
(1998) 11 DEL CK 0071
In the Delhi High Court
Case No : C.W. No. 4514 of 1994

Capt. B.K. Kukreja

APPELLANT

Vs

Indian Airlines Ltd. and Others

RESPONDENT

Date of Decision : 01-11-1998

Acts Referred:

Citation : (1999) 49 DRJ 27

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Y.P. Narula, for the Appellant; Rajiv Nayar and Ratna Dwevedi
Dhingra, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The petitioner has challenged the promotion of Respondents 2 to 35 from Commander Grade to the Grade of Deputy Operations Manager. According to the petitioner, he was considered Along with others including respondents 2 to 35 in June 1994. The petitioner had not been promoted. According to the petitioner, his performance had been very good and having regard to the overall performance of the petitioner he should have been selected by the Selection Committee. But the members of the Selection Committee without complying the law acting on irrelevant considerations had selected the persons of their own choice and thereby the petitioner was deprived of his promotion. The petitioner was subsequently promoted in August 1994 and he became Deputy Operation Manager on 05.09.1994. According to the petitioner, respondents 2 to 35 belonged to his batch and once the petitioner was promoted he should have been given his due seniority in the promotion post and respondents 2 to 35 are far junior to him in the lower grade. Though the petitioner has not directly challenged the promotion of Respondents 2 to 35 but what he wants is that he must be deemed to have been promoted along with respondents 2 to 35 on the basis of the Selection held in June 1994.

2. The petitioner has stated that when he made a representation to the higher

authority he was informed that in the selection held in August 1994 he was found suitable. According to the petitioner there was no selection in August 1994. Respondent No.1 had promoted the petitioner only on the basis of assessment made in the selection held in June 1994 but deliberately he was given an order of promotion only in August 1994 to give the benefit to Respondents 2 to 35.

3. The first respondent in the counter filed has explained the position stating that in the selection held in June 1994 the case of the petitioner was considered and he was not selected. Subsequently, in August 1994 taking a policy decision substantial number of Commanders were promoted as Deputy Operation Manager and in that process the petitioner was promoted. The first respondent denied the case of the petitioner that the petitioner was found suitable in the selection held in June 1994 but purposely the order of promotion issued in August 1994. Mr. Y.P. Narula, the learned counsel for the petitioner submitted that the letter dated 27.10.1994 would clearly show that there was a selection in August 1994 and the first respondent had not produced any material to show that there was any selection. While as a matter of fact, there was no selection in August 1994 and this only to explain what has been stated in the letter dated 27.10.1994, the respondent No.1 had come out with the new theory of promotion on the basis of a policy decision. Mr. Narula, the learned counsel for the petitioner also contended that the selection committee had selected the persons whose track record had not at all been satisfactory and while making the decision the members of the selection committee had acted irrationally and that had resulted in the petitioner being denied his promotion in June 1994.

4. The learned counsel for the petitioner Mr. Narula, further submitted that a perusal of the Annual Appraisals Operation for Pilots with reference to each of the respondents 2 to 35 that will clearly show the manner in which the members of the Selection Committee had considered the candidates for promotion. According to Mr. Narula the selection was, vitiated by illegality, irrationality and it was wholly unreasonable. Mr. Rajiv Nayar, the learned Senior Counsel for the first respondent submitted that the first respondent held the selection in June 1994 to consider the case of all eligible candidates for promotion to the post of Deputy Operation Manager. The case of the petitioner was considered. Respondents 2 to 35 were found suitable for promotion because as their performance, was better than that of the petitioner and others who were not selected. On the basis of the decision reached by the selection committee, respondents 2 to 35 were not promoted. In August 1994, with a view to preventing exodus of pilots from the Organisation and to maintain the service, a policy decision was taken by the first respondent to promote Commanders as Deputy Operation Managers and for that purpose the case of all eligible candidates was considered and about 73 Commanders were promoted as Deputy Operation Manager and the petitioner was one of them. Though what was done in August 1994 cannot be strictly called a selection in the manner in which it was done in June 1994 but a process of selection must be adopted to select the 73 of officers out of the officers who could be considered for promotion.

