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

% *Date of decision: January 27, 2023*

+ LPA 471/2014

AIRPORTS AUTHORITY OF INDIA Appellant

Through: Mr. K.K. Rai, Sr. Advocate with
Mr. Digvijay Rai, Mr. Anshul Rai,
Ms. Sreoshi Chatterjee, Mr. Archit
Mishra, Advocates with Mr. V.
Gupta, Sr. Manager, (Law)/AAI.

versus

W.MORRIS ROMEL ROY & ORS Respondents

Through: Mr. Amit Chadha, Mr. Atin Chadha,
Ms. Munisha Chadha, Mr. Deevanshu
Sharma, Mr. Tarun Walia, Advocates
with the respondents in person.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

SUDHIR KUMAR JAIN J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The present LPA is filed to impugn the final judgment and order dated 28.11.2013 passed by the learned Single Judge in W.P.(C) 3398/2013 and order dated 04.07.2014 passed in review petition bearing no. 299/2014.
2. The respondents filed the writ petition bearing no. 3398/2013 for seeking declaration of the result by finalising the merit list of the selection

LPA 471/2014

Page 1 of 15

process for departmental promotion for the post of Junior Executive (HR) which were 22 in number in respect of which the selection process took place.

3. The appellant initiated the selection process for filling up of 22 posts of Junior Executive (HR) by promotion in the year 2011. The appellant vide circular dated 20.06.2011 invited applications from eligible candidates those who were M.B.A. graduate and having secured at least 60% marks in graduation. The circular dated 20.06.2011 was supplemented with another circular dated 05.07.2011 and vide the latter candidates who were having degree in M.A. with Personnel Management or equivalent, were also invited in addition to M.B.A. graduates. The last date of submission of the applications was extended to 25.07.2011. The respondents have applied to the post and were called in the selection process. The respondents appeared in the examination before they had been called for interviews. The interviews for the different zones had been fixed on different dates.

4. The appellant took out another circular on 11.01.2013 whereby the probationers who had completed their probation period till the date of interviews were also considered as eligible candidates for being appointed to the post of Junior Executive (HR). Due to this, some of the probationers

were stated to be qualified in the selection process for the appointment to the post of Junior Executive (HR) by promotion. The circular dated 11.01.2013 reads as under :-

Reference is invited to this office letter of even No./1265 dated 31.12.2012 and subsequent letter of even number addressed to RED-ER dated 02.01.2013, intimating the list of ineligible candidates for appearing in the interview for departmental examination for the post of Jr. executive (HR).

2. In this regard, it is intimated that the Competent Authority has reviewed the matter and after due deliberation it has been decided to allow the following category of candidates to appear in the interview for the said post (as per schedule noted in para 3 below).

(i) Such candidates who have successfully completed their probation period by the interview date and have also passed the written test; and

(ii) Those candidates who have acquire the requisite qualification by the interview date and have also passed the written test.

3. In view of the above, the candidates whose names are appearing in the enclosed annexure may be informed to attend the interview at CHQ, Rajiv Gandhi Bhawan, New Delhi on 23.01.2013 at 1000 hrs. The candidates may also be advised to bring all original certificates for the purpose.

4. The candidates may be relieved well in time to attend the interview at CHQ as per above schedule. TA/DA would be admissible as per rules.

5. The respondents being aggrieved on account of change of the Rules by entitling probationers for being considered for promotion in the selection process vide circular dated 11.01.2013 and as there was no finalization of

merit list/select list of the candidates for appointment to the 22 posts of Junior Executive (HR) filed the writ petition bearing no. 3398/2013.

