

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

Reserved on : 06.01.2021
Pronounced on : 06.04.2021

+ **W.P.(C) 10150/2020**

TALLAPALLI SAIKRISHNA & ORS. ...Petitioners

Through: Mr. Joel and Mr. Keshav
Maheshwari, Advocates.

versus

UNION OF INDIA & ORS. ...Respondents

Through: Mr. Digvijay Rai and Mr.
Aman Yadav, Advocates for
R-1&3 (AAI).
Mr. Ruchir Mishra and Mr.
Mukesh Kumar Tiwari,
Advocates for R-2 (UOI).

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J.

1. The Petitioners, who are employees of Respondent No. 3 - Airport Authority of India (*hereinafter referred to as "AAI"*) and have preferred the present petition under Article 226 of the Constitution of India, 1950 as they are aggrieved by an advertisement dated 3rd July, 2018 (*hereinafter referred to as the "impugned advertisement"*) issued by the AAI for direct recruitment to the post of Manager (Electronics), contending that their promotional avenues for the said post, to which they are otherwise

eligible, are being curtailed. At the same time, they seek quashing of the Recruitment and Promotion Guidelines, 2005 (*hereinafter referred to as “2005 Guidelines”*) as well as a circular dated 18th July, 2016 (*hereinafter referred to as the “2016 Circular”*) of AAI. They also seek to challenge the legality of Section 6(1) of the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 (*hereinafter referred to as the “2003 Regulations”*) which, they claim, is liable to be quashed as being illegal, *ultra vires* and without any authority of law, on account of it being excessive delegation in contravention of the Airports Authority of India Act, 1994 (*hereinafter referred to as the “Act”*) as well as the Constitution.

Brief Facts

2. The legislative and regulatory framework leading to the filing of the present writ petition is as follows:

- i. AAI is a Public Sector Enterprise (‘PSE’) engaged in both airspace as well as on-ground civil aviation infrastructure. It provides engineering support required to the civil aviation industry through its Air Navigation Services wing (*hereinafter referred to as “ANS”*), which is further divided into the Communication, Navigation, and Surveillance (*hereinafter referred to as “CNS”*) and the Air Traffic Control (*hereinafter referred to as “ATC”*). The CNS branch comprises of the Communication, Navigation, and Surveillance sub-units and provides niche technical support to the ATC branch.
- ii. Under the mandate of the Act, in particular Sections 42 and 43, the AAI framed and introduced the 2003 Regulations concerning various matters set out therein, which includes recruitment

processes as well. Section 6(1) of the 2003 Regulations provides for framing of further guidelines for recruitment by AAI.

- iii. In exercise of its powers under Section 6(1) of the 2003 Regulations, AAI framed the 2005 Guidelines. The 2005 Guidelines envisaged that 25% of the posts may be recruited by way of direct recruitment, while the remaining 75% may be appointed by way of promotion. Insofar as direct recruitment is concerned, Section II of the 2005 Guidelines deals with the process of direct recruitment and related matters. Clause 6.3 stipulates as under:

“The detailed qualification and the kind of experience required for posts filled through DR will be specified with reference to the requirement of each post. These are broadly specified in Annexure-I (Executives) and Annexure -II (Non Executives). The educational qualification / experiences for direct recruitment of promotions for employees joined prior to 29.08.2011 to the various grades in executive cadre are indicated in Annexure-III”.

- iv. Clause 2 of Annexure I of the 2005 Guidelines provides that:

“2 year’s work experience in the executive cadre in the discipline concerned is essential for direct recruitment to Manager (E-3) level.”

- v. By way of the 2016 Circular, the 2005 Guidelines were amended and the work experience required for recruitment to the post of Manager (E-3) through direct recruitment, was enhanced from two years to five years in the concerned discipline.

