

(2015) 08 DEL CK 0033
In the Delhi High Court
Case No : LPA 653 of 2012

Malkeet Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 233

Citation : (2015) 08 DEL CK 0033

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Rekha Palli, Senior Advocate instructed by Saahila Lama and Tarun Khanna, for the Appellant; Anjana Gosain, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J—The controversy involved in the above captioned intra-court appeal relates to appointment to the post of Air Traffic Control (hereinafter referred to as "ATC") cadre in Airports Authority of India.

2. To adjudicate upon the controversy in the present case we need to start our journey from the year 1972 when all airports in India were under the direct control of the Ministry of Civil Aviation, Government of India. The employees engaged to manage the airports were the employees of the Central Government and were paid wages as recommended from time to time by the Pay Commissions subject to such changes as were made by the Central Government. In other words these employees were receiving salary as per the CDA Pattern.

3. At that time the hierarchical structure of ATC Cadre in the Department of Civil Aviation was as follows:--

4. The conditions of service of employees of the Department of Civil Aviation were governed by the Civil Aviation Department (Class I and Class II Posts) Recruitment Rules, 1969 (hereinafter referred to as the "1969 Rules"). Under the 1969 Rules direct recruitment in ATC cadre was at two posts; viz. (i) Aerodrome

Assistant; and (ii) Assistant Aerodrome Officer. The appointment to the post of Aerodrome Officer was by 100% promotion from the eligible Assistant Aerodrome Officers having an experience of three to eight years. The age and eligibility criteria(s) prescribed for promotion to the post of Assistant Aerodrome Officer was as follows: -

5. On April 01, 1972 by an Act of Parliament the International Airport Authority of India was constituted and four international airports : Delhi, Bombay, Calcutta and Madras were handed over to the said International Airport Authority of India. Employees working in these airports were given the option to join the International Airport Authority of India with explicit understanding that they would continue to receive pay under the CDA Pattern till the year 1977 but thereafter the pay scales would be converted into IDA Pattern. Remaining airports continued to be managed directly by the Ministry of Civil Aviation.

6. 1969 Rules were amended in the year 1982 when the Civil Aviation Department (Class I and Class II posts) Recruitment (Amendment) Rules, 1982 (hereinafter referred to as the "1982 Rules") were promulgated. Under 1982 Rules the appointment to the post of Aerodrome Officer was 66.66% by promotion and 33.33% by direct recruitment. The age and eligibility criteria(s) prescribed for direct recruitment to the post of Aerodrome Officer was as follows:

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7. The National Airport Authority of India was formed in the year 1986 by an act of Parliament and all remaining airports under the Ministry of Civil Aviation came under the control of the National Airport Authority of India. The employees working in these airports became employees of the National Airport Authority of India and since as employees of the Central Government were receiving salary under the CDA pattern continued to receive salary under the CDA pattern as employees of the National Airport Authority of India.

8. National Authority of India issued a circular on March 04, 1992 regarding amendment to the 1982 Rules, which circular reads as under:--

"Subject: - AMENDMENT IN RECRUITMENT RULES.

The Recruitment Rules for the post of Aerodrome Officer circulated vide Ministry of Civil Aviation Notification No. A.12018/3/79-EA(VE/SFS) dated 7.2.1983 are amended as under with the approval of the Competent Authority in National Airports Authority:--

(a) In Serial No. 42 Column No. 10.

For

(i) 33 1/3% by promotion, failing which by direct recruitment.

(ii) 66 2/3% by direct recruitment.

Read

(i) 50% by promotion, failing which by direct recruitment.

(ii) 50% by direct recruitment.

2. This order takes effect with immediate effect."

9. Thus by virtue of the circular dated March 04, 1992 the source of recruitment to the post of Aerodrome Officer (in National Airport Authority of India) became 50% by direct recruitment and 50% by promotion.

10. Subsequently the National Airport Authority of India and the International Airport Authority of India were merged with effect from April 01, 1995 and Airports Authority of India (hereinafter referred to as "AAI") was constituted.

11. Since under the National Airport Authority of India and the International Airport Authority of India posts of similar nomenclature were in different pay scales having different rules and regulations a need was felt to have a common recruitment rule and unified pay structure. It was all the more necessary because by said year the International Airport Authority of India was following the IDA Pay Scales and the National Airport Authority of India was following the CDA pattern. Vide letter dated June 16/18, 1996, the IDA Pay Scales were introduced for the employees of the erstwhile National Airport Authority of India with retrospective effect from January 01, 1989. In this manner the employees of the erstwhile National Airport Authority of India and the International Airport Authority of India who had become employees of the Airport Authority of India started receiving salary under the IDA Pattern.

12. The conditions of service of the employees of AAI continued to be governed by the 1982 Rules (as amended by afore-noted circular dated March 04, 1992 for the post of Aerodrome Officer/Manager (ATC) in AAI).

13. AAI issued an Office Order on February 09, 1998 adopting unified pay scales and designation for executives and non-executives in AAI, the relevant portion whereof reads as under:--

"Sub: ADOPTION OF UNIFIED PAY SCALES AND DESIGNATION FOR EXECUTIVES AND NON-EXECUTIVES IN AAI.

The competent authority has approved adoption of unified pay scales and designations in respect of executives and non-executives in Airports Authority of India as under:

I (i) adoption of unified pay scales and designations, as below, for executives in IAD and NAD w.e.f. 1.4.1996

14. By virtue of aforesaid adoption of unified pay-scales/designation, the hierarchical structure of ATC cadre became as follows: -

Be it noted here that the posts of Assistant Aerodrome Officer and Aerodrome Officer got re-designated as Assistant Manager (ATC) and Manager (ATC) respectively.

15. The Department of Public Enterprises, Government of India issued an Office Memorandum on June 25, 1999 on the subject of revision of pay scales in public enterprises, the relevant portion whereof reads as under:--

"2. In enterprises, where the scales of pay are different from those prescribed in the DPE guidelines or where rates of increments higher than those provided had been adopted in the past, it may be necessary for such enterprises to introduce certain intermediary scales or modify the scales to be provided in the guidelines with appropriate adjustments in their span and rates of increments. In doing so, it should be ensured that the minimum and the maximum of the individual scales prescribed herein are not altered. Such enterprises shall introduce these modifications only in consultation with their administrative Ministries and the DPE."

(Emphasis Supplied)

16. In view of the aforesaid Office Memorandum dated February 25, 1999 an exercise was undertaken in AAI to bring the pay scales of the posts in AAI at par with the pay scales prescribed in the DPE guidelines with effect from January 01, 1997.

17. In its Forty-Fifth Meeting, the Board of AAI dealt with the issue of revision of pay scales to bring them at par with the pay scales prescribed in the DPE guidelines. The relevant portion of the minutes of the 45th Board Meeting reads as under:--

"[ITEM NO.5]

Board Level Posts and Below Board Level Posts including Non-Unionized Supervisors - Revision of Scales w.e.f. 01.01.1997

The pay scales in all Central Public Sector Undertakings are due for revision w.e.f. 01.01.1997. On recommendations of the Committee under the Chairmanship of Justice S Mohan a retired Supreme Court Judge, Government of India in the Ministry of Industry, Department of Public Enterprises had decided that scales of pay attached to Board Level Post and below Board Level Posts including Non-unionized Supervisors would stand revised w.e.f. 01.01.1997 through their communication OM No. 2(49)48-DPE(WC) dated 25th June 1999. Copy of which is enclosed (Annexure-1).

