
(2017) 11 BOM CK 0019
In the Bombay High Court
Case No : 757 of 1996

T.S.Kolhatkar

APPELLANT

Vs

Air India Corporation

RESPONDENT

Date of Decision : 15-11-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 11 BOM CK 0019

Hon'ble Judges : A.A.Sayed, M.S.Karnik

Bench : DIVISON BENCH

Advocate : Arshad Shaikh, Sanjay Udeshi, S.K.Talsania, Lancy D"Souza,
Deepika Agarwal, I.b Bhasin

Final Decision : Dismissed

Judgement

1. This Petition filed under Article 226 of the Constitution of India seeks a direction to the Respondent to promote the Petitioner as a Senior Manager with retrospective effect with all consequential benefits. The facts of the present case in a nutshell are these :

2. The Petitioner belongs to the S.C.category. The Petitioner was appointed as a Progress Clerk with the Respondent Air India Corporation on 8.11.1973. He was promoted as a Technical Assistant on 1.6.1977 and thereafter promoted as a Senior Technical Assistant on 1.6.1978. Subsequently, he came to be promoted as a Planning Officer with effect from 1.12.1981.

3. Learned counsel for the Petitioner invited our attention to the Memorandum at Exhibit A dated 16.8.1986 appreciating the work of the Petitioner. He submitted that with effect from 7.9.1987 to 9.9.1988 the Petitioner fell ill and could not get leave for the said period. The same was however regularized by the Respondent.

4. In the submission of the learned counsel for the Petitioner, his senior Officer started harassing him and his colleagues. His senior officer demanded apology

for unknown reasons. The Petitioner was asked to tender an apology for his leave period during which he was ill. The Petitioner made representations to higher authorities protesting against the illegal practice of spoiling his annual appraisal performance at the behest of one Shri Sannaki. Learned counsel for the Petitioner invited our attention to the communication dated 16.8.1993 addressed by him to Shri Bheekha Bhai the then Member of Parliament and ExChairman, National Commission for SC/ST, Director on Board of Air India to intervene by sending a letter to the respondent. He also invited our attention to several representations made on behalf of the Petitioner by the SC/ST Employees Association for ventilating the grievances of the Petitioner. In the submission of the learned counsel for the Petitioner, the Petitioner was rated as "B"" i.e above average in the appraisal report for the year 1988. Prior to that he was always rated above average in the Appraisal Report. In his submission, since the year 1988, the Petitioner's confidential reports are spoilt purposely and malafidely only to deny him promotion. The Petitioner was denied promotion yearafteryear. The petitioner made several representations which are listed at Exhibit G1 to G7 but the rightful claim of the Petitioner for promotion was denied.

5. Learned counsel for the Petitioner submitted that this happened at the instance of one Shri Sannaki who developed a grudge against the Petitioner and other subordinate employees. Shri Sannaki for no ryhme or reason started harassing the Petitioner. During the period 7th to 9th September 1986 the Petitioner fell ill. Shri Sannaki instead of sanctioning leave of the Petitioner recommended deduction of three days wages for the said period. Learned counsel contended that though the petitioner was entitled for leave, with malafide intentions the wages of the Petitioner were deducted at the instance of Shri Sannaki. Even the representation which the Petitioner submitted was not favourably considered and on the contrary Shri Sannaki asked the Petitioner to apologise. Though sanction was later on granted for three days sick leave, only because he did not tender apology to Shri Sannaki, Shri.Sannaki meted out ill treatment to the Petitioner. According to him, the Petitioner was thereafter denied promotions only at the instance of Shri Sannaki.

6. Learned counsel for the Petitioner invited our attention to the President's Directives 1975 on Reservation for Scheduled Castes, Scheduled Tribes and other Backward classes. He invited our attention to clause 14.2 of the said Directives and contended that the procedure therein has not been followed. In his submission, the Petitioner has not been provided adequate opportunity for institutional training and for attending seminars/symposia/conferences. He further submitts that it is the responsibility of the immediate superior Officer of the SC/ST Officers Association in Group A to give advise and guidance to the employees about the quality of their work. In his submission, the Petitioner was never considered and sent for training. He further invited our attention to clause 19 (ii) and (iii) of the President's Directives 1975 to show that the Petitioner is not only seniormost in the category of the employees but he is also seniormost in the general category. According to the learned counsel for the Petitioner, his

service till the year 1987 was rated as " B+" i.e. above average and therefore, it is highly improbable that after the year 1988 onwards his performance would come down from B+ to B and remained stagnant at that stage. Specific allegations are therefore made that all this was done at the behest of Shri Sannaki with a malafide intention and for victimization of the Petitioner to deny him promotion. In the submission of the learned counsel for the Petitioner though the Petitioner had received call letter for attending the interview on 5.4.1996 for promotion to the post of Deputy Manager, the same was nothing but an eyewash. Learned counsel for the Petitioner would submit that though the records of the Annual Performance Appraisal Report are submitted, the Respondent failed to show on what basis marks are given.

