

(1993) 04 SC CK 0076
In the Supreme Court Of India
Case No : Civil Appeal No. 123 Of 1992

C.P. Kalra

APPELLANT

Vs

Air India through its Managing Director, Bombay and Others

RESPONDENT

Date of Decision : 08-04-1993

Acts Referred:

Citation : (1995) 1 LLJ 164 : (1994) 1 SCC 454 Supp

Hon'ble Judges : A. S. Anand, J;A. M. Ahmadii, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—Under a Promotion Policy evolved by Air India on June 15, 1988, promotions to various managerial posts in the hierarchy had to be finalised in terms thereof. The appellant, who joined Air India on May 12, 1964 as Junior Traffic Assistant, was duly promoted to the next higher post of Assistant Station Superintendent on October 1, 1979. He was seeking promotion to the next higher post of Station Superintendent but he complains that on account of the change in the promotion policy in June 1988 he has been kept out from promotion even though his record has been throughout good. He complains that he has been stagnating as Assistant Station Superintendent since his appointment to that post in 1979.

2. It is true that the promotion policy underwent a change in June 1988. According to the said policy, the promotion from the post of Assistant Station Superintendent to Station Superintendent had to be on the criteria of merit-cum-seniority. Rule 2.3 of the Promotion Policy provides that only those employees will be eligible for being considered for promotion, who, on the date of the meeting of the Promotion Committee or earlier, have been confirmed in the post, in the scale of pay next below the scale of pay of the post to which the promotion is to be made. The zone of consideration is set out in Rule 2.4. The basis for promotion is to be found in Rule 2.5. This Rule inter alia states that the basis for promotion would be merit-cum-seniority; merit to be determined by the performance and conduct of an employee in the post held by him and an

assessment of the employee's potential for development to shoulder higher responsibilities and seniority to prevail after meritorious candidates have been identified. According to Rule 2.5.3, the revised promotion policy provides for a selection criteria which suitably balances merit and seniority, so as to ensure that higher positions are filled by Officers possessing requisite qualities and attributes. The process of determination of merit is set out in Rule 2.6 which states that all promotions from the level of Assistant Station Superintendent/ equivalent categories and above will be based on the overwhelming consideration of merit which should be objectively assessed by measuring the abilities, qualities and attributes of the employee necessary for the promotion post. This merit has to be determined on the basis of Annual Performance Appraisal Reports, personal records as well as personal interview. Out of a total 100 marks, 60 marks are reserved for Annual Performance Appraisal Reports and 40 marks for personal interview. Rule 2.6.2. indicates the factors and points to be assessed at the personal interview. The factors mentioned are professional knowledge, managerial ability, communication ability, interpersonal skills/general awareness and professional qualifications relevant to the job attained while in the grade held immediately before promotion. The marks assigned for the last three are 5 each and for the first and the second 15 and 10, respectively. Rule 2.6.4 states that the marks secured by an employee on the basis of ratings in the Annual Performance Appraisal Reports and Personal Interview will be added together and those who have obtained 70 marks or more would be considered suitable for promotion. After the candidates found suitable for promotion on the basis of merit are thus identified, they have to be arranged in the order of their inter se seniority in the panel which would operate for one year. This in brief is the promotion policy discernible from the document placed on record.

3. Briefly stated, the promotion policy is that promotion to the post of Station Superintendent shall be on the basis of merit-cum-seniority, merit to be determined on the basis of the assessments found in the Assessment Reports as well as the performance at the interview. The minimum marks required for being empanelled is 70 per cent. If a candidate gets less than 70 per cent he is not considered suitable for promotion to the next higher post. From amongst the candidates who have secured 70 per cent and above, a list has to be prepared in the order of their inter se seniority regardless of the marks secured and promotions given according to their placement in the panel.

4. Thus after the merit of each candidate is determined and those found meritorious are identified, seniority plays a role at the stage of empanelment. This is the thrust of the promotion policy introduced in 1988 with a view to strengthening the managerial cadres.