2. Ministry of Civil Aviation vide letter No. 24033 00299-AAI dated 15th July 1999 conveyed the presidential Directive to the Airports Authority of India to implement the approved pay scales, fitment formula, DA guidelines and ceiling on prerequisites for Board Level and below Board Level Executives w.e.f. 01.01.1997 (copy enclosed as Annexure-II).

3. The Board in its 43rd meeting held on 12.01.2000 accorded in principle approval for implementation of the revised pay scales as communicated by Department of Public Enterprises (DPE) and as advised by Ministry of Civil

Aviation (MCA). As directed by the Board against Item No. 43.6 (in its meeting on 12.01.2000), the statement of implementation schedule is placed before it for consideration and approval for implementation of the revised pay scales from 01.01.1997. The implementation schedule is worked out by the High Level Committee constituted by the Board.

4. In the light of preceding, detailed pay revision proposals in respect of Board Level and Below Board Level Executives have been firmed up for implementation w.e.f. 01.01.1997. These proposals will cover only pay and allowances and will not cover perquisites. This will be finalized while settling the wage revision for unionized staff. A copy of the implementation schedule is placed in the Annexure-III.

5. In order to ensure fair implementation of the revised pay scales to all executives who are placed in higher pay grades executives levels under the existing Flexible Complementing scheme and present stipendiary trainees following are proposed:

5.1 All future induction at Executive level will be as Executive Trainees and are proposed to be taken on a consolidated stipend of Rs. 7,500 per month in the place of existing Rs. 5,000 per month. On successful completion of training, they will be placed as Junior Executives in E-1 level.

5.2 E-1 Executive Grade of Rs. 4,000-7,150 (Pre-revised) equivalent to the revised scale of Rs. 8600-250-14600/- is proposed to be introduced to Executive Probationers in direct recruitment. They will be designated as Junior Executives.

5.3 On completion of two years as Junior Executive, the direct recruits will be placed in the scale of Rs. 4800-8275 (pre-revised) to be revised as Rs. 10750-16750.

5.4 Pay scale of Rs. 7000-9600 E-5 (Pre-revised) to be revised as Rs. 16000-20800 is proposed to be introduced where present Senior Managers in the grade of Rs. 6500-9425 - (Revised Rs. 14500-18700) will move after three years regular service subject to necessary clearances and PAR grading. This grading will be designated as Assistant General Managers.

5.5 For promotion to DGM a combined regular service of not less than 5 years in the grade of Sr. Manager Assistant General Manager would be required.

5.6 The new Executive grades of E-1 & E-5 will be effective from 01.04.2000."

(Emphasis Supplied)

18. AAI issued an advertisement on July 17, 1999 inviting applications for appointment, by direct recruitment, to fill up sixty posts of Manager (ATC), the relevant portion whereof reads as under:--

"AIRPORTS AUTHORITY OF INDIA

In pursuit of fulfilling its mission for providing world class Air Traffic Services,

Airport Authority of India requires the following Personnel:

PAY SCALE UNDER IDA PATTERN DUE FOR REVISION MANAGEMENT (ATC):
5000-225-5900-250-8400

QUALIFICATION:

MANAGEMENT (ATC): (a) First class (60%) Engineering Degree in Electronics/ Telecommunication/Radio Engineering of a recognized University: OR (b) Passed Sections A and B in first class (60%) of the Institution Exams of the Institution of Engineers (India) in Electronics/Telecommunication/Radio Engg. Subject: OR (c) Passed in the graduate Membership Exams of the Institution of Electronics and Telecommunication Engineers (India) in first class (60%) OR (d) Passed Associate Membership Exam Parts II and III/Sections A and B of the Aeronautical Society of India (Electronics/Avionics and a group) in first class (60%) OR (e) First Class (60%) Master's degree in Science with Physics or Maths as Principal subject, with Physics as one of the subjects during graduation.

AGE LIMIT (AS ON 01.07.99).

MANAGER (ATC): Below 28 years."

(Emphasis Supplied)

19. Respondent Nos. 3 to 54 applied, and so did many others.

20. AAI issued letter(s) to the shortlisted candidates including respondents Nos. 3 to 54 on December 12, 1999 requiring them to appear in the Selection Test to be held on January 09, 2000, the relevant portion whereof reads as under:--

"REFERENCE No. A2024/4/98-HR

DATED: 10.12.99

Subject: Selection Test for Manager - ATC

Dear Candidate,

We thank you for responding to our advertisement for recruitment of Manager-ATC, based on preliminary scrutiny of your application we invite you to appear in the selection test on 9.1.2000 (Sunday) at 9.45 a.m."

(Emphasis Supplied)

21. Thereafter AAI issued admit card(s) to the shortlisted candidates, including respondents Nos. 3 to 54, to appear at the Selection Test to be held on January 09, 2000. Be it noted here that the heading of admit card(s) issued to the shortlisted candidates was as follows: - "ADMIT CARD MANAGER (ATC) SELECTION TEST".

22. AAI issued letter(s) to the candidates who emerged successful in the Selection Test including respondents Nos. 3 to 54 on February 23, 2000,

requiring them i.e. successful candidates to appear at the Voice Test and Interview, the relevant portion whereof reads as under:--

"Sub: CALL LETTER FOR VOICE TEST AND INTERVIEW

With reference to your application for the post of Manager (ATC) in Airports Authority of India (National Sports Division) and the subsequent written test held on 09.01.2000, you are requested to call us for a qualifying voice test and interview as per the following programme.

Please note that your selection is subject to qualifying in the voice test failing which you will not be allowed to participate in further selection proceedings.

2. Your candidature is purely provisional and subject to the fulfillment of the necessary requirements with regard to age, qualification, category etc. as advertised. Please bring the original certificates of your age, educational qualifications, experience, case along with a Photostat copy of all the documents, along with this call letter, failing which you will not be allowed to appear for the interview. During interview, you can give replies either in Hindi or English.

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."

(Emphasis Supplied)

23. The "declaration" referred to in the letter dated February 23, 2000 reads as under:--

"DECLARATION

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 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 AAI for this recruitment exercise. I undertake that I will not make any representation in this regard."

(Emphasis Supplied)

24. AAI issued an Office Order on April 05, 2000 regarding revision of pay-scales of executives (below Board level) with effect from January 01, 1997 in terms of the instructions contained in the Office Memorandum dated June 25, 1999 issued by the Department of Public Enterprises noted above in paragraph 15, the relevant portion whereof reads as under:--

"Subject: Revision of Scales of Pay of Executives (Below Board Level) - Effective from 01.01.1997

It has been decided to implement the revised scales of pay, fitment formula and Dearness Allowance (DA) guidelines of below Board Level Executives on IDA pattern in terms of instructions contained in the Department of Public Enterprises (DPE) OM No. 2(49)/98-DPE(WC) dated 25th June 1999 as under:

1. SCALES OF PAY

1.1 The existing scale of pay of Executives are revised w.e.f. 01.01.1997 as per Annexure-1

1.2 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 Rs. 5,000/- per month. On successful completion of training, they will be placed as Junior Executives in E-1 level.

1.2.1 E-1 Executive Grade of Rs. 4000-175-7150/- equivalent to the revised scale of Rs. 8600-250-14600/- is introduced for Executives/probationers in direct recruitment. They will be designated as Junior Executives and will be placed in the revised scale.

1.2.2 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) revised Rs. 10750-300-16750/-.

