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

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Date of decision: 14.10.2020

+ **W.P.(C) 5300/2020 and CM 19144/2020**

SWAMINATHAN SUBRAMANIAN Petitioner

Through: Mr. Angad Singh Dugal, Advocate

versus

**UNION OF INDIA THROUGH DEPARTMENT OF
PERSONNEL AND TRAINING (PUBLIC ENTERPRISES
SELECTION BOARD & ANR.** Respondents

Through: Ms. Suneita Ojha, Adv. for R-1.
Mr. Digvijay Rai and Mr. Aman Yadav,
Advocates for R-2.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JYOTI SINGH, J. (ORAL)

1. Petitioner herein has filed the present writ petition challenging the action of Respondent No.2/Airport Authority of India (hereinafter referred to as AAI) whereby AAI has rejected his application for appointment to the post of Member (ANS) in terms of the Advertisement dated 20.02.2020, issued by the Department of Personnel and Training – Public Enterprises Selection Board. Petitioner also lays a challenge to the letters dated 20.07.2020 and 08.06.2020 whereby AAI rejected the petitioner's application on the ground that he is "not eligible for the said post".

2. The facts of the case as set up by the Petitioner are in a narrow compass. Petitioner has been serving the AAI/Government of India for more than 33 years in various capacities including more than two decades of experience as an Air Traffic Controller, Air Traffic Services In-charge, Senior Instructor at the Civil Aviation Training College and a Watch Supervisory Officer. Petitioner also has various distinctions and achievements to his credit, which are elaborated in paragraph 5 of the petition.

3. From July 2011 to March 2016 the Petitioner served in his parent cadre as a Joint General Manager (Air Space Management & ATS Automation) / Officiating General Manager (ATM-ASM) and AAI Corporate Headquarters (CHQ) Officer in charge of ASM and ATS Automation Projects. As per the Petitioner he was promoted to the post of General Manager (HR) on 12.03.2016. The selection was from a large pool of GMs and Joint GMs. He was holding additional charge as GM (HR) (ANS) and thus has the experience of handling of all ANS-HR matters as well as implementation of Apprentices Recruitment in AAI, including CNS.

4. In November, 2016 Petitioner was selected as Technical Advisor to the Representative of India on the Council of International Civil Aviation Organization (ICAO) Montreal, Canada and is now a State Observer in the Air Navigation Commission. The posting was a result of Aviation Management experience of the Petitioner which includes a 6 year stint as senior Instructor who has taught Air Law to 40 batches of Air Traffic Controllers.

5. An Advertisement dated 20.02.2020 bearing No. 29/2020 was issued by the Department of Personnel and Training – Public Enterprises Selection Board inviting applications for the post of Member (ANS). Eligibility conditions relevant to the present case are as follows:-

“III. Eligibility

1. AGE: *On the date of occurrence of vacancy (DOV)*

<i>Age of superannuation 60 years</i>			
<i>Internal</i>		<i>Others</i>	
<i>Minimum</i>	<i>Maximum</i>	<i>Minimum</i>	<i>Maximum</i>
45	2 years residual service as on the date of vacancy w.r.t. the date of superannuation	45	3 years residual service as on the date of vacancy w.r.t. the date of superannuation

2. EMPLOYMENT STATUS:

The applicant must, on the date of application, as well as on the date of interview, be employed in a regular capacity - and not in a contractual/ad-hoc capacity - in one of the followings:-

- (a) Central Public Sector Enterprise (CPSE) (including a full-time functional Director in the Board of a CPSE);*
- (b) Central Government including the Armed Forces of the Union and All India Services;*
- (c) State Public Sector Enterprise (SPSE) where the annual turnover is *Rs 2000 crore or more;*
- (d) Private Sector in company where the annual turnover is *Rs 2000 crore or more.*

Preference would be given to candidates from listed companies.

(The average audited annual turnover of three financial years preceding the calendar year in which the post is advertised shall be considered for applying the approved limits)*

3. QUALIFICATION:

The applicant should be an Engineering Graduate or Graduate in Science with good academic record from a recognized University/Institution.

4. EXPERIENCE:

The applicant should have at least five years of cumulative experience at a senior level during the last ten years, in Aviation/ avionics Sector relating to Air Traffic Management or communication, navigation and surveillance infrastructure.

