

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.22153 of 2016

Between:

R.Tulasi Hymavathi

....Petitioner

and

The Hindustan Aeronautics Limited,
Having its Registered Office at 15/1,
Cubbon Road, Bangalore-560001, India,
Represented by its Chairman and Managing Director (CMD),
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 12.08.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether His Lordship wishes to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.22153 of 2016

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ORDER:

The petitioner was working as an Executive Trainee (ET) – Personnel – 3rd batch in the first respondent company. It was a Grade-I post. The recruitment was made through all India competitive examination in the year 2005. 24 candidates from all over India were selected and the petitioner is one among them. She belongs to OBC community. During her training, an advertisement for Management Trainees (HR) – Grade II post was issued and internal candidates were

permitted to apply. She applied to the said post along with her batch mates. It was open to the candidates all over India. She was qualified in the written test and interview. After completion of the Executive Trainee training those who qualified in Management Trainee test were absorbed as Personnel Officer (Grade-II) post with effect from 13.06.2006 and she was posted to Aerospace Division, Bangalore. She requested for transfer to Hyderabad due to family problems and she was transferred to Hyderabad in August 2009. She reported for duty on 06.08.2009. She was eligible for promotion to Deputy Manager (HR) – Grade III with effect from 01.07.2009. But, the promotions took place only in the year 2010. She appeared for online test and interview and an order of promotion as Deputy Manager (HR) – Grade III was issued on 09.12.2010 reckoning the seniority with effect from 01.07.2009. She was confirmed in the said post on 09.12.2011. Thereafter she was promoted to the post of Manager (HR) (Grade-IV) by an order dated 01.08.2013 reckoning seniority with effect from 01.07.2013. As per the said order of promotion she will be on probation for a period of one year. It is her case that since the probation was not extended immediately after expiry of the period of one year or thereafter, she was deemed to have completed the probation. However, on 09.09.2015 she was given a feedback on the performance wherein it was alleged that her performance was rated as average. Within one week thereafter, by order dated 16.09.2015, her probation was extended by six months with effect from 01.08.2014. After receipt of feedback on her performance she approached the Director (HR) on 22.02.2016 personally and requested him to take a holistic view by taking into consideration her past performance and the onerous duties she has been discharging. She submitted a representation through proper channel on 30.05.2016. She was asked to raise a performance appraisal report for the four quarters of 2014 and 2015. Though her mutually agreed tasks for quarters 1, 2 and 3 (April 2015 to June 2015, July 2015 to September 2015 and October 2015 to December 2015) showed that she had

achieved 85% of the mutually agreed tasks, it was reduced by the Reporting Officers to 73%, 78% and 78% during February 2016 without assigning any reasons. It was followed by an order of reversion on 29.06.2016 to the lower grade, challenging which the present Writ Petition is filed.

A counter affidavit is filed on behalf of the respondents stating that the performance of the petitioner during the probationary period will be evaluated in accordance with the performance appraisal reports and an officer promoted to a higher grade will be confirmed on the basis of such evaluation. Such evaluation is made in an objective method. An officer, who is promoted to higher post and placed under probation, is required to submit Probationary Performance Appraisal reports after six months and eleven months and the petitioner submitted her reports very late, after lapse of the requisite time. The performance appraisal reports of the promotee during the period of probation will be evaluated by the "Initiating Authority" "Reviewing Authority", "Divisional Head" and "Director (HR)", who is the appointing authority. Rule 23 of the rules of promotion govern the situation. It was noticed by all the authorities that the quality of the work, performance and also the attendance during the probationary period were not satisfactory, the petitioner was repeatedly advised and counseled by the superiors to show improvement with regard to the same and she committed lapse in not submitting the performance appraisal report within the required time. In view of her performance she was awarded average marks and she was counseled regarding her performance. The petitioner did not show any improvement in spite of extending her probation by six months with effect from 01.08.2014. When a review was made with regard to her performance from 01.01.2015 to 31.12.2015 it did not indicate any improvement even during the period of extended probation. Accordingly, an order of reversion to the substantive post of Deputy Manager (Grade III) was passed. The petitioner cannot claim confirmation in her promoted post when her performance was not satisfactory. Being an

officer in HR Department she was a habitual late comer and was not following due time of attendance to office, which itself is a major factor in considering her performance to hold the responsibility of higher post of Manager to HR.

