

* **HIGH COURT OF DELHI : NEW DELHI**

1. WP (C) No. 2136 of 2010

% Decided on: 31.08.2010

SHAKTI SHARAN TRIPATHI & OTHERS Petitioners
Through: Mr. Rakesh Tiku with
Mr. Prakash Gautam, Adv.

Versus

AIRPORT AUTHORITY OF INDIA & ANR. Respondents
Through: Mr. P.S. Patwalia, Sr. Adv. with
Ms. Anjana Gosain, Adv. for R-1.
Ms. Manjusha Wadhwa, Adv. with
Mr. Kanwaljeet Singh, Section
Officer, for R-2/UOI.

and

2. WP (C) No. 2133 of 2010

ARUN KUMAR JAIN & OTHERS Petitioners
Through: Mr. Rakesh Tiku with
Mr. Prakash Gautam, Adv.

Versus

AIRPORT AUTHORITY OF INDIA & ANR. Respondents
Through: Mr. P.S. Patwalia, Sr. Adv. with
Ms. Anjana Gosain, Adv. for R-1.
Ms. Manjusha Wadhwa, Adv. with
Mr. Kanwaljeet Singh, Section
Officer, for R-2/UOI.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. By this common judgment I shall dispose of the two similar writ petitions filed by the petitioners against the respondents wherein the petitioners were selected for the posts of

Manager (Electronics) and Manager (ATC) but were later on rejected on the ground of less number of vacancies.

2. Brief facts of the case relevant for the disposal of the present writ petition are as under:

3. An advertisement No. 2/2007 was issued in December, 2007 by the respondent (AAI) for filling up of 68 posts of Manager (ATC) and 171 posts of Manager (Electronics) inviting applications by way of direct candidature and the applicants were required to take competitive examination. These posts were disintegrated into the following categories:

<u>Manager (ATC)</u> WP(C)2133 of 2010	<u>Manager (Electronics)</u> WP(C)2136 of 2010
General 36	General: 88
OBC: 18	OBC: 46
SC: 10	SC: 25
ST: 04	ST: 12
Total 68	Total 171

4. The last date of applying for the post was 24.12.2007.

The requisite qualification for the post is detailed below:

Qualifications:

Manager (ATC)

Manager (Electronics):

First class Engineering degree in Electronics/Telecommunications/Radio Engineering Electrical with specialization in Electronics or M.Sc. degree or its equivalent with Wireless Communications,

*Electronics, Radio Physics
or Radio Engineering as a
special Subject or
equivalent with first Class.*

5. The written examination was conducted on 09.11.2008 and the selected candidates out of the written examination were called for the interview from 6-9th August, 2009. The results pursuant to the interview were declared on the website on 01.12.2009, selecting 68 candidates. The result was in order of merit and the petitioners were declared successful. The name of the petitioners also appeared in the selected list of candidates. However, in January, 2010 a fresh list was issued selecting only 35 candidates for the post of Manager (ATC), leaving aside the petitioners herein by reducing the number of posts to almost 50%. Aggrieved by the same the petitioners filed the writ petition bearing no. W.P.(C) No. 2133/2010.

6. In the category of Manager (Electronics) the results were declared in June 2009. The petitioners were declared successful in the written examination and were called for interview. Pursuant to the interview, a final list of 87 candidates was issued who were finally selected for the post of Manager (Electronics). The petitioners were not included in the said list. Aggrieved by the same, the petitioners have filed the writ petition being W.P.(C) No. 2136/2010.

7. The case of the respondent no.1 is that the advertisement clearly stipulated the condition that the number of post may vary. It is further the case of the respondent that since the recruitment rules of AAI (the R&P Regulations) have undergone a change, it would not be appropriate to recruit such a large

number of candidates in a haste especially as the post of Manager (ATC) is a highly technical one, it was thought appropriate to call for only the best talent available.

