

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2016

Pronounced on : 27-01-2017

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 20251 of 2002

1. Edwin Dinroze
 2. R. Ganesan
 3. M. Selvaraj
 4. S. Savithri
 5. V.B. Parthiban
 6. G. Shyamala Raja
 7. K. Usha Devi
 8. A. Mary Rajalakshmi
 9. A. Nagabhushanam
 10. V.R. Vasantha
- ... Petitioners

Versus

1. The Chairman
Airports Authority of India
New Delhi - 110 003
 2. The Executive Director (P&A)
Airports Authority of India
New Delhi - 110 003
 3. The Regional Executive Director
Southern Region
Airports Authority of India
Chennai - 600 027
- .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order No.AAI/NAD/M/2-6(2)/EM dated 14.03.2002 passed by the third respondent on the authority of the second respondent's letter dated 26.02.2002 and quash the same and to direct the third respondent to maintain separate seniority list, one for Senior Office Assistants already promoted from Junior Office Assistants based on the recruitment rules existing prior to 1969 and other one for Engineering Office Assistants who had been re-designated

as Senior Office Assistants in the year 1998 as per their own decision taken in the order No.A 23018/7/96-EM dated 07.08.1996 and to create number of posts of Office Superintendent and to give promotion to the petitioners in the cadre of Office Superintendent and above taking into account their service put in in the Ministerial Line at appropriate time earlier than the staff from non-ministerial line such as Engineering Office Assistants Grade I even though their cadre has been re-designated as Senior Office Assistants.

For Petitioners : Mr. S. Ramaswamy Rajarajan
For Respondents : Ms. O.K. Sri Devi

ORDER

The petitioners calls in question the legality and validity of the order passed by the third respondent on 14.03.2002 on the basis of the letter dated 25.02.2002 of the second respondent, in and by which, the representation of the petitioners questioning the merger of the post of Engineering Office Assistant Grade-I with Senior Office Assistant was rejected on the ground that such a decision for merger of the posts was taken in the Joint Consultative Machinery (JCM) meeting and there is no anomaly in drawal of the seniority list.

2. The petitioners herein have joined as Junior Office Assistant on various dates during the year 1973 to 1984 and subsequently they were promoted as Senior office Assistant, in which post, they are presently working in the respondents organisation at Chennai. Originally, the petitioners were appointed to serve in the erstwhile Civil Aviation Department which is coming under the Civil Aviation Ministry and therefore they were called as Ministerial Staff. It is further stated that the post of Junior Office Assistant in which they were originally appointed is the feeder category post for promotion to the post of Senior Office Assistants. According to the petitioners, subsequently they were promoted as Senior Office Assistant under the Recruitment Rules existing prior to 1969 in Airports Authority of India as at the relevant time they were having the requisite qualification. It is also stated that the post of Senior Office Assistant is a promotional post and no one could be appointed directly to such post.

3. According to the petitioners, during the year 1990, the National Airports Authority had introduced a separate wing called Engineering Wing was formed and new posts were introduced such as Senior Works Assistant and a new recruitment Rule was also framed prescribing educational qualification. Subsequently, the cadre of Senior Works Assistants were re-designated as Engineering Office Assistants Grade I and the

scale of pay was upgraded for which revised educational qualification of possessing a graduation with typing speed of 30 words per minute and one year experience was prescribed. On the basis of such revised Rules, six Engineering Office Assistants Grade-I were appointed by the respondents through direct recruitment. The respondents were also maintaining separate seniority list for the cadres such as Junior Office Assistant, Senior Office Assistant and Engineering Office Assistant Grade-I and II for the purpose of conferring further promotion. While so, during 1998, the respondents have taken a policy decision unilaterally to merge the cadre of Engineering Office Assistant, Junior Office Assistant and Senior Office Assistant and accordingly, by merging the aforesaid three cadres, a seniority list was drawn on 01.07.1998.

4. The grievance of the petitioners towards drawal of such seniority list is that Engineering Office Assistants have no technical qualification and the merger of such cadres with the Office Assistant or Senior Office Assistant who are possessing technical qualification is illegal. Further, the post of Senior Office Assistant is a promotional post and it cannot be merged with the post of Engineering Office Assistants. As the petitioners were aggrieved by drawal of the seniority list, they have submitted an objection to remove the cadre of Engineering Office Assistants from the seniority list and to maintain a separate seniority list for Senior Office Assistants who were appointed prior to 1969 and for Engineering Office Assistant Grade-I on their re-designation as Senior Office Assistant. The third respondent, without considering the objections raised by the petitioners, has passed the order dated 14.03.2002 stating that the decision to merge the cadre was taken in the JCM meeting and there is no pay anomaly caused to any one by reason of drawal of such merged seniority list. Challenging the said order dated 14.03.2002 of the third respondent, the present writ petition has been filed.

