

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 17284 of 2012 (I)

PETITIONER(S):

1. **T. RAJ ANTONY, SUPERVISOR (FIRE SERVICE),
AIRPORTS AUTHORITY OF INDIA,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM-695 008,
RESIDING AT: THERUVIPARAMBIL HOUSE, NEDUNGAPARA P.O.,
KURUPPAMPADI VIA., ERNAKULAM DIST., PIN-683 545.**
2. **ABRAHAM PAUL, SUPERVISOR (FIRE SERVICE),
AIRPORTS AUTHORITY OF INDIA,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM-695 008,
RESIDING AT AMBATTU THOTTUNKAL, CONVENT ROAD,
NALANCHIRA, THIRUVANANTHAPURAM-695 015.**

**BY ADVS.SRI.BENNY GERVACIS
SRI.K.M.VENKATESH KAMATH**

RESPONDENT(S):

1. **AIRPORT AUTHORITY OF INDIA,
REPRESENTED BY ITS CHAIRMAN, CENTRAL HEADQUARTERS,
RAJIV GANDHI BHAVAN, SAFDURJANG AIRPORT,
NEW DELHI-110 003**
2. **THE EXECUTIVE DIRECTOR (HUMAN RESOURCES),
AIRPORT AUTHORITY OF INDIA, CENTRAL HEADQUARTERS,
RAJIV GANDHI BHAVAN, SAFDURJANG AIRPORT,
NEW DELHI-110 003**
3. **AIRPORTS AUTHORITY OF INDIA,
REGIONAL HEADQUARTERS, SOUTHERN REGION,
REPRESENTED BY REGIONAL EXECUTIVE DIRECTOR,
CHENNAI AIRPORT, CHENNAI-600 027**
4. **AIRPORT DIRECTOR, AIRPORT AUTHORITY OF INDIA,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM-695 008**
5. **THE DEPARTMENTAL PROMOTION COMMITTEE (NON EXECUTIVE),
REPRESENTED BY THE CONVENER/CHAIRMAN D.P.C.,
AIRPORT DIRECTOR, AIRPORTS AUTHORITY OF INDIA,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM-695 008**

WP(C).NO.17284/2012

6. S.SUNIL,
SUPERVISOR (FIRE SERVICE),
AIRPORTS AUTHORITY OF INDIA,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM-695 008

7. M.S.TAHA,
SUPERVISOR (FIRE SERVICE),
AIRPORTS AUTHORITY OF INDIA,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM-695 008

R1 TO R5 BY ADV. SRI.V.SANTHARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20-01-2015, THE COURT ON 20-03-2015 DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS

- EXT.P1 PHOTOCOPY OF THE ORDER DATED 28.7.2009 ISSUED BY THE 4TH
RESPONDENT IMPOSING MINOR PENALTY ON THE 1ST PETITIONER.
- EXT.P2 PHOTOCOPY OF THE ORDER DATED 28.7.2009 ISSUED BY THE 4TH
RESPONDENT IMPOSING MINOR PENALTY ON THE 2ND PETITIONER.
- EXT.P3 PHOTOCOPY OF THE MINUTES OF THE DPC DATED 28.6.2010
- EXT.P4 PHOTOCOPY OF THE ORDER DATED 30.11.2010 ISSUED BY THE 3RD
RESPONDENT GRANTING APPROVAL FOR PROMOTION
- EXT.P5 PHOTOCOPY OF THE 5TH RESPONDENT'S NOTE DATED 8.2.2011
- EXT.P6 PHOTOCOPY OF THE CIRCULAR DATED 22.9.2009 BY THE 1ST
RESPONDENT
- EXT.P7 PHOTOCOPY OF THE REPRESENTATION PREFERRED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P8 PHOTOCOPY OF THE REPRESENTATION PREFERRED BY THE 2ND
PETITIONER BEFORE THE 2ND RESPONDENT
- EXT.P9 PHOTOCOPY OF THE NOTE DATED 29/5/2012 BY THE 4TH
RESPONDENT.
- EXT.P10 PHOTOCOPY OF THE REPLY BY THE 3RD RESPONDENT DATED
4/7/2012.
- EXT.P11 PHOTOCOPY OF THE SELECT LIST ISSUED BY THE 5TH RESPONDENT
DATED 18/7/2012
- EXT.P12 PHOTOCOPY OF THE ORDER DATED 9/8/2012 ISSUED BY THE 4TH
RESPONDENT.