The petitioner filed a reply affidavit stating that the delay in submitting the Probationary Performance Appraisal reports was due to non evaluation of mutually agreed task for the relevant quarters by the Senior Manager (HR), her immediate superior, even after frequent personal follow up by her. She was always pressurized to complete the tasks on hand and not to worry about her mutually agreed tasks and performance appraisal reports. It is her case that even according to the respondents she was awarded "average" marks and as per Rule 9.6 of the H.R.Manual Book of the company a person with average performance appraisal report marks is entitled to be promoted. She denied the late coming but admitted that she was late by few minutes on some days. She further stated that she was entrusted with additional responsibilities and was placed as a member of eight committees in addition to her regular work and it is based on her performance only. On 09.09.2015 she was given a feedback on the performance, and she was rated as average. Within one week thereafter, her probation was extended by six months with effect from 01.08.2014 retrospectively. She further stated that she was awarded certificate of appreciation in recognition of her valuable contribution to recast the "recruitment & promotion rosters" on 06.12.2013.

Learned Counsel for the petitioner submitted that as per the performance appraisal reports available in the records of the respondent company recorded by the authorities, she is entitled for confirmation of her probation as per the rules. Learned Standing Counsel for the respondents on the other hand submitted that the impugned order was passed based on her performance and after review by various authorities.

The promotion rules were framed by the company regulating the promotions at various stages. Section C deals with promotions in the Executive Cadre. The petitioner was already promoted as Manager (HR) (Grade-IV) by order dated 01.08.2013 reckoning her seniority with effect from 01.07.2013 and keeping her on probation for a period of one year. The qualification of the petitioner for promotion is not in dispute. The probation and confirmation are dealt with in Rule 23 and the relevant portion of the said rule is as follows:

“23. Probation and confirmation

- i) Every Officer promoted to the higher Grade either by Departmental Promotion/Internal Merit Selection/Career Plan Promotion will be on probation in that Grade for a period ONE YEAR from the date they assume charge of the higher post;
- ii) If the Officer does not acquire the standards required of him or his conduct and work are considered unsatisfactory during the period of probation, the period of probation may be extended at the discretion of the Appointing Authority. The reasons for extending the period of probation are to be communicated to the Officer concerned in writing. The Officer will be treated as on probation till they are confirmed. The Officer is deemed as confirmed in their post, only if they are intimated to that effect in writing;
- iii) In the case of Officers in Grade-I and above, the period of probation is to be closely watched and monitored by the appropriate Initiating, Reviewing Authority. Deficiencies found, if any, should be communicated in writing to the probationer concerned and this should be indicated in the Sixth/Eleventh monthly probationary reports;
- iv) If the performance of the probationer is not found to be satisfactory in spite of intimating the deficiencies noticed in writing, the Appointing Authority may consider extending the probationary period and then decide the question of confirmation of the Officer in the present Grade on the basis of their performance during the extended period of probation. If at the end of such extended period, the Officer's performance is still found to be unsatisfactory, they should be reverted to their lower post;

- v) In the cases where the period of probation is extended, the Officer whose probation has been extended will lose the seniority by a period equivalent to the period by which the probation was extended. The due date of increment will also be postponed in the event of extension of probation period. The revised due date of increment thereafter will be reckoned with reference to the actual date of confirmation;
- vi) Cases of Officers who are unable to perform duties during their probation satisfactorily, on account of long sickness/deputation/study leave will be considered on merits individually;”

The competent authority for approving confirmation is the Managing Director of the Complex/Functional Director in respect of Grade-IV, V & VI posts.

It is not in dispute that the petitioner was promoted to the higher post of Manager (HR) (Grade-IV) by order dated 01.08.2013 and she was kept on probation for a period of one year. The probation was not extended within the period of one year, but it was extended on 16.09.2015 by six months from 01.08.2014. It also expired in January 2015. However, a communication was issued to the petitioner on 09.09.2015 stating that her performance was rated as “average”. As per Rule 23(ii), the standards required of the officer are not specified anywhere. However, it is stated that the officer is deemed as confirmed in their post only if they are intimated to that effect in writing. Sub rule (iii) further states that the period of probation is to be closely watched and monitored by the appropriate Initiating/Reviewing Authority. Deficiencies should be communicated in writing to the probationer and if the performance of the probationer is not found to be satisfactory in spite of intimating the deficiencies noticed in writing, the Appointing Authority may consider extending the probationary period and then decide the question of confirmation of the officer in the present Grade on the basis of their performance during the extended period of probation. If at the end of such extended period, the Officer’s performance is still found to be unsatisfactory, they should be reverted to their lower post. In the

instant case, the relevant period is 01.08.2013 to January 2015. The petitioner was never informed of her performance except through a feedback of performance on 09.09.2015, wherein it was stated that it is “average” and not up to the expectations. Without giving sufficient time to the Officer to improve her performance, the period of probation was extended by six months by order dated 16.09.2015 with effect from 01.08.2014. The respondents should not have done this.

