

\$~

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

%

Reserved on : January 24, 2020

Decided on : February 26, 2020

+

W.P.(C) 9687/2019 & CM APPL. 40006/2019

DHANANJAY KUMAR MISHRA AND ORS. Petitioners

Through Mr. Shashank Raj Singh, Mr.Syed
Rizwan Ahmed Nasur, Mr. Md.
Waquas and Mr.Adil Sarfuddin,
Advocates.

versus

AIRPORTS AUTHORITY OF INDIA AND ANR. Respondents

Through Mr. K.K. Rai, Sr. Advocate with
Mr.Aman Yadav, Mr.Dig Vijay Rai,
Mr. D.P.S. Rajesh, Mr.Sreoshi
Chatterjee, Mr.Anshul Rai and
Mr.Ram Krishna Virender,
Advocates for AAI.

Ms. Anajana Gosain, Ms. Himanshi,
Ms.Shalini Nair and Ms.Rupali
Kapoor, Govt. Pleader for R-2.

+

W.P.(C) 9716/2019 & CM APPL. 40094/2019

ARVIND KEWART

..... Petitioner

Through Mr. Biraja Mahapatra and Mr.Sumit
Mishra, Advocates.

versus

AIRPORT AUTHORITY OF INDIA

..... Respondent

Through Mr. K.K. Rai, Sr. Advocate with
Mr.Aman Yadav, Mr.Dig Vijay Rai,
Mr. D.P.S. Rajesh, Mr. Sreoshi
Chatterjee, Mr.Anshul Rai and
Mr.Ram Krishna Virender,
Advocates.

+ **W.P.(C) 10697/2019 & CM APPL. 44210/2019**

ANAND KUMAR

..... Petitioner

Through: Mr. M.K. Bhardwaj with Mr.Prabjot
and Mr. Akash Dahiya, Advs.

versus

AIRPORT AUTHORITY OF INDIA & ANR

..... Respondents

Through: Mr. Digvijay Rai and Mr. Aman
Yadav, Advs. for AAI.

+ **W.P.(C) 12124/2019 & CM APPL. 49665/2019, 50774/2019 &
51569/2019**

V S JAYALAKSHMI

..... Petitioner

Through: Mr. P.A. Noor Muhammed, Adv.

versus

AIRPORTS AUTHORITY OF INDIA & ORS

..... Respondents

Through: Mr. Digvijay Rai and Mr.Aman
Yadav, Advocates for R-1.

Ms. Anjana Gosain and Mr.R.M.
Tripathi, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J.

All the four writ petitions viz. W.P.(C) 9687/2019, 9716/2019, 10697/2019 and 12124/2019 are taken up together as these invite consideration on common questions of facts and law. For the sake of brevity, the petitioners in W.P.(C) 9687/2019 shall be referred to as 'Dhananjay & Ors', and, the petitioners in the three other petitions shall be referred to as 'Arvind', 'Anand' and 'Jayalakshmi', respectively.

2. The petitioners are aggrieved of the fact that on the on-line applications made by them for being appointed to the post of Manager (Electronics) against the Advertisement No.02/2018 in short 'the Advertisement', issued by the Airport Authority of India in short 'AAI', though, they had qualified the on-line CBT examination conducted by AAI and were so eligible to be interviewed for the selection, their names appeared in the list of ineligible candidates. On the representations made there-against, AAI did not respond positively. It resulted into filing of the instant petitions.

3. The relevant facts emerging from the record are that the respondent—AAI, a Public Sector Enterprise, had issued the advertisement inviting applications for appointment from eligible candidates to various posts

including the post of Manager (Electronics). In view of the fact that the instant petitions relate to the post of Manager (Electronics), the advertence to the invitation for other posts is not called for. For the post of Manager (Electronics), the stipulated minimum qualification was '*Full time regular B.E. / B. Tech. Degree in Electronics / Telecommunications / Electrical with specialization in Electronics*'. In addition thereto, it stipulated '*5 years work experience in Executive cadre in the field of Electronics and Telecommunications*'. Relevant to the subject, it was also stipulated that the candidates from private sector should be drawing minimum CTC of Rs.11 lacs p.a. as on cut-off date i.e. 30.06.2018. The number of vacancies to be filled for the said post was 324, which could be increased or decreased at the sole discretion of AAI.

4. The issue agitated in the instant petitions is not as regards the minimum qualifications but for their experience as stipulated in the advertisement and the co-related stipulation for the candidates of private sector applying for the post of Managers in various disciplines to be drawing minimum cost to company—CTC of Rs.11 lacs p.a. as on cut-off date i.e. 30.06.2018. None of the petitioners were drawing minimum CTC of Rs.11 lacs p.a. as on the cut-off date being not in dispute, the issue agitated before the Court revolves around the criterion of experience. Though, Jayalakshmi, who, undisputedly was employed with private sector, was not drawing Rs.11 lacs p.a. CTC as on 30.06.2018, according to her, she fulfilled such stipulation on the date of verification of documents, and, therefore, in view of the other issues agitated by her as regards the constitutionality of the given stipulations of experience, she was also

eligible to be considered for the given post. In other words, whether the petitioners—Dhananjay & Ors., Arvind and Anand fulfilled the pre-dominant stipulation of experience for having five years' work experience in Executive Cadre in the field of Electronics and Telecommunication, and, whether the 11 Lac CTC criterion for private sector employees is unconstitutional, are the moot questions for consideration before the Court.

