
(1999) 01 DEL CK 0069
In the Delhi High Court
Case No : C.W. No. 1542 of 1997

S.C. Kapoor

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Citation : (1999) 77 DLT 753 : (1999) 48 DRJ 618

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : N.L. Bareja, for the Appellant; Anjana Gosain, for respondents 2 and 3 and B.K. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The petitioners in CW No. 1542 of 1997 was working in the cadre of Private Secretary in Airport Authority of India in the International Airport Division (in short AAI(IAD)). There are two divisions after the merger on 01.04.1995. They are National Airport Division (NAD) and International Airport Division (IAD). The claim of the petitioners is that one post of Executive Assistant which is the next promotional post from the Private Secretary fell vacant on 20.02.1995 on the retirement of the incumbent and the selection process was not resorted to and officer from the National Airport Division was as Executive Assistant at the discretion of the Chairman.

2. A Scheme called the Flexible Complementing Scheme (PCS) came into force with effect from 31.08.1995 and there were two types of schemes framed that was the object of the giving monetary benefit to categories of employees mentioned therein.aa 3. The answer to the claim of the petition by the second respondent is that there is no post vacant as Executive Assistant to the Chairman. The Chairman who took charge expressed the view that there was no need to have any person as an Executive Assistant and whenever the Chairman is appointed that officer bringing his own officer to assist him and Therefore, no steps are taken up to fill up the post of the Executive Assistant. That is why the

officers working in the category of Private Secretary were given opportunity to participate in the other examination to improve their career prospects.

4. Regarding Flexible Complementing Scheme the case of the second respondent is that it had acted in accordance with the Scheme. While implementing the Scheme the petitioners and other similarly situated were given the scale of the post of Assistant Manager and the petitioners could not be given the scale of pay equivalent that of a Senior Manager which could be compared with Executive Assistant.

5. The petitioners' case in this behalf is that as per the scheme the scale of pay should have been given to the petitioners is the scale of pay applicable to the next higher post. Therefore, the scale of pay to the post of Executive Assistant should be given to them and the scale of pay applicable to the nominated post cannot be given.

6. Two questions arise for consideration are:

i) whether the procedure adopted by the Chairman of the second respondent in not resorting the selection process of filling up the post of the Executive Assistant of the Chairman is correct in law?

ii) Whether the second respondent had acted in accordance with the Flexible Complementing Scheme?

7. The learned counsel for the petitioners, Mr. N.L. Bareja submitted that the post of the Executive Assistant to the Chairman is governed by statutory rules and whenever the post has fallen vacant the second respondent is bound to follow the rules. The Chairman cannot choose a person of his own choice debarring the petitioners and others similarly situated of being considered for promotion to the post of Executive Assistant to the Chairman.

8. It is common ground that the two Divisions are operating independently and no officer working in one Division could claim any promotion in the other Division. The petitioner who are in International Airport Division cannot claim for consideration to higher post in National Airport Division.

a9. Regarding the Flexible Complementing Scheme of promotional opportunity, the direction was issued by this court on 06.03.1997 directing respondents 2 and 3 to decide the representations submitted by the petitioner within four weeks from that date with reasoned order. The learned counsel for the petitioners Mr. N.L. Bareja made a representation and the same was considered by the second respondent that would give a clear picture of the matter which reads as under:

No. PERS-II/1101/2/5/76/I/907 dtd. the 4th April, 1997 In pursuance of the directions of the Hon'ble Delhi High Court dt. 6.3.1997, the representation of Sh. J.L. Taneja has been considered by the Management.

In his representation Shri Taneja had made the following prayers:-i).....to fill up the existing vacancy of Executive Assistant (EA), in the IAD lying vacant since,

1995 by promoting him to the said post w.e.f. 1.3.95. ii)... in the alternative to grant higher scale in line with the promotion equivalent to Sr. Manager towards stagnations relief under the FCS w.e.f. the date he was given the intermediary scale.

As regards the first prayer mentioned above, it is stated that consequent upon the repealing of International Airport Authority Act, 1971 and the formation of Airports Authority of India, the Corporate Hqrs. of the said Authority has been established at Rajiv Gandhi Bhavan, New Delhi. The office of EA to CM is already in operation in the Corporate Hqrs.

Accordingly, on retirement of EA, International Airports Division (the post of erstwhile IAAI), the Chairman, AAI decided that Ea Post of erstwhile IAAI is not to be operated and as such not required to be filled. In any case, the post was not available to Shri Taneja on seniority, as claimed. EA to CM post is filled on the basis of selection through written test, evaluation of PAR rating and interview from amongst the eligible candidates. By pothetically, had it been decided to fill up the second post of EA to CM (one already filled and operated at Chairman Office, Rajiv Gandhi Bhavan), the post would have been filled by direct recruitment/selection basis after due rationalisation as explained in Para 2(a) below.

As regards alternative claim for his placement in the scale equivalent to Sr. Manager under Flexible Complementing Scheme, he is informed as under:

a) The career progression available to officers in Group "B" and base level Group "A" in all disciplines in erstwhile IAAI now IAD of AAI to:-

/From to Mode of filling posts

Assistant Manager &

equivalent Manager & equivalent 50% posts are to be

filled up on the basis of

merit-cum-seniority/and

selection and remaining

50% through direct

recruitment.