8. As per the case of the respondent no.1 later on it was decided that the experience required for the post of Manager (ATC) should be revised to “essential” (as per the revised R&P regulations) where as originally as per the advertisement the experience required was “desirable”. Accordingly it was decided that the stipend also needed to be revised to Rs. 60,000/- pm (as per the amended R&P regulations) this was as opposed to Rs. 13,000/- mentioned in the advertisement. It is submitted that appointment letters have been sent to the selected candidates.

9. Further the case of respondent no.1 is that, due to these key changes made in the recruitment rules, the respondent no.1 has decided to cut down on the number of vacancies to be filled for the post of Manager (ATC). The underlying reason behind reducing the candidates for the post of Manager (ATC) is to have the finest candidates in the aviation industry.

10. Initially, the petitioners in both the petitions claimed their relief against respondent no.1 but in their rejoinder they have relied upon the Minutes of meeting dated 26.04.2010 held under the Chairmanship of the Joint Secretary, Ministry of Civil Aviation calling upon the Respondent no.1 to appoint the required number of candidates for the post of Manager (Electronics).

11. The respondent no.1 has however, submitted a review of the decision taken in the Minutes of Meeting dated 26.04.2010 before the Ministry of Civil Aviation who had participated in the meeting and a view was taken for appointing these petitioners to

the respective posts.

12. Later on with the consent of the petitioners and respondent no.1 vide order dated 19.07.2010 the respondent no.2 was impleaded as a respondent in the array of parties. The stand of the respondent no.2 has been brought on record by way of a letter dated 05.08.2010 which is reflected in the aforesaid letter as well as oral submission of the learned counsel for the respondent No.2. that the meeting dated 26.04.2010 was held under the Chairmanship of the Joint Secretary of the respondent No.2 wherein the Director of respondent No.1, its Under Secretary and also other senior officials of respondent No.1 participated.

13. The said meeting was held with a view to fill up recruitment action plan in ATC and CNS Disciplines. Necessity to hold the said meeting arose because there was shortage of manpower in the critical Air Traffic Control (ATC) and Communication and Navigation Services (CNS) and so as to take a policy decision to accelerate filling up of 515 vacancies at various levels in ATC and 1115 vacancies at various levels in CNS Disciplines of respondent No.1.

14. In para 3 of the minutes of the said meeting, it was noted that process of recruitment for 68 posts of Manager under ATC Discipline and 171 posts of Manager (CNS) Discipline had been undertaken. Stand of the respondent No.1 to the effect that the offer of appointment had only been issued to 35 candidates under ATC and 87 candidates under CNS Discipline was also noted.

15. Para 3 of the minutes of the said meeting it was observed as under :

“after discussion, it was decided that since

the offer of appointment for the remaining candidates had been held up for no valid reasons, the same be issued to remaining 33 candidates under ATC Discipline and 84 candidates under CNS Disciplines for appointment under Manager Grade so as to fill up originally declared vacancies of 68 and 171 in ATC and CNS Disciplines respectively.”

16. It was submitted by the respondent No.2 that the copy of the minutes of the meeting dated 26.4.2010 containing decision taken in the said meeting was duly circulated and sent to Chairman of respondent No.1 and other senior officials vide letter dated 6.5.2010. Accordingly, it was expected that the decision taken in the joint meeting dated 26.4.2010 would be taken due note of and would be complied.

17. It was also contended that thereafter the respondent No.2 sent reminder dated 17.5.2010 to the Chairman of respondent No.1 for the action taken report. The Chairman of respondent No.1 sent letter to the respondent No.2 received on 26.5.2010 whereby the reasons were stated for non compliance and the respondent No.2 was apprised of pendency of present 2 cases before this Court and made a request seeking to review the decision communicated in the minutes followed by another note of the respondent No.1, initiated through its General Manager (Law) dated 4.8.2010 almost on the same lines.

18. It is argued by the learned counsel for the respondent No.2 that since litigation was pending, the respondent No.2 left the legal effect of the same for this Court to decide.

19. The contention of the petitioners is that it is evident from the minutes that it was more in the realm of a policy decision to have a firm plan for making recruitment to these managerial

posts both under direct recruitment as well as promotion category. In para 4 of the said minutes it was also decided to give some kind of relaxation as one time measure. However, that relaxation was not for the direct recruit category to which the petitioners belong but was confined to the promotee category. The petitioners after having come to know about the said minutes, had filed a copy of the same on record along with the rejoinder.