5. At the relevant time, according to the petitioners, they possessed requisite experience, as under:

Petitioner Nos.	Name	Organization	Work Experience
1	Dhananjay Mishra	1. Engineering Projects India Ltd.	4 Years 3 Months
		2.BHEL	2 Years 6 Months
2	Vikash Kumar	Air India Air Transport Services Limited	6 Years 5 Months 17 Days
3	Neha Chouhan	Air India Air Transport service Ltd	6 Years 8 Months 30 Days
4	Rigvendra Kumar Vardhan	National Institute of Ocean Technology	5 Months 25 Days
		Combat Vehicles Res. & Dev. Estt., DRDO (Central Govt.)	1 Year 11 Months 21 Days
		BRG Iron and Steel Pvt Ltd.	2 Years 11 Month 12 Days
5	Yashwant Kumar	1.RailTel Corporation of India Limited	4 Years 3 Months 14 Days
		2.Narula Infra Pvt Ltd	11 Months 2 Days
		3.Elblag Technology Pvt Ltd	7 Months 27 Days
6	Naveen Kr Saluja	Air India Transport service	6 Years 7 Months 28 Days
7	Saritha TS	Kerala State	7 Years 9 Months 8 Days

		Electronics Development Corporation Limited	(as on 19.05.2019)
8	Prateek Bisht	Air India Air Transport Services Limited	6 Years 8 Months 16 Days
9	Anurag Jain	Centre for Development of Advanced Computing (C-DAC)	7 Months 17 Days; 7 Months; 3 Years 9 Months 12 Days; 1 Year 5 Months 27 Days
10	Arvind Kewart [W.P.(C) 9716/2019]	ITI Ltd	3 Years
		Broadcast Engineering Consultants India Limited (BECIL)	3 Years 01 Month
11	Anand Kumar [W.P.(C) 10697/2019]	AAI	1 Year 09 Months 25 Days
		Centre for Development of Advanced Computing (C-DAC)	1 Year 07 Months 18 Days
		Galgotias College of Engg. and Technology	3 Years 10 Months 30 Days
		College of Engineering Roorkee	1 Year 5 Months 30 Days
12.	V.S. Jayalakshmi	L&T Technology Service	1 Year 5 Months 19 Days.
		Ashok Leyland	4 Years 5 Months 16 Days

6. But for Jayalakshmi, the other petitioners assert that though they were working on contract and/or ad-hoc basis in Government/PSU/ Autonomous Bodies and were not drawing their salaries as per the regular pay-scale, they qualified the stipulated condition of experience inasmuch as the experience gained by them working with Government/ PSU/ Autonomous Bodies on contract and/or ad-hoc basis met the stipulated condition of experience. It is their plea that every Government organization/ PSU/Government Sector Undertaking in the present scenario hires technical and administrative manpower on direct contract basis in their Executive

grade depending on its financial condition, need and status of work for the defined period of years, which, regularly gets extended. To supplement such a plea, the petitioners advert to the instances with National High Speed Rail Corporation, Delhi Metro Rail Corporation, Central Electronics Limited etc., where, the Engineers were appointed on E-2/E-3 Scale on direct contract basis for defined periods. Thus, according to them their candidature being rejected on the ground that they do not fall within the Executive Cadre was erroneous. In addition thereto, according to them, their candidature having been duly considered, when they were allowed to appear for the on-line examination, AAI was estopped from challenging their credentials at a later stage inasmuch as it would amount to changing the rules of the game. Arvind, also asserts that he has been working with ITI Ltd. as a Project Engineer and presently working with BECIL– Broadcast Engineering Consultant India Limited as an Asst. Director and both such companies being the Government Enterprises – which fell within the meaning of State as enshrined under Article 12 of the Constitution of India, his such experience could not be treated to be as that of a private sector and therefore, he could not be declared ineligible on account of his income being less than Rs.11 lac CTC. As for Anand, it is his case that he joined AAI as Junior Executive on 05.09.2016 and prior thereto, he was employed with College of Engineering, Roorkee as Lecturer w.e.f. 01.08.2009 to 31.01.2011; with Galgotias College of Engineering and Technology, Greater Noida as Assistant Professor w.e.f. 01.02.2011 to 31.12.2014; with C-DAC Noida as Project Engineer w.e.f. 08.01.2015 to 26.08.2016; and, with AAI as Junior Executive w.e.f. 05.09.2016 till the cut-off date i.e. 30.06.2018. It is his plea that the posts of Junior Executive,

Assistant Professor and Lecturer so occupied by him were Executive Posts. In support of such plea, he places reliance on communication No.1-7/2015-U.II(1) dated 02.11.2017 issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education and the Government of India notification dated 28.09.2008 to contend that he had the experience of working in a Group 'A' post having pay scale of Rs.15,600 - 39,100 with grade pay of Rs.6,000/- (Academic Grade Pay), which was higher than the pay-scale provided to the Executive posts with AAI. Thus, according to him, he could not be treated for not having an Executive Cadre post experience. Jayalakshmi, who has more than 5 years work experience with private sectors assails the very criterion of minimum CTC of Rs.11 lacs p.a. laid for a public service post. According to her, such a stipulation was against public policy and violative of her fundamental rights enshrined under Articles 13(2), 14, 16, 19(1)(g), 19(6) and 21 of the Constitution of India. It is also her plea that as on the date of verification of the documents after the on-line examination, she was drawing a CTC of more than Rs.11 lacs p.a. and it was so also communicated to AAI vide her letter dated 27.05.2019 and therefore also, her being not considered for the given post, was unconstitutional and illegal.