1.4 The new Executive grades of E-1 & E-5 will be effective from 01.04.2000.

Pay Scales of Executives (Below Board Level) W.E.F. 01.01.1997

25. In the meanwhile AAI had conducted the voice test and had interviewed the respondents Nos. 3 to 54 and other candidates who had emerged successful in the Selection Test. Respondent Nos. 3 to 54 successfully cleared the voice test and the interview.

26. AAI issued letters to the successful candidates including respondents Nos. 3 to 54 on May 29, 2000 offering them appointment to the post of "Junior Executive Trainee (ATC)", which letter reads as under:--

"Sub: Appointment to the post of the Junior Executive Trainee (ATC) in Airports Authority of India (NAD)

Dear Sir/Madam,

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

2. The terms and conditions of appointments 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 of India, (National Airport 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."

(Emphasis Supplied)

27. The relevant portion of the "Appendix" referred to in the afore- noted letter dated May 29, 2000 reads as under:--

"APPENDIX

Sub: OFFER OF APPOINTMENT AS JUNIOR EXECUTIVE TRAINEE (ATC)

The terms and conditions of the above appointments are stated below:

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.

3. AGREEMENT BOND

The trainee will be required to execute an agreement bond on non-judicial stamp paper of Rs. 62/- (Rupees sixty two only) as per specimen enclosed. The person standing surety to the above agreement shall be:--

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 allowance 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."

(Emphasis Supplied)

28. The relevant portion of the Form of Agreement required to be executed by the successful candidate (including respondents Nos. 3 to 54) who accepted appointment to the post of Junior Executive (Trainee) as offered by AAI reads as under:--

"This agreement (hereinafter referred to as the Junior Executive (ATC) Trainee)

of the first part

(hereinafter referred to as the surety) of the second part and the Chairman, Airports Authority of India of the third part.

WHEREAS the Junior Executive (ATC) Trainee has agreed to undergo training in the Airports Authority of India and on the successful completion of the same to accept employment as Junior Executive (ATC) in that department, on the terms and condition hereinafter appearing.

In witness whereof, the Junior Executive (ATC) Trainee and the surety have hereinto set their respective hands and the Chairman has hereinto.

Caused

_____ on his behalf to set his/her hand the _____ day of _____ thousand.

Signature of the

Junior Executive (ATC) Trainee"

29. Significantly, respondents Nos. 3 to 54 accepted the appointment to the post of Junior Executive (ATC) offered to them by AAI (vide letter dated May 29, 2000) and underwent required training.

30. After successful completion of their training, AAI appointed respondents Nos. 3 to 54 to the post of Junior Executive (ATC).

31. Soon thereafter, on July 25, 2001 the respondents Nos. 3 to 54 submitted representation(s) to the competent authority in AAI inter-alia stating therein that AAI committed an illegality in appointing respondents Nos. 3 to 54 to the post of Junior Executive (ATC) when the post which was advertised by AAI and in respect whereof the respondents Nos. 3 to 54 had applied was that of Manager (ATC), particularly when the post of Junior Executive (Trainee) was two steps below the post of Manager (ATC) in the hierarchy. It was thus prayed that the respondents Nos. 3 to 54 be appointed to the post of Manager (ATC) or an equivalent post instead of post of Junior Executive (ATC).

32. On the issue of undertaking(s) given by them at the time of appearing for voice test and interview and acceptance of appointment(s) to the post of Junior Executive (ATC) by them, following was stated by respondents Nos. 3 to 54 in the representation(s) submitted by them:--

"Though the post advertised for which the written test and the interviews were held, was that of Manager (Air Traffic Control), but the appointment letter which has been given to us is for the post of the Junior Executive Trainee (ATC). We accepted the same under the belief that the offered post of Junior Executive (ATC) in new scale is the same and equivalent to the post of Manager in the old

scale. However, we have come to know that even after the training is over we will be designated as Junior Executive (ATC) which is lower than the post of Manager (ATC). The administration had taken an undertaking from us that we will not object to the restructuring of the pay scales. The restructured pay scale of Rs. 5000-225-5900-250-8400 is Rs. 13000-350-18250. However, instead of giving us the revised pay scale of Rs. 13000-350-18250 w.e.f. 1.1.97 we have been given the scale of Rs. 8600-250-14600 which scale is below the scale applicable to the post of Assistant Manager (ATC). The post of Assistant Manager is one step below the post of Manager (ATC).

We may so point out that earlier the Assistant Manager were entitled to the post of Manager and the Manager was entitled to be promoted to the post of Senior Manager. Now the Junior Executive is to be promoted to the post of Assistant Manager and the Assistant Manager is to be promoted to the post of Manager and the Manager is entitled to be promoted to the post of Senior Manager. This itself shows that we, who were selected for the post of Managers, are in fact being appointed to the post of Junior Executive (ATC). This is not in accordance with Rule of law and fair play. We may add that at the time the undertaking was taken from us it was not disclosed to us that the post is being downgraded. We were told only of restructuring. We are, therefore, not bound with the said undertaking."

33. Receiving no response to their representation(s), respondents Nos. 3 to 54 filed a writ petition under Article 226 of Constitution of India being W.P. (C) No. 7390/2001 before a Single Judge of this Court making same submissions as were made by them in their representation(s) and praying that they be appointed to the post of Manager (ATC) or an equivalent post instead of post of Junior Engineer (ATC).

34. At this stage it would be useful to note the following averments regarding giving of undertaking and acceptance of appointment to the post of Junior Executive (ATC) made by respondents Nos. 3 to 54 in their writ petition:--

"5. Petitioners successfully qualified in the written test. On the basis of their performance in the written test petitioners were called for voice test and interview vide letter dated February 23, 2000. A copy of this letter is annexure - P4. Even in this letter post for which petitioners were called described the post as Manager (ATC). It was not disclosed at even at this stage that the post has been downgraded or is proposed to be downgraded.

7. Even in this appointment letter it was not disclosed that the said post was being downgraded by two steps below the post of Manager (ATC) which had been advertised and for which the petitioners had been selected. Petitioners believed that after training period they will be posted on a regular post as Managers (ATC) or a post equivalent to that of Manager (ATC) and in the pay scales applicable to the post of Manager (ATC).

8. Apart from what has been stated above it is submitted that a perusal of the

letters annexure P-3 and P-4 and the appendix appended thereto will show that no where it has been disclosed that the advertised post of Manager (ATC) was being down graded. All along it has been said that the pay scales were in revision. However after successfully completing training the petitioners have been posted as Junior Executives and have been placed in the pay scale of Rs. 8600-250-14000 (revised) instead of the revised pay scale of Manager (ATC) which had been revised from Rs. 5000-6400 to 13000-18250.

14. It is respectfully submitted that the above undertaking was given at a time when the petitioners had not been informed that posts were being downgraded. The petitioners, therefore, are not bound by the same and the respondents cannot take advantage of the said undertaking. It is respectfully submitted that the petitioners were not ad idem when the undertaking was given.

15. Apart from above, it is submitted that the said undertaking even otherwise is invalid as it is not only oppressive it is unconscionable and is liable to be struck down. It is respectfully submitted that the employment conditions in India are well known. Had the petitioners not given the undertaking asked for, the petitioners would have been denied the employment, despite their having passed the selection process successfully and they would have exposed themselves to hazards of finding another job which is not easy if not impossible. The petitioners and respondents were not equal bargaining position.