5. The learned counsel for the petitioner would contend that the impugned order has been passed without determining the inter se seniority among the Engineering Office Assistants. The merger of the posts was purportedly made on the assumption that the nature of work performed by all the cadres is similar, but the nature of duties discharged is not one and the same. Further, the petitioners were initially appointed as Junior Office Assistant and were conferred with promotion to the post of Senior Office Assistant based on the then existing Rules after considering their qualification and experience. While so, the cadre of Senior Office Assistant ought not to have been merged by only taking into account the date of entry into service. According to the learned counsel for the petitioners, Engineering Office Assistants Grade-I were promoted on the basis

of the recruitment Rules framed in the year 1989 to 1990. At any rate, even in the combined seniority list, the Engineering Office Assistants ought to have been placed below the petitioners who were working as Senior Office Assistant on the basis of the then existing recruitment Rules. Further, the combined seniority ought not to have been prepared among the Engineering Office Assistant Grade-I, who are non-ministerial staff and the petitioners who are holding the post of Ministerial staff. By virtue of such combined seniority list, the further promotion to the post of Office Superintendent is deprived to the petitioners. Even though the decision to merge the cadres have been taken on the basis of the JCM meeting, in the said meeting, merger was not at all demanded. Further, the respondents have not considered the inter se seniority of Senior Office Assistant and Engineering Office Assistant Grade-I on re-designation and therefore, the action of the respondents in drawing the combined seniority list and legally not sustainable. The merger of Senior Office Assistant with the Engineering Office Assistant Grade-I is therefore in gross violation of recruitment Rules inasmuch as the method of recruitment of Senior Office Assistant is different and distinct and both the cadres cannot be treated as equivalent. By reason of the merger, the length of service put in by the petitioners as Junior Office Assistant and subsequently promoted as Senior Office Assistant is grossly ignored for the purpose of further promotion. Therefore, the learned counsel for the petitioners prayed this Court to allow the writ petition as prayed for.

6. On the contrary, the learned counsel for the respondents vehemently opposed the prayer sought for in the writ petition. The learned counsel for the respondents, by placing reliance on the counter affidavit, would contend that Airport Authority of India was formed during 1995 under the Airport Authority of India Act, 1994 by merging both International Airports Authority of India and National Airport Authority for better administration and management of all Civil Airports and Civil Enclaves. According to the learned counsel, the petitioners 1, 3, 6 and 8 were appointed as Junior Office Assistant through Employment Assistant Scheme while the 10th petitioner was appointed as Airport Ticket Clerk at Bangalore and subsequently, on her request, she was transferred and posted as Junior Office Assistant at Chennai. The other Petitioners were appointed as Junior Office Assistants through Employment Exchange/Staff Selection Commission. As per the R & P Rules of Government of India, the petitioners were subsequently given promotion to the post of Senior Office Assistants. Such Rule do not prescribe any qualification for promotion from the post of Junior Office Assistant to Senior Office Assistant but only the length of service in the lower cadre is prescribed as a qualification for promotion to the post of Senior Office

Assistant.

7. According to the learned counsel for the respondents, prior to formation of Airport Authority of India, all appointments in the cadre of Junior Office Assistants were made on nomination made by the Staff Selection Commission and no direct recruitment was made in the Civil Aviation Department. Even though the post of Junior Office Assistant is the feeder category post for promotion to the post of Senior Office Assistant, the contention of the petitioners that direct recruitment to the post of Senior Office Assistant cannot be made is not relevant since the persons from Engineering Office Assistant was inducted into the cadre through lateral movement for the reason that they were more qualified and doing similar works as that of Senior Office Assistant. The respondents therefore thought it fit to create an Engineering Wing to cater to the needs of construction and maintenance of Airports. Accordingly, a department called as Engineering Department was formed during 1987 and the staff possessing required qualification and experience were also recruited. Consequently, the cadre known as Senior Works Assistant for maintenance of work documents, accounts register, bill register etc., was created with prescribed qualification and experience. Such Senior Works Assistants recruited were having additional qualifications such as S.S.L.C., I.T.I. Certificate in Civil and Electrical with four years of experience and knowledge in typing speed at 40 words per minute. Thus, the Senior Works Assistants were carrying on similar works as that of the Senior Office Assistants, the petitioners herein. Since Engineering Department was created with regular Engineering Staff during 1987 to 1988, Senior Works Assistant were recruited during 1989 to 1990. On such appointment, it was necessitated to merge the cadre of Senior Works Assistant and Engineering Office Assistant from 1992. Further, there was no scope for promotion to higher grade as no posts were created at higher levels. When such discrepancy was noticed, it was decided that the Engineering Office Assistants Grade-II and Grade-II be merged with the Senior Office Assistants especially when the duties of these cadres are similar. At that time, there were 6 Engineering Office Assistants Grade-I with general qualification and they were merged with the Senior Office Assistants and a combined seniority list was drawn. By virtue of such a merger, the interest of the Senior Office Assistants are not affected. According to the learned counsel, the respondents have ensured that interest of the petitioners are not in any way affected since sufficient additional posts in the higher grade of Senior Superintendent (Personnel) were created so that none of the eligible Senior Office Assistants is denied promotion. Further, the petitioners have never raised any objection for drawal of such a combined seniority list after the merger of these cadres.