7. According to AAI, none of the petitioners had worked in the Executive Cadre nor were they drawing minimum CTC of Rs.11 lacs p.a. as on the cut-off date i.e. 30.06.2018 and therefore, none of them were eligible for appointment to the given post. AAI also asserts that there was no alteration / amendment of the mandatory conditions stipulated in the advertisement inviting applications to the given post, and, the details sought

by it from the candidates after the declaration of the results of on-line CBT examination as regards the candidates working in private sector / on contract or ad-hoc (not working in regular scale in Government / PSU / Autonomous Bodies) was only to filter such candidates, who were ineligible i.e. those of the candidates who did not have 5 years' experience in Executive Cadre in the field of Electronics and Telecommunication, or, if, working in private sector, were not drawing minimum CTC of Rs.11 lacs p.a. as on the cut-off date i.e. 30.06.2018. In support of such plea, AAI also adverts to 7th CPC pay levels w.e.f. 01.01.2016, which provides for a minimum pay in the Executive Cadre at Rs.35,400/- p.m. for the Central Government employees, and, as per OM dated 03.08.2007 of the Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, Govt. of India, for an employee of public sector to be Rs.40,000 - 1,40,000 w.e.f. 01.01.2017. In doing so, AAI submits that none of the petitioners was earning a monthly salary of Rs.55,000/- p.m. and therefore, none of them could be said to be working in the Executive Cadre for a period of 5 years in consonance with the terms and conditions for appointment to the given post. To draw strength to such plea, it also comes to be contended that the pre-revised basic salary as per the 6th CPC w.e.f. 01.01.2006 was Rs.9,300 - 34,800 for the Central Government employees and for the PSUs it was Rs.16,400 - 40,500. Thus, according to AAI, neither as per the pre-revised pay-scale nor the revised, any of the petitioners could be treated to be having 5 years' experience in the Executive Cadre. As for Anand, AAI takes the plea that the work experience of Anand as a Lecturer and Assistant Professor does not qualify as an experience in the Executive Cadre post inasmuch as he was working

on contract basis and on private employment. As for Jayalakshmi, AAI pleads that an employer has the liberty to set out the qualifications, experience and other conditions of service on the basis of which he wants to hire/employ people. Also, according to AAI, any such challenge was not tenable inasmuch as the challenge has so come to be made only after rejection of her candidature having participated in the process of selection, and her qualifying the condition of Rs.11 lacs CTC p.a. after the cut-off date of 30.06.2018 did not validate her candidature.

8. In the rejoinder filed by Dhananjay & Ors., it comes to be stated that as regards the petitioner no.1–Dhananjay Kumar Mishra, AAI admits that he was in Executive Cadre as an Asst. Manager (Electronics & Communication), though, on contract basis, and, that as per the check-lists prepared by the officials of the HR Department of AAI, they were found to be fulfilling the minimum 5 years work experience in the Executive post. In addition thereto, in their rejoinder, they also point out the instance of one Mr.Anurag Kumar having 4 years experience on the post of Junior Executive–Technical with Air India Air Transport Services Limited, having been invited for interview. Citing such an instance, the experience of the petitioner nos.2, 3, 6 & 8 in the case of Dhananjay & Ors., is sought to be considered. In the rejoinder, Dhananjay Kumar & Ors. also assert that three of the persons namely, Mr. Anurag Kumar, Ms. Pragya Patel and Mr.Arun Kumar, were similarly placed as the petitioners and were entertained by AAI for interview. Anand, in the rejoinder has also taken the plea that his basic pay was more than the Executive Posts with AAI and he also had the experience of working in Group 'A' post in the scale of Rs.15,600-39,100

with grade pay of Rs.6,000/- (Academic Grade pay). In addition thereto, he also points out the instances of candidates working with BSNL, who were having general experience in the field of electronics and communication, having been called for interview by AAI. Jayalakshmi, in the rejoinder, states that even though the employer has the liberty to set out qualifications, experience(s) and other conditions but it cannot be whimsical for a public post. It is thus her plea that condition of 11 Lacs CTC p.a. was arbitrary and not in public interest. In support of such pleas reliance is placed on '*State of Bihar and others vs Project Uchcha Vidya, Sikshak Sangh and Ors*' (2006) 2 SCC 545 and '*Nawabkhan Abbaskhan vs The State of Gujarat*' (1974) 2 SCC 121.

9. In the submissions of Mr. Singh, Id. counsel for Dhananjay & Ors., the subject petitioners, who were working in different Government Organizations, had the requisite Executive experience as defined by their parent Government Organizations with which were working. According to him, it was so accepted by AAI, when the said petitioners found their place in the merit list on CBT on-line test having been conducted as prescribed in the advertisement. It also comes to be pointed that as per the check-lists prepared by the office of AAI, they were found to be having the requisite experience in the Executive Cadre. It is also his contention that the subject petitioners, who were working on contract basis in different Government Organizations and found merited on the CBT on-line test could not be considered unfavourably as against the regular employees. In addition thereto, in his submissions, AAI had brought in a change/addition in the eligibility criterion after conducting the CBT on-line test, and, therefore,

such action was not sustainable and hit by principles of estoppel. In support of such submissions, reliance is placed on '**Maharashtra State Road Transport Corporation vs. Rajendra Bhimrao Mandve**' MANU/SC/0737/2001.

10. In the submissions of Mr. Mahapatra, Id. counsel for Arvind, AAI has erred in interpreting the condition of 5 years' work experience in Executive Cadre and the reliance placed on the judgment in W.P.(C) 8326/2005 '**Umesh Verma vs. The Chairman/Managing Director National Thermal Power Corporation Ltd.**' was misplaced. In his submissions, the word 'Executive' as per Webster's dictionary means '*a person or a group of persons having administrative or supervisory authority, as in a company; 2. the person or persons in whom the supreme executive power of a Government is vested; 3. The executive branch of a Government—adj.; 4. of, pertaining to, or suited for carrying out plans, duties etc.; executive ability.....*' His such submissions have been in addition to the submissions made by the Id. counsel for the petitioners in Dhananjay & Ors.