6. The issue before the learned Single Judge for consideration was that whether the probationers have a right to be considered for appointment by promotion to the higher post, although the probationary period did not stand completed at the time of commencement of the selection process. The learned Single Judge has observed as under:-

“5. Promotion is from a lower post to a higher post, and therefore, before seeking promotion a person must be holder of a lower post. To be a holder of a lower post a person has to be employed in that post within a regular/permanent employment. A probationary employee, similar to an adhoc employee or a temporary employee, cannot be said to be a holder of a post, and therefore, not being holder of a post which is a sine qua non for promotion, a probationary/adhoc/interim employee cannot be an eligible candidate for promotion to a higher post. In my opinion, it is implicit in the very term of promotion that promotion is of a regular/permanent employee of an organization. Promotion surely can only be of a regular/permanent employee inasmuch as it would be an absurd position that if for some reason a probationary employee is promoted but thereafter for valid reasons his original period of promotion itself is held not to be successfully completed and therefore there takes place termination of services of such an employee. It is not the law that by participating and being successful in the selection process for promotion there is an automatic passing of an order by an employer that probationary officer has successfully completed the period of probation. The period of probation can only be successfully completed in accordance with the applicable rules

or agreement, and on completion of the probationary period. Of course, there may be confirmation of the employee even prior to completing the probationary period, however, an order would be required that the probationary period stands successfully completed and the employee is now a regular/permanent employee. I put it to the learned senior counsel for the respondent to show me any judgment of any Court which lays down a ratio that promotion can be granted even to those employees who are not regular/permanent employees but are only probationary employees. However, learned senior counsel for the respondent very fairly states that he does not have any judgment with him though it is argued that it is the general/ normal law that a probationer should be held entitled to appointment to a higher post by promotion. I however cannot agree with this argument urged on behalf of the respondent that a probationary officer without his successfully completing the period of probation or without his being deemed to be confirmed in the job by making his appointment as regular/permanent, a probationary employee can/ must be considered for promotion.

6. The judgment in the case of D. Dastagiri (supra) relied upon by the respondent does not help the respondent for the reason that the proposition of law stated therein is not in doubt that for valid reasons a selection process can be scrapped and there is no vested right in a selected candidate for being appointed although his name appears in the select list/merit list for appointment. However, the crux of the matter is that there must exist valid reasons for scrapping of the selection process and not appointing the candidates in the select list or in not finalizing the select list I itself. In the case of D. Dastagiri (supra) there were valid reasons for scrapping of the select list and hence bonafide action of the State because the State Government had made a policy decision not to employ Excise Constables on account of prohibition policy of the State Government. Once there are valid reasons, the government cannot be forced to make appointments. The point however is that government's action cannot be arbitrary and whimsical

and a successful candidate is entitled to be appointed unless some bonafide/valid reasons are given by the government. ”

7. The learned Single Judge also relied upon *Shankarsan Dash V Union of India*, (1991) 3 SCC 47 to highlight the law with respect to entitlement or disentitlement of the government to scrap the selection process and not give appointments to the candidates in the Select List, wherein it was observed as under:-

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander*; *Marwaha and Ors.* : (1973) IILLJ266SC ; *Miss Neelima Shangla V. State of Haryana and Ors.* : [1986]3SCR785 and *Jitendra Kumar and Ors. v. State of Punjab and Ors.* [1985] 1 SCR899.”*

8. The learned Single Judge after relying upon above cited decision

allowed the writ petition and observed as under:-

“8. A reference to the aforesaid para of the judgment of the Supreme Court shows that the State does not have a licence to act in an arbitrary manner and the decision not to fill up the vacancies has to be taken for bonafide and appropriate reasons. Therefore one will have to examine in facts of the present case whether germane reasons are given and so argued before me for scrapping of the selection process and in not finalizing the select list although the entire selection process is complete by conduct of the interviews and also otherwise a merit list has been prepared which has not been published.

9. The argument which is argued before this Court of selection process requiring to be scrapped on account, of change of rules of the game midway by allowing probationers as valid candidates and also that all eligible probationers in whatever posts employed with the respondent ought to have been considered, is an argument which in my opinion does not give valid and germane reasons for scrapping of the selection process and not finalizing the merit list/select list. I have already held above that probationers cannot be part of a promotion process unless and until the probationary officers stand confirmed as regular/permanent employees. Admittedly, respondent allowed (may be just before the interviews were conducted) probationary officers to be part of the selection process however, that cannot mean that the entire selection process can be scrapped because all that it means is that probationary officers who were wrongly considered in the process will have to be ousted from the merit list which has to be finalized and the merit list which has to be finalized can in law only be of those employees who participated in the selection process as regular/permanent employees of the respondent. Therefore, there is no reason to scrap the entire selection process and all that is required is that the probationary officers who in the first place could not have been considered in the selection process, cannot be validly considered for the selection process merely because of the circular of the respondent dated 11.1.2013, Therefore, it will

suffice to direct the respondent that in the present case the selection process can be completed without at all considering the probationary officers for appointments to the 22 posts of Junior Executive (HR) which are to be filled up by promotion.