20. The submission of Mr. Rakesh Tikku, learned counsel for the petitioners is that once the respondent No.2 has taken its decision, and the said decision has admittedly been conveyed to respondent No.1 in writing, therefore, the said respondent No.1 is bound to follow the same as under Section 40 of the Airport Authority of India Act, 1994, power is vested with the Central Government, which is Ministry of Civil Aviation to issue directions to respondent No.1. The respondent No.1 has no alternative but to fill up the vacant posts both under the direct recruitment as well as promotion quota, which was engaging the attention of the respondent No.2, is in the realm of policy decision as the said minutes extensively deals with various issues including the issue of giving offer of appointment to the petitioners and it was not an isolated decision to give an appointment to any particular person.

21. Mr. Patwalia, Sr. counsel appearing on behalf of respondent No.1 has argued that respondent No.1 had advertised in 2007 the above mentioned posts and after the results were declared on account of three major reasons which are given below :

- a) 1st time large scale recruitment were done and merit had gone down in order to invite better talent from outside, it

was decided to fill up the remaining posts from inviting applications from outside by giving better scales i.e. earlier the stipend was Rs.13000/- resulting into a salary of Rs.20000/- to Rs.25000/- but later on after the amendment of the rules, it was increased to Rs.60,000/-.

b) At present all the candidates are the serving employees of AAI. The earlier advertisement had the requirement of experience being desirable but was changed to be an essential requirement subsequently.

c) The mode of selection criteria was changed by keeping the marks of the written examination of the subject upto 70% and the remaining to 30%. Earlier it was 50% each.

d) It was also decided to stream line the functioning in both the subjects of electronics and CNS Cadres. (Communication, Navigational Services).

22. It is argued that the petitioners have no vested right to be appointed just because their names are shown in the selection lists and even in the matter of post of ATC, only the list of successful candidates was declared. The respondent No.1 is not bound by the minutes of the meeting held by its Ministry as it was only a coordination cell committee meeting which is held every month and it was in fact not an error as many formalities were to be complied with before its compliance. The meeting was chaired by Joint Secretary whereas the Chairman of respondent No.1 is senior to him and the Joint Secretary is also the Board Member of respondent No.1 which is chaired by the Chairman. It is argued that when the respondent No.2 was apprised about the pending litigations by a letter dated 26.05.2010 a request was made to the respondent No.2 for review of its minutes of meeting dated 26.04.2010, however, no decision was taken by the respondent No.2 who has already left the matter to the discretion of this Court.

23. Mr. Tikku, learned counsel for the petitioners has given his point-wise reply to the submissions made by respondent no.1 and the same are as follows:

- a) The first point of the respondent No.1 regarding the new R & P Regulations were being framed proposing to make certain qualifications as essential instead of desirable has no force as it is settled law that any R & P Regulations can only have prospective effect and these would be retrospectively applied to the advertisement which was issued in December, 2007 wherein it was specified that "the eligibility with respect to age, experience will be determined as on 1.10.2007". Even otherwise, the qualifications at the Managerial level, which as per respondent No.1 is now proposing to be essential, are the ones which are already possessed by the petitioners which is not disputed by the respondent No.1 in its counter affidavit. Thus, an objection in this regard is legally misplaced.
- b) The second plea namely proposal to enhance the stipend for these future vacancies from Rs.13,000/- to Rs.60,000/- per month, it is submitted that it is for the petitioners to take a call as to what remuneration they will have. During the course of argument Mr. Tikku has agreed that the petitioners are content to receive the same remuneration which has been granted and is being granted to those candidates to whom the letter of appointment have been issued and the petitioners claim parity.
- c) Coming to the third plea i.e. proposal to insert some question relating to certain areas in written test for filling up new

vacancies, the petitioners in the present matter have already qualified the test and also met the qualifications which were required as per the advertisement. According to the petitioners, no prospective changes can deprive the petitioners of the benefit of their success in the written examination already held.