11. In the submissions of Mr. Bhardwaj, Id. counsel for Anand, Anand met the requisite eligibility criterion of having 5 years' work experience in the Executive post inasmuch as the Executive Cadre includes all the discipline viz. technical, operational, law, CA and CS etc. and as per the pay-scale drawn by Anand, who had served as Junior Executive, Lecturer and Asst. Professor for more than 5 years in the higher pay-scale of Rs.16,400-40,500 as against the pay-scale of Rs.12,600-32,500, he fulfilled the eligibility criterion of having 5 years' work experience in the Executive Cadre. It is also his contention that the advertisement nowhere prescribed

that the experience was required to be gained in Government College / Institute and therefore, it was not open to AAI to insist for experience in a Government Organization. As for the connotation and the meaning of Cadre, in his submissions, a Cadre would ordinarily mean strength of a service or a part of service so determined and therefore, the expression "Executive Cadre", as stated to in the advertisement has to be understood to imply that the concerned person must have gained experience at a higher level inasmuch as the object to be achieved in prescribing eligibility criterion is to have such persons who have experience of working at a higher level (Executive Cadre), and, such eligibility criterion has no concern with the organized service or cadre etc. In support of such submissions, he placed reliance upon '*Dr. Asim Kumar Bose vs. UOI & Ors.*' (1983) 1 SCC 345 and '*Ran Singh Malik vs. State of Haryana & Ors.*' (2002) 3 SCC 182.

12. In the submissions of Mr. Muhammed, Id. counsel for Jayalakshmi, the condition of 'Not less than Rs.11 lacs CTC p.a.' was unconstitutional being violative of Articles 13(2), 14, 16, 19(1)(g) of the Constitution being unjust, unfair etc. In his submissions, the fundamental right to carry on any occupation can be restricted only reasonably as contemplated under Article 16 of the Constitution and in the absence of any law prescribing the requirement of 'Not less than Rs.11 lacs CTC p.a.' it was not sustainable and such stipulation was liable to be quashed. Similarly, adverting to Articles 13(2), 14 and 16(1) it was contended by him that the stipulation of not less than Rs.11 lacs CTC p.a. for the persons from private sector was violative of Articles 13(2), 14, 16(1) and 19 of the Constitution and that

such stipulation does not serve any purpose for a public service. In support of such submissions, reliance is placed on '*State of Bihar & Ors vs. Project Uchcha Vidya*' (2006) 2 SCC 545; '*State of W.B. vs. Debasish Mukherjee*' (2011) 14 SCC 187; '*Express Newspapers (P) Ltd. vs. Union of India*' (1986) 1 SCC 133; '*Prabodh Verma vs. State of UP*' (1984) 4 SCC 251; '*Nawabkhan vs. State of Gujarat*' (1974) 2 SCC 121; '*Nar Singh Pal vs. UOI*' (2000) 3 SCC 588 and '*Ramchandra Shankar Deodhar vs. State of Maharashtra*' (1974) 1 SCC 317.

13. In the submissions of Mr. Rai, Id. Sr. Counsel for AAI appearing in the cases other than that of Jayalakshmi, none of the petitioners was borne on the Cadre of a Public Sector Undertaking and their CTC being less than Rs.11 lacs p.a. on the cut-off date, they were ineligible for appointment to the given post. In support of such submissions, Mr. Rai submitted out that the said petitioners had worked as contractual employees rather than the regular employees of any of the PSUs. It however came to be pointed out by him that the criterion of Rs.11 lacs CTC p.a. was forming part of the conditions incorporated in the advertisement inviting applications since inception and no rule of game had come to be changed later. In his submissions, a contractual employee is neither on the strength of service nor against a sanctioned post and therefore, when it came to be ascertained that the subject petitioners did not fulfill the eligibility criterion of Rs.11 lacs CTC p.a., the process of their selection was halted and therefore, the action of AAI could not be faulted. In his submissions, the word '*Cadre*' has a distinctive connotation to mean 'strength of service or a part of service sanctioned as a separate unit'. In support of such submissions, Mr. Rai

placed reliance on the judgment of a Id. Single Judge of this Court in '*Umesh Verma*' (supra) and '*Dr. Chakradhar Paswan vs. State of Bihar*' (1988) 2 SCC 214. It also came to be submitted by him that the petitioners having participated in the selection process by appearing for written test could not turn around later and question the specifications given in the advertisement for selection to the given post. It was also his contention that the *rule of contemporanea expositio* commands due deference to the Executive interpretation and the word '*Cadre*' as understood by the employer is the plausible view and therefore, the subject petitioners being not borne on a PSU cadre did not qualify for the given post. In support of such submission, the reliance was placed on '*Dhananjay Malik vs. State of Uttaranchal*' (2008) 4 SCC 171; and '*Rohitash Kumar vs. Om Prakash Sharma*' (2013) 11 SCC 451. Placing reliance upon '*Zonal Manager, Bank of India, Zonal Office, Kochi vs. Aarya K. Babu*' (2019) 8 SCC 587, it was also contended that the equivalence is never supplied by the Courts unless the rules provide for themselves. Even as per the existing and the revised pay-scale of Executive Cadre, which was Rs.16,400-40,500 and revised to Rs.40,000-1,40,000, the petitioners could not be treated at par with the Executive Cadre and even on that count, they were ineligible. Similar submissions came to be made by the counsel for AAI appearing in Jayalakshmi's case.

14. On facts, as per the list of not eligible candidates published by AAI, it can be outrightly observed that from amongst the 12 petitioners, Anand was declared ineligible with the remark 'less than 5 years' experience as

Executive Cadre', while others were declared ineligible with the remark 'less than 11 lacs CTC'.

15. Were the grounds valid to declare the petitioners—who had the five years experience in the subject discipline, ineligible, is the moot question for consideration before the Court. The issues agitated by the parties to find answer to the given question unequivocally and first of all, invite interpretation or implication of the term 'Executive Cadre' inasmuch as the advertisement inviting applications for the given post by itself does not define or explain the meaning thereof nor the AAI on its part has sought to advert to any of its rules and regulations for recruitment either in the counter-affidavit or the written submissions filed on its behalf.

