
(2012) 07 DEL CK 0175

In the Delhi High Court

Case No : WP (C) Nos.7390 of 2001 and W.P (C) No's. 9010-9060 of 2001

Binit Kumar Toppo and Others

APPELLANT

Vs

Union Of India and Others

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 192 DLT 40

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Pooja Dhar, for the Appellant; V.K. Rao and Ms. Neha Bhatnagar, for R2, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Vide the instant petitions, the petitioners, who are total 52 in numbers, have sought direction or order directing the respondent to place the petitioners in the post of Manager (ATC) or any other equivalent post with effect from the date of their appointments. Consequently, place the petitioners as seniors to the promotees on the posts specially created and advertised for which the petitioners had been selected, with the consequential benefits thereto.

2. Case of the petitioner is that the respondent, with a view to provide world standard air services, created 60 posts of Manager(ATC) in the pay scale of Rs. 5000-225-5900-250-8400, to fill-up the same, issued advertisement on 10.08.1999.

3. Thereafter, vide communication dated 10.08.1999 of Airports Authority of India, the petitioners were invited to appear in selection test on 09.01.2000 (Sunday) at 9.45 am. Vide this communication, the respondent narrated the mode of selection and procedure for marking the answer sheet.

4. Vide communication dated 23.05.2000, the petitioners were invited for voice test and interview for the aforementioned post of Manager (ATC). In the said

letter it was stated that selection would be subject to qualifying in the voice test. However, in Para 5 of the said communication, mentioned as under:- "5. The pay revision for Executives is to be implemented w.e.f. 1.1.1997. As a consequence of the Executive pay revision designation, scale of pay and other related terms and conditions will be suitably decided and will be applicable to you. You are, therefore, requested to sign the enclosed declaration as token of your acceptance."

5. At the time of interview, the petitioners were also asked to sign a declaration which is mentioned as under:-

I understand that the executives pay revision in Airports Authority of India is due for implementation w.e.f 01.01.97. Though I had applied for the post of Manager (ATC) in pre-revised scale of Pay Rs. 5000-8100, I will have no objection to accept the designation and the scale of pay in the revised structure of pay scales as may be decided by the management of AAI for the recruitment exercise. I undertake that I will not make any representation in this regard.

6. Thereafter, the Offer of Appointment dated 29.05.2000 issued to the petitioners which reads as under:-

We are pleased to offer you an appointment to the post of Junior Executive Trainee (ATC).

2. The terms and conditions of appointment are as per appendix to this letter.

3. In case the terms and conditions as offered are acceptable to you, you may forward your acceptance to us latest by 16.04.2000 (Friday) failing which this offer shall be treated as cancelled without any further correspondence. In the event of your acceptance, you will report for training to the Principal, Civil Aviation Training College, Airports Authority Division), Bamrauli, Allahabad-211012 on 3rd July, 2000. It must be noted that no request for extension/postponement of the reporting date for training at CATC, Allahabad will be entertained."

7. Vide subsequent communication which is at page 26, mentioned as under:-

1. TRAINING The period of training will be 52 weeks at the Airports Authority of India (National Airports Division), Civil Aviation Training College, Bamrauli, Allahabad and at any other airport/ place as determined by the Management. The duration of the training may be extended or terminated based on the performance and conduct of the Trainee during the training period.

2. SERVICE CONDITION DURING TRAINING

(a) STIPEND

The trainee will be given a consolidated stipend of Rs. 7500/- (rupees seven thousand five hundred only) per month."

6. SERVICE CONDITION ON REGULAR APPOINTMENT

On successful completion of the training, trainee will be appointed as Junior Executive (ATC) in the Airports Authority of India (NAD) in the scale of Rs. 8600-250-14600 (IDA pattern) plus other allowances as admissible from time to time at that level. On successful completion of two years probationary period as Junior Executive, they will be placed in the scale of Rs. 10750-300-16750.

a) NATURE OF THE POST

The post of Junior Executive (ATC) is temporary at present but likely to continue. The posting is anywhere in India or abroad as may be determined by the management.

8. Learned counsel for the petitioner submitted that 60 posts of Manager (ATC) were advertised by AAI and qualification required was First Class Engg. Degree or First Class M.Sc or equivalent required to undergo one year training.