5. According to Mr. Nayar, the learned Senior counsel for the first respondent the petitioner was conferred a privilege and a benefit and but for the decision taken by the first respondent to make promotion as in August 1994 the petitioner would not have been appointed as Deputy Operation Manager at all. The petitioner, according to the learned Senior counsel, cannot claim promotion as a matter of right. His only right in law is to have his case considered by the Selection Committee. That was done by the first respondent is accepted by the petitioner. A perusal of the records belonging to the selection committee would show the assessment made by the members of the select committee. The petitioner has leveled allegations against the members of the selection committee and the process of selection was without any basis. The learned senior counsel referred to the judgment of the Supreme Court in All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, C wherein the Supreme Court observed:

There is yet another reason why this contention of the petitioners must fail. It is now settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favor Respondents 4 and 5 and, Therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been imp leaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fides, which allegations, in fact, are without merit.

It was also submitted that the change in the policy was completely arbitrary and without any reason. We are unable to accept this contention. The respondent - Bank is a business organisation and it must identify the best available talent in the organisation for holding challenging assignments in the top executive grades. There is nothing wrong if the Bank devised a policy defining the eligibility norms on a realistic basis and devised a system whereby the best available talent would be chosen to man the critical positions. Keeping this objective in view the changes in the promotion policy have been made, it is always for the employer to see how to promote and utilise the best talent available in the organisation. The promotion policy originally framed in the year 1975 has been amended from time to time. The changes have now been made in 1989 keeping in mind the requirement of the Bank and based on the experience of the Bank in regard to making selection for promotion. The changes so made cannot be regarded as arbitrary and the Court cannot sit in appeal and decide as to what is good for the institution. Under the new policy the petitioners are also eligible for who were eligible under the old policy, but in practice were not considered for promotion, are now considered under the new policy. The object of the new policy seems to be not only to redress the injustice to those officers resulting on account of the difference between the rules and the practice but also with the object of selecting the best talent for the top executive posts. It was next contended that a uniform system of appraising the work was not followed which has caused prejudice to a

section of the employees of the Bank. Prior to April 1986 appraisal used to be on the basis of the annual confidential reports. With effect from April 1986 a new system known as annual appraisal system was introduced. Under the new system the appraisal report starts with the writing by an employee himself, which is called self-appraisal. It is then forwarded to the superior authorities who record their own remarks on the performance of the employee concerned. As already noticed this self-appraisal system was not applicable in respect of all the candidates. The comparative merit was assessed by taking into consideration the annual confidential reports in the case of some employees and the new performance appraisal reports in the case of others. Alleging that this has caused prejudice to those employees whose annual confidential reports were considered the submission made was that the procedure so adopted was discriminatory. It is no doubt true that in the case of some employees annual confidential reports were considered and in the case of other employees assignment appraisal reports were considered. In our opinion, however, this cannot be a good ground for holding that the selection is vitiated. Firstly, no particulars have been given in the writ petition in order to show that the officers in whose case the annual confidential reports were considered had suffered a disadvantage. If the petitioners were serious in raising this contention they would have given particulars as to how many of the 58 officers who were selected were those in whose case annual confidential reports were considered and how many were those in whose case the assignment appraisal reports were considered. In the absence of this basic fact it cannot be presumed that the section of the employees whose annual confidential reports were considered had suffered a disadvantage. Further more confronted with the situation whether (sic where) the performance of the officer was recorded in two different types of reports the management had, as of necessity, to consider the same and evaluate them. Even though the assignment appraisal reporting system may be an improvement in the existing system of writing, annual confidential reports, the performance of the officer concerned could have been determined from the annual confidential reports. In fact this was being done before the gradual introduction of appraisal reporting system. Each report of an officer, whether an annual confidential report or assignment appraisal report, had to be considered on its own and the performance assessed. It is only if they received 70 per cent marks on the basis of this assessment that they were eligible for being called for the interview. There is nothing to suggest that such assessment, and assignment of marks, on the basis of the annual confidential report or the assignment appraisal report could not have been given. It is, Therefore, not possible to hold that the consideration of two types of reports had resulted in any discrimination. It was then submitted that under the existing policy the performance appraisal comprised of self-appraisal and annual confidential reports for six years. With the change in the eligibility norm to four years instead of the actual five/six years' service, it was submitted, there was a need for reducing the consideration of period of appraisal from six years to four years. As this has not been done the junior officers who were considered were at an advantageous position because