- vi. On 3rd July, 2018, the impugned advertisement titled ‘Recruitment of Managers and Junior Executives in various disciplines’ was issued, inviting applications from eligible candidates for several posts, including the post of Manager

(Electronics), for which the minimum qualification was prescribed as “*Full time regular B.E / B.Tech Degree in Electronics / Telecommunications / Electrical with specialization in Electronics.*” and the work experience is prescribed “*5 year work experience in Executive Cadre in the field of Electronics and Tele Communication.*”

3. In light of the above, the grievance of the Petitioners which gives rise to the present petition, is summarized as follows:

- i. All the 8 Petitioners herein were appointed to the post of Junior Executive (E-1) in the CNS branch of the ANS wing of AAI through direct recruitment in 2016, later promoted to Assistant Manager, CNS (E-2), and are part of the feeder cadre for promotion to the post of Manager, Electronics (E-3).
- ii. The Petitioners were working at the E-2 level for about two to three years, when, in 2018, in furtherance of the 2005 Guidelines, the AAI issued the afore-noted impugned advertisement.
- iii. Aggrieved with this recruitment scheme, the present writ petition has been filed seeking the following reliefs:

“A. Quash the Advertisement dated 03.07.2018 issued by the Respondent No. 3 for Direct Recruitment to the post of Manager (Electronics) as well as any consequential Orders/Proceedings in pursuance thereof for being arbitrary and in violation of Law;

B. Quash the Recruitment and Promotion Guidelines, 2005 issued by the Respondent No. 3 (Airports Authority of India) for being arbitrary and unconstitutional and any other or further Acts taken in pursuance of the same;

C. Quash the circular dated 18.07.2016 issued by the Respondent No. 3 amending the Recruitment and Promotion Guidelines, 2005;

D. Quash sub-section (1) of Section 6 of the Airports Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 along with any other Section which

permits excessive delegation as ultra vires of the Airports Authority of India Act, 1994 as well as the Constitution;

E. Direct that direct recruitments shall not be held by way of direct recruitments to the post of Manager (CNS) except for exceptional and stated reasons as per the applicable policy.”

Contentions of the parties

4. Mr. Keshav Maheshwari, learned counsel for the Petitioners, contends as follows:

I. Regarding the Advertisement dated 03rd July, 2018.

- i. The impugned advertisement is in clear violation of the mandate of the communication dated 21st January, 2016 issued by the Department of Personnel and Training (*hereinafter referred to as “DoPT Letter”*), under which the AAI could not have advertised more than 3% of the sanctioned number of seats for direct recruitment. The total sanctioned strength in the manager cadre of CNS branch is 1498 seats. Accordingly, only 44-45 seats (i.e. 3% of 1498) could have been advertised for direct recruitment, whereas the impugned advertisement proposes to recruit about 324 persons.
- ii. If for the sake of argument, it is assumed that the 2005 Guidelines are constitutional, even then the impugned advertisement is in violation thereof, as the guidelines themselves envisage direct recruitment to the extent of 25% of the posts while the remaining 75% would be filled up by way of promotions from the pool of persons holding the post of Assistant Manager.
- iii. The introduction of the requirement of five years as opposed to the earlier threshold of two years’ prior experience, is arbitrary and *mala fide*. Once the advertised posts are filled-up by way of direct recruitment, the same will result in the languishing of junior

employees in the same position for years, until direct recruitment exams are held, or promotions are considered.

- iv. The advertisement is arbitrary in so far as it treats all engineers who have acquired five years of experience in any 'Executive Cadre' as equals. The work experience of any 'Executive Cadre' may not be treated as work experience required for undertaking supervisory work with AAI in the CNS branch, as the work undertaken at the CNS branch is extremely unique and cannot be equated with the work undertaken by any other electronic engineer. An executive engineer working for railways or shipyards cannot be expected to undertake the risky and sophisticated work undertaken at the CNS branch based on the experience acquired by him over five years.