9. Further submitted that letter for written test to be held on 09.01.2000 also stated test for Manager (ATC). Admit cards sent to the petitioners also stated test for Manager (ATC). Even in letter for interview dated 23.02.2000 and voice test sent to successful candidates also stated that the posts were for Manager (ATC). The same is annexed at page 21, Annexure P (4).

10. However, the said letter also mentioned that pay revision of the executives had to be implemented and as a result, pay scale, designation will be changed and that the candidates were required to give undertaking to this effect.

11. Learned counsel has argued that in the said letter, it is nowhere mentioned that the posts of the petitioners will be down-graded by two levels. Even, in the undertaking, down-grading is not mentioned.

12. In the appointment letters dated 29.05.2000 though described the posts as Junior Executive Trainees. Even at that stage, the candidates were not informed that their posts were being downgraded by two levels. The petitioners accepted the appointment presuming that the post would be re-designated. They were under bonafide impression that their new designation shall be equivalent to that of Manager (ATC).

13. Vide Office Order dated 05.04.2000, it was decided by AAI to implement revised scales of pay, fitment formula and DA guidelines and a base level Executives were inducted at E-1 level w.e.f. 01.04.2000 with pay scales totally different from Manager (ATC). Thus, made E-1 level is group B executive post, while E-3 and above levels are group A executive level posts.

14. Learned counsel further submitted that vide communication dated 28.06.2000, the Chief Instructor, Faculty of Aerodrome asked the

AAI that there was no defined course for the post of Junior Executive and asked them to specify what training had to be imparted to the Petitioners.

15. In reply thereto, General Manager vide communication dated 03.07.2000

replied that the petitioners should be imparted the same training as that of Aerodrome Officers (Manager ATC) and that the same course may be renamed as Junior Executive (ATC) Ab-initio Course and the duration of the Course remains unchanged.

16. It is pointed out by the learned counsel for the petitioner that the subsequent appointees at E-1 level received only 6 months of training.

17. The petitioners realised after one year of joining the service i.e. on 28.07.2001, that their posts have been downgraded by two levels. Therefore, they submitted their representations.

18. Learned counsel for the petitioners further submitted that during the pendency of the instant petition, petitioners were placed in E-2 level in the year 2003 which was again one post down than the actual post of Manager (ATC) for which the petitioners had actually applied and selected for.

19. The Recruitment & Promotion Rules, 2005 framed by AAI were implemented only w.e.f. 01.02.2005 which also have the provision for the induction at E-3 level with the same qualifications as that of the petitioners.

20. Learned counsel has pointed out that vide order dated 27.11.2006, passed by this court, directed that all future promotions shall be subject to the outcome of the instant Writ Petition.

21. Thereafter, on 01.12.2006, 49 petitioners were promoted to E-3 level, the post for which they had applied and at which they should have been inducted in the year 2000. The aforementioned promotions have been made subject to the disposal of this Writ Petition.

22. The Airport Authority of India (AAI) again advertised the vacancy of Manager (ATC) on 08/14.12.2007 and 2010.

23. In para 11 of the instant petition, it is stated as under:-

All the 60 posts of Managers (ATC) which were advertised instead of being filled by the applicant. Petitioners who had applied in response to the advertisement, have been filled by promotion in the revised pay scale."

24. The petitioners thereafter have clarified by filing an affidavit wherein they had referred to certain documents which were most relevant to the present case, and throw light upon the above issue of appointments to the said posts pertaining to which this court had sought a clarification.

25. An application dated 02.08.2006 moved by the petitioner under the provisions of the Right to Information Act, 2005, seeking information from the Airports Authority of India regarding 60 posts of Manager (ATC). One of the questions raised in the said application was-

3. What is the total number of vacant posts of Manager (ATC) as on 31st July, 2006.

26. The reply was given on 06.09.2006 by the Directorate of Personnel of the Airports Authority of India, inter alia, the answer to the above quoted question was given as under:-

Ans. The number of vacant posts of Manager (ATC) as on 31st July 2006 is 193, out of which 25% of 193 (i.e. 48 vacant posts) are to be filled through departmental candidates. The recruitment of these 48 departmental candidates is already in process. Hence, the total number of vacant posts is 146, including 52 posts, which are kept reserved for JE (ATC) due to Court Case.