7. Learned Senior counsel for the Respondent on the other hand submitted that the entire case of the Petitioner is based on allegations of malafide against Shri Sannaki. Specific allegations of malafides are attributed to Shri Sannaki alleging that it was at the behest of Shri Sannaki that the Petitioner was not promoted. Learned Senior Counsel for the Respondent would further contend that though specific allegations of malafides are made against Shri Sannaki, the Petitioner has not made him a party and on this ground alone, the Petition deserves to be dismissed. This contention goes to the root of the matter. Learned Senior Counsel appearing for the Respondent would further contend that the Respondent has given a fair treatment to the Petitioner and that his case has been considered for promotion time and again when due. In his submission, several times the Departmental Promotion Committee has met to consider the cases of eligible Officers. He further points out that Shri Sannaki against whom so-called allegation of malafide is made, is the most Senior Officer belonging to Scheduled caste. The learned Senior Counsel has produced the original records of the Performance Appraisal report and relied upon the Affidavit reply filed by Shri V.A.Ferreira General Manager (HRD) on behalf of the Respondent.

8. In so far as the contention of the Petitioner about compliance of the President's Directives, 1975 the learned senior counsel submits that reservation in promotion is applicable only to the lowest rank in Group "A" category i.e. up to the level of Planning Officer in the case of the Petitioner. All subsequent promotions are determined by a selection process. The promotion policy of the Respondent Company, based on which the Petitioner now seeks promotion, does not have any reservation. In this view of the matter, in our opinion, the contention of the Petitioner that the President's Directives 1975 are violated can only be stated to be rejected. We do not find any merit in the contention of the Petitioner that there has been any violation of the President's Directive, 1975.

9. The learned Senior Counsel for the Respondent further invited our attention to various paragraphs of the Affidavit in reply filed showing that the Petitioner was counselled time and again but, he showed no signs of improvement in his work. In the submission of the learned Senior Counsel for the Respondent the Petitioner was considered on several occasions for promotion as he was in the

zone of consideration on the basis of the promotion policy for considering the cases of the employees for promotion. It is brought on record that the said promotion policy was challenged in this Court and the validity of the said promotion policy has been upheld by this Court as well as the Apex Court. The learned Senior Counsel further submitted that when a candidate belonging to Scheduled caste/Scheduled tribe is declared unsuitable and is superseded, the said supersession of the said candidate has to be approved at various levels before it becomes final. As and when vacancies arise, the Departmental Promotion Committee is constituted by the Competent Authority comprising of one representative from the user department (i.e.Engineering Department) one representative belonging to the Scheduled Caste/Scheduled Tribe community (if any of the candidate falling within the zone of consideration belongs to the SC/ST community) and one representative from HRD to assess the suitability of the candidates coming within the zone of consideration for promotion to the next grade (Assistant Manager to Deputy Manager, Deputy Manager to Manager etc.). The learned senior counsel further invited our attention to the procedure where the Promotion Committee after conducting the personal interview, scrutiny of the Performance Appraisal Reports and the personal files of the eligible candidates submits a report (i.e. marks for personal interview = 40 marks and Performance Appraisal Reports=60 marks) recommending suitable candidates for promotion to the next higher grade to the competent authority (Director of Engineering). The Director of Engineering, if he accepts the report, forwards the report to the Special Cell for SC/STs of the HRD Department under cover of a letter which, after considering the report submits the same to the Managing Director. The Managing Director then puts up the matter before the Board of Directors. Once the Board approves the supersession, the same is confirmed and conveyed to the concerned department by the SC/ST Cell of HRD Department. The above procedure for obtaining the approval of the Board before superseding SC/ST candidate for promotion came into force in November 1989 vide a letter dated 16.11.1989. This was in keeping with the provisions contained in para 9.7 of the Brochure on Reservation for SC/ST candidates. In the submission of the learned senior counsel, the entire procedure was duly followed in case of the Petitioner and the Promotion panel found the Petitioner unsuitable and therefore, recommended supersession of the Petitioner.

10. We have considered the submissions of the learned counsel for the Petitioner and the learned Senior Counsel for the Respondent.

11. From the records, we find that the Petitioner was superseded for the first time in February 1989. The Promotion Panel vide its report dated 9.2.1989 found the Petitioner unsuitable and therefore, recommended supersession of the Petitioner from the post of Planning Officer to Administrative Officer (Planning). The Promotion Panel while considering the Petitioner 's Appraisal Reports stated that the said reports indicated the following : for the year 1986" Requires more experience ; 1987 " Promotability is "NO" and requires more experience" ; 1988: "Promotability is "NO" and does not have initiative, interest in work, can do

