

FMA 826 of 2017

Ujjal Chattopadhyay
vs.
Airport's Authority of India & Ors.

Mr. B. N. Ray
Mr. S. Ray

... for appellant

Mr. Anup Kanti Poddar
Mr. Ayan Poddar
Ms. Moumi Yasmin

... for respondents

This appeal is up for hearing and disposal. Mr. Ray, learned advocate appears on behalf of appellant, who had his writ petition dismissed and is aggrieved. In it he had challenged report dated 27th July, 2015 of Grievance Redressal Committee (GRC), Airports Authority of India (AAI). On hearing Mr. Ray we understand that the main grievance was, appellant had not been promoted in time and therefore lost out on seniority, consequent upon merger of erstwhile International Airport Authority (IAA) and National Airport Authority (NAA).

Undisputed facts are, appellant joined NAA as fire operator on 26th July, 1986 at Non Executive level 5 (NE-5). The dispute is regarding his promotion and placement in NE-6 grade on completion of eight years of service, with effect from 1st August, 1995 and thereafter on regular basis as Senior Assistant (FS), grade NE-6 in cadre of fire service with effect from 1st July, 2002. Mr. Ray submits, his client is not disputing that regular basis promotion would be given on available vacancy. On query

we have ascertained that the order of promotion is dated 14th September, 2007 (page 70). It appears from said order that the promotion was result of restructuring of various cadres and in accordance with guidelines contained in several letters. However, in impugned report GRC appears to have accepted that the promotion was one on regular basis and given against vacancy.

Mr. Ray draws attention to a chart, disclosed as annexure P-15 in paragraph 35 of the writ petition. Appellant had said, the chart is a comparison showing, inter alia, differences of promotional advancement between petitioner and senior most employee amongst all incumbents junior to him. He points out, the person with whom compared, has later initial date of joining. However, promotion under the scheme was given to compared person and thereafter petitioner was left far behind. We have looked at paragraph 22 in the affidavit-in-opposition, dealing with statements made in paragraph 35 of the writ petition. Paragraph 22 in the affidavit-in-opposition is reproduced below.

“With reference to the statements made in para 32 to 35 I deny the contention made therein as his representation has been duly dealt and observation of the Grievance Committee is on record of the Hon’ble Court.”

We enquired of Mr. Ray regarding basis of promotion, whether it could also be on merit? He submits, training had to be undertaken and upon successfully undergoing training, promotion is on basis of seniority. His client successfully completed the training. He submits, the

comparison was made in relying upon common seniority list. The list is disclosed at page 98 of paper book. Serial 21 is in respect of the person compared. His first promotion was obtained on 4th July, 1998. This was promotion to (NE-6 Grade). Said person thereafter got promotion to (NE-9) on 17th October, 2001. The person was next promoted to post of Assistant Manager (F/S) (E-2), on 1st May, 2007.

On above facts, he relies on Airports Authority of India Act, 1994. He submits, the Authority was constituted by notification, to make appointed day as 1st April, 1995. Keeping that in mind, section 18 of the Act makes employees of erstwhile IAA and NAA, other employees of Airports Authority of India, referred to as Authority in the section. All other employees transferred to the Authority shall be governed by the rules and regulations made by the Authority, in respect of their service conditions. There is no dispute that the one year or thereafter extended period, if extended, does not apply to appellant or the person compared. In this situation, GRC was clearly wrong in dealing with his clients grievances.

The grievances were firstly, he should have been given promotion to post of Senior Assistant (F/S) (NE-6 Grade) with effect from 1st August, 1995, on completing 8 years service. His second grievance was for recasting final seniority list prepared and published in respect of post of Senior Assistant (F/S) as in year 2005. His third grievance

was non-grant of increment for acquiring L.L.B. qualification.

Mr. Poddar, learned advocate appearing on behalf of respondents draws attention to Flexible Complimentary Scheme (FCS) at page 180 of the paper book. He submits, in clause (ii) under Part 'A' it has been said that in respect of group 'C' posts, these will be determined at respective units. Person compared was at a unit where there was vacancy, while appellant was at another where there was no vacancy.