27. Learned counsel submitted that petitioners have also obtained copy of an memo circulated by the E.A. section of the AAI, which pertains to fixation of seniority/placement in the grade of Manager (ATC) and of JE (ATC's). In this memo, it has been clearly stated as under:-

3.0-The Jr. Executive (ATC) were aggrieved by the decision of the Management to offer them the post of Jr. Executive Trainee (ATC) in the scale of pay of Rs. 8600-14600, through the vacancy was initially advertised for the post of Manager (ATC) in the scale of pay of Rs. 8600-14600, through the vacancy was initially advertised for the post of Manager (ATC), being aggrieved these 52 JET moved to the Court for redressal of their cases for claim to the post of Manager (ATC). Since the matter has been sub-judice, the Management has thought it wise to set aside and keep 52 posts vacant for Manager (ATC) in respect of these executives in the event, if Court's directions are in their favour.

28. It is further submitted that from a bare perusal of these documents, it is more than evident that the AAI has kept these posts of Manager (ATC) vacant for the petitioners herein in view of the instant Writ Petition. Clearly, the AAI felt that it was better to keep the said posts vacant as there was a likelihood of this court deciding in favour of the Petitioners. Thereafter, on 1.12.2006, the petitioners herein were given promotion to the Post of Manager (ATC).

29. Learned counsel has clarified that since no one was appointed to these posts in place of the petitioners, there cannot be any difficulty in granting relief to the Petitioners as prayed for, for the reason that no prejudice would be caused to either the AAI or any other employee of AAI, as the petitioners have merely been promoted into the very same posts which were initially the subject matter of this Writ Petition and had in fact been kept vacant for the Petitioner by the AAI.

30. He has further clarified that though the impleading applications of the impleaded applicants have been allowed, it is submitted that the applicants were aware of the instant Writ Petition since its inception. Since then they have been sleeping over it and after the matter was fully argued they filed the impleadment application.

31. It is further submitted that though impleaded applicants were never promoted at the posts at which the Petitioners had applied and further their promotions to E-4 level were also made subject to the outcome of the instant

Writ Petition.

32. Learned counsel has submitted that since 2001, respondents have been promoting officers bypassing the petitioners. Petitioners at that stage also apprehended that these promotions might create complications in future and therefore, petitioners filed two separate applications before this Hon"ble Court for directions to the Respondent for keeping 51 seats vacant.

33. Therefore, on these applications, this court had passed orders dated 27.11.2006 and 18.01.2007 wherein all future appointments were made subject to the outcome of the instant Writ Petition. Therefore, these applicants cannot claim any equities in their favour.

34. On legal aspect, learned counsel has argued that the State has to act fairly in its action as it is a model employer, and therefore, cannot make its employee sign an undertaking like this when they don't have any bargaining power. Such an undertaking is arbitrary and in violation of Article 14.

35. In the instant case, after qualifying the written test, the candidates were sent letters for voice test on 23.02.2000. The said letter mentioned that pay revision of the executives had to be implemented and as a result pay scale, designation will be changed and that the candidates were required to give undertaking. It is nowhere mentioned in the letter that the posts of the petitioner will be downgraded by two levels.

36. Even, the appointment letter as relied upon by the respondents, only terms the post as Junior Executive and nowhere mentioned that the posts are downgraded by two levels. The case of the petitioners further justified by the fact that appointment letter also mentions the same training as that of the Manager ATC as mentioned in the advertisement, therefore, there is no question of informed choice. Moreover, the qualification for both the posts are same.

37. Learned counsel had relied upon the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth-century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social

and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

38. Learned counsel for the petitioner has further submitted that the vacancies which occurred prior to the amendment of rules will be governed by the old rules, therefore, change of policy after the start of selection process is held not permissible. He relied upon the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, which reads as under:-

11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and government orders. Candidates who apply and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement; however he has no

absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for the post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

39. Further relied upon case of *State of Rajasthan Vs. R. Dayal and Others*, , wherein it has been held as under:-

Therefore, it is not in dispute and cannot be disputed that while selecting officers, minimum requisite qualifications and experience for promotion specified in the relevant column, should be taken into consideration against vacancies existing as on 1st April of the year of selection. But since the Rules came to be amended and the amendment became effective with immediate effect and clause (11-B) of Rule 24-A indicates that options have been given to the Government or the appointing Authority, as the case may be, to revise the select list as existing as per the law as on the date of the appointment or as may be directed by a competent court, selection is required to be made by the concerned DPC. An appointment made, after selection as per the procedure, to the vacancies existing prior to the amendment, is valid. But the question is: whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came into force, according to the amended Rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore? This Court has considered the similar question in paragraph 9 of the judgment above cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose. Undoubtedly, the selection came to be made prior to the

amendment of the Rules in accordance with law then existing since the anticipated vacancies also must have been taken into consideration in the light of Rule 9 of the Rules. But after the amended Rules came into force, necessarily the amended Rules came into force, necessarily the amended Rules would be required to be applied for and given effect to. But, unfortunately, that has not been done in the present case. The two courses are open to the Government or the appointing authority, viz., either to make temporary promotions for the ensuing financial year until the DPC meets or in exercise of the power under Rule 24-A (11-B), they can revise the panel already prepared in accordance with the Rule and make appointments in accordance therewith.