GROUND

A The action of the respondents is contrary to the principles of promissory estoppel. Respondent advertised the post of Manager (ATC). The petitioners applied for the post of Manager (ATC). They undertook the written test, voice test and interview for the said post. In none of the letters i.e. annexure P-2 and P-3 it was disclosed that the post advertised was being downgraded. The emphasis was all along on the revisions of pay scales. Petitioners did not apply for any other post and applied only for the post advertised on account of the information contained in the advertisement, believing the same to be true. Now the petitioners cannot leave this job and try for another post. The respondent having advertised a post which has been accepted by the petitioners, the respondent is bound to place the petitioners in the post of Manager (ATC) or equivalent post, having the scale of Pay advertised."

(Emphasis Supplied)

35. In addition to above it was contended by the respondents Nos. 3 to 54 (in their writ petition) that another reason which entitles them to be appointed to the post of Manager (ATC) is that they were imparted training prescribed for the post of Manager (ATC). The aforesaid contention raised by respondents Nos. 3 to 54 was based on the letter dated June 28, 2000 written by the Chief Instructor (ATM) regarding imparting of training to respondents Nos. 3 to 54 and response thereto sent by the General Manager (ATM) vide letter dated July 03, 2000.

36. The letter dated June 28, 2000 written by Chief Instructor (ATM) reads as under:--

"During the last visit Mr. S.P. Sikka, AGM (OPS) had stated that new recruits (Aerodrome Officers) will be joining at CATC for training in July, 2000. Now the letter received from Executive Director (P&A) designates these recruits as Jr. Executive Trainee (ATC) for whom no defined course has been mentioned. Normally a letter is sent by the ARA Directorate specifying the course/training to be imparted to the trainees.

This may please be confirmed that these trainees have to be given same course/training that of Aerodrome Officers. Since no letter has been received from ARA Directorates. The Principal may like to talk to the Executive Director (ATM) or DARA (O) for confirmation."

37. The response to letter dated June 28, 2000 sent by General Manager (ATM) vide letter dated July 03, 2000 reads as under:--

"Junior Executive trainees (ATC) reporting at CATC for training will be imparted instructions and training from the course curriculum earlier prescribed for AO ab-initio course. Duration of training remains unchanged.

Course may be renamed as Junior Executive (ATC) ab-initio course."

38. Appellants, nineteen in number, are employees of AAI who were promoted to the post of Manager (ATC). In case the relief as prayed for by respondents Nos. 3 to 54 in the writ petition would have been granted the same would have adversely affected the promotion/seniority of appellants to the post of Manager (ATC) thus they i.e. the appellants got themselves impleaded as a party in the writ petition.

39. In essence, the stand taken by AAI and respondents Nos. 3 to 54 in the writ petition was that while seeking employment in AAI the respondents Nos. 3 to 54 had given an undertaking to the effect that they would have no objection in accepting the designation and pay-scales in the revised structure of pay scales as may be decided by the AAI and further accepted appointment to the post of Junior Executive (ATC). In this view of the matter, the respondents Nos. 3 to 54 are estopped from claiming appointment to any post other than Junior Executive (ATC).

40. Before proceeding further we note that during the pendency of writ petition AAI formulated the Airports Authority of India (Recruitment and Promotion) Regulations, 2005 (hereinafter referred to as the "2005 Regulations") which replaced 1982 Rules.

41. As per 2005 Regulations, the hierarchical structure of ATC cadre in AAI became as follows: -

42. At this juncture we note following relevant prescription relating to appointment by direct recruitment to the posts of Manager and Junior Executive

in ATC cadre contained in 2005 Regulations:--

"SECTION-II

DIRECT RECRUITMENT AND RELATED MATTERS

6. INDUCTION LEVELS DIRECT RECRUITMENT (DR) IN EXECUTIVE & NON-EXECUTIVE CADRES:

6.1 Generally, the intake from outside the authority through direct recruitment will be at the following levels called the induction levels.

(i) EXECUTIVE CADRES:

INDUCTION IN E-1 JUNIOR EXECUTIVE LEVEL (Scale of Pay Rs. 8600-250-14600)

INDUCTION IN E-3 MANAGER LEVEL (Scale of Pay Rs. 13000-350-18250)

Note: The Executives in the cadre of Communications and ATC will be inducted after passing the specialized training/courses. Considering the specialized nature of job, two years experience will not be applicable in these cadres."

43. We may note that in the year 2007, AAI issued an advertisement to appoint 68 Manager (ATC), the relevant portion whereof reads as under:--

"Applications are invited for the following Group "A" posts in the pay scale of Rs. 13000-350-18250(IDA)

44. AAI issued an office order on February 02, 2010 relating to amendments in 2005 Regulations in respect of Executives, the relevant portion whereof reads as under:--

"Subject: Amendments in the R & P Regulations, 2005 in respect of Executives.

In continuation of CHQ letter dated 12.11.2009 on the above subject, it has been decided as follows:

(a) Para 4(i) of CHQ letter dated 12.11.2009 shall be read as follows:

"Two years" work experience will be required for direct recruitment at Manager (E-3) level in the ATC, CNS and Electronics cadres."

45. Vide impugned judgment and order dated July 17, 2012 the learned Single Judge has allowed the writ petition filed by respondents Nos. 3 to 54 and has held that "respondents Nos. 3 to 54 are entitled to the post of Manager (ATC) with pay scale attached thereto with effect from the date of their actual appointment". Further, the learned Single Judge has directed AAI to pay 50% back wages to respondents Nos. 3 to 54.

46. Briefly stated the reasons by the learned Single Judge are as under:--

"a) Post which was advertised by AAI and in respect whereof the respondents Nos. 3 to 54 had applied was that of Manager (ATC).

b) 2005 Regulations which were implemented with effect from February 01, 2005 provides for (direct) induction in AAI at E-3 level i.e. level of Manager and the qualification prescribed for said direct induction is same as prescribed in the advertisement pursuant to which respondents Nos. 3 to 54 had applied.

c) The State has to act fairly in its action as a model employer and thus cannot make its employees sign the undertaking when they i.e. the employees do not have any bargaining power. In the instant case, respondents Nos. 3 to 54 were made to sign the undertaking after they had qualified in the written test and were sent letters for appearing in the voice test i.e. at the time when they had no bargaining power.

d) The vacancies in question occurred prior to the amendment of the Rules and thus will be governed by the old Rules. The change of policy after the start of selection process is not permissible.

e) Letter dated April 05, 2000 relied upon by AAI (and appellants) for purposes of restructuring of posts is a mere administrative order and not passed by the competent authority. In these circumstances, change of policy vide letter dated April 05, 2000 when 1982 Recruitment Rules were in existence was not proper. Moreover, change of policy after start of selection process and when written test had already been conducted is not permissible.

f) By virtue of office order dated April 05, 2000 the post of Junior Executive (ATC) was made an entry post and post of Manager (ATC) was made a promotional post. Subsequently, 2005 Regulations were framed whereby 25% of posts of Manager (ATC) were to be filled through department candidates. This action of AAI has caused prejudice to respondents Nos. 3 to 54 inasmuch as post on which respondents Nos. 3 to 54 were appointed of Junior Executive (ATC) was two steps below the post of Manager (ATC).

g) The qualification(s) and training prescribed for the (two) posts of Junior Executive (ATC) and Manager (ATC) are same. Further, on two occasions in the year 2007 and 2010 AAI had issued advertisement(s) for filling up vacancies occurring in the post of Manager (ATC)."

47. Aggrieved by the aforesaid decision the appellants (who were promoted to the post of Manager (ATC)) have filed the present Letters Patent Appeal.

