

(1999) 04 DEL CK 0055

In the Delhi High Court

Case No : Letters Patent Appeal No. 156 of 1999

Attar Singh and Others

APPELLANT

Vs

Airport Authority of India

RESPONDENT

Date of Decision : 30-04-1999

Acts Referred:

Citation : (1999) 79 DLT 400 : (1999) 50 DRJ 395 : (1999) 1 ILR Delhi 373

Hon'ble Judges : Usha Mehra, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : M.M. Sudan, for the Appellant; Anil Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—Admit.

2. With the consent of learned counsel for the parties, this appeal was taken up for final disposal and heard on 21st and 22nd April, 1999.

3. The Appellants are working as Fire Foreman (Regular) with the Airport Authority of India (for short AA1) in Safdarjung Aerodrome, New Delhi.

4. According to the Appellants, AAI had formulated a "Transfer Policy" in May 1994, which policy was issued in consultation with its recognized unions and associations. In terms of the said Policy, a seniority/priority list of officers liable for transfer was prepared. This list was operated up to and including the 1997 "transfer season". According to the Appellants, the list showed some discrepancies with regard to their seniority/priority. Consequently, they sent representations dated 24th April, 1998 and 18th May, 1998 pointing out the discrepancies and also suggesting that transfers in the 1998 "transfer season" be made accordingly.

5. The Appellants submit that their representations were not heeded and an order dated 5th June, 1998 was issued transferring them to Varanasi from New Delhi. This transfer order dated 5th June, 1998 was challenged by the Appellants

by filing CW. No.2950/98. It was contended that the transfer order was in violation of the "Transfer Policy" and as such was liable to be set aside.

6. After hearing both the parties, a learned Single Judge of this Court was pleased to dismiss the writ petition by the impugned order dated 12th April, 1999. This appeal under Clause X of the Letters Patent is directed against the order dated 12th April, 1999.

7. During the course of hearing, no reference was made to any specific provision of the "Transfer Policy" which was alleged to have been violated. Learned counsel for the Appellants, however, vehemently submitted that as per the seniority/priority list, the Appellants were not due for transfer inasmuch as persons senior to them in the said list had not been transferred. Specific reference was made to six Fire Foreman, namely, S/Shri S.S. Dhankad, Pitamber Dutt, Rajinder Singh, K.S.Rathi, Shyam Lal and Suresh Kumar. Reference was also made, in passing, to S/Shri Chander Prakash and Bhanwar Singh but no serious submissions were made in their regard.

8. AAI had formulated a Flexible Complementing Scheme (for short, FCS) sometime in May 1995. The object of this Scheme was "to evolve a system to give relief to the staff who have been waiting for promotion for long years after completing the eligibility period, for want of vacant posts in the higher grade.""

9. It was under this Scheme that the six officers mentioned above were granted promotion from the post of Fire and Rescue Operators (for short F&RO) to the post of Fire Foreman (FCS).

10. It is submitted by the AAI that the nature and duties of Fire Foreman (FCS) and Fire Foreman (Regular) are different. It is stated in the affidavit of Shri Shambu Prasad, dated 18th August, 1998, as follows:

"The promotion from the Fire and Rescue Operators to Fire Foreman (F.C.S.) is made pursuant to promotion by D.P.C., pursuant to promotion of Fire and Rescue Operators to Fire Foreman (F.C.S.), the posts of Fire and Rescue Operators are not filled unless the Fire Foreman (F.C.S.) are promoted to Fire Foreman (Regular), pursuant to promotion by a D.P.C. For promotion of Fire Foreman to Senior Fire Foreman, the Fire Foreman (F.C.S.) are not considered so long as they are not promoted as Fire Foremen (Regular). The duties of Fire Foreman (Regular) and Fire Foreman (F.C.S.) are also different. The Fire Foreman (Regular) is a shift supervisor and Fire Foreman (F.C.S.) performs the duties of Fire and Rescue Operator under him. Similarly in a crash fire tender, the supervisor is a Fire Foreman (Regular) and Fire Foreman (F.C.S.) performs duties under him as Fire and Rescue Operator. Pursuant to representations made to respondents, it was clarified that Fire Foremen who are promoted under Flexible Complimenting Scheme shall continue to function in their present capacities so as long as operational requirement of critical manning level is not fulfilled."

11. With regard to transfers, the Senior Manager (Personnel) of the AAI, in his

letter dated 18th May, 1998 addressed to the Regional Executive Director (NR) of the AAI stated that the "policy in respect of clubbing of Fire Foreman for purpose of transfer has since been reviewed and it has been decided that henceforth Fire & Rescue Operator who have been promoted as Fire Foreman under FCS are not to be clubbed with regular Fire Foreman for preparing their seniority for annual transfer"". It is as a result of this that the AAI has been maintaining two different seniority/priority lists, one of officers liable for transfer from the list of Fire Foreman (FCS) and another from the list of Fire Foreman (Regular).

12. The Appellants have not questioned the wisdom of having two categories of Fire Foreman or of maintaining different seniority/priority lists for transfer. They have, however, submitted that such separate lists are not being maintained with regard to other categories of employees who are entitled to the benefit of the FCS. Reference in this regard is made to the category of Assistant Technical Officers. It is further submitted that prior to the 1998 "transfer season" even in the case of Fire Foreman, a combined seniority/priority list was being maintained.

13. The AAI has replied to this submission in the affidavit of Shri Shambu Prasad dated 18th August, 1998, in which it is specifically stated that :

"The nature of job which is performed by the A.T.Os. who are promoted under the F.C.S. and A.T.Os. (Regular) are same and no representations for having a separate transfer list were made nor any difficulties were pointed out by A.T.Os. under F.C.S. and A.T.Os. (regular). Initially, the same seniority list was maintained for the purpose of transfer even for Fire Foreman (F.C.S.) and Fire Foreman (regular). It is only pursuant to the difficulties reported and the difference in duties and the nature of work performed by Fire Foreman (F.C.S.) and Fire Foreman (Regular), the policy decision applicable to in all the regions has been taken to have Fire Foreman (F.C.S). and Fire Foreman (regular) separate transfer list. In view of these facts, and under these circumstances, we find no similarity in the case of the Appellants and the six officers mentioned above. The two categories of Fire Foreman form distinct classes. The duties, functions and responsibilities of each category is different (although the exigencies of service may demand some overlapping) and even for the purposes of transfer, they are being treated differently. Treating Fire Foreman (Regular) and Fire Foreman (PCS) as two different categories is not irrational.

There is no allegation that there are any Fire Foreman (Regular) who are higher up than the Appellants in the seniority/priority list who have not been transferred.

There is no denial of the fact that separate seniority/priority lists for transfers are now being maintained as a result of difficulties pointed out by Fire Foreman. This being the position, it appears to us that the Respondents were not unjustified in splitting up the seniority/priority list of officers due for transfer with effect from the 1998 "transfer season".

Consequently, we find no infirmity in the decision of the AAI to transfer the Appellants who are Fire Foreman (Regular) de hors the transfers of the six

officers mentioned above who are Fire Foreman (PCS).

14. As a result, the impugned judgment and order dated 12th April, 1999 is upheld and the appeal dismissed. There will be no order as to costs.