

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2041 OF 2002

Subhash Waman Wadke
206, Vijay Apartments,
Caesar Road,
Amboli, Andheri (West),
Mumbai 400 058.

.. Petitioner

Vs.

1. National Aviation Company of India Ltd.
A Govt. of India
Undertaking,
registered under Companies
Act and having its Head
Office at Air India Bldg,
Nariman Point,
Mumbai 400 021.

2. The Managing Director,
N.A.C.I.L.
Air India Building,
Nariman Point
Mumbai 400 021.

3. The Director of Operations
N.A.C.I.L.
Old Airport, Santa Cruz (E),
Mumbai 400 029.

4. V.V. Karandekar
Medini Apartments
Ground floor,
Baman Wada, Chakala,
Vile Parle (East),
Mumbai 400 057.

5. Sunil Thula
Sr. Manager – Flight Despatch,
Air India Flight Despatch
Ama International Airport,
Chennai

.. Respondents

Mr.Mohan Bir Singh, for the Petitioner.
Mr.Sudhir K. Talsania, Sr.Advocate a/w Mr.S.D. Shetty and Mr.Arsh
Misra i/b M.V.Kini & Co., for Respondents.

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

**RESERVED ON : 03rd AUGUST, 2017
PRONOUNCED ON : 14th AUGUST, 2017**

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

. By this Petition the petitioner seeks promotion as a Senior Manager Flight Despatch with effect from 01/07/2002 and/or from the date not later than the date when respondents No. 4 & 5 are promoted as Senior Manager Flight Despatch.

2. The petitioner joined the services of Air India on 27/12/1973. On 01/02/1993 the petitioner was promoted as Manager Flight Despatch. Respondents No.4 & 5 were promoted as Manager Flight Despatch on 01/04/1995. Learned Counsel for the petitioner submits that on 13/11/1998 an agreement was reached

between the Indian Flight Despatchers Union and Managers of respondent No.1 inter alia providing for a promotion policy in respect of promotion of flight despatchers. Clause (c) which is material in the context of the present Petition is quoted hereunder.

“c) Manager Flight Despatch will be eligible for promotions to grade of Sr.Manager Flight Despatch after completing eight years of service as Manager Flight Despatch subject to vacancies. The existing incumbent will be promoted to Sr.Manager-Flight Despatch as a one-time exercise. These additional posts in the grade of Sr.Manager-Flight Despatch will be adjusted against future vacancies. “

3. Learned Counsel for the petitioner pointed out that the Union on behalf of the petitioner and similar situated Managers which included respondents No. 4 & 5 requested the respondents on 25/03/2002 to implement the policy and promote the existing incumbents as Senior Manager Flight Despatch. In the submission of the learned Counsel for the petitioner therefore atleast till 25/03/2002 the petitioner and respondents No. 4 & 5 were not promoted to the next higher post of Senior Manager. The grievance of the petitioner is that on 01/07/2002, respondents No.4 & 5 who were juniors to the petitioner are promoted as Senior Manager Flight Despatch. In the submission of the learned Counsel for the petitioner, the respondents were not justified in promoting respondents No.4 & 5 with retrospective effect from 1998. According

to him, the stand of respondent - Air India that respondents No.4 & 5 were found suitable by promotion panel in the year 1998 and since they were on foreign posting at that point of time, it is only upon issuance of the promotion letters on 08/07/2002 to respondents No.4 & 5 that they were promoted with effect from July 1998 and placed above the petitioner in the seniority list is unreasonable and arbitrary.

4. Learned Counsel for the petitioner invited our attention to the promotion policy and procedure for officers, more particularly clause 11.2 which reads thus :

11.2 Consideration of officers who are away on deputation or on foreign service on their own volition

11.2.1 In the case of an officer who has gone in response to an advertisement, to another Public Sector Undertaking, or on foreign service on his/her own volition, he/she will also be considered for promotion and if found suitable, would be included in the list of selected candidates. However, well in advance of his/her becoming due for promotion, he/she will be required to revert back to the parent cadre, so as to be available in the parent cadre, when the promotion is due. If he/she fails to revert to the present cadre when due for promotion, he/she will not be promoted and will have no claim for promotion to the higher grade. He/she will only be considered in the normal course along with other officers eligible when the Committee meets next after his/her reversion to the parent cadre/parent department.”