10. In view of the above, the writ petition is allowed. Respondent is directed to now finalize the select/merit list of the 22 promotion posts of Junior Executive (HR) in terms of the selection process which culminated by the interviews from 04.01.2013 to 10.01.2013. Since the probationary officers cannot be considered as valid candidates who are entitled to participate in the selection process, if any select list has already been made by the respondent including therein probationary employees, though not published, a fresh select Ust/merit list will be made whereby probationary officers would be excluded and only the regular/permanent employees will be considered for appointments by promotion to the posts of Junior Executive (HR) in terms of the merit list. Direction is given to the respondent to finalize the merit list/select list in terms of this judgment within a period of eight weeks from today. Parties are left to bear their own costs.”

9. The learned Senior Advocate for the appellant impugned the judgment dated 28.11.2013 and argued that the entire selection process has been scrapped on account of irregularities in the selection process, as the recruitment and promotion rules do not bar the probationers from appointment by promotion to the post of Junior Executive (HR); the original circulars dated 20.06.2011 and 05.07.2011 were faulty because they wrongly denied entitlement of consideration to the probationers and the said defect was removed subsequently by the letter dated 11.01.2018 issued by the

appellant. The learned Senior Advocate for the appellant justified the scrapping of the selection process vide circular dated 03.04.2013 due to administrative reasons. Referring to *State of A.P. and Ors. V D. Dastagiri and Ors.*, (2003) 5 SCC 373, he contended that no vested right is accrued in favour of the selected candidates to claim appointment and the appellant was entitled to cancel the selection process.

10. The records reflect that vide circular dated 20.06.2021, the appellant invited applications for filling up of 22 posts of Junior Executive HR by promotion from the candidates who were M.B.A. graduates and have secured at least 60% marks in the graduation. The said circular was supplemented by another circular dated 05.07.2021 whereby candidates having degree in M.A. with Personnel Management or equivalent were also invited. Vide circular dated 11.01.2013, the appellant also made it eligible for participation in selection process, for filling of 22 posts of Junior Executive HR, of those who had completed their probation period till the date of interviews. The appellant subsequently scrapped the selection process vide circular dated 03.04.2013 by citing administrative reasons. The circular dated 03.04.2013 reads as under:

“ Further to vacancy circular No.A.60011/20/2011-EH dated, 20.06.2011 and 05.07.11 and subsequent letter of even number dated 17.12.2012 on the subject cited above, it is informed that due to administrative reasons, the Competent Authority has decided to set aside the aforementioned departmental exam. Accordingly, the process for filling up the vacancies notified in the above mentioned vacancy circular shall be initiated afresh.”

11. The perusal of circular dated 03.04.2013 reflects that it does not contain the details of reasons due to which the appellant has decided to set aside the departmental examination for filling up 22 posts of Junior Executive HR by promotion.

12. The administrative authority which is vested with power to determine questions affecting the rights of individuals must exercise power in conformity with the rules of natural justice and the requirement of passing reasoned orders by the administrative authorities is one of the important aspects of natural justice. Due to expanding horizon of judicial review, requirement to give reasons has become an indispensable part of judicial review. The Privy Council in *Minister of Natural Revenue V Wright's Vanadian Ropes Ltd.*, (1947) AC 109 held that a Minister who had failed to give reasons for a special tax assessment had not shown that it was correct and that the taxpayer's appeal must be allowed. In *R V Civil Service Appeal*

Board exp Cunningham, (1991) 4 A AIIR 310 an award of abnormally low compensation to an unfairly dismissed prison officer by the Civil Service Appeal Board, which made it a rule not to give reasons was quashed by the court of Appeal by holding that natural justice demanded the giving of reasons both in deciding whether dismissal was unfair and in assessing compensation. In England, in a series of cases it has been held that statutory tribunals must give satisfactory reasons in order that the losing party may know whether he should exercise his right of appeal on a point of law. (See also *Norton Tool Co. Ltd. V Tewson*, [1973] WLR 234.