24. Mr. Patwalia, learned Senior counsel for the respondent No.1 has referred the following decisions in support of his submission :

- a) Batiarani Gramiya Bank Vs. Pallab Kumar & Ors. (2004) 9 SCC 100.
- b) S.S. Balu & Anr. Vs. State of Kerala & Ors. (2009) 2 SCC 479.
- c) Bangalore Medical Trust Vs. B.S. Muddappa & Ors. (1991) 4 SCC 54.
- d) Poonam Verma & Ors. Vs. Delhi Development Authority (2007) 13 SCC 154.
- e) Bangalore Development Authority & Ors. Vs. R. Hanumaiah & Ors. 2005 (8) Scale 80.
- f) State of UP Vs. Neeraj Awasthi & Ors. 2005 (10) Scale 286

25. In the **Batiarani Gramiya Bank's case** (supra), the Supreme Court had noted that after the advertisement was published, examinations were held, the Bank took a decision to not filling up any of such posts and the reasons for not filling up any of the posts was noted by the Apex Court in para 6 of the said judgment which included the fact that the Bank had incurred losses of more than Rs.7 crores, the target in the various anti poverty programmes could not be met on account of the loss, the ban imposed by the state government on the opening of further branches, in view of the loss; due to poor recovery performance,

the rural banks became ineligible for refinance from NABARD; and due to the award given by the financial implications of the National Industrial Tribunal on 30.4.1990 granting benefits with retrospective effect from 1987. In view of this arrears payable to the existing employees alone came to Rs.2 crores and establishment expenditure increased by 150%. Thus, the Bank in that case took a decision not to fill up any of the vacancies because of financial non viability coming to second case it is to be noted that in that case also decision was taken on facts not to fill up any of the vacancies. It was so noted in para 3 of the said judgment. For these reasons the Apex Court had taken a view that no mandamus can be issued to force the government to fill up any vacancies.

26. In the present matters facts are materially different. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant circumstance may alter the entire aspect. Reliance in this regard has been placed by the petitioners in the two cases namely **Zee Telefilms Limited and Another Vs. UOI** reported as AIR 2005 SC page 2677 and **UOI Vs. Amritlal Manchanda** AIR 2004 SC page 1625.

27. It is not a case of respondent No.1 that there was no need to fill up the vacancies which were advertised. On the contrary, it is on record that in the month of July of this year respondent No.1 has itself advertised in the newspaper for filling up the additional vacancies for these very posts. Thus, the posts for which the applicants/petitioners had appeared for examination not

only subsist but an advertisement in the month of July, 2010 have again been issued for additional posts at the same level.

28. Therefore, there is a force in the submission of Mr. Tikku that there is no justification for the respondent No.1 to restrict the offer of letter of appointment only to the extent of approximately 50% of the candidates who were found eligible and were selected. The petitioners have referred in this regard a judgment of the Apex Court in the case of **UOI Vs. Rajesh P.U.** reported as 2003 VII SCC page 285.

29. The most important aspect of these matters is when this Court examined the original record/file produced by the respondent No.2 during the course of argument it was found that there is a noting dated 14.6.2010 by Sh. Alok Shekhar, Director (s) which is relevant to refer herein which reads as under :

“2. The issue is about action plan for recruitment in ATM and CNS disciplines in AAI. A meeting in this regard was taken by JS(S), wherein AAI representatives were also present. The minutes of the meeting can be seen from 12-17/C.

3. Various decisions were taken in this meeting. However, the most contentious issue discussed was about the recruitment for 68 posts of Managers under ATM discipline and 171 posts of Managers under CNS discipline, which was undertaken by AAI. These posts were advertised and requisite number of candidates was selected. However, appointment letters were issued to only 35 candidates (out of 68 posts advertised) under ATM discipline and 87 candidates (out of 171 posts advertised) under CNS discipline. No valid reasons were given by AAI for this decision. Hence during the meeting held by JS(S), it was decided that offer of appointment to the remaining candidates may be issued immediately, as it had been held up for no valid reasons.

