

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

% *Date of decision: July 08, 2015*

+ **LPA 354/2015**

AIRPORT AUTHORITY OF INDIA Appellant
Represented by: Mr.Vivek Chib and Mr.Asif
Ahmed, Advocates.

versus

ANKIT KUMAR AGGARWAL AND OTHERS Respondents
Represented by: Mr.Prakash Gautam and
Mr.Vivek Ojha, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated April 09, 2015 allowing the writ petition filed by the Respondents seeking appointment to the post of Manager (Electronics) being wait listed candidates, the Airport Authority of India prefers the present appeal.

2. A writ petition was filed by Ankit Kumar Aggarwal, Abhijit Sharma, Mohit Kant Sharma and Pawan Kumar Bharti who had appeared for selection pursuant to the Advertisement No.2/2007 requiring 171 posts of Manager (Electronics) out of which 88 posts were for General Category, 46 posts were for OBC category, 25 posts for SC category and 12 posts were for ST category. In the present appeal we are only concerned with the General and OBC category posts as Ankit Kumar Aggarwal, Abhijit Sharma and Mohit Kant Sharma appeared as General category candidates and Pawan Kumar Bharti as OBC candidate.

3. The grievance of the Respondents in the writ petition was that after

the written test was conducted on November 09, 2008 and they appeared for the interview, the final list showed names of only 87 candidates belonging to different categories whose names were shortlisted for appointment to the post of Manager (Electronics). On inquiry made as to why 171 posts had not been filled and the names of the Respondents were not in the list, no reply was given, however, on one eligible candidate filing a writ petition before this Court being W.P.(C) No.1336/2010 the Airport Authority of India filed the merit performance of all the candidates. After W.P.(C) No.1336/2010, another writ petition was filed before this Court being W.P.(C) No.2133/2010 as letters of appointment were not issued to successful candidates. W.P.(C) No.2133/2010 was allowed vide order dated August 31, 2010 directing Airport Authority of India to offer the letter of appointment to the Petitioners therein for the reason that restricting of the offer of appointment for the same set of persons by 50% was held to be in violation of Article 14 of the Constitution of India. In the order dated August 31, 2010 this Court noted the minutes of the meeting dated April 26, 2010 before the Ministry of Civil Aviation 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.”

4. The case of the Respondents before the learned Single Judge was that pursuant to the order dated August 31, 2010 the Appellant issued offer letter of appointment to the remaining candidates, however, there existed

vacancies as some of the candidates did not join the post and as per the rules the same were required to be offered to the next candidates as per merit list and Respondents fell in the said category. It was contended that despite 171 vacancies being advertised and the life of the panel still being valid, Respondents who were successful candidates being at merit Nos.88, 99 and 101 in the General category and 49 in the OBC category were not given offer of appointment letter.

5. Vide the impugned judgment dated April 09, 2015 the learned Single Judge allowed the writ petition for the reason that though Respondents were unsuccessful in the 2010 selection process however, admittedly as per the Appellant, the posts which were advertised pursuant to 2007 selection were not those posts which were advertised in the 2010 selection and the Respondents were never intimated that they were entitled to appointment as they fell within the 22 and 12 number list of waitlisted persons who were entitled to appointment because 22 persons did not join in the General category and 12 persons did not join in the OBC category. Learned Single Judge held that since no appointments have been made pursuant to the remaining vacancies of the 2007 selection and no third party vested interest has come into existence, the doctrine of delay could not be pressed against the Respondents and that the life of the panel of 2007 had not come to an end when the recruitment process in the 2010 was started hence without filling up those vacancies to which the Respondents were eligible had been selected, the Airport Authority of India could not claim that it was entitled to leave the vacancies unfilled since no reasons existed for non filling up the available vacancies and the ratio in the case reported as 1991 (3) SCC 47 Shankarsan Dash vs. Union of India did not apply to the facts of the present

case.

6. We have heard learned counsel for the Appellant at length.

7. Clause 15.12 of the Airport Authority of India (Recruitment and Promotion) Regulations, 2005 provides:

“15.12 After issue of appointment letters according to availability of vacancies, the names of the remaining candidates shall be kept in the said list for consideration to fill up vacancies which may arise in future within one year from the date of approval of panel by Appointing Authority subject to its being extended for a further period not exceeding six months for reasons to be recorded in writing by the Competent Authority.”

8. It is thus apparent that the life of a panel was one year from the date of approval of the panel further extendable for a period of six months for the reasons to be recorded in writing by the Competent Authority. In the present case, the Respondents applied for the post of Manager (Electronics) in December, 2007 and the written tests were held on November 09, 2008 whereafter they were called for interview.

9. In the counter affidavit before the learned Single Judge the stand of the Airport Authority of India is that after the advertisement for 171 posts for Manager (Electronics) was issued it was decided to fill up only 87 posts accordingly offer of appointment was issued only to 87 persons and in addition to 87 posts another 84 offer letters were issued in compliance of the order of this Court dated August 31, 2010 passed in W.P.(C) No.2133/2010. Since in the meantime, fresh recruitment process was started except Pawan Kumar Bharti the other three candidates failed in the written test they were not called and even Pawan Kumar Bharti did not appear in the second

recruitment and thus they had no entitlement for the selection. It is the case of the Appellant that Clause-15.12 as noted is not attracted to the facts of the present case, however, there is no reasoning why it is not so attracted.

10. In the counter affidavit the averment of the Respondents that even after issuing letters of appointment pursuant to the decision of this Court in W.P.(C) No.2133/2010, ten vacancies in the General category and eight vacancies in the OBC category of the 2007 selection existed has not been denied. It is only stated that the Respondents cannot claim as a matter of right appointment letters in case some of the candidates to whom offer of appointment had been given had not joined the post.

11. The Supreme Court in the case reported as JT 1994 (3) SC 559 Gujarat State Dy.Executive Engineers' Association vs.The State of Gujarat and Ors. explained the position of recruitment from the wait listed candidates and held that waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment but is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list.

12. As held in 1997 (8) SCC 488 Surinder Singh and others vs.State of Punjab and another it would certainly be an improper exercise of power to make appointments over and above the posts advertised however, the candidates in the waiting list have a limited vested right to appointment to the extent that when candidates selected against the existing vacancy do not join for some reason, the waitlisted candidates would be entitled to be

appointed.

13. As noted above, in the present case first after advertising 171 posts of Manager (Electronics) the Appellant without any reason filled only half the vacancies and when the remaining vacancies were directed to be filled by this Court vide its order dated August 31, 2010 passed in W.P.(C) No.2133/2010 the Appellant still did not fill up all the vacancies by offering the same to the waitlisted candidates as all candidates did not join.

14. Consequently, we find no infirmity in the impugned order warranting interference. Appeal is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 08, 2015
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