16. The interpretation of the term 'Executive Cadre' as provided for in the advertisement inviting applications for selection and appointment to the given post, in the considered opinion of the Court, has to be seen in the context of an offer to a public service rather than private service inasmuch as AAI is the creation of a Central legislation namely, 'the Airports Authority of India Act, 1994' in short 'the Act, 1994' and it emerges, this statutory body, with the approval of the Central Government, has notified the Regulations namely, the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 in short 'the Regulations, 2003' in exercise of the powers conferred by Clause (b) of sub-Section (2) of Section 42 of the Act, 1994. It also emerges that subsequent to the framing of the Regulations, 2003, the Board of AAI approved the Regulations called the Airports Authority of India (Recruitment and Promotion) Regulations, 2005 in short 'the proposed

Regulations, 2005', but, it appears, the same are not yet approved by the Central Government and published in the Official Gazette to have the statutory force. Let it be so. The advertence to the proposed Regulations, 2005 would be of importance to take note of inasmuch as the interpretation or the implication of the expression 'Executive Cadre' as finds mention in the advertisement invites consideration.

17. Before, one proceeds further, it would be of relevance to advert to the notified Regulations, 2003 which prescribe the designations of Non-Executives and Executives and their pay-scales. It may be noted that these Regulations, 2003 by itself do not define the expressions like 'Executive Posts', 'Non-Executive Posts', 'Posts' etc., which the proposed Regulations, 2005 provide for. Regulation (4) of the Regulations, 2003 is as under:

"4. **Designations of Non-Executives and Executives and the Pay scales.**—The employees are further categorized as Executives and Non-Executives. The existing designations of Non-Executives and Executives and their pay scales in the Airports Authority of India effective from 01.01.1997 are as follows, namely:-

(1) **NON-EXECUTIVES**

<u>LEVEL</u>	<u>DESIGNATION</u>	<u>PAY SCALES (In Rs.)</u>	<u>GROUP</u>
NE-1	Junior Attendant or equivalent	4400-75-5300-90-6920	} "D"
NE-2	Attendant or equivalent	4900-95-6040-110-8020	
NE-3	Senior Attendant or equivalent	5300-115-6680-135-9110	
NE-4	Junior Assistant or equivalent	5500-140-7180-160-10060	} "C"
NE-5	Assistant or equivalent	5800-160-7720-180-10960	
NE-6	Senior Assistant or equivalent	6300-180-8460-200-12060	
NE-7	Supervisor or equivalent	6500-200-8900-220-12860	

NE-8	Superintendent or equivalent	7200-230-9960-250-14460}	"C"
NE-9	Senior Superintendent Equivalent	8000-260-11120-290-16340	} "B"
NE-10	Senior Superintendent (Special Grade) or equivalent	9000-300-18000	

(2) **EXECUTIVES**

<u>LEVEL</u>	<u>DESIGNATION</u>	<u>PAY SCALES (In Rs.)</u>	<u>GROUP</u>
E-1	Junior Executive or equivalent	8600-250-14600	} "B"
E-2	Assistant Manager or equivalent	10750-300-16750	
E-3	Manager or equivalent	13000-350-18250	} "A"
E-4	Senior Manager or equivalent	14500-350-18700	
E-5	Assistant General Manager or equivalent	16000-400-20800	} "A"
E-6	Deputy General Manager or equivalent	17500-400-22300	
E-7	Additional General Manager or equivalent	18500-450-23900	
E-8	General Manager or equivalent	20500-500-26500	
E-9	Executive Director or equivalent	23750-600-28550	

NOTE:-

1. The Authority shall have power to create posts of the description specified from time to time.
2. The Authority may from time to time determine the strength of staff, both permanent and temporary under the various categories, required for carrying-out its functions."

(emphasis supplied)

18. The Regulations, 2003 especially, the Regulation (4) thereof, does show that AAI had categorized the various posts in two categories viz.

Executive and Non-Executive posts level-wise with respective pay-scales provided thereagainst. In addition, it also provides for AAI to determine the strength of staff, both permanent and temporary, without any exception. In other words, AAI, when required, could vary the number of posts in any category, whether on permanent or temporary basis. This provision is clearly indicative of the fact that the strength of staff on any of the posts was not to be seen in the rigid standards of permanency like sanctioned posts or to say, regular posts, the standards of selection for any being the same.

19. The proposed Regulations, 2005 *inter alia* define the expressions 'Executive Posts'; 'Non-Executive Posts'; 'Permanent employee'; 'Post'; and 'Temporary Employee'. The said proposed Regulations also categorize the cadres / grades. In view thereof, before the Court adverts to the rival contentions made on behalf of the parties, it would be relevant to advert to the definitions of the foregoing expressions as provided for in the proposed Regulations, 2005, which, are as follows:

"2. DEFINITIONS:

In these Regulations, unless the context otherwise requires -

(a) to (l) xxx xxx xxx xxx

(m) **'Executive posts'** means the posts in the grade of Junior Executive & equivalent and above, upto the level of ED & equivalent.

(n) to (q) xxx xxx xxx xxx

(r) **"Non-Executive Posts"** means the posts in the grade of Jr. Attendant and equivalent and above, upto the level of Sr. Supdt. (SG);

(s) **"Permanent employee"** means an employee who has been appointed by the Authority against a post which has been

sanctioned and who has been confirmed after completion of probation period satisfactorily;

(t) '**Post**' means any post against which a person has been appointed on temporary or permanent basis or on Contract/Deputation;

(u) & (v) xxx xxx xxx xxx

(w) "**Temporary Employee**" means an employee who has been appointed by the Authority against a temporary post sanctioned for a specified period or appointed on temporary basis against a permanent post."

