

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.11.2016

DATED : 18 .11.2016

CORAM:

THE HON 'BLE MR. JUSTICE R.SUBBIAH

Writ Petition No.22824 of 2016

& W.M.P.Nos.19511 & 19512 of 2016

Mr. P.Kaliyamoorthy, M.E., M.B.A., ... Petitioner

Versus

1. The Chairman, Airports Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung Airport, New Delhi 110 003
2. The Member (HR), Airports Authority of India,
Rajiv Gandhi Bhavan, Safdarjung Airport,
New Delhi - 110 003
3. The Member (Finance),
Airports Authority of India,
Rajiv Gandhi Bhavan, Safdarjung Airport,
New Delhi - 110 003
4. The Member (Planning),
Airports Authority of India,
Rajiv Gandhi Bhavan, Safdarjung Airport,
New Delhi - 110 003
5. The Member (ANS),
Airports Authority of India,
Rajiv Gandhi Bhavan, Safdarjung Airport,
New Delhi - 110 003
6. The Executive Director (HR),
Airports Authority of India,
Rajiv Gandhi Bhavan, Safdarjung Airport,
New Delhi - 110 003
7. Mr. C.G.Ravindran, General Manager (Ele./PMQA),
Airports Authority of India,
Operational Complex, Gurgaon Road,
New Delhi - 110 037
8. Mr. Rakesh Kumar Handa,
General Manager (Ele.),
Airport Authority of India,
Goa Airport, Airport Road,
Dabolim, Goa 403 801

9. Mr. B.K.Tailong, APD/General Manager (Ele.),
Airport Authority of India,
Jaipur Airport, Jaipur, Rajasthan
10. Mr. Reena Rai, General Manager (Ele.),
Airport Authority of India,
Northern Region, Operational Complex,
Gurgaon Road, New Delhi - 110 037
11. Mr. S.Judson, General Manager (Ele.),
Airport Authority of India,
Kolkatta Airport, Kolkata
12. Mr. Shinde Rajesh Nilkanth,
APD/General Manager (Ele.),
Airport Authority of India,
Srinagar Airport, Srinagar,
Jammu & Kashmir
13. Mr. N.V.Subbarayudu,
General Manager (Ele.) / Kid,
Airport Authority of India,
RG Bhavan, Safdarjung Airport,
New Delhi - 3
14. Mr. O.P.Chugh, General Manager (Ele.),
Airport Authority of India, NER,
Borjhar, Guwahati Airport,
Assam 781 015 .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the order of the promotion dated 17.07.2015 passed by the sixth respondent in his proceedings A.32013/62/2015-DPC and quash the same and direct the first respondent to promote the petitioner to the post of General Manager (Ele. Engg) from the year 2015.

For Petitioner : Mr. R.Gandhi, Sr. Counsel, for,
Mr. R.G.Narendhiran

For Respondents : Dr. Fr. Xavier Arulraj, Sr. Counsel,
for, M/s. A.Arul Mary, for R-1 to R-6,
No Appearance for R-7 to R-14.

O R D E R

This writ petition has been filed by the petitioner seeking for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of the promotion, dated 17.07.2015 passed by the sixth respondent in his proceedings A.32013/62/2015-DPC, quash the same and direct the first respondent to promote the petitioner to the post of General Manager (Ele. Engg) from the year 2015.

2. The facts, as projected by the petitioner and which led to the filing of the above case, read thus :-

The petitioner, who is the First Class holder in Master Degree in Electrical Engineering (M.E.,) as well as M.B.A., Operational Management (consisting of Diploma in Management, PG Diploma in Management and Specialized Diploma in Management), has joined the Airport Authority of India (hereinafter will be referred to as "the AAI") as Assistant Executive Engineer (Electrical) on 26.12.1988. Prior to joining the AAI, he served for six years in Bharat Heavy Electrical Limited and three years in the Tamil Nadu Electricity Board.

3. The petitioner was promoted to the post of Senior Manager cadre, equivalent to Executive Engineer, on June 1993. Subsequently, the petitioner was promoted as Assistant General Manager with effect from April 2000, further promoted to the post of Deputy General Manager in November 2001 and Joint General Manager on 01.07.2005. The combined regular service of the Joint General Manager (Ele.) and Deputy General Manager of minimum of five years will be eligible for promotion to General Manager (Ele.) with selection committee based on interview and with minimum bench mark of four numbers of very good out of 5. The petitioner was called for interview for the post of General Manager (Ele.) on 16.04.2007, vide order No.A.32013/131/2007 DPC, with vacancy of four numbers of General Manager (Ele.), with four eligible JGM (Ele.) and the petitioner's seniority number was 4. The petitioner was not selected even after performing well in the interview, very good PARs (Performance Appraisal Reports) and with Master Degree in Engg. (Ele.) with M.B.A.

