made that only persons with post graduate qualification would be qualified for being commissioned in AMC, can anyone contend that as in the past mere graduates were recruited and therefore, ignoring the revised minimum eligibility qualification, a graduate must be considered for recruitment. Therefore, in respect of benefits which are available for certain qualification at the time of entering the service, the same having been made available, a revision of the same at a later date to attract fresh entrants cannot be retrospectively claimed by those who had already entered service knowing full well the benefit then available.

Therefore, there is no substance in the contention note appended to the, amended Army Instruction No. 78/78 pr the benefit of enlarged period of ante-dating being made available to new entrants only will have the pernicious tendency of dividing homogeneous class.

It was then contended that the selection of the date April 1, 1978 is thoroughly arbitrary and has no national nexus to the objects sought to be achieved. Reliance was placed on Union of India & Anr. v M/s Parameswaran Match Works etc.(1) In that case this Court quoted with approval the decision in Louisville Gas Co. v. Alabama Power Co., (1) wherein it was observed that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances of the case. In the present case, there is no division of a homogeneous class by the choice of the date. The object underlying the benefit extended to the new entrants determines the choice of date. Inducement for attracting fresh recruits from the market must come into force by a certain date. The employer can legitimately determine, keeping in view the demands of public service, from which date the document will be available. In such a situation choice of date is not wholly arbitrary and has

not the tendency to devise a homogeneous class. We see no classification amongst those who enter AMC after acquiring Postgraduate qualification determined by length of ante-dating benefit because each one at the relevant time obtained the advantage of ante-dating as it was then in force. There is no differential treatment. There is no division of a homogeneous class. The distinct possibility is that if petitioner's contention is accepted there would be vertical splitting of a homogeneous class. It is therefore, difficult to accept the contention that the note under the impugned amended Army Instruction is violative of Art. 14 or Art. 16.

It was next contended that the Third Pay Commission recommended that doctors entering service of the Union of India with post-graduate qualifications should be suitably recompensated for the time spent in acquiring these qualifications. It was urged that this recommendation was implemented in Central Government Health Service and it is this recommendation which has promoted the Union of India to enlarge the period of ante-dating. It was urged that by limiting the benefit only to those who would be commissioned on or after April 1, 1971, the respondents are guilty of according discriminatory treatment in the matter of public employment, and it is violative of Article 16 of the Constitution. Reliance was placed on *Purshotam Lal and others v. Union of India & Anr (2)*., wherein this Court held that when a Pay Commission makes recommendations and the Government accepts the same, it is bound to implement the recommendations in respect of all Government employees. And if it does not implement the report regarding some employees only it commits a breach of Arts. 14 and 16 of the Constitution. It is difficult to appreciate how this decision would help the petitioners. The benefit of ante-dating was devised long before the recommendations of the Third Pay Commission were formulated and each petitioner got the benefit consistent with the Army Instruction in force at the time of being commissioned in the AMC. A subsequent enlargement of the period, not pursuant to the recommendation of the Pay Commission and held out as an inducement for recruitment from the market cannot be claimed as a matter of right by those who have already availed of the benefit on earlier occasion.

It was then contended that if extending the benefit of enlarged period of ante-dating to all irrespective of the date of entry would have the tendency of unsettling the seniority list, that should not weigh with this Court because on such nebulous ground violation of constitutional mandate cannot be overlooked. Reliance was placed on *General Manager, South Central, Railway, Secundrabad and Anr. etc. v A.V.R. Siddhanti & Ors. (1)*. We again fail to see how this decision helps the petitioners. The fallacy underlying the submission is that this benefit of enlarged period of ante-dating is claimed as a condition of service uniformly applicable to all persons qualifying for the same ignoring the conditions under which it can be claimed. The contention overlooks the basic condition subject to which benefit can be claimed and it is that it is available at the time of entering the service as a compensation for having a higher qualification compared to their simultaneously entering service with lower qualification. And undoubtedly an inducement held out to future entrants, if extended to those who had entered more than 25 years ago, the inducement so offered would adversely affect a large number of persons who need not be subjected to unfair treatment for no fault of theirs. There are hundreds of officers, in all- 1227, who are holding post graduate qualifications today, may be having acquired the same after joining service but there being no qualitative difference in the service rendered by them and those who entered with PG qualification, way-back in 1948 or 1949 or 1953, if the contention is accepted. the petitioners would score a march

over others having now the same qualification thereby giving the petitioners an unfair advantage which ought not to be given, if approaching the matter A from that angle, would not violate any constitutional mandate.

The next contention is that if giving the petitioners benefit of enlarged period of ante-dating would unsettle a settled seniority list, the respondents have already given limited retrospectivity to the revised benefit by providing in the note to the impugned Army Instruction 78/78 that: "The seniority officers who joined with PG qualifications during 1-112 years prior to 1.4.78 will be protected by grant of requisite ante-date so that they do not become junior to officers who have joined later with equivalent PG qualifications." It was urged that the provision in the note would benefit some of those who joined with PG qualifications even prior to April 1, 1978 in a limited way, and thus its retrospective operation is implicit in the note. There is no merit in this contention. In fact the provision demonstrably establishes fair play in action. An illustration would expose the fallacy underlying the submission. 'A' joined with PG qualification and six months full time service on 31st March, 1978, 'B' joined with the same qualification and eligibility on April 2nd, 1978. Both are wholly similarly situated. 'A' would get ante-date benefit of 1-1/2 years and 'B' would qualify for 2 1/2 years. 'B' though a later entrant with same qualifications would score a march over 'A'. This would be extremely unfair. To protect such cases, it is provided that those who joined with PG qualifications during 1-1/2 years prior to April 1, 1978 will be protected by giving of requisite ante-date to protect their seniority over later entrants who qualified for larger period of ante-dating. It is idle to contend that limited retrospectivity is given to impugned Army Instruction. It is in fact a case of marginal adjustment showing fair play in action.

On behalf of the respondents, it was urged that if the contention of the petitioners is accepted which could compel the first respondent to re-settle the seniority list, those over whom petitioners and those similarly situated would score a march should have been impleaded as respondents and in their absence, no relief can be given to them. We would not accept this contention for two reasons: (i) that the decision in General Manager, South Central Railway Secundrabad etc. would permit us to negative the contention, this being not a case of individual claim or claim of seniority by one person against specified others, but a question of interpretation of a provision and which interpretation could be given because it would be binding on the Union of India, the presence of others is unneces-

sary. Union of India would have merely to give effect to the decision of this Court. Therefore, the absence of those who may by our interpretation be adversely affected in the facts and circumstances of the case need not be necessarily here and if the relief could have been granted, the same would not have been denied on the ground that proper parties were not before the court. But the second reason why we should not examine this contention is that we are not inclined to grant any relief and the matter ends there.

Having examined the matter from all angles, we find no substance in the contentions raised on behalf of the petitioners and therefore all the petitions are dismissed with no order as to costs.

S.R.

Petition dismissed.