20. Relevant to the context, but for the definitions providing meaning to the expression 'Executive Posts'; 'Non-Executive Posts'; 'Permanent employee' Post; and 'Temporary Employee', the expression 'Executive Cadre' remains undefined even in the proposed Regulations, though, it comes to be so used in Regulations (4) & (6). Regulation (4) categorizes the posts in AAI Cadre/Grade wise, as follows:

"4. CATEGORISATION OF CADRES/GRADES

4.1 The posts in Authority are broadly categorized as Executive and Non-Executive and fall in the following groups/levels:

(i) **EXECUTIVES** :

<u>LEVEL</u>	<u>DESIGNATION</u>	<u>PAY SCALES (In Rs.)</u>	<u>GROUP</u>
E-1	Junior Executive & equivalent	8600-250-14600]	"B"
E-2	Assistant Manager & equivalent	10750-300-16750]	
E-3	Manager & equivalent	13000-350-18250]	
E-4	Senior Manager & equivalent	14500-350-18700]	
E-5	Senior Manager (SG) & equivalent	16000-400-20800]	"A"
E-6	Deputy General Manager & equivalent	17500-400-22300]	

E-7	Joint General Manager & equivalent	18500-450-23900]	
E-8	General Manager & equivalent	20500-500-26500]	"A"
E-9	Executive Director & equivalent	23750-600-28550]	

(ii) **NON-EXECUTIVES :**

<u>LEVEL</u>	<u>DESIGNATION</u>	<u>PAY SCALES (In Rs.)</u>	<u>GROUP</u>
NE-1	Junior Attendant & equivalent	4400-75-5300-90-6920]	
NE-2	Attendant & equivalent	4900-95-6040-110-8020]	"D"
NE-3	Senior Attendant & equivalent	5300-115-6680-135-9110]	
NE-4	Junior Assistant & equivalent	5500-140-7180-160-10060]	
NE-5	Assistant & equivalent	5800-160-7720-180-10960]	
NE-6	Senior Assistant & equivalent	6300-180-8460-200-12060]	"C"
NE-7	Supervisor & equivalent	6500-200-8900-220-12860]	
NE-8	Superintendent & equivalent	7200-230-9960-250-14460]	
NE-9	Senior Superintendent & equivalent	8000-260-11120-290-16340]	"B"
NE-10	Sr. Superintendent (SG) & equivalent.....	9000-300-18000]	
5.	xxx xxx	xxx xxx	xxx"

21. Regulation (6) of the proposed Regulations, 2005, which falls under its Section II and relates to Direct Recruitment and related matters, then, reads as follows:

"6. **INDUCTION LEVELS - DIRECT RECRUITMENT (DR) IN EXECUTIVE & NON-EXECUTIVE CADRES:**

6.1 Generally, the intake from outside the Authority through direct recruitment will be at the following levels called the induction levels:

(i) **EXECUTIVE CADRE :**

GR.	Level	Designation	%Age quota	Discipline	Qualifications
A	E-6	DGM	Upto	This is an	First class

		<i>& Equivt.</i>	<i>25%</i>	enabling provision and will be resorted to only when qualified/eligible candidates in the next below cadre of concerned discipline are not available for promotion.	<i>MBA/M.Tech./ B.E/B. Arch/ B.Tech./LLB OR equivalent, with relevant experience in the concerned discipline as prescribed for each discipline.</i>
<i>A</i>	<i>E-3</i>	<i>Mgr. & Equivt.</i>	<i>25%*</i>	<i>All disciplines</i>	<i>First class MBA/ B.Tech./ B.E. OR Professional Degree from a reputed Institute OR equivalent with relevant experience in the concerned discipline as prescribed for each discipline.</i>
<i>B</i>	<i>E-1</i>	<i>Junior Executive & Equivt.</i>	<i>75%**</i>	<i>Communication, ATC, Electronics, Engg.(Civil) & (Elect.) and other disciplines as per requirement</i>	<i>B.Tech/ B.E. OR equivalent/ MBA/ CA/ ICWA/ Professional Degree from A reputed Institute OR Equivalent."</i>

22. A perusal of the foregoing proposed Regulations, 2005 would show that the words 'Post' and 'Cadre' have come to be used there-under interchangeably. So are the words 'Cadres' and the 'Grades' used in the alternative in Regulation (4) of the proposed Regulations 2005 to signify the various posts of different level be it Executive or Non-Executive. The categorization of Cadres/Grades viz-a-viz the various posts as per the said Regulation by itself is also indicative that the term 'Cadre' or 'Grade' used are in context of the post rather than the strength thereof as also, irrespective of the fact as to whether such post(s) are being permanent or temporary. In the given context therefore, the word 'Cadre' used in the advertisement has to be given its literal meaning in the context, it is used. Suffice to say, the advertisement invited the applications from all eligible candidates including from the public sector. In '**Union of India vs. Pushpa Rani & Ors.**' (2008) 9 SCC 243, the Supreme Court advertent to the aspect of the meaning of the term 'Cadre' made the observations as follows:

"15. In the service jurisprudence which has developed in our country, no fixed meaning has been ascribed to the term "cadre". In different service rules framed under proviso to Article 309 of the Constitution as also rules framed in exercise of the powers of delegated legislation, the word "cadre" has been given different meaning.

*16. In **A.K. Subraman and Others vs. Union of India and Others** [1975 (1) SCC 319], a three Judges Bench of this Court while interpreting the provisions contained in Central Engineering Service, Class I, Recruitment Rules, 1954, observed as under:*

"The word "grade" has various shades of meaning in the service jurisprudence. It is sometimes used to denote a pay scale and sometimes a cadre. Here it is obviously used in the sense of cadre. A cadre may

consist only of permanent posts or sometimes, as is quite common these days, also of temporary posts."
(emphasis supplied)

17. In ***Dr. Chakradhar Paswan vs. State of Bihar and Others*** [1988 (2) SCC 214] it was observed as under:-

"In service jurisprudence, the term 'cadre' has a definite legal connotation. It is not synonymous with 'service'. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The posts of the Director and those of the Deputy Directors constitute different cadres of the service. The first vacancy in the cadre of Deputy Directors was that of the Deputy Director (Homoeopathic) and it had to be treated as unreserved, the second reserved and the third unreserved. Therefore, for the first vacancy of the Deputy Director (Homeopathic), a candidate belonging to the Scheduled Caste had therefore to compete with others."