Manager & equivalent Sr. Manager &

equivalent On the basis of merit-

cum-seniority.

This career progression is available to officers in all the disciplines across the board. Incidentally, career progression opportunities are available to Private

Secretaries in the departments such as personnel subject to meeting job requirements.

It may also be pertinent to mention that in the major disciplines viz. Engineering & Architect, earlier the officers were promoted from Asstt. Engineer to Ex. Engineer and Asstt. Architect to Architect (AE & Asstt-Architect post is equivalent to Asstt. Manager and EE & Architect post is equivalent to Sr. Manager). In cadre rationalisation posts of Asstt-Executive Engineer & Dy. Architect progression of officers in these disciplines was brought in line with other disciplines. In no discipline any officer is now promoted from the rank of Assistant Manager to Sr. Manager & equivalent by - passing - Manager level as claimed by Sh. J.L. Taneja.

In the year 1995 AAI Management has introduced Flexible Complementing Scheme to enhance promotional opportunities to officers and staff. The scheme broadly envisaged clubbing of induction level posts with one level above and operating 60% in the higher scale. The Manager & equivalent is considered as induction level. This clubbing was not available to the cadre of Sh. Taneja. Those not covered under the clubbing of the grade, were considered stagnating in the scale for more than 6 years have been given the next scale.

In the instant case the next higher scale available for promotion to the officer holding Asstt. Manager post is Manager scale. Accordingly, Sh. Taneja has already been given Flexible Complementing Scheme relief by giving the higher scale of pay equivalent to the Manager as has been done in all other disciplines. The cases quoted by Sh. Taneja in his representation are not relevant.

In view of the above facts and circumstances, the claims of Shri Taneja are not justified. More so, he had already enjoyed the benefit under Flexible Complementing Scheme wherein he has received the higher scale of pay equivalent to the post of Manager as applicable to similarly placed other Group "B" officers. Thus his request for promotion to the post of EA to CM and/or granting him the scale of Sr. Manager under Flexible Complementing Scheme cannot be agreed to since that will be discriminatory and vocative of equitable justice.

His representation stands disposed of accordingly.

10. The petitioners on the basis of the Flexible Complementing Scheme submitted that there are three categories:

- 1) One Senior Manager;
- 2) Manager
- 3) Assistant Manager.

11. The category of Private Secretary would come within the category of Assistant Manager. The next promotional post from Private Secretary to the Executive Assistant to the Chairman would come within the category of a Senior Manager. According to the learned counsel for the petitioner Mr. N.L. Bareja so

far as this Private Secretary cadre is concerned the second category i.e. Manager, is not relevant and the officers working as Private Secretary could straightaway become an Executive Assistant to the Chairman on Senior Manager level. Therefore, according to Mr. Bareja, the learned counsel for the petitioner while applying the provisions of the scheme the monetary benefit should be on the basis of the next Senior promotion level being Senior Manager and the petitioner cannot be put on the scale of pay of Manager. According to the learned counsel for the petitioner Mr. N.L. Bareja with reference to other categories when there is no middle level category having been given the scale applicable to the next promotion post. The officers coming within this category Private Secretary alone have been singled out and they have been discriminated against.

12. The learned counsel for the petitioner referred to the letter dated 08.10.1996 by the Executive Director (Personnel) therein the position has been explained and the same reads as under:

AIRPORTS AUTHORITY OF INDIA

(INTERNATIONAL AIRPORTS DIVISION)

Operational Officers,

Gurgaon Road,

New Delhi-110037

No. -PERS/MPP/1108/9/95/342

Dt. 08.10.1996

This refers to our letters No. PERS/MPP/1108/9/95 dated 31.8.95 and 4.12.95 regarding Flexible Complementing Scheme. In this regard, it is clarified that while giving FCS under Scheme -II, the employees may be given the next scale in the line of promotion wherever applicable as per the R&P rules instead of next available scale envisaged in the above orders. For example, Sr. D/Men or Hindi Translator who have put in eight years service in the grade will now be given the scale of Rs. 4400-7800/-instead of the scale of Rs. 3450-6100/-. The above scales will be given subject to meeting the norms stipulated in the above orders. While giving the scale under Scheme-II, the pay of the employees will be fixed in the next available stage in the next scale without change in the date of annual increment. Personal Secretaries who meeting the stagnation norms will be given the scale of Manager subject so meeting other conditions.

This issues with the approval of the Competent Authority.

13. The learned counsel for the petitioner Mr. N.L. Bareja submitted that what is stated by the Executive Director (Personnel) is not at all valid in law. It is violation of the Articles 14 and 16 of the Constitution of India. I am unable to accept this submission. The officers working as Private Secretary would form a separate and distinct class and they cannot compare themselves with other

employees whose service conditions are entirely different. Therefore, I am of the view, that the respondents had acted in accordance with law and no case has been made out by the petitioners for interference by this Court.

Accordingly, the writ petition stands dismissed. There shall be no order as to costs.