

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 17th November, 2009*
Judgment Delivered on: 27th November, 2009

+ **LPA No.379/2003**

JAHAR LAL BASU & ORS. Appellants
Through: Mr.R.M.Bagai, Advocate with
Ms.Prachi Sharma, Advocate

Versus

AIR INDIA Respondent
Through: Ms.Padma Priya, Advocate and
Ms.Meenakshi Sood, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. Appellants, 5 in number, along with 2 of their colleagues; total number being 7 had filed a writ petition which has been dismissed by a learned Single Judge of this Court vide impugned judgment and order dated 24.3.2003. The prayer made in the writ petition by the 7 writ petitioners was:-

“That the respondents may kindly be directed that the seniority as regularized promotion to the post of Senior Security Assistant may kindly be granted to the

seven petitioners since 16th July 1990 as the due fundamental right of the petitioners so that the petitioners may get their due seniority and the promotional benefits etc.”

2. The respondent in the writ petition was Air India.

3. Briefly noted, the claim of the writ petitioners was predicated on the averments that in the year 1986 there existed vacant posts of Junior Security Assistant under Air India and the 7 writ petitioners were appointed on various dates in the year 1986 as Junior Security Assistant. On 1.7.1990 all of them were given promotion on Officiating basis to the next higher/promotional post in the cadre i.e. the post of Senior Security Assistant and that on 1.1.1991, petitioner No.3, 6 and 7 were issued letters confirming them to the post of Senior Security Assistant. The petitioners pleaded that in the year 1993 posts of Security Assistant were created for the first time in the pay scale in between the scale of pay to the post of Junior Security Assistant and Senior Security Assistant i.e. the post of Security Assistant became the promotional post from the post of Junior Security Assistant and likewise became the feeder post to the post of Senior Security Assistant. Alleging that the petitioners having been promoted on Officiating basis to the post of Senior Security Assistant and 3 of them being even confirmed when the post of Security Assistant was not even

created, the petitioners could not be promoted to the post of Senior Assistant and that the action of Air India in posting all petitioners as Security Assistants w.e.f. 1.1.1993 was illegal. It was averred that on 1.7.1996 the petitioners were promoted as Senior Security Assistants and were confirmed to said post on 1.1.1997. Stating that it was settled law that where continuous Officiating promotion to a higher post was followed by a confirmation to the said post, prayer aforementioned was made that since the petitioners were first promoted on Officiating basis as Senior Security Assistants on 1.7.1990, the respondent i.e. Air India be directed to reckon their seniority to the post of Senior Security Assistant w.e.f. 1.7.1990.

4. Opposing the writ petition Air India pleaded that as admitted by the writ petitioners, on 1.1.1993 all of them were promoted on regular basis as Security Assistants and worked as Security Assistants till, on 1.7.1996 they were promoted to the next higher post of Senior Security Assistant. It was pleaded that it was obviously incorrect to state as a matter of fact that w.e.f. 1.7.1990 till 1.7.1996, the petitioners had continued to work as Senior Security Assistants on Officiating basis. It was pleaded that in the year 1990 the cadre did not have a post of Security Assistant and there being vacancies in the post of Senior Security Assistants, the petitioners were given Officiating

charge to the post of Senior Security Assistant, to which post they could not be promoted for the reason the service rule applicable mandated that to be eligible for promotion to the post of Senior Security Assistant minimum 6 years' service on regular basis in the post of Junior Security Assistant was mandatory. Air India further pleaded that the letters confirming petitioner No.3, 6 and 7 as Senior Security Assistant w.e.f. 1.1.1991 was inadvertently issued and vide letter dated 11.6.1991, petitioner No.3 and 7 were informed that they were wrongly informed of being confirmed as Senior Security Assistant. Vide letter dated 7.12.1993, petitioner No.4 was likewise so informed. Air India further stated that an exercise of cadre review was taken and an understanding was reached with the Union that a post of Security Assistant be created in between the post of Junior Security Assistant and Senior Security Assistant with eligibility condition of promotion to the post of Security Assistant being 6 years' regular service as Junior Security Assistant. Explaining the grant of promotion on Officiating basis as Senior Security Assistant given to the petitioners it was stated that pending administrative approval and formal sanction of posts of Security Assistant, the petitioners were promoted to the post of Senior Security Assistant on Officiating basis; it being clearly indicated that the