4. In fact, the petitioner became eligible to be promoted to the post of General Manager (Ele.) as early as on 16.04.2007. In order to prevent the petitioner from getting promotion, a charge memo was issued and Departmental proceedings were initiated for nearly six years. In the said period, the petitioner's name was kept under sealed cover by the Departmental Promotion Committee (DPC) and later the petitioner was imposed with penalty for avoiding to open the sealed cover. It is pertinent to point out that the Enquiry Officer appointed has given a report to the effect that the charges framed against the petitioner are not proved, but the Disciplinary Authority proceeded with enquiry and concluded with penalty only to prevent the petitioner from getting the post of General Manager.

5. It is the further case of the petitioner that the post of General Manager (Ele.) will be filled by the DPC, comprising of respondents 1 to 5 along with 1 outside member. The Rules and regulations for the promotion has been given in the corporate Personnel Circular - 13/2010 dated 20.04.2010 issued by Member (P&A). A panel of promotion will be prepared by the DPC. The panel will be prepared based on the PARs (Performance Appraisal Reports)-50 marks, special attributes (higher/additional qualification & experience (SAE)) - 25 marks, Interview-25 marks. Those who secure 40 out of 75 marks in PARs Plus SAE will be called for interview by the DPC.

6. It is the further case of the petitioner that the Joint General Manager (HR), New Delhi, by his proceedings dated 19.06.2015 in No.A32013/62/2015-DPC has intimated about the selection / interview for the post of General Manager (Engg. Elect & Civil) on the same day from the eligible Joint General Managers discharging their duties all over the country. The panel was published and the name of the petitioner is found in Serial No.2 along with respondents 7 to 13. By the above said intimation the petitioner and other Joint General Managers were directed to appear for the interview to be conducted on 27.06.2015 in the office of the first respondent. Though the petitioner attended the said interview he was not selected, but respondents 7 to 14 were selected. Therefore, the petitioner made an application under the Right to Information Act and obtained the marks awarded to the petitioner by the DPC, so as to know whether the marks have to be awarded as per Corporate Circular No.13/2010. On an analysis, the petitioner found that he was awarded 64 marks instead of 65 and was not selected to the post of General Manager (Ele.). Challenging the non-selection of his name to the said post and to quash the order passed in favour of respondents 7 to 14, the petitioner has come up with this petition.

7. Heard the learned counsel appearing for both sides.

8. The learned senior counsel appearing for the petitioner, while reiterating the aforesaid facts, submitted that the action of the sixth respondent in promoting respondents 7 to 14 as approved by the first respondent is in total violation of Article 14 of the Constitution of India. He further submitted that the petitioner has secured 5 marks for additional qualification of MBA and he has not awarded additional/extra 5 marks for possessing M.E., degree, whereas as per the Rules, for possessing higher qualification 5 marks ought to have been awarded and other JGMs, who are possessing M.E., were awarded 5 marks, while computing Special Attributes experience. He

further submitted that in the case of the last five years PARs (i.e., 2010-11 to 2014-15) grading shall be taken into account by the DPC, whereas the DPC Cell states that PAR of the years 2013-14 and 2014-15 have not been received by the sixth respondent on the date of passing of the impugned order, vide information given by HR Letter No.AAI/PMS/03/RTI/2015/298, dated 26.11.2015, therefore, due to this, DPC had considered 6th year (2009-10), i.e., 'Good' grade was taken into account, i.e., 6 marks, whereas 2013-14 the PAR was sent by the Reporting Officer to the competent authority with a copy to the petitioner stating PAR of the petitioner as 'very good' and mark should be upgraded from 6 to 8. Therefore, the learned senior counsel submitted that if the PAR of the year 2013-14 is considered, as has been done in the case of other incumbents, the petitioner would secure 71 marks totally and has to be selected to the post of General Manager (Engg. Elec).