routine jobs, has very limited knowledge. The Petitioner was therefore superseded. The Promotion Panel Report was accepted by the Director of Engineering who at the relevant time was the Competent Authority. Since the rule pertaining to the prior approval of the Board before supersession of an SC/ST candidate came into force only in November 1989, there was no requirement of obtaining the Board's approval for supersession. The Promotion Panel vide its report dated 26.2.1990 superseded the Petitioner for promotion from Planning Officer to Administrative Officer (Planning). The reasons stated in the report were that "His overall rating is "B" and promotability has been rated as "NO" during the last 3 years. Further, his Appraisal Reports indicate adverse remarks. It has been observed that the adverse remarks have been conveyed to him. Further he has obtained 51.7 marks which are much below the passing level of 70 marks. The Board of Directors granted approval for the supersession. Likewise the Promotion panel by its report dated 14.3.1991, 14.2.1992, 15.4.1993 and 13.1.1995 has not recommended the case of the Petitioner and necessary approval of the Board of Directors has been sought for supersession. We further find that in the year 1996 the Respondent Company introduced a new Promotion Policy wherein candidates having completed certain number of years become eligible for multiple promotions. The Petitioner came to be considered for the post of Deputy Manager and Manager. The Promotion Panel vide its report dated 5.4.1996 has not recommended the Petitioner for promotion to the post of Deputy Manager (equivalent to the post of Administrative Officer Planning) as he was found to be unsuitable having obtained 36 marks in total as against the minimum stipulated 70 marks. The necessary approval of the Board of Directors for supersession of SC/ST candidate was obtained. The Promotion panel vide its report dated 10.4.1996 declared the Petitioner to be unsuitable for promotion to the post of Manager as he had failed to secure the stipulated minimum 70 marks. He had obtained a sum total of 23.33 marks. In this case, as the Petitioner was juniormost amongst the eligible candidates, and as such no supersession was involved, his matter was not referred to the Board.

12. In the Promotion Panel convened on 15.7.1996 to assess the suitability of the Petitioner amongst others to the post of Deputy Manager, the Petitioner did not appear for the interview despite intimation. Therefore, the marks obtained by the Petitioner on the Performance Appraisal Reports only had to be considered which were 87 marks. In accordance with the promotion policy Mr.J.L.Joshi and Mr.M.Dey who had secured 70 marks and above were considered suitable for promotion. Even as regards the contention that Mr.M.M.Vaidya is junior to the Petitioner as alleged we find that Mr.M.M.Vaidya is Deputy Deputy Manager-Planning w.e.f. 1.4.1993 whereas the Petitioner is Assistant Manager Planning only. Thus, the said Mr.M.M.Vaidya was promoted from the post of Deputy Manager to Manager w.e.f. 1.9.1996 whereas the Petitioner was being considered for promotion from the post of Assistant Manager to Deputy Manager. We find that Mr.Vaidya and the Petitioner belonged to two different cadres and therefore, the question of Mr.Vaidya being junior to the Petitioner does not arise.

13. In the Affidavit in reply, a categorical stand has been taken by the respondent that one of the members of the Board of Directors belonging to the SC/ST community studied the records of all candidates who were superseded including the records of the Respondents for a period of 5 to 10 years. After verification of the same the said member conveyed his recommendation for the supersession to the Board of Directors for approval. We have already found that the President's Directive 1975 are only applicable to the lowest rank in group "A" category i.e. up to the level of the Planning Officer in the case of the Petitioner. All the succeeding promotions are determined by a selection process as per the promotion policy of the Respondent. At the cost of repetition, in para 8 we have already held that there is no merit in the contention of the learned counsel for the Petitioner that there is any breach of the President's Directive 1975.

14. As regards the case of the Petitioner that till the year 1988 his performance was good, we find that the Respondents have taken a stand that from the year 1981 onwards, the performance of the Petitioner has been average and not fit for promotion. The Petitioner was rated B+ only in 1985 and 1986. In 1984, though Reporting Officer had rated the Petitioner "B+" the Countersigning Officer had moderated the rating to "B". Apart from this fact though the Reporting Officer had assessed the Petitioner as "B" + the said Reporting Officer had under Part III (APromotability) of the Appraisal Report had assessed the Petitioner as not ready for promotion to the next grade, his potentiality for shouldering higher responsibility as limited and the limiting factors hindering his advancement were Decision Making and Power of Analysis. Even in 1987, a year prior to the alleged victimisation the Petitioner was rated as "B" and he was assessed as not ready for promotion. In fact it is the categorical stand of the respondent that though the President's Directives 1975 may not be applicable, nonetheless in terms of the President's Directives 1975 he was nominated for an inhouse training programme. The same was not availed by the petitioner on two occasions.

15. We have perused the Performance Appraisal Report. We do not find that the same is arbitrary. It is not possible for us in exercise of our ExtraOrdinary Writ Jurisdiction under Article 226 of the Constitution of India to reassess and reappraise the Appraisal Reports and arrive at our own conclusions. We do not find that the procedure adopted by the Respondent superseding the Petitioner is illegal and violative of the Petitioner's right for promotion. The Petitioner has only a right to be considered for promotion. We find that the Petitioner has been considered on all occasions but not found suitable. We further find that though allegations of malafides are made against Shri Sannaki at whose instance the supersession of the Petitioner is alleged has not been made a party and hence we refrain from giving a finding of malafides in the matter of supersession.

16. In the result, we do not find any merit in the present Petition and the same deserves to be dismissed and is accordingly is dismissed with no order as to costs. Rule is discharged.