

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

Judgment Reserved on: October 28, 2015

% *Judgment Delivered on: November 18, 2015*

+ **LPA 648/2013**

AIRPORTS AUTHORITY OF INDIA Appellant
Represented by: Mr.K.K.Rai, Sr.Advocate
instructed by Mr.Digvijay Rai,
Advocate.

versus

VIKAS SINGH & ORS Respondents
Represented by: Mr.Sourabh Ahuja, Advocate
for Respondent Nos.2, 3 and 5.

+ **LPA 684/2013**

AIRPORTS AUTHORITY OF INDIA Appellant
Represented by: Mr.K.K.Rai, Sr.Advocate
instructed by Mr.Digvijay Rai,
Advocate.

versus

MAHENDRA KUMAR ARYA & ORS Respondents
Represented by: Mr.Sourabh Ahuja, Advocate.

+ **LPA 929/2013**

MAHENDER KUMAR ARYA & ORS Appellants
Represented by: Mr.Sourabh Ahuja, Advocate.

versus

AIRPORT AUTHORITY OF INDIA Respondent
Represented by: Mr.K.K.Rai, Sr.Advocate
instructed by Mr.Digvijay Rai,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. A writ petition was filed by Vikas Singh, Manish Sava, Mahesh Kumar Meena, Shalia Garg and Jitender Kumar Belwanshi being W.P.(C) No.5767/2011 inter-alia praying for a writ of certiorari seeking quashing of the selection list of July 2011 issued by the Airport Authority of India (in short AAI) herein selecting only 75 candidates for the post of Manager (Electronics) as against 112 post advertised in various categories which resulted in the exclusion of the petitioners from appointment to the post of Manager (Electronics). W.P.(C) No.5767/2011 was followed by another writ petition being W.P.(C) No.3216/2012 filed by Mahender Kumar Arya, Kapil Meena, Sunil Kumar Yadav, Abhishek Chaudhary, Pradeep Kumar Pradhan and Pankaj Kumar, Swaran Kumar praying the same relief.

2. In the Counter affidavit AAI stated that out of the 317 candidates called for interview only 210 candidates appeared out of which 14 candidates did not submit certain essential documents in support of their claims within the stipulated period hence the eligible candidates for selection available were 196. It was stated that keeping in view the nature of the work, availability of candidates and cut-off percentage in the previous recruitment for the same post which was much higher than the present, the management of the answering respondent decided that the cut-off percentage would be 55 for General category, which would be a sum aggregate of their marks obtained in their written examination and interview and for the reserved category the cut-off percentage was fixed as 50%. Since no

candidate was available in ST category with an aggregate of 50% marks one candidate in the PWD category qualified, 9 in SC category, 19 in OBC category including 1 PWD and 47 candidates in the General category; thus 75 candidates were selected.

3. The learned Single Judge vide order dated February 22, 2013 directed the AAI to file an additional affidavit giving details on the following issues:

“(i) Whether the advertisement did or did not contain what would be the pass percentage of marks for written examination or for interview or for both combined.

(ii) If the advertisement did not contain the marks required for passing the written examination, with or without the interview, then was there an administrative decision existing in the files of the respondent No.1 as to what would be pass marks whether independently for the written test and the interview or for combined of the written test with the interview.

(iii) What was the basis for calling of the candidates for the interviews i.e. were they called on the basis of an existing criteria or they were called on the basis of a different criteria which did not exist till the time the persons were called for interview.

(iv) If the administrative decision which existed with respect to the passing marks as stated above, whether such administrative decision was changed with respect to the passing marks by increasing the same upwards to make the same as a higher cut-off marks, and if so, did there exist any rationale for increasing the pass marks or giving a higher cut-off marks for being called for the interview or for finally being selected.”

