

(1991) 07 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Appeal No. 1730 of 1986

C.P. Kalra and Others

APPELLANT

Vs

Air India and Others

RESPONDENT

Date of Decision : 31-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1991) 45 DLT 113

Hon'ble Judges : Leila Seth, Acting C.J.; Sat Pal, J

Bench : Division Bench

Advocate : Rakesh Luthra, Arun Jaitley, Lalit Bhasin, A.K. Sharma and K.C. Kalra, for the Appellant;

Judgement

Leila Seth, A.C.J.

(1) Mr. Rakesh Luthra, learned Counsel for the petitioners has restricted his arguments to the limited question whether an employee has a right to notice before any administrative change is made in the promotional policy and whether promotions made on the basis of such changed policy are vitiated for lack of notice.

(2) The facts are being briefly set out. Petitioner No. 1 Joined Air India on 3rd May, 1964 as Junior Traffic Assistant and was promoted to the post of Assistant Station Superintendent on 1st October, 1979. Petitioner No. 2 joined the service on 3rd April, 1967 and was promoted to the post of Assistant Station Superintendent also on 1st October, 1979. Along with respondent No. 3. Petitioner No. 3 is the Air India Officers Association.

(3) It is the admitted case of parties that the circular dated 24th June, 1970 contained the promotional policy and procedure. The zone of consideration was originally three and this was subsequently enlarged in 1977 to five i.e. five times the number of posts. It is also the admitted case of parties that in 1981, to be exact on 8th April, 1981 a Panel report indicated certain changes with regard to

the promotion of officers from the grade of Assistant Station Superintendent to the grade of Station Superintendent. Subsequently on 6th September, 1982 this policy was circulated to all the departments.

(4) The crux of the change in the promotional policy and procedure as between the circular of 1970 and that of 1981 is only with regard to weightage to be given to the annual appraisal reports. Both promotional policies proceed on the basis of merit combined with seniority. It appears that employees are- rated on their annual performance into one of four grades, i.e. A. B+, B and C. The Panel constituted for selection of candidates for promotion, while: considering an employee for promotion to the category of Station Superintendent was treating grade B+ and Grade A t par for the purpose of determining merit. The 1981 selection panel had to fill up 68 posts of Station Superintendents. The zone of consideration being five, all the Assistant Station Superintendents that is 319 of the Air India had to be considered. The 1981 Selection Panel felt that in order to arrive at a more objective manner of appraisal, it would be better to allocate marks for merit and seniority. The criteria adopted by the Panel for the purposes of the marks system was 60% for merit and 40% for seniority. The allocation for merit and seniority in the marks system is as indicated below : Merit Seniority Marks Rating Marks Length of Service in grade as on 1.8.1984

(5) The basic system of promotion from the grade of Assistant Station Superintendent to Station Superintendent on the basis of merit-cum- seniority remained in operation and the mark? system was introduced for the purposes of quantifying the number of marks to be allotted to the grading of merit and seniority of the person.

(6) Mr. Arun Jaitley, learned Counsel for the respondents argued that on the facts of the case, in effect there was no actual change in the policy but only an attempt to reduce subjectivity in assessing the performance of the officers.

(7) It is pertinent to note that certain promotions were made in the year 1981, 1982 and 1983 to the post of Station superintendent on the basis of this marks system. Petitioners I and 2 are basically aggrieved only with the promotions made in the year 1984. At that time the seniority of the said petitioners was No. 112 and 113 respectively whereas respondent No. 3 Mr. M.R. Bhide was at 126 in the seniority list. Yet respondent No. 3 was found suitable for promotion whereas the petitioners were not so found. It is Therefore, clear that the petitioners were within the zone of consideration and were considered but were not found fit. 28 officers in fact were promoted in the year 1984.

(8) However, it appears that on 20th/21st February, 198? respondent No. I issued an office notice addressed to All Conveners of Promotion Panels for their guidance and indicated therein that though the zone of consideration would be five times the number of the existing and anticipated vacancies" the marks system was being discontinued and the earlier "Promotional Procedure" would apply. Thus an overall average rating of "B"+ or "A" in the preceding three year-

would be deemed sufficient merit for the officer to be promoted and not to be superseded; and inter-se seniority would be protected.