5. In his submission respondents No.4 & 5 were found suitable by promotion panel in the year 1998. The respondents could

not have promoted respondents No.4 & 5 retrospectively as the said policy provides that they should have been considered in the normal course along with other officers eligible when the committee meets next after his/her reversion to the parent cadre. According to the learned Counsel for the petitioner, respondents No.4 & 5 continued on foreign posting even after they were found suitable for promotion in the year 1998 and therefore in the year 2002, no promotion orders could be issued promoting respondents no.4 & 5 retrospectively from 1998.

6. In the submission of the learned Counsel for the petitioner in any case new promotion policy has come into effect from November 1998. Consideration of the case of the respondents No.4 & 5 should have been in accordance with the new policy as they had not joined the promoted post consequent upon they being found suitable in the selection process of 1998.

7. Learned Counsel in the alternate prays that the respondents have not given benefit of promotion policy of November 1998 to the petitioner as per clause (c). The petitioner being an existing incumbent should have been promoted as Senior Manager

Flight Despatch as one time exercise. This has not been done.

8. Learned Counsel for the respondents No. 1 to 3 on the other hand pointed out that the policy of November 1998 is subject to existing promotion policy and procedures. He invited our attention to the affidavit-in-reply filed by Mrs.Meenakshi Kashyap-Senior Manager on behalf of respondent – Air India. He points out that regular promotion process was carried out in 1995 and 1998. The petitioner though was considered was not found suitable. In the promotion process in the year 1998, respondents No.4 & 5 were considered and were found suitable. However, as they were on foreign posting, the promotion letters dated 08/07/2002 were issued only after they were reposted in India. Learned Counsel submits that even the petitioner was promoted in the year 2002 in his own turn and has now taken voluntary retirement in the year 2004.

9. Having considered the submissions made by learned Counsel for the parties, we find that in the regular promotion process that was carried on in the years 1995 & 1998 for promotion to the post of Senior Manager Flight Depatch, the petitioner was duly considered but was not found suitable as he did not meet the criteria

laid down in the relevant circulars. We have been also gone through the report of the panel constituted in this regard. Furthermore, we find that the respondents No.4 & 5 were considered for promotion in 1998 and were found suitable. As respondents No.4 & 5 were on foreign posting at the relevant point of time and reposted back in India in the year 2000, letters of promotion were issued on 08/07/2002 to the respondents No.4 & 5 with effect from July 1998. We do not find the approach of the respondents as unreasonable or arbitrary. The promotion policy relied upon by the petitioner in our opinion has no application to the promotions effected in respect of officers who are posted abroad by the respondents. Clause 11.2.1 of the policy indicates that the same is applicable to the officer who has gone in response to an advertisement to another Public Sector Undertaking or on foreign service on his own volition. The petitioner has not made out a case that respondents No.4 & 5 had gone on foreign service on their own volition or in response to an advertisement to another Public Sector Undertaking. It appears that it is the respondent No.1 who had posted the respondents No.4 & 5 on foreign posting. The said clause 11.2.1 will therefore not apply in case of respondents No.4 & 5.

10. We thus find that the petitioner was considered for promotion in 1995 & 1998 but was not found suitable. Respondents No.4 & 5 who were duly considered in 1998 were found suitable, thus promoted by letters of 2002 with effect from 1998 in view of the fact that respondent No.1 had posted respondents No.4 & 5 on foreign posting.

11. We find that the promotion to the post of Assistant Manager Flight Despatch under the new policy of November 1998 is subject to existing promotion policy and procedures. We, therefore, do not find any merit in the Petition as regards the claim of the petitioner that he has been wrongly denied promotion and superseded by the respondents No.4 & 5. However, we find some merit in the contention of learned Counsel for the petitioner that in terms of the promotion policy of November 1998, the petitioner's case should have been considered in accordance with clause (c). Though the petitioner had prayed for wider relief of promotion to the post of Senior Manager Flight Despatch challenging the supersession of respondents No.4 & 5, we are inclined to direct the respondents to consider the case of the petitioner in terms of clause (c) of the promotion policy dated 13/11/1998 as Senior Manager Flight

Despatch.

12. As the petitioner has taken voluntary retirement from the service, he may be notionally promoted if he is found eligible under the policy and consequent arrears may be paid to him. No relief as prayed for in terms of prayer clauses (a), (b) & (c) can be granted. However, respondents No. 1 to 3 shall consider the case of the petitioner in terms of clause (c) of the promotion policy of Flight Despatch dated 13/11/1998 within 2 months from today. If the petitioner is found eligible, he may be notionally promoted. In the event, the petitioner is found eligible to be promoted, he may be paid the arrears within a period of 4 months. The Writ Petition is accordingly disposed of. Rule is made absolute in the above terms. No order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)