RESPONDENTS' EXHIBITS :

- EXT.R4(A) TRUE COPY OF THE LETTER NO.MPP/1126/2010(VOL.I) DATED 8/2/2011

/TRUE COPY/

P.A.TO.JUDGE

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.17284 of 2012

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Dated this the 20th day of March, 2015

JUDGMENT

The denial of promotion to the petitioners to the post of Superintendent (Fire Service) under the 4th respondent on the ground that their Personal Assessment Report (PAR) for one year is not available is the cause of action for this writ petition.

2. The petitioners are Supervisors (Fire Service) under the Airport Authority of India (1st respondent). As per the Airport Authority of India (Recruitment & Promotion) Regulations, 2005 framed under Section 42 of the Airports Authority of India Act, 1994 (for short, the Act), the post of Supervisor is included in the non-executive category. The petitioners allege that Supervisors in N.E-7 level are eligible for promotion as Superintendent in N.E.-8 level on completion of three years regular service in the grade of Supervisor. The 1st petitioner became eligible and qualified for Superintendent

grade on 1.7.2010. The 2nd petitioner became eligible and qualified for promotion as Superintendent on 17.6.2009.

3. Disciplinary proceedings were initiated against the petitioners for unauthorised absence which culminated in imposition of minor penalty of withholding two increments with cumulative effect due on 1.1.2010 and 1.1.2011. The petitioners point out that imposition of minor penalty is not a disqualification for consideration by the Departmental Promotion Committee (DPC). Thereafter, three vacancies of Superintendent (Fire Service) have arisen on 27.1.2012 and 31.3.2012. Out of this, two vacancies were under general category and one was under reservation (scheduled caste) category. No eligible employees were available under the scheduled caste category and the 4th respondent intended to fill up two posts under the general category which arose on 27.1.2012.

4. The petitioners further point out that they are fully eligible and qualified as per the Recruitment & Promotion Guidelines for

promotion to the post of Superintendent as on the date of occurrence of vacancies and are, therefore, entitled to be considered for promotion. It was further pointed out that the 5th respondent DPC considered the petitioners for selection to the post of Superintendent (Fire Service). However, the 3rd respondent has directed to issue revised select list deleting the name of the petitioners. This was on the ground that the Personal Appraisal Report of the petitioners was not available for the year 2008-09. According to the petitioners, the 1st respondent had issued Ext.P6 certificate laying down the guidelines for timely completion of PARs. It has been specifically stated therein that if for any reason the PAR of an employee is not available for consideration for promotion for any given year, then the PAR for the preceding year can be looked into for the purpose of considering the PAR for three years. Therefore, according to the petitioners, the deletion of their name from the select list on the ground that the PAR for one year was not available is not legally

sustainable. It is with this background, they have come up with this writ petition.

5. In the counter affidavit filed by respondents 1 to 5, they maintained the stand that as per Corporate HRM Circular dated 8.2.2011 (produced as Ext.R4(a) along with the counter), the DPC would be held only once in a year between January to March and PARs upto previous year would be considered. In the case of the petitioners, PARs for the previous year i.e. 2010-11 could be considered and since the PAR for the year 2011-12 was not required for the DCP, the Regional Headquarters (RHQ) has not approved Ext.P9 proposal made by the Trivandrum Airport.

6. They further contended that the PAR for the year 2007-08 cannot be considered in the case of the petitioners, since they were unauthorisedly absent from duty during 2008-09 and have not performed their duties during the said period. Therefore, according to them, there is no illegality in excluding the petitioners from the

zone of consideration by the DPC held on 18.7.2012. It was also contended that the proposal to convene DPC for promotion to the post of Superintendent (Fire Service) was initiated in the month of March, 2012 and as per CHQ (Corporate Headquarters) directions, the PARs for the year 2011-12 could not be considered and as such the petitioners were not eligible for promotion.

7. The petitioners have filed reply affidavit and the respondents 1 to 5 have filed an additional counter affidavit later.

8. I have heard the Mr. Benny Gervacis, the learned counsel for the petitioners as well as Mr. V. Santharam, the learned counsel for the respondent Airport Authority.

9. It is evident from Exts.P1 and P2 that disciplinary proceedings were initiated against the petitioners for unauthorised absence and the same culminated in imposition of minor penalties of withholding two increments with cumulative effect which were due on 1.1.2010 and 1.1.2011. The imposition of minor penalty is not a

disqualification for consideration by the DPC. There is no dispute regarding this.

