

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 946 OF 2000

Karam Singh
E-1, New Trishul,
Bhavani Nagar,
Marol
Andheri East
Mumbai 400 059

.. Petitioner

Vs.

Air India Limited
Backbay Reclamation
Nariman Point,
Mumbai 400 021

.. Respondent

Mr.Mohan Bir Singh, for the Petitioner.
Mr.S.K.Talsania, Senior Advocate a/w Mr.Lancy D'Souza &
Ms.Deepika Agarwal, for Respondent.

**CORAM : A.A.SAYED AND
M.S.KARNIK, JJ.**

**RESERVED ON : 18th JULY, 2017
PRONOUNCED ON : 24th JULY, 2017**

JUDGMENT (PER M.S.KARNIK, J) :

. The petitioner joined services of the respondent in July 1977 as an Assistant Flight Purser/Cabin Crew The petitioner was promoted as a Flight Purser in April 1987. The petitioner was further

promoted as a Senior Check Flight Purser with effect from 01/07/1997. In or around June 1997, the respondent devised the promotion policy for its Cabin Crew. The said policy was introduced in order to overcome the stagnation on account of vacancy based promotions. The policy makes it a time bound promotion upto the level of Manager i.e. grade 29 which is first executive level. The minimum service eligibility criteria provided in clause 4.1 of the said policy is as follows :

“4.1 The minimum service eligibility criteria for promotion of the cabin crew from one level/grade to the next level/grade will be as under :
Male Cabin Crew”

AFP/FP/Chk, FP/Addl.Sr.Chk.FP/Sr.Chk.FP

From	To	No. of years	Cumulative in the grade years from the 1 st grade
AFP/CC	FP/Sr.CC	05	05
FP/Sr.CC	Chk.FP/CC	05	10
Chk.FP/CC	Addl. Chk.FP/CC	Sr. 04	14
Addl.Sr.Chk FP/CC	Sr.Chk.FP	04	18
Sr.Chk.FP /CC	Manager	04	22

2. The promotion exercise for promotions to Manager is to be carried out once a year whilst promotions to other levels are to be

carried out in January & July every year. The said exercise is to be carried out in the months of January of each year and cut of date of eligibility is the 15th of January. The petitioner being a Senior Check Flight Purser was eligible for promotion under the policy to the next grade as a Manager as he had completed 22 years of service. The basis for promotion was personal file and appraisal reports, however at the relevant point of time, there was no appraisal, therefore consideration was to be on the basis of personal file. Clause 5.1 of the policy provides for eligibility of the Cabin Crew to be promoted (subject to suitability).

3. By an order dated 22/24th September 1998, the punishment of stoppage of annual increment due to the petitioner on January 1999 was awarded. In the said order, it was indicated that he will receive his next increment only on 01/01/2000 depending on his work and conduct during the aforesaid period of punishment. Though the petitioner was considered for promotion, he was not recommended for promotion on account of punishment. It is the petitioner's case that with effect from 01/01/2000, he started receiving his next increment and the punishment was no longer subsisting. The petitioner prays that he may be promoted as a

Manager with effect from 01/01/2000 with all consequential benefits and allowances at applicable rate.

4. It is an admitted position that the petitioner was thereafter promoted with effect from 01/01/2003. The petitioner has since retired. Learned Counsel for the petitioner urged that the respondent is not justified in denying the benefits of promotion to the petitioner with effect from 01/01/2000 as a Manager. In his submission, the entire object of the promotion policy is to remove stagnation. He submits that since his juniors are promoted, the petitioner obviously is entitled for promotion. Learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of **Ashok Shankar Guha Vs Air India Ltd. in Civil Appeal No. 1916 of 2008 delivered on 11/03/2008**. He has placed reliance on paragraphs 6 to 8 of the said decision which read thus :