II. Regarding the 2005 Guidelines.

- i. The 2005 Guidelines are entirely illegal and unconstitutional as they are *ultra vires* to the mandate of Section 42 read with Section 43 of the Act, which does not envisage a further re-delegation of delegated legislation.
- ii. The 2005 Guidelines have not been tabled before Parliament as was required to be done under Section 43 of the Act, and thus, do not have the force of law. It is a settled position in law that when an action is stipulated to be done in a certain manner under a statute, then the process cannot be bypassed under the garb of such subterfuge legislation.
- iii. The 2005 Guidelines are *ultra vires* the letter dated 21st January, 2016 issued by Respondent No. 2 (being the Department of Personnel, Public Grievance, and Pensions) to all ministries, and the PSEs under the concerned ministries, stating that, for direct

recruitment, only 3% of the sanctioned cadre strength shall be advertised in all 'Group A' Services.

III. Regarding Section 6(1) of the 2003 Regulations.

Section 6(1) is liable to be quashed because it permits excessive delegation, as the 2005 Guidelines have been manifestly drafted under the ambit of Section 6(1) of the 2003 Regulations.

IV. Regarding the Circular dated 18th July, 2016 amending the 2005 Guidelines.

The 2016 Circular makes an unreasonable classification between ATC and CNS cadre by stopping direct recruitment from the ATC wing due to lack of availability of experienced candidates, but continuing recruitment from the CNS branch. As a result, the 2016 Circular is entirely arbitrary and unconstitutional. Moreover, as the above circular was issued in furtherance of the 2005 Guidelines, it is itself *void ab initio*.

V. Arguments against direct recruitments.

- i. Direct recruitments were being conducted after a gap of about eight to ten years, due to which, employees in posts junior to the vacancies advertised i.e., those which were to be filled by way of direct recruitment, lost out on promotional avenues. This would result in existing junior employees languishing for many years and losing out on all prospects of promotion.
- ii. The International Civil Aviation Organization, in its *Manual on Air Traffic Safety Electronics Personnel Competency-based Training and Assessment*, vide Doc 10057 (AN/520), very specifically prescribes that only specialized persons, to whom developmental

training has been imparted and tests conducted before promotions can be appointed under the CNS branch. The same was recognized and internalized by AAI in its letter dated 9th January, 2019.

- iii. Direct recruitment falls foul of the mandate of the DoPT circulars issued in this regard which seek to protect the promotional avenues of existing employees.
- iv. CNS branch of the ANS wing is a specialized field, and direct recruits from the open market cannot be expected to undertake the complex tasks which are expected of an employee at the CNS branch. The promotional avenues are being hijacked/overridden by the direct recruits, and the available posts are being filled up by a process that is arbitrary and also in utter violation of the Regulations of the AAI which have been laid down in this regard.
- v. That an unreasonable classification has been made between the employees in the CNS branch and the ATC branch, who should otherwise be treated at par within the ANS wing of AAI. It is submitted that there is no reason to prohibit the direct recruitment process within the ATC branch and allow the same in such a large-scale manner in the CNS branch. Further, it is submitted that while a Junior Executive (E-1) would take about six years to reach the post of Manager (E-3), the direct recruits who have no relevant work experience would be eligible to occupy the post in five years itself. This is an instance of an unreasonable classification, and such classification has no nexus with the object sought to be achieved.

Respondent's contentions

5. Mr. Digvijay Rai, learned counsel appearing for the Respondents, countering the arguments advanced by Mr. Maheshwari, contended that the

case of the Petitioners is wholly devoid of merit and is liable to be dismissed. His submissions can be summed up as follows:

- i. There is a sizeable difference between the eligibility requirements of CNS and ATC branches of the ANS wing. ATC branch is a highly specialized division where, for instance, the pilots have to directly talk to foreign pilots, and due to past experiences where some employees were found to be lacking proficiency in English, the old method of recruitment was scrapped and the impugned advertisement notice was adopted. However, this is not true for ANS employees, as they only do on-ground work, and thus do not require such stringent criteria for the post.
- ii. Regarding the DoPT Letter, Mr. Rai urged that it is wholly inapplicable to AAI and thus, does not deserve any deliberation.
- iii. There is no cause of action for the Petitioners, and purely on this basis, this writ petition ought to be dismissed as not maintainable.