10. As per Regulation 23 of the Airport Authorities of India Employees (Conduct, Discipline & Appeal) Regulations, 2003, at the time of consideration of the cases of employees for promotion, the DPC has to be intimated about employees (a) who are under suspension, (b) where disciplinary proceedings are pending and (c) criminal proceedings/prosecution are pending. The petitioners will not come under any of these categories as the imposition of penalty fell due on 1.1.2010 and 1.1.2011. The period of imposition of penalty expired on 1.1.2011. That means on the date of occurrence of vacancies of Superintendent (Fire Service) during the year 2012, no punishment of disciplinary proceedings were pending against the petitioners and they are eligible to be included in the zone of consideration as it is trite law that eligibility for promotion would be considered as on the date of occurrence of the vacancy. Admittedly,

three vacancies of Superintendent (Fire Service) have arisen on 27.1.2012 and on 31.3.2012. Out of this, two vacancies were under general category and one was under reserved category. The respondents proceeded to fill up the general category only as no candidate was available under that category.

11. It is evident from Ext.P5 that the 5th respondent DPC considered the petitioners for selection to the post of Superintendent (Fire Service). However, the 3rd respondent has directed to issue revised select list deleting the names of the petitioners. This was directed to be done on the ground that the PAR of the petitioners is not available for the year 2008-09 was not available.

12. Mr. Benny Gervacis placed reliance on Ext.P6 circular dated 22.9.2009 issued by the 1st respondent laying down the guidelines for preparation of Personal Appraisal Reports which specifically states that, for any reason, Personal Assessment Report for the relevant period was not available, the Personal Assessment

Report of the previous year could be considered. Therefore, according to him, the non-consideration of the petitioners for selection to the post in question for the reasons pointed out by the 3rd respondent is not legally sustainable.

13. Mr. Benny Gervacis further submitted that as the petitioners have duly suffered the penalty imposed upon them, the non-consideration of their claim for promotion on the ground that PAR for the year 2008-09 was not available due to the unauthorised absence in effect imposes further punishment of barring of promotion to the petitioners. This, according to the learned counsel, tantamount to double jeopardy and the same is illegal and wrong, violating the fundamental rights of the petitioners.

14. Mr. V. Santharam, per contra, would submit that the petitioners leaving the country without the permission of the competent authority invited disciplinary action against them. According to the learned counsel, as per the DPC criteria, PAR of an

employee is one of the important parameters for conducting the DPC proceedings for granting promotion to the higher post. It was pointed out that the PAR in respect of the petitioners for the year 2008-09 could not be assessed as the petitioners had not performed their duty at the Airports Authority of India due to unauthorised absence. Hence, the PAR grading for the year 2008-09 was not available and, therefore, the petitioners could not fulfil the DPC criteria. According to Mr. Santharam, the non-consideration of the petitioners for promotion was not on account of the penalty, but because of the non availability of the performance of the petitioners for the period during which they were absent.

15. It is crucial to note that the petitioners were unauthorisedly absent during 2008-09 period, for less than 8 months only. That means, the petitioners have worked for a period of more than 4 months during 2008-09. The first petitioner had worked for about 6 months and second petitioner had worked for more than 4 months.

As already stated, on the date when the DPC met for selection to the post of Superintendent (Fire Service), no proceedings or punishment were pending against the petitioners.

16. Mr. Benny Gervacis points out that as per the guidelines laid down by the official respondents, eligibility for preparing the Annual Confidential Report was a period of three months. Since the petitioners worked for more than three months during 2008-09, the Annual Confidential Report for the year 2008-09 had to be prepared.

17. In reply to the said submission, Mr. V. Santharam inviting my attention to the additional counter affidavit would point out that as per the PAR Guidelines, assessment of PAR of an employee would be done at the end of each assessment year i.e. 2007-08 (1.4.2007 to 31.3.2008), 2008-09 (1.4.2008 to 31.3.2009) and so on. It was pointed out that accordingly, the Reporting Officer would assess the performance of an employee based on the performance done during the year in question. The question of part PAR would arise only in

case, the employee is transferred to other airport or the employee works under more than one Reporting Officer during the reporting/assessment year for more than three months. According to Mr. Santharam, in this case, the petitioner did not work under more than one Reporting Officer and has not been transferred. As such, writing part PAR for 2008-09 did not arise.

18. Mr. Benny Gervacis further submitted that as it is evident from Ext.P11 that the DPC has met only in the month of July, 2012, the PAR for the year 2011-2012 which was duly available as on the above date had to be taken into consideration by the DPC.