4. AAI filed the additional affidavit pursuant to order dated February 22, 2013 wherein it stated that an advertisement bearing No.01/2010 was issued

for recruitment of 112 post of Manager (Electronics) which included General category post – 58, OBC- 30, SC-17, ST-9 including 4 posts for persons with disabilities. The advertisement specified that the AAI reserved its right to modify/alter/restrict/enlarge/cancel the recruitment process to increase or decrease the number of post to be filled, if so need arises, without issuing any further notice or assigning any further notice, any reasons thereafter and the decision of the management would be final and no appeal would be entertained. It was stated that the post of Manager (Electronics) being a Group ‘A’ post the selection was entirely on the basis of merit (written plus interview) and suitability of the candidates as the job involved was highly operational and sensitive in nature involving safety of the aircraft, passengers and operation of high sophisticated equipments installed at the various airports in the country. It was further stated that as per the practice in vogue 80 marks were kept for written examination, whereas 20 for the interview and the number of candidates to be called for interview was restricted to 2.5 times the number of vacancies that existed. This practice was being followed since 2007 for all the selections. It was further submitted that an administrative decision was taken with regard to cut-off marks for final selection keeping in view the merit of the candidates on the basis of some aggregate marks of written plus interview (80 : 20) as was past practice. Further it was stated that the management did not change its decision. Further as per the practice in vogue candidates @ 2.5 times the number of vacancies in each category were called for interview subject to securing minimum 50 marks for Gen/OBC category and 40 marks for SC/ ST & PH category.

5. The learned Single Judge decided W.P.(C) No.5767/2011 vide the

impugned order dated August 02, 2013 noting that the entire selection process could not have commenced, gone ahead, concluded and selection list published without the candidates not even knowing what would be the passing marks for written test or for the interview and then for the written test and the interview taken together and which were to be taken as the total marks for passing the selection process and that on so achieving the qualifying criteria for being selected stands satisfied. The learned Single Judge discarded the plea of estoppel against the writ petitioners and held that since AAI did not specify or publish or intimated what would be the passing marks qua candidates till the select list was actually published, no estoppel would apply to the writ petitions. Holding the action of the AAI to be illegal directions were issued to AAI to fill up the remaining vacancies securing the rights of the higher rank candidates to be appointed in preference to the rights of the writ petitioners and granting reasonable time to join and in case the higher ranking candidates did not join the post, thereafter the same could be given to the writ petitioners in the respective categories.

6. Aggrieved by the order dated August 02, 2013 in W.P.(C) No.5767/2011 AAI preferred LPA 648/2013. W.P.(C) No.3216/2012 was decided by the learned Single Judge vide the impugned order dated August 08, 2013 following its decision dated August 02, 2013 passed in W.P.(C) No.5767/2011. The decision dated August 08, 2013 has been challenged both by AAI and the writ petitioners therein. The AAI has preferred LPA 684/2013 taking the same pleas as in LPA 648/2013 whereas the writ petitioners in W.P.(C) No.3216/2012 i.e. Mahander Kumar Arya & Ors. have preferred LPA 929/2013 for the reason the learned Single Judge noted in the impugned order that all service entitlements whether they be monetary

emoluments or seniority would be taken from the date of their joining the AAI, if the writ petitioners are employed with the AAI in terms of the judgment. It is the plea of Mahender Kumar Arya and Ors. that all the direct recruits should get emoluments and seniority from the same date and they cannot be discriminated in this regard.

7. The rationale of the decision of the learned Single Judge is in paragraphs 20 and 21 as noted hereunder:

“20. The argument of the respondent that it has simply adapted the existing criteria or the practice in vogue is an argument which begs the question of existence of selection criteria. Issue is not of subsequent adaption of an existing criteria after conclusion of the test and interview, but, the issue is that no such criteria existed right from commencement till conclusion of the selection process. What the law requires is a definite selection criteria being prescribed at or before the commencement of the selection/recruitment process and not adaption of an existing or new criteria at the end of the process. If existing passing marks criteria are adapted after conclusion of the selection process, it will not take the case out of the condition that no passing marks criteria was fixed or existed before the selection process began.