48. During hearing of the present appeal the learned senior counsel appearing for the appellant drew our attention to the following facts:--

"(a) The advertisement issued by AAI in respect whereof respondents Nos. 3 to 54 had applied prescribed that "PAY SCALE UNDER IDA PATTERN DUE FOR REVISION".

(b) Letter dated February 23, 2000 issued by AAI to the candidates who emerged successful in the Selection Test including respondents Nos. 3 to 54 requiring them i.e. successful candidates to appear in the Voice Test and Interview clearly

brought to their notice that "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 (read selected candidate). You (read selected candidate) are, therefore, requested to sign the enclosed declaration as token of your acceptance."

(c) Before appearing for the voice test and the interview the respondents Nos. 3 to 54 had given an undertaking to the effect that "though I (read respondents Nos. 3 to 54) had applied for the post of Manager (ATC) in pre-revised scale of Rs. 5000-8100 I (read respondents Nos. 3 to 54) 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 AAI for this recruitment exercise. I (read respondents Nos. 3 to 54) undertake that I (respondents Nos. 3 to 54) will not make any representation in this regard."

(d) The appointment offered to respondents Nos. 3 to 54 by AAI (vide letter dated May 29, 2000) was to the post of "Junior Executive (ATC)".

(e) The "Appendix" to letter dated May 29, 2000 containing offer of appointment clearly prescribed that the post of Junior Executive (ATC) offered to respondents Nos. 3 to 54 was in the pay scale Rs. 600-250-14600 (IDA pattern). It further informed that after completion of two years probationary period the respondents Nos. 3 to 54 will be placed in the pay-scale Rs. 10750-300-16750 (the scale attached to the post of Assistant Manager (ATC), a post below the post of Manager). Counsel placed strong emphasis on the reference of pay scales of Rs. 8600-250-14600 and Rs. 10750-300-16750 in the Appendix to argue that at the time of offering appointment to respondents Nos. 3 to 54 it was made very clear to respondents Nos. 3 to 54 that the post of Junior Executive (ATC) was two steps below the post of Manager (ATC), inasmuch as (revised) pay-scales of the posts of Junior Executive (ATC) and Assistant Manager (ATC) were Rs. 8600-250-14600 and Rs. 10750-300-16750 respectively, while the pay scale of the post of Manager (ATC) was Rs. 13000-350-18250.

(f) The respondents Nos. 3 to 54 accepted the offer of appointment to the post of Junior Executive (ATC) in the pay-scale of Rs. 8600-250-14600 without any demur and underwent required training."

49. Learned senior counsel for the appellants argued that aforesaid facts pointed out by her show that right since the inception of the selection process i.e. issuance of advertisement, the respondents Nos. 3 to 54 were made aware of the fact that the restructuring of posts in ATC cadre is underway and designation and pay-scale of the post of Manager (ATC) are likely to change. An undertaking was given by the respondents Nos. 3 to 54 to the effect that they would have no objection to the change of designation/pay-scale. It was made clear to respondents Nos. 3 to 54 that the post which was being offered to them is that of Junior Executive (ATC) in the pay-scale of Rs. 8600-250-14600 and that their

next promotional post would be that of Assistant Manager (ATC) in the pay-scale of Rs. 10750-300-16750.

50. Per contra, learned senior counsel for respondents Nos. 3 to 54 advanced following five submissions:--

"A. The advertisement in respect whereof respondents Nos. 3 to 54 had applied was for the post of Manager (ATC); The letter dated December 12, 1999 issued by AAI to respondents Nos. 3 to 54 requiring them to appear for Selection Test indicated "Selection Test for post of Manager (ATC)"; the admit card issued by AAI to respondents Nos. 3 and 54 indicated "ADMIT CARD MANAGER (ATC) SELECTION TEST". Counsel argued that aforesaid three facts unequivocally show that the respondents Nos. 3 to 54 had participated in the selection process for the post of Manager (ATC) and thus they were entitled to be appointed to the post of Manager (ATC).

B. That it is settled law that a vacancy has to be filled up on the basis of Recruitment Rules existing on the date of occurrence of vacancy. In the instant case, counsel urged that admittedly sixty vacancies, against which respondents Nos. 3 to 54 were appointed, fell vacant when Civil Aviation Department (Class I and Class II posts) Recruitment (Amendment) Rules, 1982 were in existence. 1982 Rules did not envisage the post of Junior Executive (ATC) and provided direct induction in ATC cadre at the level of Manager (ATC). Such being the position, AAI committed a manifest illegality in appointing respondents Nos. 3 to 54 on the post of Junior Executive (ATC), a post which was not envisaged under 1982 Rules in vogue at the time when sixty vacancies accrued, against which the respondents Nos. 3 to 54 were appointed. In this regards learned senior counsel further pointed out that:-- (i) recommendations of Wage Revision Committee set up the Chairmanship of Justice S. Mohan, a retired Judge of Supreme Court of India, which purportedly led AAI to stop direct induction at level of Manager (ATC) and create a new post of Junior Executive (ATC) for direct induction related only revision of pay scales and not restructuring of posts; (ii) direct induction in ATC cadre at level of Manager (ATC) is envisaged even in new (amended) Recruitment Rules i.e. 2005 Regulations; and (iii) AAI issued an advertisement in the year 2007 for direct induction of employees in ATC cadre at the level of Manager (ATC).

C. As a limb to the second argument it was argued that action of AAI to fill up sixty vacancies against which respondents Nos. 3 to 54 were appointed on the basis of office order dated April 05, 2000 when 1982 Rules were in existence, that too after start of selection process, was clearly impermissible.

D. That giving of undertaking and acceptance of offer of appointment to the post of Junior Executive (ATC) by respondents Nos. 3 to 54 do not bind respondents Nos. 3 to 54 for they i.e. respondents Nos. 3 to 54 were not made aware at any stage before giving of undertaking or acceptance of offer of appointment that the post of Junior Executive (ATC) is two steps below the post of Manager (ATC) for

which they had applied. The undertaking given by respondents Nos. 3 to 54 was only to the effect that they would not raise any objection to revision of pay-scales attached to the post of Manager (ATC) and had no relation whatsoever with restructuring of posts in ATC cadre. In this regard, counsel placed strong emphasis on the fact that the training imparted to respondents Nos. 3 to 54 before joining was the same as prescribed for the post of Manager (ATC) as is clearly evident from a conjunctive reading of letter dated June 28, 2000 written by Chief Instructor (ATM) regarding imparting of training to respondents Nos. 3 to 54 and response thereto sent by General Manager (ATM) vide letter dated July 03, 2000.

E. As an alternative to the fourth submission, it was argued that giving of undertaking and acceptance of offer of appointment to the post of Junior Executive (ATC) by respondents Nos. 3 to 54 is unconscionable for the reason the respondents Nos. 3 to 54 had no bargaining power to negotiate with AAI and were forced to accept the terms and conditions imposed by AAI while offering employment to them."

51. From the aforesaid detailed conspectus of facts, it is clear that the controversy in the present case relates to the post of Manager (ATC) in AAI.

52. Prior to creation of Airports Authority of India, the post of Manager (ATC) was known as Aerodrome Officer in Department of Civil Aviation/International Airport of India/National Airport Authority.

53. Till the time 1969 Rules were in vogue i.e. till the year 1982, the appointment to the post of Aerodrome Officer (in Department of Civil Aviation/International Airport of India) was by 100% promotion.

