

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: October 13, 2017

+ **LPA 330/2017 & CMs. 16815/2017 & 26701/2017**

AIR INDIA LTD (EARLIER KNOWN AS INDIAN AIRLINES LTD) Appellant

Through: Mr. Lalit Bhasin, Ms. Ratna
Dhingra and Mr. Ajay Pratap Singh, Advocates

versus

M S JAYANTHI & ORS Respondents

Through: Ms. Madhumita Bora and Ms.
Bijoy Kumar Pradhan, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

S. RAVINDRA BHAT, J. (OPEN COURT)

1. Notice.
2. Ms. Madhumita Bora, Advocate accepts notice.
3. The grievance raised in this appeal is with respect to Single Bench judgment of this Court dated 13.01.2017 whereby petitioner i.e. late Sh. J. Chandra Hassan's claim for seniority and consequential promotion was granted. Sh. J. Chandra Hassan and one J. Sathyanarayan were both appointed as Assistant Manager (Security) in consequence of a direct recruitment process conducted in 1993. A panel was prepared on 11.11.1993. The petitioner-J. Chandra Hassan's grievance was that though he was well-merited, he was treated junior to J. Sathyanarayan on the ground that the latter was senior to him within the organisation. On

this grievance, unable to secure any departmental redress, he had approached this Court by filing a W.P. (C) 2333/1997. The Court after appreciating the circumstances and the submissions of the parties had allowed the writ petition on 01.07.2013 essentially placing reliance on Rule 9 of the Recruitment Rules. The Air India was aggrieved and carried the matter in appeal i.e. LPA 690/2013, which was allowed on 07.03.2014 and the matter was remitted for fresh consideration to the learned Single Judge. By the impugned order, the learned Single Judge repeated the reasoning in the previous order and over ruled the Air India's contention with respect to applicability of Rules 18 & 19 of the Recruitment Rules.

4. It is argued on behalf of Air India that Rule 9 deals with emergency recruitment and has no application to the facts of this case. It was submitted that the reliance placed upon proviso to Rule 9 therefore is inapt inasmuch as, read in isolation, it suggests that those who obtain higher merit have to be ranked at senior position in the merit/seniority list. Air India relies upon Rules 18 & 19 in this regard, which read as follows: -

"18. Selection from within Indian Airlines Successful Candidates (i.e. those who have obtained 60% marks and above) will be placed on a panel in order of seniority. For this purpose persons in the higher grade will be ranked senior to persons in the lower grade. Within each grade seniority will be reckoned by length of service in the grade. Those of the candidates who have obtained 80% marks and above will be termed as 'Outstanding'. They will be given priority for appointment but, on appointment, their seniority vis-a-vis persons

appointed in the same batch with them will be in the order shown in the panel mentioned above.

19. Direct Recruitment from outside Indian Airlines:

If there are any successful internal candidates (i.e. those who have obtained 60% marks and above) they will be placed on top of the panel in order of seniority as mentioned in para 18 above."

5. This Court notices at the outset that the petitioner-late J. Chandra Hassan died during the proceedings and his name was substituted by his legal heirs. The respondent in the original writ proceedings- J. Sathyanarayan—impleaded by an order of this Court, did not choose to contest the proceedings. The only issue is whether the Single Judge committed an error in holding that the proviso to Rule 9 applies as opposed to Rules 18 & 19 of the Recruitment Rules.

6. Rule 9 in its entirety reads as follows: -

"All posts available for direct recruitment shall be given the widest possible publicity and, in particular, the following steps shall be taken:

(a) An advertisement incorporating the minimum qualifications and experience necessary for all posts, except those in grade I and II shall be inserted in such of the leading newspapers as may appear necessary.

(b) All applications received at Headquarters and Regions shall be registered in the Administrative & Personnel Branch and a record of the same maintained by a classification into occupational groups.

(c) Local Employment Exchange may be approached in case of recruitment to grade I & II and may be approached in other cases also with a view to suggesting suitable candidates.

(d) A public notice indicating the existence of vacancies shall be put up on the Notice Board at Local Offices of the I.A. and the Workshops.

(e) Those already in the employment of the Corporation shall be entitled to apply for any of the posts subject to eligibility.

PROVIDED that in emergent cases, the procedure outlined in (a) above may be dispensed with in respect of Regions with the permission of the Regional Director and in other cases with that of the Chairman/Managing Director.

PROVIDED that in selecting the candidates, all things being equal, existing employees of the Corporation from the grades or inter-linked grades immediately below shall be given the first preference and 'Retrenched', or ex-employees of the former constituent airlines shall be given second preference provided they are suitable in all respects."

7. As is evident from an overall reading of Rule 9, it provides the procedure for direct recruitment. The quoted portion in the judgment i.e. proviso to Rule 9, is really the second proviso occurring below the first proviso, which has to be read alongwith that provision. It would injunct meaning to the extent that in emergent cases where recruitment is resorted to, the procedure determined in Rule 9 can be dispensed with and even while doing so, the Rule prescribes a system of preference including a preference to retrenched and ex employees of the other constituent Air India.

8. Rules 18 & 19 on the other hand deal with the subject of *inter se* seniority of selected candidates. More pointedly, Rule 19 deals with the cases where recruitment is resorted to from outside Indian Airlines and the process permits participation of in house or internal candidates.

Formulated though, it seems that a direct recruit securing merit, nevertheless, would have to be treated as junior most if there are in house or internal candidates, who are senior to him. The Rule 19 stringently suggests that the senior most—even if least merited, would have to be ranked highest as against the most merited junior most candidate. This aspect is only noticed as a matter of record; however, there was no challenge to the Rule. This obviously means that as between internal candidates, senior in the organisation was to be the determining criteria and not merit in the direct recruit process. Apparently, respondent in the writ petition i.e. J. Sathyanarayan was more senior to the petitioner-J. Chandra Hassan.

9. Having regard to the above analysis, the conclusion arrived at by the learned Single Judge was erroneous. This Court however is of the opinion that the impugned order should not be disturbed having regard to the fact that the original writ petitioner-Sh. J. Chandra Hassan, expired during the pendency of the proceedings. It is therefore clarified that the directions contained in the impugned judgment are to be implemented and the relief granted shall be given within two months from today. At the same time, they shall not be treated as a precedent in future cases.

10. We are informed that a Review Petition i.e. 301/2017 has been preferred by Air India; likewise, the respondent has preferred a contempt proceeding being CONT.CAS(C) 657/2017. Learned counsel for the parties agreed that the said proceedings have been rendered infructuous in view of the above directions. R.P.301/2014 and Cont.Case (C) 657/2017 are therefore rendered infructuous.

11. The appeal (LPA 330/2017) as well as the R.P. 301/2017 and Cont. Case (C) 657/2017 and all pending applications are disposed of in the above terms.

S. RAVINDRA BHAT
(JUDGE)

SUNIL GAUR
(JUDGE)

OCTOBER 13, 2017

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