19. In answer to the said submission, Mr. V. Santharam would submit that as per Ext.R4(a) DPC would be held only once in an year, between January to March, and PAR up to the previous year would be considered. Therefore, the case of the petitioners, PAR upto the previous year i.e. upto 2010-2011 alone would be considered since PAR for the year 2011-2012 was not required for DPC. This is the

reason pointed out by in Ext.P10 also while rejecting the claim of the petitioners.

20. Ext.P9 is the copy of the note forwarded by the 4th respondent requesting to include the petitioners in the zone of consideration of promotion to the post of Superintendent (Fire Service), since they are eligible for inclusion and promotion. There it is specifically stated that the petitioners are eligible for promotion as they meet the requirement for consideration by the DPC. The PAR grading of the petitioners are as under:

Name	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Abraham Paul	Very Good	Very Good	Not assessed	Very Good	Very Good	Very Good
T. Raj Antony	Very Good	Very Good	Not Assessed	Very Good	Very Good	Very Good

Not assessed because of unauthorised leave

21. In support of the recommendation for considering the case of promotion, the following extract from the CHQ Circular is extracted in Ext.P9:

“As per CHQ order, PAR grading upto 2010-2011 has to be considered for the current DPC. Also as per CHQ's Circular on PAR grading vide Para-4 says that *“where one or more PARs have not been written for any reason during the relevant period, the DPC should consider the PARs of the years preceding the period in question and if in any case even these are not available the DPC should take the PARs of the lower grade into account to complete the number of PARs required to be considered. If this is also not possible, all the available PARs should be taken into account”*. Accordingly, the above employees have been included for DPC for promotion to the post of Supdt. (FS).”

22. However, in Ext.P10, there was a attempt to read into the circular, something which is not there at all.

23. The Apex Court in **Mohindar Singh Gill v. The Chief Election Commissioner, New Delhi** [AIR 1978 SC 851] has observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned and cannot be supplemented by fresh reasons in the shape of an

affidavit or otherwise. Ext.P10 on the face of it appears to be irregular as the authority who issued the same was searching for reasons for not bringing the petitioners within the zone of consideration.

24. As rightly pointed out by the learned counsel for the petitioner, the present course of action imposes an additional penalty in effect tantamount to double jeopardy. In this context, Mr. Santharam invited my attention to the decision of the Apex Court in Collector of **Thanjavur Distt.** v. **R. Rajagopalan** [(2000) 9 Supreme Court Cases 145]. There, the respondents were considered for promotion, but were not included in the panel for the year 1982 on the ground that minor penalty(stoppage of increments) had been imposed on them. Their exclusion was upheld. However, the competent authority was directed to consider whether their names could be included in the select list of subsequent years.

25. The said decision has no applicability to the present case because, in this case the respondents have no case that the petitioners were excluded from the zone of consideration for promotion on account of their previous misconduct. Their case is that the performance of the petitioners could not be ascertained during the period of their unauthorised absence. Therefore, having accepted that the petitioners are not disqualified from being considered for promotion, now the respondents cannot turn round and say that the denial of promotion to the post which arose in the year 2012 was on account of the penalty imposed upon the petitioners, though in effect, it tantamount to a dual penalty.

26. It is evident from Ext.P9 that the petitioners were fully eligible for selection and promotion to the post of Superintendent (Fire Service) and the non-assessment of the PAR for 2008-2009 need not stand in the way of considering the petitioners for selection to the said post by the 5th respondent DPC. The PAR for the year

2007-2008 could be considered and in extreme case, the PAR for the year 2011-2012 also could be considered.

27. I would hasten to add that the PAR of the petitioners for the years 2006-2007 to 2011-2012 are very good and there is nothing against the petitioners. In case of any dispute with regard to this, the matter could have been referred to the 2nd respondent for clarification. The non-acceptance of the same and the direction issued by the 3rd respondent to exclude the petitioners from the zone of consideration by the DPC on the ground that they have not performed duty during 2008-2009 is clearly illegal and wrong.

On a consideration of the entire materials placed on record, this Court is of the view that the petitioners are entitled to succeed.

In the result, the writ petition is allowed. Ext.P10 order is quashed. It is hereby declared that the petitioners are eligible and qualified for promotion as Superintendent (Fire Service) for the vacancies which arose in the year 2012. Consequently, Ext.P11

select list and Ext.P12 order issued by respondents 4 and 5 selecting and promoting the respondents 6 and 7 to the said post are also quashed. Revised formal orders shall be issued in the light of above within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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