40. He has also referred the case of Secretary, A.P. Public Service Commission Vs. B. Swapna and Others, wherein has held:-

The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for the applicant-respondent No.1 it was un-amended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criteria e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the Statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If the Rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See P. Mahendran and others Vs. State of Karnataka and others, and Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others,

41. Learned counsel has also cited the case of Raj Kr & Ors. V Food Corporation of India 1998 (16) LCD-436 (Allahabad High Court), wherein held as under:-

12. After considering the aforesaid contentions of the parties as also the law relied upon, I find that in the present case admittedly the selection process was started by asking the employment exchange authorities to sponsor the candidates for the purpose of filling up certain vacancies and in pursuance thereof the candidates having been sponsored by the employment exchanges by the Petitioner participated in the written test and on successful completion also in the interview. The result has not been declared on the ground that the policy had been changed by letter dated 18.08.1986. The said letter at Annexure No. II to the counter affidavit only speaks of the decision by the competent authority. Nothing has been disclosed to show that such decision was taken by which authority and in what manner. In the aforesaid circumstances, on the existing material, I do not find the said change of policy was in modification of the

regulation already in existence. Moreover, after the selection process started and the written test and interview took place, the change of policy in the aforesaid manner cannot be held permissible."

42. Learned counsel further submitted that at the time of advertisement, there was no post for Junior Executive and the test of Manager (ATC) was that at E-2 level. Recruitment rules followed by AAI in 1999-2000 were that of Civil Aviation Department Rules (CAD Rules), 1983. The new recruitment rules were only implemented w.e.f. 01.02.2005. Respondents could not have changed the policy to the detriment of the Petitioner after the selection process was started.

43. It is further argued that statutory rules cannot be replaced by administrative order. At the time of advertisement, Recruitment rules followed by AAI in 1999-2000 were that of Civil Aviation Department (Class I and Class II posts) Recruitment (Amendment) Rules, 1982 (CAD Rules). The letter dated 05.04.2000 on which the respondents are relying for the restructuring of the AAI is a mere administrative order and not passed by any competent authority. Vide Office order, it was decided by AAI to implement revised scales of pay, fitment formula and DA guidelines and base level Executives were inducted at E-1 level w.e.f. 1.04.2000.

44. Further argued that such an administrative order cannot change the process provided for in the statutory rules. Learned counsel has relied upon the case of C.L. Verma Vs. State of M.P. and another, which held as under:-

6. The question which arose for consideration in the writ petition before the High Court at the instance of the appellant was whether in the face of the mandate in Rule 29 of the administrative order could operate. It is not the stand of the State Government that the order dated May 15, 1981, is one under the proviso to Rule 29. In fact, the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employees. An administrative instruction cannot compete with a statutory rule and if there be contrary provisions in the rule the administrative instructions must give way and the rule shall prevail. We are, therefore, of the view that the appellant, in terms of Rule 29, ceased to be a government employee on his in the age of 58 years, two days prior to the order of dismissal. In view of the fact that he had already superannuated, government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The ratio of the decision in R.T. Rangachari Vs. Secretary of State for India in Council (64 IA 40: 1937 AIR (PC) 27 : 41 CWN 545) supports the position."

45. The respondent (Airport Authority of India) has filed response to the instant petition, wherein stated that the petitioners have themselves given an undertaking that they have no objection to accept the designation and the scale of pay in the revised structure of pay scale as may be decided by the management of Airport Authority of India for the exercise of recruitment in question. In view of giving such a declaration by each of the petitioners, by filing

the present writ petitions and seeking the relief contrary to what has been accepted by them.

46. It is further stated that Airport Authority of India issued an advertisement for making appointments for various posts including the post of Manager (ATC), which was in the pay scale of Rs. 5000-8400/-. Pursuant to the said advertisement, on 10.08.1999, the petitioners applied for the said post. Each of the petitioners appeared in the written test on 09.01.001, which was followed by a voice-test and interview.