Analysis & Findings

6. As stated by the Respondents' counsel, ATC is a highly specialised division, where the officers have to communicate directly to foreign pilots. It has been explained at length that past experience exhibited that candidates hired through the old method of recruitment were found to be unsuitable to the requirements of the job, and thus, the same scrapped and the impugned advertisement with different benchmarks was issued. It has been further explained that CNS branch employees do on-ground duty, and thus, do not require similar stringent criteria for the position. Having regard to the nature of services rendered by the two divisions, AAI would have the right to prescribe different eligibility criteria for the two cadres if it so desires. The employees in the CNS branch cannot claim parity of treatment

with the ATC branch. Thus, the impugned recruitment can legitimately be sustained on the basis of a valid classification which is reasonable and permissible under Article 14 of the Constitution.

7. To our minds, the Petitioners also do not have a cause of action to impugn the advertisement or to contend that the AAI should not resort to the direct recruitment mode. The promotional avenues of the Petitioners have been provided under the recruitment rules of the AAI. The engineers fall under the 'Executive Cadre' category, wherein the junior-most post is of Junior Executive (E-1), which is filled entirely by direct recruitment. Immediately above the Junior Executive (E-1) post is the post of Assistant Manager (E-2) which is filled entirely by promotion against Junior Executive, and few promotions also fall from the non-executive category. Above the post of Assistant Manager, there is the post of Manager (E-3). In terms of the 2005 Guidelines, 25% of such posts may be filled by way of direct recruitment, while the remaining 75% may be appointed by way of promotion from amongst Assistant Managers. As noted earlier, the 2016 Circular clearly stipulates that the reason for stoppage of direct recruitment at the level of Manager (E-3) in the ATC branch was the non-availability of candidates with necessary experience. A reasonable explanation has been provided, and moreover, the same is a matter of policy falling within the prerogative of AAI. Prejudice to the Petitioners cannot be understood to have arisen from this decision. It is the prerogative of AAI to fill vacant positions, depending upon factors such as need and the administrative exigencies. This strategy of AAI that is based on ground realities cannot be questioned. Therefore, it cannot be said that there is any infirmity in the Circular on this aspect, and this Court cannot issue a mandamus commanding AAI to resort to direct recruitment for the ATC branch.

8. Moreover, we cannot accede to the Petitioners' contention that AAI's decision to amend the 2005 Guidelines *vide* the 2016 Circular, by increasing the required work experience from two to five years in the concerned discipline, is arbitrary. In our view, the requirement of work experience is a facet which lies exclusively within the domain of the employer. It is for the employer to determine and modify the qualifications and work experience required for any post. In case the employer deems it necessary to increase the work experience requirement for a particular post, it is free to prescribe the same. Work experience serves as a necessary prerequisite to assess the suitability of potential candidates to cater to organisational needs, and eventually ensures efficiency and quality in the cadre. We are also not convinced that work experience requirement for a post is an unreasonable classification. There can also be a reasonable classification of the employees for the purpose of direct appointment or promotion, as the same stem from two different sources. Just because the revised experience requirement puts the Petitioners in a disadvantageous position, or if they do not have the requisite eligibility, does not cause the advertisement to become *mala fide*. Moreover, it is reiterated that as a Court, we are not equipped to assess the prescription of eligibility criteria, which is a purely a matter of recruitment policy of the employer.