21. The facts of present writ petition, in my opinion, in a way, falls in a totally different path then the line of cases relied upon by the respondent and the line of cases relied upon by the petitioner. This is because there is no judgment which is pointed out to me by either side that an entire selection process can or cannot be commenced, gone ahead, concluded and selection list published without the candidates not even knowing what would be the passing marks for the written test or for the interview and then for the written test and the interview taken together and which

are to be taken as the total marks for passing the selection process and that on so achieving them the qualifying criteria for being selected stands satisfied.”

8. The Supreme Court in Renu & Ors. Vs. District & Sessions Judge, Tis Hazari & Anr. Civil Appeal No.979/2014 decided on February 12, 2014 emphasised the requirement of transparency in public appointments and informing about the qualification and eligibility criteria etc. for the post explicitly and recruitment process with certainty and clarity. It was held:

“16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.”

9. The learned Single Judge rightly noted that the issue involved in the writ petition was whether the appellant, an instrumentality of the State can conduct the selection/ appointment process without pre-fixing the eligibility criteria of passing marks and which position continues well after conducting of the written exam and even after conducting the interviews and the passing marks are fixed only thereafter when merit list is prepared. To put it differently the issue involved in the writ petition was whether the appellant could have gone ahead with the selection process without informing the

candidates the marks required to be scored in written test and interview and the weightage to be given to the marks so obtained. In view of the issue arising in the matter the decision of the Supreme Court in 2013 (10) SCALE 333 Yogesh Yadav Vs. Union of India & Ors. as canvassed by learned senior counsel for the appellant has no application. In Yogesh Yadav the Supreme Court noted that the instructions to the examinee provided that written tests will carry 80% marks and 20% were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the General category and minimum 40% marks in the reserved category in the written test would qualify for the interview and the entire selection was undertaken in accordance with this criteria which was laid down at the time of recruitment process. Only after conducting the interview the benchmark which was not stipulated for giving the appointment was prescribed by taking a decision that appointments will be given only to those persons who have secured 70% marks or above in the unreserved category and 65% and above marks in the reserved category. This action of fixation of the benchmark was held to be permissible in law and the Supreme Court noted that this did not amount to changing the “rules of the game”

10. None of the affidavits filed by AAI disclose that the eligibility criteria or the practice in vogue or the requirement of minimum marks was informed to the candidates either in the advertisement or thereafter. Learned counsel for AAI has also not been able to show that either in the advertisement or in question paper or by way of any notice the candidates were informed of the following criteria, which it shows from its internal notings of the examination as under:

“As per practice in vogue candidates @2.5 times the

number of vacancies in each category are to be called for interview subject to securing minimum 50% marks for General/OBC category and 40% marks for SC/ST and PH category. However, if in any case, the minimum number of required candidates (2.5 times) are not available, the approval of the competent Authority for reduction of cut off percentage is sought as applicable.”

11. Concurring with the view taken by the learned Single Judge we dismiss LPA Nos. 648/2013 and 684/2013.

12. As regards LPA No.929/2013 in view of the decision in favour of the appellants herein by the learned Single Judge the appellants claim that they are entitled to monetary emoluments and seniority from the same date as those who have already been recruited and they should not be discriminated. It is well-settled that the emoluments and seniority for direct recruit can be granted only from the date of his joining the service and not from the date when people senior to him in the merit list have joined. Indubitably, the candidates already appointed were higher in the merit list so senior to the appellants. Thus the case of the appellants is akin to that of wait listed candidates who are appointed subsequently and cannot claim appointment from a back date. The Supreme Court in the decision reported as JT 1994 (3) SC 559 Gujarat State Dy. Executive Engineers' Association Vs. The State of Gujarat & Ors. held that a candidate from the wait list appointed subsequently cannot claim appointment from a back date and even otherwise appointment of a candidate operates from the date he is appointed and not from the date when the candidates from the select list are appointed. Same principle applies even amongst the inter-se appointees from the waiting list. Thus there is no error in the impugned judgment directing that all the service

entitlements whether they be monetary emoluments or seniority will be taken from the date of their joining with the respondent, if the writ petitioners get employment with the AAI in terms of the judgment.

13. Accordingly LPA 929/2013 is also dismissed.

14. No costs.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 18, 2015
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