5. PAY SCALE:

(a) Central Public Sector Enterprises

Eligible Scale of Pay

- (I) Rs. 7250-8250 (IDA) Pre 01/01/1992*
- (ii) Rs 9500-11500 (IDA) Post 01/01/1992*
- (iii) Rs. 20500-26500 (IDA) Post 01/01/1997*
- (iv) Rs. 51300-73000 (IDA) Post 01/01/2007*
- (v) Rs. 120000-280000 (IDA) Post 01.01.2017*
- (vi) Rs. 18400-22400 (CDA) Pre-revised post 01.01.1996*
- (vii) Rs. 37400-67000 + GP 10000 (CDA) post 01.01.2006*
- (viii) Rs.144200-218200 (Level 14) CDA post 01.01 .2016*

The minimum length of service required in the eligible scale will be one year for internal candidates, and two years for others as on the date of vacancy.

(b)

(I) Applicants from Central Government / All India Services should be holding a post of the level of Joint

Secretary in Government of India or carrying equivalent scale of pay on the date of application.

(II) Applicants from the Armed forces of the Union should be holding a post of the level of Major General in the Army or equivalent rank in Navy/Air Force on the date of application.

(c)

Applicants from State Public Sector Enterprises/ Private Sector should be working at Board level position or at least a post of the level immediately below the board level on the date of application.

6. According to the Petitioner, since he met all the eligibility criteria as set out in the Advertisement, he applied for the said post. However, on-line status of the Petitioner's application as updated on 11.05.2020 showed that the Petitioner was ineligible for the said post. Petitioner thereafter made a representation on 14.05.2020, which was rejected by letter dated 08.06.2020. Operative part of the letter dated 08.06.2020 is as under :-

“The aforesaid request has been examined by the Competent Authority but the same has not been acceded to as you are holding Jt. General Manager Post in your Parent Cadre.”

7. Mr. Angad Singh Dugal, learned counsel for the Petitioner at the outset contends that the reason given in the letter of rejection of his application is flawed and based on completely incorrect interpretation of the eligibility criteria as set out in the Advertisement. He submits that the ground for rejection that the applicant should hold the designation of 'General Manager' in the parent cadre is flawed and it is obvious that AAI is seeking to read something into the eligibility criteria which does

not exist in the advertisement. He submits that a comparison between the eligibility criteria as laid down in the Advertisement with the qualifications and profile of the Petitioner would show that the Petitioner meets all the requisite eligibility conditions.

8. To elaborate the argument learned counsel draws the attention of the Court to a table reflecting the comparison which is as follows:-

<i>S. No</i>	<i>Eligibility Criteria (as per the Advertisement) for internal candidates</i>	<i>Qualification of the Petitioner</i>
1.	<i>Minimum Age = 45 years (as on the date of vacancy)</i>	<i>Petitioner was 56 years, 11 months and 24 days on the date of filing of his Application for the post.</i>
2.	<i>Candidate must be employed in regular capacity</i>	<i>Petitioner has been under employment with the Respondent (being a CPSE) since September, 1987 in regular capacity.</i>
3.	<i>Educational Qualification: Candidate must be an Engineering Graduate or a Graduate in Science with good academic record from a recognized University/Institution.</i>	<i>The Petitioner is a graduate in BSc Physics, MA Philosophy (III Rank) from Madras University and an MBA in systems and Marketing Management from the College of Engineering Trivandrum (with a distinction)</i>
4.	<i>Experience: The applicant should have at least five years of cumulative experience at a senior level during the last ten years, in</i>	<i>The Petitioner joined the services of the Respondent No. 2 in 1987 as a Group A (E3) Officer in ATC. The Petitioner has 33 years of continuous multifaceted</i>

	<i>Aviation/avionics Sector relating to Air Traffic Management or Communication, Navigation and Surveillance (CNS) infrastructure.</i>	<i>experience with special competencies in ANS Management. Further, the Petitioner has a combined experience of 15 years as DGM (4) & Jt. GM (11) and have a continuous record of outstanding PARs.</i>
5.	<i>Eligible scale of pay (for candidates from CPSE): E8 pay scale of Rs. 51300-73000 (IDA) Post 01/01/2007 with a minimum length of service required in the eligible scale as one year for internal candidates</i>	<i>The pay scale of the Petitioner falls under the same category and has been availed by the Petitioner since March 14, 2016 (i.e, since more than 4 years)</i>
6.	<i>Condition of immediate absorption for Central Government Officers.</i>	<i>Does not apply to the Petitioner since he is an internal candidate</i>