“6. It is contended by learned counsel for the appellant that under the promotion policy dated 5.6.1997, promotion to different category of posts depends on the number of years an incumbent serves the Respondent-Organization. Although the promotion policy has referred to suitability of criteria for promotion to different posts but it appears that no such suitability criteria has been made applicable for promotion in Air India. The appellant joined Air India on 1st January, 1980 and was confirmed as an Assistant Flight Purser w.e.f. 1st July, 1980. After completion of 17 years of service he would have been eligible for promotion to the post of Additional Senior Check Flight Purser on 1st January, 1997. That promotion has not been given to the appellant. On 6th August, 1997 after the promotion committee

met he was served with a charge-sheet and placed under suspension pending enquiry. On 22.9.1998 a punishment of stoppage of two annual increments due on 1.1.1998 and 1.1.1999 was imposed on the appellant. Thus, the stoppage of two annual increments was upto 1.1.2000 and he was eligible to receive his annual increment as on January 1, 2000 and the ineligibility imposed on the appellant for future promotion to the post of Senior Check Flight Purser on completion of 18 years of service stood removed and the appellant would have been entitled for promotion to the said post on 1.1.2000.

7. The promotion policy refers to promotion only on the basis of particular number of years completed in the service. The appellant would have become entitled for promotion to the post of Senior Check Flight Purser on 15.7.1998 itself but due to departmental enquiry and suspension during that period and later on imposition of punishment of the stoppage of two annual increments he was denied promotion. But once the period of stoppage of two increments was over, he was entitled for promotion w.e.f. 1.1.2000 to the post of Senior Check Flight Purser. Accordingly, the respondent by its order dated 24.8.2000 promoted the appellant as Senior Check Flight Purser w.e.f. 1.1.2000, which was, according to us, later on wrongly withdrawn.

8. For the aforesaid reasons, the impugned order of the High Court is set aside. The appellant is entitled for promotion to the post of Senior Check Flight Purser from 1.1.2000 and the appellant shall be entitled for all other consequential benefits.

5. In the submission of the learned Counsel for the petitioner, the petitioner in regular course would have become entitled for promotion to the post of Manager in 1999 itself as he completed 22 years of service. The petitioner is therefore entitled to be promoted as a Manager with effect from 01/01/2000 as the punishment is no longer subsisting from 01/01/2000.

6. Learned Senior Counsel for the respondent on the other

hand contended that the petitioner was not recommended for promotion for two reasons. Firstly, he did not come within 90% of the Senior Check Flight Purser who had completed 22 years of service and therefore could not have been promoted to the post of Manager. Secondly, it was noticed from the personal file of the petitioner that by order dated 22/ 24th September 1998, the punishment of stoppage of annual increment due to the petitioner as on January 1999 was awarded.

7. Having considered the submissions advanced by the learned Counsel on behalf of the parties, we find that the petitioner had requisite eligibility of 22 years of service for promotion to the post of Manager under the said policy. It was only on account of the punishment order dated 22/ 24th September 1998, currency of which was till 31/12/1999 that the petitioner's case was not recommended for promotion. The promotion policy refers to promotion only on the basis of particular number of years completed in the service. On 22/ 24th September 1998, punishment of stoppage of one annual increment due to the petitioner as on 01/01/1999 was imposed on the petitioner. Thus, stoppage of increment was upto 31/12/1999 and he was eligible to receive his annual increment as on

01/01/2000 and the ineligibility imposed on the petitioner for future promotion to the post of Manager on completion of 22 years of service stood removed and the petitioner would be entitled for promotion to the said post on 01/01/2000 as the petitioner's juniors also were promoted by then.

8. The petitioner belongs to the Scheduled Caste category. Learned Counsel for the petitioner pointed out that as per clause 8.1 the promotion policy is subject to reservations for Scheduled Caste/Scheduled Tribe employees in accordance with the Presidential directive. The petitioner in any case, therefore, is eligible to be promoted.

9. The promotion policy refers to promotion only on the basis of particular number of years completed in the service. The petitioner would have become entitled for promotion to the post of Manager in 1999 itself, but due to punishment of stoppage of one annual increment, he was denied promotion. Once the period of stoppage of one annual increment was over, he was entitled for promotion with effect from 01/01/2000. Nothing is brought on record to indicate that during the currency of punishment his work or conduct was in question.

Hence, the following order.

ORDER

- (i) The respondent is directed to notionally promote the petitioner to the post of Manager with effect from 01/01/2000.
- (ii) The petitioner is entitled to all consequential benefits from 01/01/2000.
- (iii) The arrears be paid to the petitioner within a period of 3 months from today.

10. Rule is made absolute in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)