promotion as on Officiating basis would not confer any right in favour of the petitioners. It was averred that on the pleadings in the writ petition, it was apparent that the writ petition was highly belated; the claim filed in the year 2000 related to an action of Air India withdrawing the Officiating promotions of the petitioners on 1.1.1993 on which date they were promoted as Security Assistants. It has been further pleaded by Air India that as per the notified rules, prescribed eligibility condition for being promoted as a Security Assistant is 6 years' regular service in the grade of Junior Security Assistant and for further promotion to the post of Senior Security Assistant, 4 years' regular service has to be rendered in the grade of Security Assistant. Thus, as per the respondents the writ petition was liable to be dismissed on account of delay and laches and even on merits.

5. On the pleadings of the parties, discussing the rival contentions, the learned Single Judge has opined as under:-

“The petitioners, however, while working as Junior Security Assistants, were given promotion to the post of Senior Security Assistants on officiating basis w.e.f. 1.7.1990. It is indicated in the said order issued on 29.8.90 that with the aforesaid officiating promotion the petitioners would be drawing salary in the pay scale of Rs.1555-2405, which was the pay scale of Senior Security Assistants. It was, however, made clear in the said order that the said order would not entitle the petitioners for any claim to the post of Senior Security Assistant on regular basis and that

their cases for promotion on regular basis would be considered as per their turn in accordance with the promotion policy of the corporation. Therefore, on the aid date when the petitioners were so promoted on officiating basis, the eligibility criteria for such promotion under the said promotion policy was at least ten years of service for getting a promotion from the post of Junior Security Assistant to Senior Security Assistant inasmuch as minimum six years of service is required for getting promotion from the post of Junior Security Assistant to Security Assistant and another four years of service is required for getting promotion from the post of Security Assistant to Senior Security Assistant. None of the petitioners had the eligibility criteria for such promotion to the post of Senior Security Assistant as on 29.8.90 when the aforesaid order of officiating promotion was issued. In that view of the matter, it was also made apparently clear in the order giving ad-hoc promotion that the petitioners would not be entitled to claim any promotion to the post of Senior Security Assistant on regular basis and that their case for promotion on regular basis would be considered as per their turn in accordance with the promotion policy.

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Another order being the order dated 17.8.1993 was issued to all the petitioners indicating therein that they had been promoted to the post of Security Assistant in the Security Division w.e.f.1.1.1993 in the salary grade of Rs.1450-2285. It was also made clear in the said order that they were deemed to have been confirmed as Security Assistant w.e.f.1.7.93 and that on their promotion to the post of Security Assistant, they would continue to perform the functions carried out by them in the post of Junior Security Assistant in addition to the functions attached to the post of Security Assistant and that the said letter dated 1.7.93 was issued for record purposes and would not materially affect their present emoluments as officiating Senior Security Assistant and that they would continue to draw whatever salary they were drawing at the relevant time. On 2.4.97, the respondents issued another order informing the

petitioners that they have been promoted as Senior Security Assistant in the Security Division w.e.f. 1.7.96 on regular basis and that they would be deemed to have been confirmed as Senior Security Assistant w.e.f. 1.1.1997. The aforesaid letters, which were issued giving promotion to the petitioners to the post of Security Assistant and thereafter to the post of Senior Security Assistant on regular basis, have been issued in accordance with the criteria laid down in the promotion policy issued in the year 1989. The petitioners were given regular promotion and they were confirmed in the post of Security Assistant after completion of six years of service and they were shown promoted on regular basis and confirmed in the post of Senior Security Assistant after four years of service as Security Assistant. The aforesaid orders of regular promotion and confirmation in the post of Security Assistant w.e.f. 1.7.93 and in the post of Senior Security Assistant w.e.f. 1.1.97 are in consonance with the promotion policy of the respondents.”

