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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5940 OF 2004

Jagannath Janardan Patil

... Petitioner

Vs.

The Chairman,
Airports Authority of India & Ors.

... Respondents

Mr. Rajin L. Patil, Senior Advocate I/by Mr. Onkar V. Warange for the
Petitioner.

Mr. Sudhir Talsanir, Senior Advocate a/w Mr. Arsh Misra and Ms. Kavita
Anchan, S.D. Shetty and Ms. Heena Sheikh I/by M/s. M.V. Kini & Co. for
the Respondent Nos.1 and 2.

Mr. N.D. Sharma for the Respondent No.3.

CORAM : A.S.OKA AND
 SANDEEP K. SHINDE, JJ.

DATE : 6th DECEMBER 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Called out for final hearing. Heard the learned senior counsel
appearing for the petitioner. Initially, the petitioner was in the
employment of Civil Aviation Department of the Government of India.
While he was holding the post of Senior Clerk, he was sent on deputation
to National Aviation Authority and eventually was absorbed in the
employment of the Airport Authority of India. There were four charge
sheets issued against the petitioner. The first one resulted into imposing a

minor penalty. The appeal preferred by the petitioner against the said penalty was allowed during the pendency of the proceedings. On the basis of the first charge sheet, second charge sheet was served upon the petitioner. The disciplinary authority passed the order of withholding increment for a period of one year without any cumulative effect. The said order was passed on 13th December 2000. The appeal preferred by the petitioner was rejected by the order dated 24th December 2001. During the pendency of the appeal against the order imposing penalty on the basis of the second charge sheet, the third charge sheet was served upon the petitioner on 17th June 2002. Penalty of withholding of increment for a period of one year without cumulative effect was imposed. An appeal preferred by the petitioner against the said order was dismissed by the order dated 31st March 2003. There was a 4th charge sheet subsequently served. On the basis of the said charge sheet, minor penalty of "Censure" was imposed by the order dated 16th September 2003.

2 The first substantive prayer in this petition under Article 226 of the Constitution of India is by way of a challenge to the order dated 13th December 2000 and order in appeal dated 24/27th December 2001 and orders dated 17th June 2002 and 31st March 2003 in Appeals. Further prayer is for a declaration that the petitioner was entitled in the year 1995-1995 to the post of Senior Personnel Manager (P & A) and on the date of filing the petition he was entitled to promotion to the post of the Deputy General Manager (P & A). We must note here that on 4th February 2004, the petitioner was promoted to the post of Manager (P & A). The petitioner filed Writ Petition No.6072 of 2003 wherein the first

substantive relief sought was to the challenge to the orders which are challenged in this petition and there was a prayer to grant further promotion to the post of Senior Personal Manager (P & A). The said petition was allowed to be withdrawn by order dated 6th April 2004. The said order reads thus :-

“In view of the subsequent order changing the quantum of punishment, Petitioner is allowed to withdraw this petition with a liberty to file fresh proceedings as advised.

Civil application tendered in Court is taken on record.”

3 After the said petition was permitted to be withdrawn, the present petition was filed on 7th July 2004.

4 The learned senior counsel appearing for the petitioner relied upon Regulation 26 and in particular, explanation thereof of the National Airports Authority (Employees Conduct, Discipline and Appeal) Regulations 1988.

5 He also relied upon a decision of the Apex Court in the case of *Union of India Vs. Janakiraman*¹ by submitting that sealed cover procedure was not resorted to though it was permissible. We have heard the learned counsel appearing for the respondents.

6 We have considered the submissions. In the earlier writ petition filed by the petitioner, the only substantive relief prayed for was in terms of prayer clause (b) which reads thus :-

“(b) This Honourable High Court be pleased to issue Writ of

1. AIR 1991 SC 2010

Certiorari and/or any other writ quashing all the penal actions viz. order dated 13.12.2000 order in Appeal dt.24/27-12-2001, order dt. 17.6.2002, order Dt. 31.03.2003/2.4.2003 in appeal against the petitioner and further grant the promotion to the petitioner to the post of Senior Personnel Manager (P & A).”

7 In the present petition, the only substantive relief is in terms of prayer clause (b). The only difference between the prayer clause (b) in the present petition and the prayer clause (b) in the earlier petition is that in addition, the petitioner has claimed a declaration that he is entitled to promotion to the post of Deputy General Manager. We have already quoted the order dated 6th April 2004 passed in the earlier writ petition. In fact, the subsequent order changing the quantum of punishment as mentioned in the said order is not on record. There was no specific liberty granted to file a fresh writ petition under Article 226 of the Constitution of India to challenge the same orders which were challenged in the earlier writ petition. From the synopsis tendered by the learned senior counsel appearing for the petitioner, it appears that on 4th February 2004, the petitioner was promoted to the post of Manager (P & A). We may note here that in absence of specific liberty granted in earlier petition to file a fresh writ petition for challenging the same orders, the said reliefs could not have been sought. Though paragraph 15 of the writ petition merely refers to change of circumstances, the order dated 6th April 2004 refers to subsequent order of changing the quantum of punishment.

8 In view of withdrawal of the earlier petition, it is not possible to entertain this petition containing almost identical prayers. It cannot be

said that the promotion granted to the petitioner on 4th February 2004 after the earlier petition was filed brings about a change in circumstances. Hence, there is no merit in the petition. Rule is discharged with no order as to costs.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)