9. Taking the Court through the tabular presentation counsel argues that Petitioner fulfills the requisite criteria of the Pay Scale. He submits that the requirement in the advertisement is of E-8 Pay Scale and not the designation of a General Manager. The author of the advertisement has not restricted the candidates to the Scale of E-9 only to ensure that there is a large pool to choose from as competitiveness would get the best officer suited to the job. Since the Petitioner is in the E-8 Pay Scale since 2016 he is eligible for consideration, besides the fact that his APARs have been outstanding.

10. It is further argued, without prejudice to the above submissions that in any case Petitioner working in E-8 Scale since March, 2016 is ahead of many other General Managers in his Parent Cadre, who were placed in the E-8 scale in 2017 or 2018 and is therefore, clearly most suited for the post in question. It is reiterated that a perusal of the Advertisement clearly reveals that the eligibility condition requires an officer to be in E-8 Pay Scale and not holding the post of 'General Manager'.

11. Per contra, Mr. Digvijay Rai appearing on behalf of the AAI contends that the Petitioner is not eligible for the post in question. It is argued that the eligibility conditions for the Post have been clearly prescribed in the Advertisement including the requirement of the Pay Scale.

12. Petitioner, according to Mr. Rai, is appointed in the substantive post of Joint General Manager (ATM) which is in the pre-revised Pay Scale Rs. 43200-66000/- revised to Rs. 100000-260000/- w.e.f. 01.01.2017 which is the E-7 Level. He was appointed to the post of General Manager (HR)-Ex-cadre in the Pay Scale of Rs. 51300-73000 (pre-revised) which was revised to Rs. 120000-280000/- w.e.f. 01.01.2017 in Level E-8. The appointment was purely on ex-cadre basis and temporary and the Petitioner was liable to be reverted as and when required to a substantive post.

13. It is further pointed out that Petitioner applied for the post of Technical Advisor in the office of ICAO, Montreal on the basis of his holding the substantive post of Joint General Manager (ATM) in his cadre. Applications were invited from the executives of CNS and ATM

Directorates. Petitioner stands automatically relinquished from the post of General Manager (HR) (ex-cadre) from the date of his joining as Technical Advisor in the Office of Representative of India and on his repatriation, he will join in ATM Discipline, which is his Parent Cadre and in his substantive post.

14. Mr. Rai relies on the CHRM Circular No. 20(a)/2013 dated 10.04.2015 which clearly stipulates in para (vi) that if an individual is selected on an ex-cadre post and is repatriated to his parent cadre, he will revert to his substantive post. Relevant portion of the Circular reads as under :-

“vi. Further, if an individual selected for an ex-Cadre post, repatriates to his parent cadre, he / she will revert to his / her substantive post. If an individual, selected for an ex-cadre Post and is posted to a cadre post in some other discipline on ex-cadre basis, then such posting will be in the same rank (as that of the ex-cadre post for which he / she was selected) for a defined period and only till the employees in the feeder grade in that particular cadre become eligible / selected for promotion.”

15. He further substantiates the argument by stating that while holding the post of General Manager (HR) on ex-cadre basis, Petitioner was not placed in the seniority list of General Manager (HR) and his seniority was maintained in his parent cadre i.e. ATM and the Petitioner continues to hold the substantive post of Joint General Manager (ATM). The eligibility to a post can only be decided on the basis of substantive post which the Petitioner holds in his parent cadre and not on the ex-cadre post which is a temporary appointment. However, on reversion to his parent

cadre to the post of JGM (ATM), Petitioner's pay will be protected as per CHRM Circular No. 04/2016 dated 09.03.2016. The difference in pay on reversion will be paid as Special Pay till his promotion as GM in the parent cadre.