He hands up office order dated 20th January, 1999 issued by Personnel Manager of International Airports Division under Airports Authority of India. A copy has been handed over to Mr. Ray. Name of person compared appears at serial 39 of the order. Information given is that on 1st July, 1996, the person was promoted on regular basis. Mr. Poddar clarifies that information regarding other employees appearing in the order on serials 1 to 45, except serials 38 and 39, were given promotion under FCS. Mr. Ray does not dispute this document and it is taken on record as additional evidence in the appeal, necessary to enable us to pass judgment.

Mr. Poddar reiterates his submission with reference to this office order. International Airports Division was separate from National Airports Division, though both Divisions were under the Authority. He points out that the Ministry of Civil Aviation vide its order dated 17th October, 2012 had directed date of merger, for

the purpose of determining seniority, to be first 1st February, 2005, being date on which common recruitment and promotion regulation in Airports Authority of India were implemented. Same has been said in the report of GRC, impugned in the writ petition.

We have carefully looked at impugned report on first grievance regarding date of effect of promotion to post of Senior Assistant (F/S) (NE-6 Grade) to be given effect from 1st August, 1995 on 8 years service, of appellant, completed by then, as required by FCS. GRC said appellant was given the promotion with effect from 1st August, 1995. This appears to be incorrect on scrutiny of final common seniority list, in which serial 83 is appellant and information given is that he got promotion to (NE-6 Grade) on 1st July, 2002. The report attributes regular promotion of appellant against vacancy as on this later date 1st July, 2002. The report, thereafter, says the regular promotion was pursuant to order dated 14th September, 2007, of restructuring. Said order is as follows:

“In accordance with the guidelines contained in CHQ letter No. PERS/MPP/1106/99/2005 dated 27th April, 2006, even No. 107 dated 15.03.2007, 31.05.2007 and 12.07.2007 regarding restructuring of various cadres of Engg., MT, E & M and Fire cadres etc, the under mentioned employees are promoted/placed in the respective cadres. The date of promotion/placement is also indicated against each.”

As such here we find GRC has taken the promotion, consequent to restructuring, as a regular

promotion, on availability of vacancy. Restructuring has its consequences. It is not unknown that employees get promotion as a consequence of restructuring. That, however, cannot be called promotion on regular basis, against available vacancy. Restructuring, we understand, was necessary because of the merger. What does appear is, appellant was not given promotion under the scheme (FCS) at all! It appears regular promotion never became available to him in that time. He did have a grievance. It follows that appellant's second grievance is also a good grievance.

On third grievance, Mr. Poddar relies on paragraph 12 in the affidavit-in-opposition. Sum and substance of the contention is that appellant did not apply for the incentive promptly. Furthermore, the improvement in his qualification was not relevant to the area of responsibilities, discharged in his post. Even if we accept contention of respondents, as in their affidavit, GRC by its report also did not find in favour of appellant on this grievance but on a different reason. The reason given is that circular dated 28th October, 1991 was applicable in his case. As per conditions stipulated in the circular, appellant was not eligible for even incentive of lump sum, as applicable then.

Our attention was drawn by Mr. Ray to letter dated 30th July, 2012, issued by General Manager (HR) of Airports Authority of India addressed to, inter alia, Regional Executive Director of the Authority, on special

increment upon acquiring higher qualification prior to 1st January, 2007. The fact is appellant acquired his L.L.B. degree long before that date. We quote contents of said letter below.

“Vide order No. A60011/69/2009-PP dated 25.03.2010 the grant of increment on acquiring higher qualification has been replaced with the grant of lump sum amount consequent to wage revision w.e.f. 01.01.2007.

2. Those employees who had acquired the higher qualification on or before 31.12.2006 and were not granted increment as per the then existing incentive scheme owing to the annual increment falling in the month of January, 2007, may be granted incentive increment on 31.12.2006 as applicable in the pre-revised scales of pay and their pay may be fixed on 01.01.2007 in the revised pay scales accordingly. However, wherever the lump sum incentive has already been granted, the amount shall be recovered/adjusted in one installment.

3. Any anomaly arising due to the merger of this additional increment will, however not be considered to be a case of pay anomaly.”

We find we are unable to sustain even this part of the report, on appellant's third grievance.

The report is set aside and quashed on reversing impugned order. GRC is directed to revisit appellant's grievances and report within six weeks from date of communication of this order. It will be open to the Committee to require appellant and any other to assist it in the exercise.

The appeal is allowed as above and disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)