12.1 It is suitably established in India that an adjudicatory authority is required to give reasons for its decision. The Supreme Court in *Siemens Engineer and Manufacturing Co. V Union of India*, AIR 1976 SC 1785 reiterated the principle with an emphasis that the rule requiring reasons to be given in support of an order is a basic principle of natural justice, which must inform the quasi-judicial process. It should be observed in its proper spirit and "mere pretence of compliance with it would not satisfy the requirement of law". It was observed in *Maneka Gandhi V Union of India*, AIR 1990 SC 1984 that giving of reasons is a healthy check against abuse or misuse of power. The requirement of duty to give reasons was further

crystallized in *S.N. Mukherjee V Union of India*, AIR 1990 SC 1984 and reasons due to which a reasoned decision must be passed were discussed. It was observed that reasoned decision: (i) guarantee consideration by the authority; (ii) introduce clarity in decisions; and (iii) minimize chances of arbitrariness in decision-making thereby ensuring fairness in the process. It was observed as under:

“ In our opinion, therefore, the requirement that reason must be recorded must be recorded should govern the decisions of govern the an administrative authority exercising quasi-judicial functions irrespective of fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clean and explicit so as to indicate that the authority has given due consideration to the points in controversy. ”

12.2 The Supreme Court in *Rani Lakshmi Bai Kshetriya Gramin Bank V Jagdish Sharan Varshney & others*, (2009)4SCC496 held that the purpose of disclosure of reasons is that people should have confidence in judicial and quasi-judicial authorities and minimize chances of arbitrariness. It was held as under:-

“The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people

must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.”

12.3 The Supreme Court in The Supreme Court in the case of *Namit Sharma*

V Union of India, (2013) (1) SCC 745 regarding duty to give reasons held as

under:-

*“It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr.* [(1976) 2 SCC 981]; and *Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers* [(2010) 4 SCC 785].”*

13. Negation of arbitrariness in exercise of public power is considered a

cardinal component of the Rule of Law. The Courts have invalidated arbitrary exercise of administrative power. Article 14 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment. The decision making process should be reasonable and rational and should not be arbitrary and violative of Article 14 of the Constitution. The Supreme Court in *E. P. Royappa V State of Tamil Nadu*, AIR 1978 SC 555 observed that Article 14 of the Constitution embodied a guarantee against arbitrariness. The Supreme Court in *Maneka Gandhi V Union of India*, AIR 1978 SC 597 observed that Article 14 of the Constitution strikes at arbitrariness in State action and ensure fairness and equality of treatment. The power of judicial review is considered to be an integral part of constitutional system and is described as basic and essential feature of the Constitution of India. It was also observed in *S. R. Bommai V Union of India*, AIR 1994 SC 1917 that the purpose of judicial review is to ensure that the individual is given fair treatment by the authority and is basic feature of the Constitution.

14. We are of the view that the learned Single Judge has rightly decided that the State does not have a license to act in an arbitrary manner and the decision not to fill up the vacancies has to be taken for bonafide and

appropriate reasons. The appellant cannot scrap the entire selection process on account of change of rules of the selection process, particularly, when the selection process has already been initiated in view of the circulars dated 20.06.2011 and 05.07.2011. The appellant has not pointed out any valid reason for scrapping the entire selection process initiated in pursuance of circulars dated 20.06.2011 and 05.07.2011 and not finalizing the Select List and thereafter, appointing the candidates on the basis of the Select List. The learned Single Judge has rightly held that the probationers cannot be a part of the promotion process until and unless the Probationary Officer stands confirmed as regular/permanent employees. The appellant was not justified in scrapping the entire selection process.

15. The learned Single Judge has also rightly dismissed the review petition bearing no. 299/2014 vide order dated 04.07.2018.

16. We do not find any merit in the present appeal, hence it is dismissed.

SUDHIR KUMAR JAIN, J

NAJMI WAZIRI, J

JANUARY 27, 2023

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LPA 471/2014

Page 15 of 15