The performance appraisal report submitted to this Court in respect of the petitioner for the period from 01.08.2013 to 31.01.2014 shows that she has achieved 84.5 marks in quarterly task for all the four quarters. The Initiating Authority agreed with the self appraisal of the Officer, and the Reviewing Authority agreed in general with the Initiating Authority, but however, commented that she needs to improve upon professional acumen, needs to take up the assigned job more effectively and execute more meticulously. In respect of assignment of traits, she was given 73.37 marks by the Initiating Authority and 62 marks by the Reviewing Authority. The General Manager rated her performance as 65 on 12.06.2015. The Managing Director/Functional Director rated her performance as 62 on 15.09.2015, in respect of the said period, which clearly shows that it was done after twenty months. The performance appraisal report for the period from 01.02.2014 to 30.06.2014 also gives her 85 marks in respect of some achievements of quarterly tasks and 83 marks by the Initiating Authority and 64.50 marks by the Reviewing Authority in respect of assessment of traits. The Initiating Authority found her qualitatively good, but the Reviewing Authority noticed her performance as satisfactory, while opining that she has to improve punctuality and attitude towards work. Ultimately, while taking a decision with regard to the confirmation, the Initiating Authority recommended, whereas the Reviewing Authority recommended for extension of probation by three months and watch her performance in the extended period. The Director (HR) did not recommend her case for confirmation, but opined that her probation shall be extended by six

months. In respect of the period from 01.07.2014 to 31.12.2014 her performance was found to be in the range of 79-50, which is “average”, as the Initiating Authority has given 75.12 marks and the Reviewing Authority gave 75.12 marks in the assessment of traits. The Initiating Authority as well as Reviewing Authority recommended her case for confirmation and the General Manager also recommended her case for confirmation. However, the Functional Director ordered for reversion from the due date stating that in spite of sufficient opportunities she has not shown improvements. Even during extended period of six months and further one year of observation from January to December 2015. Obviously this comment is made while reviewing the performance for the period 01.07.2014 to 31.12.2014 and it should not have taken the subsequent events into consideration. Hence, his opinion is based on irrelevant considerations. Similarly, for the period from 01.01.2015 to 31.12.2015 the Initiating Authority and the Reviewing Authority awarded 71.28 and 69.78 respectively in respect of assessment of traits and gave Category-B, which says that an Officer has potential for limited advancement. The General Manager gave her the score of 72 and the Functional Director himself gave the score of 69.78, but, however, ordered reversion to the post of Deputy Manager. This is not based on the yardstick of giving an average score. The General Manager of the Review Board recommended her case for confirmation.

As per 9.6 of Performance (PAR) Criteria, an officer, in order to become eligible for promotion, should have scored “50 Marks” or above in the PAR for the immediate last year. The average PAR of the last 3 years should also be “50 or above”. That criteria need not be applied now as the petitioner is already promoted and waiting for confirmation. But, no such criteria is available for the purpose of confirmation. In the absence of such criteria, the “average” grade scored by the officer which is in the range of 50-79 can reasonably be taken as a measure for confirmation. In the instant case, the petitioner secured the “average”

grade during the period of her probation and this Court feels such grade would qualify her for confirmation.

As per the rules, it is the Managing Director of the Complex/Functional Director, who are competent to approve confirmation of the Officer. The petitioner's performance was placed in the range of "average" consistently during the period of her probation and there is no material to revert to the lower cadre except the personal opinion of the Functional Director which is without basis. The probation of the petitioner was extended with retrospective effect which is irregular. There was no observation during the relevant period of probation or even extended period of probation from 13.08.2013 to 12.01.2015 with regard to the need for improving her performance. The feedback was given only on 09.09.2015 indicating her to be "average" and within one week thereafter, without giving sufficient time for improving her performance, the probation was extended with retrospective effect. Hence the decision to revert her is not based on any material and since the decision was taken on irrelevant considerations, the decision is vitiated. The petitioner is entitled to be confirmed in her promoted post.

Though the learned Counsel on either side placed reliance on **Shri Kedar Nath Bahl v. The State of Punjab**^[1], **Director (Production), Heavy Engineering Corporation v. Jagannath Prasad**^[2], **Satya Narayan Athya v. High Court of M.P.**^[3], **High Court of M.P v. Satya Narayan Jhavar**^[4] and **Registrar, High Court of Gujarat v. C.G.Sharma**^[5], in view of the disposal of the Writ Petition, as aforesaid on the basis of record, it is not necessary for this Court to deal with the legal position.

The Writ Petition is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as

to costs.

(A.RAMALINGESWARA RAO, J)

12.08.2016

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[\[1\]](#) (1974) 3 SCC 21
[\[2\]](#) 1995 Supp (4) SCC 699
[\[3\]](#) (1996) 1 SCC 560
[\[4\]](#) (2001) 7 SCC 161
[\[5\]](#) (2005) 1 SCC 132