6. With reference to the Constitution Bench decision of the Supreme Court reported as AIR 1990 SC 1607 The Director Recruit Class II Engineering Officers Association & Ors. Vs. State of Maharashtra & Ors., the learned Single Judge held that the period spent when on Officiating promotion could not be counted towards seniority and length of service for the reason said Officiating promotion was contrary to the rules in that the petitioners did not have the requisite eligibility criteria.

7. We note that the learned Single Judge has not expressed any opinion whether the writ petition suffered from delay and laches.

8. It is not in dispute that on 17.8.1993 the petitioners were clearly informed as under:-

“We have pleasure in informing you that you have been promoted to the post of Security Assistant in the Security Division with effect from 01.01.93 in the salary grade of Rs.1450-35-1555-50-2105-60-2285.

2. On your promotion to the post of Security Assistant you will continue to perform the functions carried out by you in the post of Jr. Security Assistant in addition to the functions attached to the post of Security Assistant.

3. You are deemed to have been confirmed as Security Assistant w.e.f. July 1, 1993.

4. The above letter is issued for record purposes and will not materially affect your present emoluments as Offg. Sr. Security Assistant. In other words, you will continue to draw whatever salary you are drawing at present.”

9. The letter in no unequivocal terms informs the petitioners that they stood promoted as Security Assistants on regular basis. Thus, if at all, the petitioners had any grievance on account of not being confirmed as Senior Security Assistants, this was the time when they ought to have approached the Court. Thus, it is too late in the day to file a writ petition in the year 2000 and raise an issue of entitlement to be confirmed as Senior Security Assistants w.e.f. 1.7.1990.

10. The claim in the writ petition was clearly barred by delay and laches.

11. The letter noted in para 9 above brings out the unfortunate malice of Union pressures which have destroyed virtually every second public sector enterprise. Today, in spite of huge grants by the Union Government we find Air India in the Red. We fail to understand as to how persons appointed on a permanent basis to a particular post can be paid salaries in the scale applicable to the next higher grade. We fail to understand as to how a person promoted on Officiating basis being required to perform duties in the post to which he is entitled to; Officiating promotion being withdrawn is entitled to salary in the next higher grade.

12. On merit, we concur with the reasoning of the learned Single Judge for the reason in the year 1990, when they were given Officiating promotion, the petitioners were not even eligible to be promoted as Senior Security Assistants. In the same year the post of Security Assistant was created; being the promotional post to that of Junior Security Assistant. Thus, the petitioners had to be first promoted as Security Assistants and thereafter, after rendering requisite service in the post of Security Assistant would be entitled to be considered for further promotion.

13. The claim of the petitioners that they were confirmed as Senior Security Assistants when letters were

issued to petitioner No.3, 4 and 7 is without any basis for the reason said letters issued to said petitioners were communicated inadvertently and were withdrawn vide letters dated 11.6.1991 addressed to petitioner No.3 and 7 and letter dated 7.12.1993 addressed to petitioner No.4. We note that said petitioners never challenged the letters dated 11.6.1991 and 7.12.1993. The same have not even been challenged in the instant writ petition.

14. In any case, in the year 1993 the petitioners were clearly informed of being promoted and hence required to function as Security Assistants. They did so till they acquired the requisite eligibility for being further promoted to the post of Senior Security Assistant. The factual basis of the claim that w.e.f. July 1990 till the year 1996 the petitioners continued to function as Senior Security Assistants on Officiating basis being incorrect, the claim for being entitled for the service rendered on Officiating basis as Senior Security Officers being reckoned as service in the said post for future benefit and seniority has to be rejected.

15. The learned Single Judge has correctly relied upon the ratio of law laid down in Direct Recruit's case (supra).

16. We find no merit in the appeal which is dismissed with cost in favour of the respondent and against the appellants.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

November 27, 2009
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