5. The appellant appeared at the interview in 1989 and it appears that he secured a total of 65.67 marks i.e. he fell short of the minimum requirement of 70 per cent marks for being entered in the list of candidates suitable for promotion to the next higher post. Having thus been unsuccessful in securing

promotion, he filed a writ petition in the High Court challenging the decision to refuse him promotion, being Civil Writ Petition No. 1048 of 1990. A Division Bench of the High Court considered the main argument, namely, that 40 per cent marks re-served for the interview was excessive and contrary to the ratio laid down by this Court in a number of decisions beginning from *Ajay Hasia v. Khalid Mujib* 1981-1-LLJ-103 and ending with *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, The High Court took the view that this Court had clarified that there can be no hard and fast rule regarding the precise weight to be given to the viva voce test as against the weight to be given to the appraisal reports and hence, in the absence of allegation of mala fides, it could not be said that weightage given to the interview test was capable of being arbitrarily exercised. In this view that the High Court took it dismissed the writ petition and hence the present appeal.

6. Mr Rajeev Dhavan, learned Counsel for the appellant, put forward three submissions in the main. His first contention was that the viva voce test which reserves 40 per cent marks for the purpose of assessment of merit, was in fact not to assess the merit of the candidate but to eliminate candidates and, therefore, it did not meet the requirement of the law laid down in the decisions referred to by the High Court as well as other decisions cited before us, namely, *Mohinder Sain Garg Ors. Vs. State of Punjab and Others*, . *Munindra Kumar v. Rajiv Govil* 1991- 2-LLJ-103 and *Indian Airlines Corpn. v. Capt. K.C. Shukla* 1993-1- LLJ-215 According to him such exclusive interview requirement being wholly disproportionate to the level for which selection has to be made can only be described as unfair, arbitrary and wholly unconnected to the object of the exercise. We do not think that there is any merit in this submission. The promotion policy clearly envisages that merit shall be the primary consideration for promotion to the next higher post. Once the candidates falling within the zone are tested for the purpose of determining their merit on the basis of their performance emanating from the appraisal reports as well as their performance at the interview, the total number of marks secured, if not less than 70 per cent would entitle the candidate to be placed in the group of meritorious candidates suitable for promotion to the next higher post. Once this group of meritorious candidates is determined, their arrangement in the select list has to be on the basis of the inter se seniority. This method of assessing the merit of the candidate cannot be said to be, in any manner, arbitrary or one which has no relevance to the object to be achieved. The basic idea under the promotion policy is that the managerial post should be manned by candidates of merit and once meritorious candidates are identified, seniority would assume relevance for the limited purpose of their placement in the panel. It is true that on the basis of the appraisal reports and the grading given to each candidate, marks are assigned out of 60 marks. Out of the remaining 40 marks, marks are assigned to each candidate on the basis of the performance at the interview. If a candidate secures 70 per cent and above he is taken to be meritorious enough for promotion to the next higher post. We see nothing arbitrary in the method of

determining merit. We, therefore, find it difficult to agree with the learned Counsel that the sole purpose of interviews is only to eliminate candidates. When candidates having merit are to be chosen, any method of choice employed will necessarily eliminate those without merit. A cut-off line has to be drawn for determining merit and in this case it is fixed at 70 per cent. There is nothing arbitrary, unfair or irrational about the prescription of the minimum eligibility marks for empanelment. We, therefore, reject this contention.

7. 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 observation of this Court in *Ashok Kumar Yadav (supra)* 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 (supra)*, but it would be sufficient for us to refer to the latest decision in the case *Indian Airlines Corpn v. Capt. K.C. Shukla (supra)*. In that case this Court after referring to the decisions in *Ajay Hasia (supra)*, *Lila Dhar 1981-2-LLJ-297* *Ashok Kumar Yadav (supra)* and *State of U.P. Vs. Rafiquddin and Others*, 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 (supra)*. 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 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.

8. Placing reliance on the decision of this Court in *Atul Khullar and Others Vs. State of Jammu & Kashmir and Others*, 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 paragraph 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.

9. Having applied our mind to the contentions urged by the learned Counsel, we have not been able to take the view that the selection process was in any manner vitiated and hence we see no merit in this appeal and dismiss the same with no order as to costs.