9. Further, having regard to the nature of work and the differences between the CNS and ATC branches of ANS wing, the Petitioners' argument that the circular draws up an unreasonable classification between the two cadres in so far as direct recruitment is concerned, is evidently untenable. The functional requirement of work experience, as discussed above, permits AAI to have a reasonable classification for the purpose of promotion to the post of Manager (E-3). Since it is founded on a rational

basis, the Petitioners cannot insist that they should be treated at par with the Engineers of the ATC branch. The law permits reasonable classification and therefore the employees in the two different branches can be treated differently. Here again, the employer, having regard to the situation as noted in the 2016 Circular, is free to adopt a method for recruiting candidates for earmarked vacancies *via* direct recruitment or through departmental candidates. That does not necessarily mean that direct recruitment at E-3 level in the CNS branch should also not be done from the open market. The employer has to take into consideration the job requirements, and in case the situation demands, the employer is within its right to bring about change in order to meet overall organisational efficiency in the cadres. We therefore cannot hold the 2016 Circular to be arbitrary and unconstitutional.

10. Next, we deal with the contentions of the Petitioners that the impugned advertisement is in violation of the mandate of the DoPT Letter. On this aspect, we may note that AAI is a PSE constituted by an Act of Parliament. The AAI has its own recruitment policy and rules and regulations. The general conditions of services of regulation of employees are prescribed under Section 6(1) of the 2003 Regulations. Therefore, the organizational structure of AAI, being a PSE, is independent, which would not be governed by the DoPT Letter relied upon by the Petitioners. We cannot interpret the DoPT Letter to be a direction by the Central Government to AAI to implement the provisions contend therein, and besides nothing has been shown to establish that the AAI has implemented the said Letter. In the absence thereof, we cannot hold that the impugned advertisement is in violation of the DoPT letter. Therefore, this contention of the Petitioners is also misconceived.

11. Turning to the Petitioners' contentions that the 2005 Guidelines are illegal and unconstitutional, being *ultra vires* the mandate of Sections 42 and 43 of the Act, we may first quote the relevant part of the provisions-

“42. Power to make regulations-

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for-

(a)

(b) the conditions of service and the remuneration of officers and other employees to be appointed by the Authority under sub-section (2) of section 10;

43. Rules and regulations to be laid before Parliament- *Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, or both Houses agree that the rule or regulations, as the case may be, should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”*

12. The 2003 Regulations have been framed under the mandate of the above-noted provisions, and in turn the 2005 Guidelines have been framed in exercise of the powers under Section 6(1) of 2003 Regulations, which reads as under:

“6. Conditions for appointment in the Authority. - *The following general conditions shall apply to all appointments in the Authority, namely: -*

(1) The Authority is empowered to lay down the procedure for appointment and promotion.”

13. Under the afore-noted sub-section, the AAI is empowered to lay down the procedures for appointment and promotion. In exercise of this power, the 2005 Guidelines have been framed. The argument of the Petitioners that the impugned advertisement is *ultra vires* the Act and in violation of the 2005 Guidelines, is thus, entirely misconceived. The Act specifically empowers AAI to make regulations not inconsistent with the

Act and the Rules framed thereunder, and to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. Further, clause (b) of sub-section (2) of Section 42 specifically provides that the conditions of service and remuneration of officers and other employees to be appointed by the Authority under sub-section (2) of Section 10 can be provided by way of regulations framed by the Authority. It is the same Authority which has framed the 2005 Guidelines. Therefore, it cannot be considered to be a case of sub-delegation of delegated legislation. Once the power to frame regulations has been conferred on an Authority, it can, in exercise of such power, implement the decision, as a matter of procedure. Seen in that light, one can notice that the 2005 Guidelines are essentially in the nature of implementation of the 2003 Regulations framed by AAI. Since the 2005 Guidelines lay down the procedure for appointment and promotion, they are thus within the competence of the delegated authority. It does not amount to exceeding the scope of delegation permitted under the statute. Thus, we cannot hold that the 2005 Guidelines are *ultra vires* the mandate of Sections 42 and 43 of the Act.

14. In view of the foregoing, there is no merit in the present petition, and accordingly, the same is dismissed.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

APRIL 6, 2021

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