54. Then came 1982 Rules. Under 1982 Rules, the appointment to the post of Aerodrome Officer (in Department of Civil Aviation/International Airport of India/National Airport Authority) was 66.66% by promotion and 33.33% by direct recruitment.

55. By virtue of circular dated March 04, 1992 the appointment to the post of Aerodrome Officer (in National Airport Authority) was 50% by promotion and 50% by direct recruitment.

56. Subsequently, National Airport Authority of India and International Airport Authority of India were merged with effect from April 01, 1995 and Airport Authority of India was constituted.

57. By virtue of office order dated February 09, 1998 the post of Aerodrome Officer (in Airport Authority of India) got re-designated as Manager (ATC) and was then in the pay-scale of Rs. 5000-8400.

58. As already noted herein above, the conditions of service of employees of AAI continued to be governed by 1982 Rules (as amended by afore-noted circular dated March 04, 1992 for the post of Aerodrome Officer/Manager (ATC) in AAI).

Meaning thereby, the appointment to the post of Manager (ATC) in AAI was 50% by promotion and 50% by direct recruitment.

59. On June 25, 1999 Department of Public Enterprises issued an Office Memorandum essentially prescribing therein that pay-scales in all public enterprises should be at par with the pay-scales prescribed in guidelines issued by Department of Public Enterprises.

60. Thereafter an exercise was undertaken in AAI to bring the pay scales of posts in AAI at par with the pay scales prescribed in the DPE guidelines with effect from January 01, 1997.

61. In its 45th Meeting, the Board of AAI dealt with the issue of revision of pay scales at par with the pay scales prescribed in the DPE guidelines. Following key decisions were taken in the said meeting:--

"(a) All future induction at Executive Level will be as Executive Trainees.

(b) After completion of training (directly recruited) Executive Trainees will be appointed on the post of Junior Executive carrying the pay-scale of Rs. 8600-250-14600.

(c) On completion of two years of service, Junior Executives will be placed in the (revised) pay-scale of Rs. 10750-16750."

62. Before aforesaid decisions taken in the 45th Board Meeting could be implemented, on July 17, 1999 AAI issued an advertisement inviting applications for appointment by direct recruitment to (sixty) posts of Manager (ATC), which advertisement clearly prescribed that "PAY SCALE UNDER IDA PATTERN DUE FOR REVISION".

63. Respondents Nos. 3 to 54 applied. The selection process started. Selection Test of respondents Nos. 3 to 54 and other candidates was conducted.

64. While the aforesaid selection process was going on, the modalities of implementation of afore-noted decisions taken by AAI Board in its 45th Meeting were underway.

65. On February 23, 2000 AAI issued letter(s) to respondents Nos. 3 to 54 requiring them to appear for voice test and interview, clearly informing therein that designation and pay-scales attached to the post of Manager (ATC) are likely to change as a consequence of revision of pay-scales of executives and changed/ revised designation and pay-scales shall be applicable to the selected candidates.

66. Pursuant thereto, respondents Nos. 3 to 54 gave an undertaking to the effect that "though they had applied for post of Manager (ATC) they 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 AAI for this recruitment exercise".

67. Thus, right from the commencement of selection process the respondents Nos. 3 to 54 were made aware of the fact that an exercise of revision of pay-

scales and re-designation of posts (which would subsume a change in cadre hierarchy) is underway in AAI and respondents Nos. 3 to 54 undertook to accept the change(s) made by AAI in said regard.

68. On April 05, 2000 AAI issued an Office Order implementing the afore-noted decisions taken by AAI Board in its 45th Meeting. Further, the Office Order prescribed that the posts of Junior Executive, Assistant Manager and Manager shall be in the (revised) pay-scales of Rs. 8600-250-14600, Rs. 10750-300-16750 and Rs. 13000-350-18250 respectively.

69. Thereafter letter(s) dated May 29, 2000 were issued by AAI offering appointment to respondents Nos. 3 to 54. Most significantly, the letter dated May 29, 2000 clearly prescribed that:--

"(a) The appointment being offered to respondents Nos. 3 to 54 is to the post of Junior Executive (ATC) in the pay-scale of Rs. 8600-250-14600.

(b) On completion of two years probationary period as Junior Executives, the respondents Nos. 3 to 54 shall be placed in the scale of Rs. 10750-300-16750."

70. With their eyes wide open and without any demur, respondents Nos. 3 to 54 accepted appointment to the post of Junior Executive (ATC) and underwent required training.

71. It was only after successful completion of training the respondents Nos. 3 to 54 submitted a representation laying a challenge to their appointment to the post of Junior Executive (ATC).

72. A conjunctive reading of representation(s) and writ petition filed by respondents Nos. 3 to 54 (relevant portions whereof have been noted by us in foregoing paras) goes to show that the respondents Nos. 3 to 54 sought to wriggle out of the acceptance of offer of appointment to the post of Junior Executive (ATC) by them on the grounds that:-- (i) offer of appointment on the post of Junior Executive (ATC) was accepted by respondents Nos. 3 to 54 on the belief that post of Junior Executive (ATC) in new scale is same and equivalent to post of Manager (ATC) in old scale; (ii) respondents Nos. 3 to 54 were under the belief and under the impression that after completion of training they i.e. respondents Nos. 3 to 54 would be posted on a regular post as Manager (ATC) or an equivalent post and in pay-scales applicable to the post of Manager (ATC); and (iii) respondents Nos. 3 to 54 were nowhere informed (either in the undertaking or appointment letter) that post of Junior Executive (ATC) is two steps below the post of Manager (ATC).

73. The letter dated May 29, 2000 containing the offer of appointment throws light on this aspect of the matter.

74. The letter dated May 29, 2000 not only offers appointment to respondents Nos. 3 to 54 to the post of Junior Executive (ATC) but goes on to state that the post of Junior Executive (ATC) shall be in the pay-scale of Rs. 8600-250-14600.

It further states that on completion of probationary period of two years on the post of Junior Executive (ATC), respondents Nos. 3 to 54 shall be placed in the scale of Rs. 10750-300-16750, which is the scale attached to the post of Assistant General, a post one step below the post of Manager (ATC). At that time, the post of Manager (ATC) was in the pay-scale of Rs. 13000-350-18250. Respondents Nos. 3 to 54 who are qualified persons cannot feign ignorance about the pay-scale attached to the post of Manager (ATC). The letter offering appointment has been noted by us in paragraph 24 above. It clearly records that above the post of Junior Executive is the post of Assistant Manager and above that is the post of Manager. Respondents No. 3 to 54 were clearly informed that they were being appointed as Junior Executives.

75. In view of the clear prescription of pay-scales contained in the letter dated May 29, 2000, we wonder where was the scope for the respondents Nos. 3 to 54 to remain under the belief/impression that the post of Junior Executive (ATC) offered to them is the same and equivalent to the post of Manager (ATC) or that after completion of training they i.e. respondents Nos. 3 to 54 would be posted on a regular post as Manager (ATC) or an equivalent post and in pay-scales applicable to the post of Manager (ATC).

76. We also do not agree that respondents Nos. 3 to 54 were not aware of the fact that post of Junior Executive (ATC) was two steps below the post of Manager (ATC) at the time when they accepted the offer of appointment to the post of Junior Executive (ATC). What more was required to be told to respondents Nos. 3 to 54? The clear and categorical reference to pay-scales being offered to the respondents Nos. 3 to 54 in the letter dated May 29, 2000 left no scope for any doubt that the post of Junior Executive (ATC) which was offered to respondents Nos. 3 to 54 was two steps below the post of Manager (ATC).