9. Per contra, the learned senior counsel appearing for respondents 1 to 6, by filing the counter affidavit, admitted the qualification and appointment of the petitioner in the AAI. He submitted that it is on record that the petitioner was imposed with one major penalty and four minor penalties for different charges. He further submitted that the composition of DPC for the promotional post of General Manager and above is comprised of the Chairman and All Full Time Board Members and the petitioner cannot question the validity and competence of the DPC; the norms and procedures for selection are based on the interview and it has been duly stipulated vide Corporal Personnel Circular No.13/2010, dated 20.04.2010 in No.MPP/1126/2016-Vol.I. He further submitted that the DPC was conducted on 27.06.2015 for 8 posts of General Manager (Engg Elc.) and totally 19 incumbents were called for interview, including the petitioner and the vacancies were duly filled in and the marks awarded on merits were based on norms stipulated in the said circular.

10. The learned senior counsel appearing for the respondents 1 to 6 further submitted that the petitioner scored only 64 marks and therefore, he was not selected; as per the guidelines in the DPC, the PARs of the previous five years have to be taken; the interview was conducted for the post for the vacancy year 2015; the PAR for the years 2009-10 to 2013-14 have to be taken, but as the PAR for the year 2013-14 was not available, PAR of the year 2009-10 was taken into consideration; as the DPC was conducted for the vacancy year of the year 2015, the authorities had to consider the available PARs and in the absence of PAR of the year 2013-14 consisting 'very good', the petitioner has been awarded 8 marks for the same; therefore, there is no deviation as alleged by the petitioner and the petitioner had one 'outstanding' '3 very good' and one 'good' in

his records in the PARs. He further submitted that the marks were awarded as per the norms and as the qualification of MBA and M.Tech are both professional degrees, marks were awarded only for one of the degrees; while keeping in view the number of vacancies, the DPC prepared a select panel, in terms of the merit position, based on the total marks obtained by each of the incumbents, after the assessment of PAR, SAE and the interview; in the interview, the petitioner scored only 9 marks out of 25, and only those who secured a total of 65 marks and above were selected and their seniority was determined accordingly; the petitioner was not selected as he did not obtain the prescribed minimum marks; therefore the petitioner cannot blame the authorities for not being selected, whereas the other incumbents referred to by the petitioner were selected and promoted as General Managers, in accordance with the procedure. Therefore the learned senior counsel submitted that the writ petition is devoid of merits and hence prays for dismissal of the same.

11. This Court has carefully considered the submissions made by the learned senior counsel for both sides and perused the materials available on record.

12. Though the petitioner has prayed for larger relief in this writ petition, considering the submissions made by the learned counsel for both sides, this Court is inclined to mould the relief and pass the following order.

13. At the outset, it has to be pointed out that, even according to respondents 1 to 6 the PAR for the year 2013-14, pertaining to the petitioner was not available at the time of considering the promotion, therefore, PAR of the year 2009-10 was taken into consideration, but, whereas, the petitioner is able to produce the same through the Right to Information Act. If the PAR pertaining to the year 2013-14 was considered by the DPC, the petitioner would have secured additional marks, as he got PAR of 'very good' for that year. It is also pertinent to note that the incumbents who attended interview and got selected were graded with the PAR of the year 2013-14. Therefore, this Court is of the considered view that respondents 1 to 6 ought to have searched for and considered the petitioner under the PAR of the year 2013-14, as has been done for the other incumbents.

14. Further, though the learned counsel for respondents 1 to 6 submitted that the qualification of both MBA and M.E are post-graduate degrees and therefore, marks were awarded only for one of the degrees is concerned, it has to be pointed out that for all other incumbents, marks were awarded for basic degree of B.E., as well as for additional degrees, but, whereas, in the case of the petitioner, only for MBA degree he was awarded

marks, but at the same time omitted to award marks for the ME degree. Further, the learned senior counsel appearing for respondents 1 to 6 has not pointed out any Rule to show that marks will be awarded for only one of the degrees, when the incumbent has been possessed with two degrees.

15. This Court finds some force in the contention of the learned counsel for the petitioner. Therefore, the first respondent is hereby directed to re-consider the claim of the petitioner, by awarding appropriate marks for the basic M.E., degree as well as M.B.A., separately and also by taking the PAR of the year 2013-14 and pass appropriate orders afresh, in this regard, by affording an opportunity of personal hearing to the other respondents, who already got promoted.

16. Accordingly, this writ petition stands disposed of. No costs. Consequently the connected WMP are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1cc to Mr.R.G.Narendhiran, Advocate, S.R.No.66890
+2cc to Mr.A. Arul Mary, Advocate, S.R.No.67600

GJII(CO)
md(16/12/2016)

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