3. Now vide U.O. Note placed at FR,

Chairman, AAI has given several reasons for this decision. In nutshell, the reasons inter alia is as under :

- i) In such large scale recruitment, merit has gone down for candidates lower in the merit list, and it is much below the desired level.
- ii) The posts were advertised in 2008, and recruitment rules have undergone a change ever since.
- iii) These posts will be included in the fresh advertisement.
- iv) The pay scale has also undergone a change.
- v) Selection criteria need to be changed.
- vi) The cadre needs to be re-structured.
- vii) There is no legal impediment, as the authority can increase or decrease the number of vacancy, as was mentioned in the advertisement.

4. Going through the reasons mentioned above, there does not seem to be any logical reason for not issuing offer of appointment to the selected candidates. All reasons forwarded by the Chairman, AAI, seem to be an afterthought, and cannot stand the scrutiny of law. The posts have been advertised and selection process has been completed. Now, withholding the issue of 'letter of appointment' on the pretext of above reasons defies all logic.

5. It is against the principles of natural justice to deny offer of appointment to candidates after their selection, when all the reasons mentioned above should have been taken into consideration at an appropriate stage, before starting the recruitment process. There is absolutely no justification in withholding the offer of appointment to a select number of candidates, after completing the selection process and issuing offer of appointment to the some candidates.

6. Hence the decision taken in the meeting under reference seems to be in order. We may therefore ask AAI to implement the decision immediately and issue offer of appointments to the remaining candidates selected for the posts of Managers in the CNS and ATM disciplines, without any further delay.

7. Submitted for approval of Secretary.

Sd/-

(Alok Shekhar)

Director (S)/14.6.2010"

30. Thereafter the file was sent to the Secretary for his approval who on 14.6.2010 has made the following noting.

“I totally agree. After completing the selection process there is no valid justification for withholding the result. In the case of Manager ATM, the roll numbers of all 68 successful candidates were published on the website but were withdrawn later and after (illegible) months (!) a list of 35 was issued. ATM/CNS wing is already facing manpower shortage. These recruitment will pave the way for more vacancies at the lower level which can be readily filled by AAI. For approval of ‘X’ pl.

Sd/-
(illegible)
14.06.2010”

31. At the end of this noting, it is written “let us discuss with Chairman AAI” dated 22.6.2010.

32. There is another noting dated 12.07.2010 wherein it was mentioned that the matter was discussed with Chairman of respondent No.1 in the presence of Secretary and he promised to recruit it with open mind.

33. From the notings dated 14.06.2010, 22.06.2010 and 12.07.2010 it appears clearly that on these dates the respondent no.2 was aware about the pendency of litigation in this court as prior to these dates the respondent no.1 sought the review of meeting dated 26.04.2010 still the respondent no.2 did not agree with the suggestion of respondent no.1 rather the same very contentions raised by respondent no.1 in the present litigation were rejected.

34. Hence all the submissions made by the respondent No.1 are without any substance. Under these circumstances, the decisions referred by the respondent No.1 are not applicable in the

facts and circumstances of the present matters. Section 40 of AAI Act is squarely applied to the facts of the present cases.

35. Admittedly, the respondent No.1 has issued letter of appointment to almost 50% of the persons who were found to be selected. The case of the petitioners therefore is not different from those who have been already issued letter of appointment and therefore, restricting of the offer of appointment for the same set of persons by 50% is in violation of Article 14 of the Constitution of India.

36. In view of the fact that in the month of July, 2010 the respondent No.1 has again issued advertisement for the same very post and it is obvious that the respondent No.1 need to fill the same very vacancies, then where is the question of financial constraints or any prohibition and legally sustainable compulsion.

37. Therefore, both the writ petitions are allowed. A writ of mandamus is issued to respondent No.1 to offer the letter of appointment to the petitioners. This more so when the respondent No.2 exercising its power under the provisions of the Act had already issued a direction to that effect based on a joint meeting.

38. No costs.

MANMOHAN SINGH, J.

AUGUST 31, 2010

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