77. Having consciously accepted appointment to the post of Junior Executive (ATC) offered to them after being fully made aware of the fact that the post of Junior Executive (ATC) is two steps below the post of Manager (ATC) for which they had applied, in these circumstances, it is not open to the respondents Nos. 3 to 54 to challenge their appointment to the post of Junior Executive (ATC).

78. A somewhat comparable situation had arisen before the Supreme Court in the decision reported as P.S. Gopinathan Vs. State of Kerala and Others, AIR 2008 SC 2768 : (2008) 3 CLT 174 : (2008) 7 SCALE 564 : (2008) 7 SCC 70 : (2008) 2 SCC(L&S) 225 : (2008) 3 SLJ 268 : (2009) 1 SLR 590 : (2008) AIRSCW 4602 : (2008) 4 Supreme 85 . In said case, appellant therein was directly recruited to the post of Munsif and later promoted to the post of Subordinate Judge. In exercise of powers conferred upon by clause (1) of Article 233 of Constitution of India, on January 14, 1992 Governor, State of Kerala appointed appellant to the post of District and Sessions Judge in Kerala State Higher Judicial Service. On February 29, 1992 High Court of Kerala issued an order posting appellant as Additional District Judge on temporary basis. Subsequently, on July 31, 1992 another order was issued stating therein that

appellant was working as Additional District Judge on temporary basis and shall function as regular Additional District Judge with effect from July 31, 1992. The grievance raised by the appellant was that the High Court committed an illegality in treating him as Additional District Judge on temporary basis between the period from January 14, 1992 to July 31, 1992.

79. After noting the conspectus of facts and relevant statutory provisions, the Supreme Court held that the High Court indeed committed an error in treating the appellant as Additional District Judge on temporary basis between the period from January 14, 1992 to July 31, 1992 but declined to grant any relief to the appellant essentially on the ground that the appellant had readily accepted posting orders dated February 29, 1992 and July 31, 1992 issued by High Court treating him i.e. the appellant as temporary Additional District Judge. In essence, it was held by the Supreme Court that since he had readily accepted the posting orders dated February 29, 1992 and July 31, 1992 the appellant is estopped from challenging the same. It would be most apposite to note the following portions of the judgment of the Supreme Court:--

"The law of equitable estoppel by acquiescence has been clearly stated by Fry, J. in *Wilmott v. Barber*, 1880, 15 Ch D 96, 105: 43 LT

95. It has been said therein that the acquiescence which will deprive a man of his legal rights should amount to a fraud. A man is not to be deprived of his legal right unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description, are stated thus:

- (i) The plaintiff (i.e. the party pleading acquiescence) must have made a mistake as to his legal rights;
- (ii) The plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief;
- (iii) The defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it, he is in the same position, as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights;
- (iv) The defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights; and
- (v) The defendant, the possessor of the legal right must have encouraged the plaintiff in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but nothing short of this will do.

These principles were followed and applied in many cases in India.

26.It is, therefore, apparent from the second appointment order that the appointing authority as well as the posting authority have all along treated the appellant as a temporary District Judge, but the appellant did not object on both occasions when he joined on 7.3.1992 and 31.7.1992 of he being treated as a temporary District Judge. The act and action of the appellant in accepting his appointment as temporary one amounts to his assent to the temporary appointment and the appellant throughout till he raised an objection on 29.10.1992 has slept on his right of being appointed permanently on the post of District & Sessions Judge. By his conduct at the time of the issuance of the order by the High Court on 29.2.1992 and thereafter issuance of the second appointment order on 15.7.1992 with full knowledge of his own right and the act of the High Court which infringes it, led the High Court to believe that he has waived or abandoned his right. Lord Campbell in *Cairncross v. Lorrimer*, 3 LT 130 held that "generally speaking if a party having an interest to prevent an act being done had full notice of its being done, and acquiesce it, so as to induce a reasonable belief that he consents to it and the position of the others is altered by their giving credit to his sincerity, he has no more right to challenge the act of their prejudice than he would have had if it had been done by his previous license.

27. The aforesaid facts clearly make out an acquiescence of the appellant of accepting order dated 14.1.1992 being treated as temporary appointment order on the post of District & Sessions Judge and he cannot now be permitted to change his position and claim the permanent appointment from 14.1.1992 to claim seniority on the post."

80. We next note the decision of a Division Bench of this Court in W.P. (C) No. 6085/2011 "*Aniruddha Panda & Ors v. Union of India & Ors*" decided on August 23, 2011. In said case, the petitioners were appointed as Inspectors in Central Excise and Customs in the year 1990 and onwards; and were posted at Indore, Bhopal and other Commissionerates. The petitioners had given undertaking(s) to the effect that in case they are transferred to Delhi zone they would not claim seniority on the basis of service rendered by them in the earlier Commissionerate and that their seniority would be reckoned from date of their joining Delhi zone. It was contended by the petitioners that they were compelled and forced to give said undertaking(s) and thus said undertaking(s) be ignored, which contention was repelled by the Court. It was held that it is not open to the petitioners to resile from the undertakings given by them after having taken advantage on the basis of said undertaking. It would be relevant to note the following portion of the judgment:--

"5. We do not find any merit in the contentions raised by the petitioners. The petitioners were allocated respective commissionerates and were assigned seniority within the said commissionerates. Without their consent/willingness, they could not be transferred out of the commissionerates. On 17th October,

2003, in view of the shortage of Inspectors in some of the commissionerates, a policy decision was taken to call for options from the Inspectors for inter-commissionerate transfers. It was specified that their previous seniority would not be counted and date of joining the Delhi zone would be the relevant date for the purpose of seniority. The petitioners, it appears did have reservation on the aforesaid term, but they accepted the said term and gave undertakings in writing in 2003. They gave up their claim of seniority on the basis of past service in different commissionerate and joined the Delhi commissionerate. We do not think that they should be permitted to resile from the said undertakings. They cannot take advantage of the policy and transfer, but ignore the terms and conditions on the basis of which they were transferred. Sanctity and inviolability must be attached to the terms on which the transfer was made and to the solemn undertakings executed by the petitioners. These cannot be brushed aside or ignored. In case there was no loss of seniority, many others including those who were senior to petitioners may have applied and expressed their willingness to the transfer."

81. In this regard, it would also be apposite to note the following observations made by Supreme Court in the decision reported as A.K. Bindal and Another Vs. Union of India (UOI) and Others, AIR 2003 SC 2189 : (2003) 114 CompCas 590 : (2003) 98 FLR 1 : (2003) 4 JT 328 : (2003) 2 LLJ 1078 : (2003) 134 PLR 470 : (2003) 4 SCALE 313 : (2003) 5 SCC 163 : (2003) SCC(L&S) 620 : (2003) 45 SCL 89 : (2003) 3 SCR 928 :--

"The petitioners are officers of the two companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However they, in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they executed the option under any kind of compulsion."