The learned counsel for the respondents also would contend that the other Regions have effected promotion to Senior Office Assistant to the cadre of Senior Superintendent (Personnel) and therefore, in order to have an uniformity among all the Regions, the merger has become necessary. There cannot be a separate seniority for Southern Region alone and if it is not given effect to, it will not result in uniformity among the counterparts of other Region. The learned counsel further submitted that till 1998, there were only 26 posts of Senior Superintendent (Personnel), 8 posts of Assistant Manager (Personnel) and 2 posts of Manager (P & A), all of which are promotional posts from among the Senior Office Assistants. However, during 1999-2001, 24 posts of Senior Superintendents (Personnel), 6 posts of Assistan Manager (Personnel), 8 posts of Manager (P&A) and 3 posts of Senior Manager (Personnel) were created. The creation of additinoal posts for which the feeder category is Senior Office Assistants, will only result in the petitioners getting better promotional opportunity at higher levels.

8. The learned counsel for the respondents would further contend that the contention of the petitioners that determination of seniority by taking into account the date of change of their designation cannot be accepted since their service at the same level prior to their re-designation cannot be ignored. Similarly, the names of the Engineering Office Assistants Grade-I on re-designation as Senior Office Assistants cannot be placed below the Senior Office Assistants since the service rendered by them earlier cannot be ignored. Therefore, date of entry into service is the relevant criteria for determination of the seniority and it cannot be questioned by the petitioners. At any rate, the merger of cadre and the consequential determination of seniority will not in any way prejudice the petitioners, rather, it would only create better promotional avenues to them and therefore she prayed for dismissal of the writ petition.

9. I heard the learned counsel for both sides and perused the materials placed on record. The grievance of the petitiners is that separate seniority list has to be maintained for the Engineering Office Assistants and Senior Office Assistants promoted from the cadre of Junior Office Assistants and their merger is unwarranted inasmuch as it deprives their promotional opportunities.

10. On careful consideration of the averments made in the affidavit filed in support of the writ petition and the counter affidavit, it is clear that the respondents have taken a policy decision to have uniformity among all the Regions and a separate policy cannot be adopted for Southern Region alone. It is

stated in the counter affidavit that the eligible Senior Office Assistants in other regions have been conferred with promotion to the post of Senior Superintendent (Personnel) but only in the Southern Region, promotions could not be given effect because of the pendency of this writ petition. Further, as pointed out in the counter affidavit, one of the major reason for merger is that a policy decision was taken by the respondents to create more posts and accordingly, during 1999-2001, 24 posts of Senior Superintendents (Personnel), 6 posts of Assistan Manager (Personnel), 8 posts of Manager (P&A) and 3 posts of Senior Manager (Personnel) were created. For conferring promotion to these additional posts, the feeder category is Senior Office Assistants, which is held by the petitioners. Therefore, by reason of creation of additional posts, there will be more promotional avenues created to the petitioners to get promotion and the merger will not in any way be construed as a hindrance to the petitioners to get further promotion to which they are eligible. Thus, promotional avenue of the petitioners have been considerably incrated by reason of creation of additional posts in all the higher cadres after merging Engineering Office Assistants Grade-I with that of the Senior Office Assistants, the posts held by the petitoiners. It is also stated in the counter affidavit that while merging the cadre of Senior Office Assistants and Engineering Office Assistants (Grade-I) for drawing a combined seniority list, adequate care has been taken to ensure that after merger, every one of the employee is given equivalent and sufficient promotional avenues at all levels. Thus, the creation of additional posts for which the feeder category is Senior Office Assistants, will only result in the petitioners getting better promotional opportunity at higher levels. Therefore, it is evident that there may not be any grievance for the petitioners in getting promotion to higher posts by reason of the merger of two cadres. Therefore, in the best interest of creating promotional avenues to the employees employed in the Chennai Region, including the petitioners, a policy decision was taken by the respondents to have oneness in the matter of conferment of promotion to their employees on par with other Region. Further, such a decision was taken on the basis of discussion and consensus arrived at in the JCM meeting in which the representatives from the management as well as the Union have participated. In such view of the matter, the grievance expressed on behalf of the petitioners with reference to merger of the two cadres and the consequential drawal of seniority is unfounded. Therefore, this Court is of the view that no relief could be granted to the petitioners in this writ petition.

11. In the result, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman
Airports Authority of India
New Delhi - 110 003

2. The Executive Director (P&A)
Airports Authority of India
New Delhi - 110 003

3. The Regional Executive Director
Southern Region
Airports Authority of India
Chennai - 600 027

+1cc to Mr.S. Ramasamy Rajarajan, Advocate, S.R.No.5058
+1cc to Mr.C.R. Rukmani, Advocate, S.R.No.5538

gr(CO)
md(09/02/2017)

WP No. 34535 of 2015

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