18. In ***State of Maharashtra vs. Purshottam and Others*** [1996 (9) SCC 266], it was held that the "cadre" means unit of strength of a service or a part of it as determined by the employer."

23. The ratio of the judgments supra also makes it very clear that no definite meaning can be ascribed to the term 'Cadre' and taking note of the own Regulations framed and proposed by AAI, the Court does not find merit in the contention of Mr. Rai, Id. Counsel for AAI that the term 'Cadre'

has to be viewed strictly in the context of a regular or permanent post or to say, a sanctioned post only.

24. The Regulations, 2003 and the proposed Regulations, 2005 are also relevant to get the correct import of the term/expression 'Executive Cadre' used in the advertisement. The proposed Regulations, 2005, which have the approval of the Board of AAI, as regards the criterion of experience for selection to the given post—a direct selection post, do not even suggest for the required experience having to be only on a permanent or regular post. It only speaks of the experience in the concerned discipline as may be prescribed. Taking note thereof, and, the connotation of the term 'Cadre' to mean the strength of the service or a part thereof, and, which would include both permanent and temporary, the contention of Mr. Rai, Id. Sr. Counsel for AAI that the term 'Cadre' as used in the advertisement for selection to the given post implies exclusion of experience on contract basis, is without any valid foundation or justification. Even otherwise, what is so sacrosanct about it, AAI miserably fails to explain, equally. It would suffice to observe, the proposed Regulations, 2005 if not binding in the absence of the approval of the Central Government and the consequent notification thereof when the advertisement inviting applications for the given post came to be issued, at least, clearly state the requirements for the given post by AAI. Any situation, which creates ambiguity therefore, cannot be allowed. In the given factual conspectus, the reliance placed on '**Rohitash Kumar vs. Om Prakash Sharma**' (2013) 11 SCC 451 by Mr. Rai, Id. Sr. Counsel for AAI to invoke the '*rule of contemporanea expositio*' to contend that due deference is to be given to the Executive interpretation, is misplaced. In the

said context, it may only be said, the administrative view has to be within the conscience of law, which should not adversely affect a person or a class of persons on strict technicalities.

25. The petitioners, but for Jayalakshmi, as per their assertions, are working in Public Sector Undertakings/Enterprises and it emerges, most of them are Maha Ratna or Mini Ratna Government of India Enterprises or Undertakings alike AAI—which is conferred with the Mini Ratna Category-I status. In the given factual conspectus to underestimate or undervalue the calibre of the employees engaged by such other Government of India Enterprises/Undertakings even though on temporary or contractual basis would be unjustifiable inasmuch as they are also engaged to discharge the public duties and nothing else. In view thereof, why such persons, who are discharging public duties and have the requisite experience in the subject field/discipline while working in such Public Sector Enterprises/Undertakings and hold an Executive post, be excluded or be declared ineligible only on the premise of having gained experience on being engaged on contract basis rather than being engaged on permanent or temporary basis, cannot be understood. Actually, it loses significance. In any case, they cannot be treated to be at par with the Private Sector employees to attract the stipulation of drawing minimum CTC of Rs.11 lacs p.a. as on the cut-off date and be declared ineligible on such count.

26. To have better understanding of the true import of the term 'Executive Cadre' used in the advertisement, one may also advert to Regulation (4) of the Regulations, 2003 and/or the proposed Regulations, 2005 inasmuch as these are the own Regulations of AAI and reflect its

conscience on the given subject. These Regulations broadly categorise the posts in AAI in two categories viz. Executive and Non-Executive. As per these Regulations, the Executive posts begin with the post of Junior Executive **and equivalent** with pay-scale of Rs.8,600-250-14,600 (level - E1) and go upto the post of Executive Director **and equivalent** in the pay-scale of Rs.23,750-600-28,550 (level - E9). Such classification of posts by AAI by itself shows that the posts of Junior Executive **and equivalent thereof** upto the level of Executive Director and equivalent, to be correlated with the pay-scales attached thereto, form the respective cadres. In view thereof, the petitioners, who are working in Government of India Enterprises/Undertakings and have the minimum 5 years' work experience in the required discipline, being declared ineligible on the premise of not drawing minimum CTC of 11 lacs p.a., which is a stipulation for private sector candidates, without any consideration of their such material credentials of gaining experience on an Executive post or not, in the considered opinion of the Court, is wholly unjustifiable. Suffice to say, as per the impugned list of not eligible candidates for the post of Manager (Electronics), which forms part of the petitions of Dhananjay & Ors. and Arvind, as Annexures 'P-5' and 'P-10' respectively, they were declared ineligible only on account of 'less than 11 lacs CTC' and nothing else. Such decision, the Court has no hesitation to observe, is wholly erroneous. Though, in the submissions of Mr. Rai, the said petitioners do not qualify to be considered in the Executive Cadre in the absence of the required pay-scale they should have had, such submission of Mr. Rai is unfounded. It is not the ground given in the impugned list for their rejection. Even the affidavits filed by AAI do not say so. The short affidavit dated 18.09.2019

and the counter-affidavit dated 14.10.2019 filed by AAI, would show that the only ground for declaring the petitioners ineligible was that they were not drawing 11 lacs CTC, which was the criterion laid for the employees of private sector rather than for Government, Semi-Government or Public Sector Undertakings/Enterprises. For instance, as for the petitioner no.1–Dhananjay Kumar Mishra, the AAI in its counter-affidavit, does not dispute that he was working in the Executive Cadre. Relevant to the context, para 1(a) of the preliminary submissions in the counter-affidavit of AAI, reads, as under:

"The Petitioner no.1 joined Engineering Projects (India) Ltd., on 10.02.2015 in Executive Cadre as Assistant Manager (Electronics and Communication) on contract basis and the basic pay of the Petitioner was Rs.18,480/- as on 17.05.2019 in the pay scale of (Rs. 16,400 – 40,500/-) Grade E-1 and as per the pay slip for April, 2019, the gross salary of the Petitioner No.1 was Rs.55,699/-."