82. We now proceed to deal with the arguments advanced by the learned senior counsel for respondents Nos. 3 to 54.

83. In view of the facts that right from the commencement of selection process the respondents Nos. 3 to 54 were made aware of the fact that an exercise of revision of pay-scales is underway in AAI and respondents Nos. 3 to 54 undertook to accept the change(s) made by AAI in said regard and that respondents Nos. 3 to 54 accepted the appointment to the post of Junior Executive (ATC) with their eyes wide open, no mileage can be drawn by respondents Nos. 3 to 54 upon the facts that advertisement in respect whereunder they had applied was for the post of Manager (ATC) and that various documents/correspondence issued by AAI to respondents Nos. 3 to 54 before issuance of appointment letter referred to the post of Manager (ATC). Likewise, nothing turns upon the fact that the training imparted to respondents Nos. 3 to 54 before joining was the same as prescribed for the post of Manager (ATC)

84. In dealing with the submission that sixty vacancies against which respondents Nos. 3 to 54 had applied were to filled up on basis of 1982 Rules which did not envisage the post of Junior Executive (ATC), we note following observations made by a Division Bench of this Court, of which one of us namely Pradeep Nandrajog J. was a Member of, in Writ Petition (Civil) No. 3586/2008 "R.P. Nautiyal & Ors v. Govt. of NCT of Delhi & Ors" decided on November 24, 2010:--

"15. The only issue which needs to be decided is whether a conscious decision taken by the Government not to fill up the existing vacancies pending amendment to the rules was a good justification to fill up the vacancies as per the amended rules.

16. In the decision reported as Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, AIR 1997 SC 1803 : (1997) 2 JT 80 : (1997) 1 SCALE 613 : (1997) 3 SCC 59 : (1997) SCC(L&S) 625 : (1997) 1 SCR 287 : (1997) AIRSCW 1152 : (1997) 3 Supreme 215 , the Supreme Court had set aside a decision of the Tribunal which directed promotion to be made by preparing the panel with respect to the year when the vacancy arose and as per the rules then in vogue.

17. It may be noted that the rules pertaining to AP Animal Husbandry Service were amended on 12.6.1996 and the vacancies had accrued for the panel year 1995-96 since the existing rules were under amendment, the Supreme Court reversed the decision of the Tribunal.

18. In para 6 of the decision the Supreme Court has categorically held that: It is also clear from the record that the Government had taken a decision not to fill up any of the vacancies until the repealed rules were duly amended.

19. It is true that in para 7, the Supreme Court noted that the pre-amended Rule 4, which continued to exist post-amendment, vide clause (ii) of the 2nd Proviso, gave the power to the State Government not to prepare the panel and to consider the cases though the vacancies were available at a later stage evidenced by the expression "or where the appointing authority does not consider it necessary" and thereafter once again noted a conscious decision not to fill up any pending vacancy till the process of amendment was completed, and notwithstanding that under the rules being considered by us there is no such provision, yet we feel that the ratio of law laid down by the Supreme Court in Dr. K. Ramulu's case (supra) is attracted; evidenced by the observations of the Supreme Court in para 12 of the decision in Dr. K. Ramulu's case (supra). The process of reasoning relates to the applicability of the ratio of law laid down by the Supreme Court in the decision reported as Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, AIR 1983 SC 852 : (1983) 2 LLJ 23 : (1983) 1 SCALE 296 : (1983) 3 SCC 284 . The Supreme Court observed:--

"Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of

law, there is no dispute and cannot be disputed. But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. (Underline emphasized)"

20. Thereafter, in para 13 of the decision in Dr. K. Ramulu's case (supra), the Supreme Court once again re-emphasized: "it is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the rules....

21. Sine we have rested our decision on the law, as we understand it to be, flowing out of the decision of the Supreme Court in Dr. K. Ramulu's case (supra), we need not deal with the decision cited by learned counsel for the respondents on the issue of retrospective application of an amending rule. We are not dealing with the same for the reason it is not in dispute that neither the amending rule of 2007 states it expressly that it is retrospective application of an amending rule nor is there anything in the rule which indicates it to be of retrospective operation. The debate at the bar was not on the issue of retrospectivity. At the crux of the debate is the effect of a conscious decision taken by the Government not to fill up the posts in DASS Grade II pending amendment to the rules constituting the service.

22. On facts we have noted hereinabove as to how the amendments incorporated in the original rules framed in the year 1967 caused immense hardship to the Ministerial Cadre and the requirement to amend the existing rules and in respect whereof the hardship was first noted in the year 1999 and thereafter steps taken to undo the wrong and till the wrong was undone, a conscious decision taken not to effect promotions."

85. In the instant case, on April 05, 2000 a conscious decision was taken by AAI to create the post of Junior Executive and that direct induction of Executives in all cadres shall be at the level of Junior Executive. In view thereof, respondents Nos. 3 to 54 were inducted/directly recruited in ATC cadre at the level of Junior Executive.

86. In the year 2005, 1982 Rules were replaced by 2005 Regulations. 2005 Regulations envisaged direct recruitment/induction in ATC cadre at two levels/posts viz. Junior Executive (ATC) and Manager (ATC). 2005 Regulations further envisaged that a person before being inducted at the level of Manager (ATC) should pass specialized courses/training. The advertisement issued in the year 2007 inviting applications for the post of Manager (ATC) prescribed that two years experience in the field of Air Traffic Control is desirable. In the year 2010 it was decided by AAI that two years work experience is required for direct recruitment for the post of Manager (ATC).

87. From the aforesaid, it emerges that on April 05, 2000 a conscious decision was taken by AAI that the post of Junior Executive (ATC) would be created and

one of the sources for appointment to said post would be direct recruitment. In the light of said conscious decision, it was further decided by AAI to recruit respondents Nos. 3 to 54 in the newly created post of Junior Executive (ATC) and accordingly letters dated May 29, 2000 were issued offering appointment to respondents Nos. 3 to 54 to the post of Junior Executive (ATC), which offer was accepted by respondents Nos. 3 to 54. The respondents Nos. 3 to 54 could have declined offer of appointment to the post of Junior Executive (ATC) but they chose to not to do so. The respondents Nos. 3 to 54 were mature enough to weigh the pros and cons of the options which were available to them. They, in their wisdom chose to accept the appointment to the post of Junior Executive (ATC). After having accepted offer of appointment to post of Junior Executive (ATC) and secured employment in AAI it is not open to respondents Nos. 3 to 54 to challenge their appointment to the post of Junior Executive (ATC) or to contend that they accepted the appointment to post of Junior Executive (ATC) under any kind of compulsion.

88. In this regard, it would also be apposite to note that the advertisement in respect whereof respondents Nos. 3 to 54 had applied was not in strict consonance with prescriptions contained in Recruitment Rules existing at that time i.e. 1982 Rules for the post of Manager (ATC) as would be evident from the following table:--

89. The fourth and fifth submissions advanced by the learned senior counsel for the respondents Nos. 3 to 54 relating to giving of undertaking and acceptance of offer of appointment to the post of Junior Executive (ATC) by respondents Nos. 3 to 54 stands dealt by us in the preceding paras.

90. Lastly, we note that learned senior counsel is not right in contending that recommendations of Wage Revision Committee set up the Chairmanship of Justice S. Mohan, a retired Judge of Supreme Court of India only related to revision of pay-scales and thus AAI could not have restructured ATC cadre and created post of Junior Executive (ATC) under the garb of implementation of recommendations of Wage Revision Committee. In this regard, suffice would it be to note that Office Memorandum dated June 25, 1999 (which has been extracted by us in the preceding para) issued by Department of Public Enterprises prescribed the Public Enterprises to introduce certain intermediary scales in order to bring the pay-scales of posts in Enterprises at par with DPE guidelines.

91. The upshot of the above discussion is that the present appeal deserves to be allowed. The impugned judgment dated July 17, 2012 passed by the learned Single Judge is hereby set aside. The writ petition filed by respondents No. 3 to 54 is dismissed.

92. Parties shall bear their own costs all throughout.