47. In the meantime as there was move in the Airport Authority of India for revision of pay scale of executives below board level, an undertaking was taken from each of the petitioners that they have no objection to accept the designation and scale of pay in the revised structure of pay scale as may be decided by the Management of Airport Authority of India. Therefore, on successfully clearing the aforesaid test/viva voce/interview, petitioners were given appointment letters to the post of Junior Executive Trainee (ATC).

48. The said office order with respect to revision of pay scale of the executive below Board level was issued on 05.04.2000 and was made effective from 01.01.1997. As per the provision of the said office order, the Induction of base level executives will be executive trainees. They will be taken on a consolidated stipend of Rs. 7,500/- per month in place of the existing `5,000/- per month. E-1 Executive Grade of Rs. 4000-175-7150, equivalent to the revised scale of Rs. 8500-250-14600/- is introduced for Executive /Probationers in direct recruitment. On completion of two years as Junior executives, the direct recruits will be placed in the scale of Rs. 4800-200-5800-225-8275/- (pre-revised) Rs. 10750-300-16750(revised).

49. Mr. V.K. Rao, Senior Advocate appearing on behalf of respondent/Airport Authority of India has submitted that on perusal of the office order and its relevant provisions would show that induction of base level Executive trainees, on completion of the training they would be placed as Junior Executive in E-1 level and the same was the new Grade effective from 01.04.2000. In accordance with the aforesaid office order only, the petitioners were given the letter of appointment on 29.05.2000 and all the petitioners were given the offer of appointment to the post of Junior Executive Trainee. On completion of training they were placed at E-1 level. The next level is that of E-II and then E-III.

50. The E-II level is designated as Assistant Engineer equivalent to the pay scale of Rs. 10750-16,750 whereas E-III level is designated as Manager equivalent to the scale of Rs. 13000-18200. In case the relief sought by the petitioners that they may be given the designation of Manages in the scale of Rs. 13000-18200/- is granted, then it will amount to violation of the order dated 05.04.2000. Therefore, the reliefs sought in the instant petitions are contrary to the decision as the reflected in the office order dated 05.04.2000, therefore are liable to be dismissed.

51. Ld. Sr. counsel has further submitted that the Management/ Executive is within its power to revise the pay scale and re-construct the cadre and it's in exercise of the said power only the respondents have issued office order dated 05.04.2000, which has been made effective from 01.01.1997.

52. Respondents No. 3 to 22 have also filed response to the instant petition and submitted that though the petitioners had applied for the post of Manager(ATC) and they were called for the written test for the aforesaid post, however, the petitioners were afterwards called for the voice test and interview and at the time the petitioner were also made to sign some undertaking, to which all the petitioners signed thereto.

53. Thereafter, on 29.05.2000, the petitioners were issued appointment letter wherein the posts of the petitioners were described as Junior Executive Trainees (ATC). It is further stated that during the selection procedure the R&P rules were changed, but at the time of the interview the petitioners were informed about the fact that they will be appointed as Junior Executives (ATC).

54. Petitioners agreed to the aforesaid appointment and gave undertaking to that effect.

55. However, it is stated that the impact of the change in the selection rules was that the direct recruitment to the Manager rank was stopped and a person could be appointed as manager only by promotion. That the maximum rank to which direct recruitment could do was that of Junior Executive.

56. It is pertinent to mention here that at the time of the interview, i.e. before joining the petitioners herein have been informed about the aforesaid change in the recruitment rules and they agreed to be bound by the same. Accordingly, they joined the services as Junior Executive. There is no cause of action in favour of the petitioners.

57. After hearing learned counsels for the parties, it emerges that the post of Manager (ATC) was advertised on 10.08.2009 in the pay scale of Rs. 5000-225-5900-250-8400. Thereafter, the petitioners appeared in the selection test on 09.01.2000. Subsequently, vide communication dated 23.05.2000 the petitioners were invited for voice test and interview for the post mentioned above. It was made clear in the said letter that the selection would be subject to the qualifying the voice test. In para No.5 of the aforesaid letter further clarified that the pay revision for the Executives would be implemented with effect from 01.01.1997. As a consequence, all the Executive's pay revision, designation, pay scale and other related terms and conditions would be suitably decided and will be applicable to the appearing candidates. The respondents asked all the candidates to sign a declaration wherein it was made understood that the executive's pay revision in Airports Authority of India is due for implementation with effect from 01.01.1997. Though, they had applied for the post of Manager (ATC) in the pre-revised pay scale of Rs. 5000-8400/-, however the petitioners had given no objection to accept the designation and pay scales in the revised

structure of pay-scales as to be decided by the management of AAI for the recruitment exercise.