(9) The argument of learned counsel for the petitioners is that there is a requirement on the part of respondent No. 1 to act fairly and the principles of natural justice require that the petitioners should have been notified with regard to the change of policy made in 1981, specially as 1970 policy specifically provided that "material changes in the above procedure if and when introduced in the light of experience will be notified for the information of a3 concerned."

(10) It is stated in the counter affidavit filed by the respondents that petitioners 1 and 2 were in the zone of consideration for promotion even in the year 1981 as the number of vacancies was 68 and in fact all the Assistant Station Superintendents were considered. But their respective seniority at the relevant time was 264 and 265 and they were not selected. Further, in the year 1982 when the marks system was again followed since the number of vacancies in the grade of Station Superintendent were only 20, only 100 officers were in the zone of consideration and consequently petitioners 1 and 2 were not considered and similarly in 1983 only 175 Assistant Station Superintendents were considered as the number of vacancies were 35. However, in the year 1984 petitioners 1 and 2 being at numbers 112 and 113 were considered but not selected as their respective marks were 57 and 65, though petitioner No. 1's marks were subsequently changed from 57 to 65. Despite the enhancement of marks petitioner No. 1 was not selected by the Selection Promotion Panel nor was petitioner No. 2, but respondent No. 3 whose merit rating was higher was promoted with effect from 1st November, 1984.

(11) Mr. Jaitley, learned Counsel for the respondents contended that the right to change the policy is a prerogative of the Corporation as is the making of policy and it cannot be struck down, unless it is arbitrary or mala fide. In fact, Mr. Luthra has not challenged the right of the respondent to change the policy, nor has he submitted that the changed policy is arbitrary but has contended that the lack of knowledge of the changed promotional policy has resulted in petitioners 1 and 2 not being considered for promotion/promoted and consequently they are aggrieved. He urges that fairness and the principles of natural justice require that they should have been informed. Consequently he submits that the said petitioners should have been considered in 1984 in terms of the 1970 promotional policy and not under the 1981 promotional policy. He relies on the decision of the Supreme Court Col. A.S. Sangwan Vs. Union of India (UOI) and Others, . In that case Mr. Justice V.R. Krishna Iyer speaking for the Court opined that a policy once formulated with regard to promotion of employees in a cadre is not good for ever, it is perfectly within the competence of the Union to change it, re-change it, adjust it and re-adjust it "according to the imperatives of circumstances and imperatives of material considerations". The Court held that there is no bar to the policy formulated earlier being changed if there are good and weighty reasons for doing so. It was a matter entirely within the

reasonable discretion of the Government, but if it did change its policy, it should do so fairly and make it "known to those concerned and not give the impression that it is acting arbitrarily or by any ulterior criteria".

(12) In the present case there's no indication that there was any ulterior criteria or the policy was arbitrary. In fact the reasons for change have been indicated in the Panel report itself and the purpose appears to have been to introduce more objectivity by the marks system as there were a very large number of vacancies to be filled. The only question is should this marks system have been made known to the petitioners and does the lack of knowledge vitiate the promotions. The expression used in the above mentioned Supreme Court Judgment "made known to those concerned", has to be read in the context in which it was stated. It is in connection with Article 14 of the Constitution that the expression was used so that a change in the earlier policy should be fair and not arbitrary. The Court observed that, after all what is done in secret is often suspected of being capricious or mala fide.

(13) From the facts set out above it is clear that the petitioners were considered for promotion because both in 1981 and in 1984 as they came within the zone of consideration but were not selected. There is no dispute that a mere chance of promotion is not a condition of service, in fact a reduction in the chance of promotion does not tantamount to a change in the condition of service. In State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others, Mr. Justice A.P. Sen while speaking for the Court observed that a right to be considered for promotion is a term of service, but mere chances of promotion are not.

(14) If the respondents have a right to change the policy and this right is not challenged and the change of policy is not arbitrary then the petitioners are not entitled to say that they must be covered by the policy of 19/0 and not by the changed policy of 1981.

(15) Further, in the present case there is no dispute that the change of policy was circulated to the persons concerned with the selection process. In fact a letter dated 8th September, 1982 was addressed to all Departmental Heads and a copy of the earlier policy of 24th June, 1970 was also annexed. It is Therefore, clear that the petitioners contention that they have to be considered in accordance with the old policy of 1970 is not tenable.

(16) Before ending we would like to record our appreciation of the manner in which Mr. Luthra argued the matter, in that he limited his arguments to only what was strictly relevant and arguable.

(17) We discharge the rule. However, we make no order as costs.