their performance in Scale V as well as in the lower Scale IV was considered whereas in the case of senior officers their performance in Scale V alone was considered because they had rendered more than five to six years" service in that grade.

6. The learned senior counsel also referred to the judgment of the Supreme Court in *C.P. Kalra v. Air India* through its Managing Director Bombay and Ors. 1994 (1) Supp. SCC 454 wherein the Supreme Court held:

It was next submitted that the promotion policy was unconstitutional as the marks assigned for the interview test were far in excess of the permissible norm or limit. The 40 per cent prescription for interview is based on Rule 2.6 of the promotion policy, this 40 per cent is divided under different heads or factors as stated hereinabove. The submission of the learned counsel for the petitioner was based on the observations of this Court in *Ashok Kumar Yadav* wherein this Court observed that 33.3 per cent marks reserved for oral test were excessive and would suffer from the vice of arbitrariness. The High Court has dealt with this submission and has pointed out that no hard and fast rule can be evolved in this behalf because much would depend on the job requirement for each post and the level of the post. A whole line of decisions were brought to our notice beginning from *Ajay Hasia* case but it would be sufficient for us to refer to the latest decision in the case *Indian Airlines Corpn. v. Capt. K.C. Shukla*. In that case this Court after referring to the decisions in *Ajay Hasia Lila Dhar*, *Ashok Kumar Yadav* and *Rafiquddin* observed that a distinction appears to have been drawn in interviews held for competitive examination or admission in educational institutions and selection for higher posts. Efforts have been made to limit the scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in, but the same standard cannot be applied for higher selections and this is clearly brought out in *Lila Dhar* case. It is, Therefore, clear that this Court was also of the view that no hard and fast rule can be laid down in these matters because much would depend on the level of the post and the nature of the performance expected from the incumbent. In that case the method of evaluation was based 50 per cent on ACRs and 50 per cent on interviews and this Court upheld the said method notwithstanding the fact that the weightage for interview performance was as high as 50 per cent. We are, Therefore, of the view that the contention that because in the instant case the weightage for the viva voce test is 40 per cent, it is per. se excessive and hence arbitrary, cannot be accepted.

Placing reliance on the decision of this Court in *Atul Khullar v. State of J&K* counsel argued that it was incumbent on the respondent to maintain and produce the record in regard to the interview test to satisfy this court that no arbitrariness had crept in. In that case this court observed in para graph 20 as under:

"We find it necessary, however, to emphasise that a Selection Committee conducting the viva voce test should maintain the entire record, including the

original work-sheets on which the marks have been recorded by each member separately, for a minimum "period of one year after the examination. Failure to do so can strengthen an allegation of mala fides against the Selection Committee".

It may be mentioned that no allegation was made before us that the decision of the Selection Committee was mala fide and Therefore the question of strengthening the allegation does not arise. We may also state that all that has been pleaded in the pleadings before this Court is that the Selection Committee devoted hardly a few minutes for interviewing each candidate and, Therefore, there was no effective application of mind and the entire viva voce test was farcical. In the counter that has been filed, this allegation has been denied and it has been contended that between 20 and 30 minutes were devoted per candidate on an average and, Therefore, there was an effective interview undertaken for assessing the merit of each candidate. A selection process cannot be interfered with on such vague allegations made by an unsuccessful candidate. We, Therefore, do not see any merit in this contention also.