58. As narrated above, it is pertinent to mention here that the petitioners applied in the pre-revised pay scale for the post of Manager (ATC) of Rs. 5000-8400/-; however, in the revised pay-scale on completion of two years as junior executive, they are placed in scale of Rs. 8600-250-14600 plus other allowances admissible from time to time. Thereafter, on successful training of two years, they are placed in the scale of Rs. 10,750-300-16750.

59. Admittedly, Recruitment and Promotion Rules 2005 framed by AAI were implemented only w.e.f 01.02.2005 which also have the provision for induction at E-3 Level with the same qualification as that of the petitioners.

60. It is further made that 25% are to be filled through departmental candidates. Same is evident from the reply filed by Directorate of a Person of AAI dated 06.09.2006, in reply to the information sought by the petitioners.

61. Thereafter, again the AAI advertised the vacancy of Manager (ATC) on 8/14.12.2007 and in the year 2010.

62. I note that vide orders dated 27.11.2006 and 18.01.2007 passed by this Court, it is made clear that all future appointments shall be subject to the outcome of the instant Writ Petition.

63. The State has to act fairly in its action as a model employer. Therefore, cannot make its employee to sign the undertaking when they do not have any bargaining power. The petitioners signed the undertaking after they qualified the written test and the petitioners were sent letters for Voice test on 23.02.2002.

64. The mandate of Article 14 of the Constitution is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessman and the contract is a commercial transaction as has been observed in case of Central Inland Water Transport Corporation Limited (Supra).

65. Moreover, the vacancies occurred prior to the amendment of Rules, thus, will be governed by the old Rules. Therefore, the change of policy after the start of selection process is held not permissible. On this issue, law has been settled in a case of N.T. Bevin Katti (Supra) that where advertisement is issued inviting applications for direct recruitment to a category of posts and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders and if it is further indicates the existence of reservation in favour of various categories, the selection of candidates in such a case, must be made in accordance with the then existing Rules or government orders. Candidates who applied and undergo written or viva-voce test acquire

vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention.

66. Same view has been taken in case of R. Dayal (Supra) that the vacancies which occurred prior to the amendment of the Rules shall be governed by the original Rules and not by the amended Rules.

67. Undoubtedly, in the case in hand, the selection was made prior to the amendment of the Rules in accordance with the law, which came into force on 01.02.2005.

68. Letter dated 05.04.2000, on which the respondents are relying for restructuring of the AAI is a mere administrative order and not passed by the competent authority. Therefore, in the aforesaid circumstances and on the existing material, I am of the considered opinion that the said change of policy was not modification of the Regulation already in existence. Moreover, after the selection process started and the written test was also over, the change of policy in the aforesaid manner cannot be held permissible. In this process E-1 level is made "Group-B" executive post, while E-3 and above levels are made "Group-A" executive posts. Initially, the respondent made the post of Junior Executive Trainee (ATC) as a direct entry and the post of Manager (ATC) was made promotional post. But, thereafter, Recruitment and Promotion Rules, 2005 were framed whereby 25% posts of Manager (ATC) were to be filled through the departmental candidates. By these processes, prejudices have been caused to the petitioners. Not only their pay scales have been brought down, but they were also brought down by two stages from the post of Manager (ATC).

69. The qualifications and training are the same that of the Manager (ATC) and the Junior Executive Trainee (ATC). Even thereafter, AAI again advertised the vacancy of Manager (ATC) on 8/14.12.2007 and in the year 2010, subject to the outcome of the instant petition.

70. In view of the above discussion and the legal position, I am of the considered opinion that the petitioners are entitled for the post of Manager (ATC) with pay scale attached thereto with effect from the date of their actual appointment. Justice would be met if the respondents are directed to pay 50% of back wages to the petitioners after calculating the same. Ordered accordingly.

71. Consequently, the instant petitions are allowed. In view of the above, CM Nos. 14539/2006, 16086/2008 and 14567/2010 have become infructuous and are dismissed as such.