16. Mr. Rai has also drawn the attention of the Court to the difference in the Pay Scale of the General Manager and the Joint General Manager, which is as under :-

<i>Group</i>	<i>Level</i>	<i>Category</i>	<i>01.01.2007 to 31.12.2016</i>	<i>01.01.2017 to 31.12.2026</i>
<i>A.</i>	<i>E-8</i>	<i>GM</i>	<i>51300-73000</i>	<i>120000- 280000</i>
<i>B.</i>	<i>E-7</i>	<i>JT GM</i>	<i>43200-66000</i>	<i>100000- 260000</i>

17. It is also argued that the eligibility criteria as prescribed in the Advertisement, amongst others, is E-8 Pay Scale, which is the Pay Scale of the Post of a General Manager and only if the Petitioner was holding the substantive post of General Manager on promotion, he would have been eligible in terms of the advertisement. The fact that there is no mention of the nomenclature as "General Manager" will make no difference as the Pay Scales have been prescribed and the Petitioner does not fit into the laid down criteria and is in the E-7 Pay Scale.

18. Mr. Angad Singh Dugal in rejoinder to the aforesaid arguments of Mr. Rai has labored hard to show that the Petitioner in fact is in E-8 Pay Scale and therefore, eligible for the said post.

19. I have heard the learned counsels for the parties. The Advertisement for the post of Member (ANS) was issued on 20.02.2020. There is no dispute between the parties with regard to the other eligibility conditions and the only dispute or the point of debate between the parties on eligibility is with regard to the Pay Scale. While the Petitioner contends that he fulfills the criteria of being in the (Pre-Revised) Pay Scale of Rs. 51300-73000, Respondent contends that E-8 is not the Pay Scale of the Petitioner in his substantive appointment.

20. It is an uncontroverted fact between the parties that the substantive appointment of the Petitioner, which he holds till date, is Joint General Manager (ATM) in his Parent Cadre. Petitioner was, no doubt, appointed to the post of General Manager (HR), in March 2016, but that was only an appointment on an ex-cadre post. On a query put to the learned counsels for the parties during the hearing, counsels have agreed that the post of General Manager (HR) is a promotional post in the hierarchy of the relevant cadre and promotions take place through the process of selection on merit by interview. It is also not disputed by the learned counsel for the Petitioner that the Petitioner was never promoted to the post of General Manager (HR). Hence the position that emerges is that the Petitioner was and continues to be in the post of JGM (ATM) as his substantive appointment and therefore in the E-7 Level of Pay.

21. While it is true, as argued by Mr. Dugal, that the Advertisement only indicates Pay Scale as eligibility criteria and does not specifically use the nomenclature “General Manager”, but there is force in the contention of Mr. Rai that the eligibility criteria vis-à-vis the Pay Scale in fact requires the officer to be in the Pay Scale of Rs. 51300-73000 (pre-revised) and revised to Rs.120000-280000, as on 01.01.2017. The undisputed fact which cannot be overlooked by the Court is that the Petitioner was in the (pre-revised) Pay Scale of Rs.51300-73000, but that was only on account of his appointment as General Manager (HR) on ex-cadre basis. As per the Circulars cited by Mr. Rai dated 10.04.2015 and 09.03.2016 and even otherwise, under law, once a person is appointed to a post on ex-cadre basis, he is liable to reversion to his substantive post and on such reversion he would only be entitled to protection of pay. Therefore, it cannot be argued by the Petitioner that substantive post of the Petitioner was that of GM (HR) or that he is the holder of a post having the Pay Scale of Rs.51300-73000 (pre-revised). Petitioner continues to be in the pre-revised Pay Scale of Rs.43200-66000, revised Pay Scale Rs.100000-260000, in substantive post of Joint General Manager (ATM) and only with protection of pay in the Pay Scale of the General Manager (HR). In fact Mr. Rai had also submitted that the appointment of the Petitioner on the post which he currently holds, was also on the basis of his being Joint General Manager (ATM) and at the end of the current tenure the Petitioner would continue serving as JGM.

22. In view of the above, this Court is not persuaded by the Petitioner to hold that the Petitioner is eligible for being appointed to the post of

Member (ANS), in terms of the advertisement dated 20.02.2020, as claimed by the Petitioner.

23. There is no merit in the petition. The same along with pending application is accordingly dismissed.

24. No order as to costs.

JYOTI SINGH, J

OCTOBER 14, 2020 /yg/yo