7. I had perused the records produced by the first respondent. The members of the Selection Committee had assessed the merits of all the candidates including the petitioner. I do not find any infirmity in the process of selection.

8. The letter dated 27.10.1994 written by the General Manager to the petitioner reads as under:

DO:CON 1301 dt. 27.10.1994

With reference to your representation dated 5th September 1994, we quote hereunder an extract of reply received from GM(Par) IAL Mr. for your information:

"We have been informed by Hqrs. that the representation of Capt. Kukreja has been examined. Capt. Kukreja was not found suitable in the selection exercise finalised in June 1994. However, he was found suitable for the post of Dy. GM(Op) in the selection held in August 1994. His appointment to the post of Dy. GM(OP) would be effective from the date he took over charge of the new assignment.

9. Taking advantage of the employment of the nomenclature selection, the learned counsel for the petitioner would submit that the first respondent had not disclosed the real facts and had tried to project a case of selection in August 1994 which is not borne out by records. The learned counsel for the petitioner developed his points by submitting that as a matter of fact the petitioner was found suitable for promotion in the selection held in June 1994 and for reasons best known to the first respondent and to favor a few of the respondents giving them an edge over the petitioner the appointment order promoting the petitioner as Deputy Operation Manager was not issued and to keep the petitioner below respondents 2 to 35 in the seniority list, the first respondent had adopted a curious procedure. The petitioner is not correct in making the submissions. No

details have been given by the petitioner in the petition. The first respondent had stated in the counter affidavit as under:

I reiterate that for candidates who were appointed as Deputy General Manager (Operations) were senior to the petitioner and the remaining 30 were junior to him. Further, in August, 1994, with a view to arrest exodus of trained pilots, it was decided to promote Commanders on completion of three years service as Deputy General Manager (Operations) as a one time exercise. Accordingly, records of 90 Commanders who had completed three years in their existing post, were perused and finally 73 Commanders were appointed as Deputy General Manager, (Operations) in August 1994. The Petitioner was one amongst these Commanders to be promoted as Dy. General Manager (Operations) on 5.9.1994. He submitted a representation dated 5.9.1994, seeking restoration of his seniority and a reply was sent to him on 27.10.1994 (a copy of which is annexed hereto and marked as Annexure "B"). This letter was acknowledge by the petitioner. Submissions made by the petitioner in this para that no reply was given by the Respondents in respect of the representation dated 5.9.1994 is not true. The acknowledgement signed by the petitioner himself for receipt of our reply dated 27.10.1994 is also annexed and marked as Annexure "C". It is fact that similar representations were received from other pilots who were responded to as indicated above. All other averments of the paras under reply which are contrary to the aforesaid are specifically and categorically denied.

10. In the rejoinder filed by the petitioner, the petitioner had disputed the stand taken by the first respondent. The petitioner, in my view has not been able to show as to how the statement made in the counter is wrong. The first respondent had acted on exigencies of the situation and the petitioner having received the benefit cannot turn round and say that the first respondent had made any selection in August 1994. I am satisfied that the first respondent while making the selection in June 1994 had acted in accordance with law and in making promotion in August 1994 had acted in the interests of the Organisation and the petitioner cannot have any objection in law.

11. Mr. Narula, the learned counsel for the petitioner submitted that the selection committee had not taken into account the performance appraisal of the candidates and some of the respondents had not been doing their duties properly and yet they had been selected. It is not for this court to sit in judgment over the decision making process adopted by the selection committee. The petitioner cannot invite this court to agitate on disputed questions of fact. I am of the view that the petitioner has not made out any case for interference under Article 226 and accordingly, the writ petition is dismissed. There shall be no order as to costs.