In AAI, the Executive posts begin with the post of Junior Executive and equivalent with pay-scale of Rs.8,600-250-14,600 (Level E-1) and, undisputedly, Dhananjay Kr. Mishra was in Executive Cadre. In the given factual conspectus, the AAI cannot derive any advantage from the decision of the Id. Single Judge of this Court in **Umesh Verma's** case (supra). In that case, the petitioner had failed to appear to make any submissions and from the material on record, the Court noted that in Central Government the Executive Cadre commences from a pay-scale of Rs.6,500-10,500/- and in N.T.P.C.–where the said petitioner was seeking employment, commenced at Rs.10,700-15,750/-, whereas, while working as an Engineering Asstt. with Doordarshan, his pay-scale was Rs.5000-8000/-, and therefore, the

said petitioner could not have been placed in the Executive Cadre with Doordarshan.

27. As for the plea raised on behalf of Dhananjay & Ors that three of the persons namely, Anurag Kumar, Pragya Patel and Arun Kumar, who were not having the requisite minimum 5 years' experience were invited by AAI for interview, whereas, few of the petitioners similarly placed were not, and therefore, the similarly placed persons are required to be treated equally, the plea so raised is misconceived. No legal right flows on negative equality.

28. As regards the contention of Mr. Bhardwaj that those of the candidates, who are working in the capacity of Professors/Lecturers etc. also fall within the Executive category, in the considered view of the Court, is well merited. As long as the criterion of work experience in Executive post is fulfilled, it does not matter as to the other background of gaining such experience unless the Regulations of the AAI specifically prescribe so.

29. Jayalakshmi, undisputedly, did not fulfill the condition of 'Not less than 11 lacs CTC p.a.' while working in a private sector. Her being declared ineligible for selection to the given post therefore, cannot be faulted with. As for her plea that as on the date of verification of documents after the on-line examination, she was drawing a CTC of more than Rs.11 lacs p.a., would not make any difference. As per stipulation laid down in the advertisement inviting applications, she undisputedly, did not qualify. Allowing so, would actually tantamount to changing the rules of the game for selection to a public post and that is not permissible. It has been so held

by the Courts repeatedly. The Supreme Court in '**Union of India & Ors. vs. S. Vinodh Kumar & Ors.**' (2007) 8 SCC 100, reiterated as follows:

"18. It is also well-settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. [See Munindra Kumar and Ors. v. Rajiv Govil and Ors. MANU/SC/0372/1991 : (1991) IILLJ103SC]. [See also Rashmi Mishra v. Madhya Pradesh Public Service Commission and Ors. MANU/SC/8586/2006 : 2006(11)SCALES]."

Such is the *ratio decidendi* of the decision of the Supreme Court in '**Zonal Manager, Bank of India & Ors. vs. Aarya K. Babu & Ors.**' (2019) 8 SCC 587, relied on by Mr. Rai, Id. Senior Counsel for AAI.

30. It is also a matter of record that Jayalakshmi has approached the Court much after the other petitioners did. It is relevant to note and observe so in view of the fact that the grounds on which she now seeks the condition of 'Not less than 11 lacs CTC p.a.' being declared unconstitutional and being violative of Articles 13(2), 14, 16, 19(1)(g) of the Constitution being unjust, unfair etc. would not be available to her at this stage. Having participated in the selection process, it is not open to her to challenge the criterion laid at the time of inviting applications for appointment. It is not the case that any condition or criterion for selection has come to be changed midstream. Even otherwise, the stipulation of drawal of minimum CTC of Rs.11 lacs p.a. for the candidates coming from private sector, the Court, taking note of the pay scales of employees of Central Government and of the PSUs, especially, the AAI, does not consider it to be unreasonable,

unjust or unfair. Stipulation of the kind could be the just manner of filtering the candidates for consideration to the given post. What, according to the petitioner could be the fair criterion for consideration of the private sector employees, Jayalakshmi does not even suggest or indicate. In the given factual conspectus, the Court does not find any merit in the contention of Mr. Muhammed that the condition 'Not less than 11 lacs p.a. CTC for the private sector employees' for the given post was unjust, unfair, arbitrary or discriminatory and violative of Articles 13(2), 14, 16, 19(1) and 21 of the Constitution. Reliance placed on the judgments cited by him in the given facts and circumstances is therefore, misconceived and misplaced.

31. At this stage, it would be appropriate to be noted that hearing in the instant petitions concluded by 24.01.2020 and the matters were listed for pronouncement of judgments on 24.02.2020. On this day, the Airport Authority of India (Recruitment and Promotion), Regulations, 2020 in short 'Regulations, 2020' published on 12.02.2020 came to the notice of the Court and taking note thereof, the pronouncement was deferred. Having gone through the Regulations, 2020, it appears, the Regulations, 2005 have since got the approval of the Central Government and are so published as 'the Regulations, 2020'. The Regulations, 2020 as such do not bring about any change in the view already expressed by the Court.

32. For the foregoing reasons, the writ petitions are disposed of with the issuance of a Writ of Mandamus to the respondent-AAI to re-consider the candidature of the petitioners employed with Government, Semi-Government or Public Sector Undertakings/Enterprises and who fulfill the criterion of qualifications and the experience required for the post of

Manager (Electronics) in the light of the foregoing observations made by the Court within eight weeks from today. No order as to costs.

A. K. CHAWLA, J.

FEBRUARY 26, 2020

nn

