2025:MHC:1225

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.9987 of 2018

P.V. Jyothi,
W/o. N. Ramesan, Senior Manager Security,
Airports Authority of India,
Regional Head Quarters,
Southern Region, Chennai 600027. ... Petitioner

Vs.

1.Airports Authority of India,
Rep. by HR Safdarjung Airport,
Rajiv Gandhi Bhavan,
New Delhi 110 003.

2.The Member (HR),
Airports Authority of India,
Rajiv Gandhi Bhavan,
New Delhi 110 003.

3.The Executive Director (HR),
Airports Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung, New Delhi 110003.

4.The Regional Executive Director,
Airports Authority of India,
Southern Region,
Chennai 600 027.

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R-5 MR.C.T.PHULORIA,
ASSISTANT GENERAL MANAGER (OL),
AIRPORT AUTHORITY OF INDIA,
REGIONAL HEAD QUARTERS,
WESTERN REGION, INTEGRATED
OPERATIONAL OFFICES BUILDING,
NEW AIRPORT COLONY,
OPP PARSIWADA, SAHAR ROAD,
VILA PARLE (E), MUMBAI.400099.

R-6 MRS.G.SHANTHI,
NO.9, VALLIYAMMAI ST,
URAPAKKAM, KANCHEEPURAM,
TAMILNADU.603 210.

R-7 MR.DURGA SARANMISRA,
ASSISTANT GENERAL MANAGER (OL),
AIRPORT AUTHORITY OF INDIA,
NETAJI SUBHASH CHANDRA
BOSE INTERNATIONAL AIRPORT,
KOLKATA AIRPORT. 700 052.

(R5 TO 7 ARE IMPLEADED AS PER ORDER
DATED 15.12.2023 IN WMP.35006/2023
IN WP.9987/2018 BY VBSJ) ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to publish the All India combined seniority list in the grade of Superintendent (OL) as on 1.2.2005 as mandated by Corporate Circular No.46/2012 issued by the 1st respondent and fix the seniority of the petitioner accordingly and on that basis conduct review DPCs for effecting promotion for the vacancy year 2006-2007 for the post of Assistant Manager (OL) and promote her w.e.f. 28.12.2006 or at least pre pone her date of

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promotion under the departmental examination quota from 2009 to 2010 with all consequential benefits such as further promotion as Manager (OL) from the due date flowing there from.

For Petitioner : Mr.Menon

For Respondents : Mr.V.Prakash, Senior counsel for
Mr.Gowtham S Raman for RR1 to 4
: No appearance for RR5 to 7.

ORDER

This writ petition has been filed seeking direction against to the respondent to publish All India combined seniority list in the grade of Superintendent [official language] on 1.2.2005 as mandated by Corporate Circular No.46/2012 issued by the 1st respondent and fix the seniority of the petitioner and on that basis conduct review DPCs for effecting promotion for the vacancy year 2006-2007 for the post of Assistant Manager (OL) and promote her w.e.f. 28.12.2006 or at least prepone her date of promotion under the Departmental Examination quota from 2009 to 2010 with all consequential benefits such as further promotion as Manager (OL) from the due date flowing there from.

2. Heard Mr.Menon, learned counsel for the petitioner, Mr.V.Prakash, learned Senior counsel for the respondents 1 to 4 and perused the materials available on record.

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3. The petitioner was placed as Superintendent [Official Language] in the respondent department which is a non-executive cadre post [NE-8] on 29.07.1999. On completing 2 years of service, she was placed as senior superintendent [Official Language] on 29.09.2001. And further upon completion of 6 years as senior superintendent [Official Language] the petitioner is entitled to be promoted to the post of Assistant Manager [Official Language] [E2 pay scale], as per the guidelines, the said six years period in the cadre of senior superintendent would fall as on 29.7.2007.

4. In view of the revised Recruitment and Promotion Guidelines issued on 01.02.2005, the post of Assistant Manager (in the E-2 pay scale) shall be filled as follows: 50% by promotion from Junior Executive (JE-E1), and 50% by promotion from Senior Superintendent (NE-9). Out of the 50% quota reserved for Senior Superintendents, 25% shall be filled through departmental examination and the remaining 25% through promotion based on seniority. As there was no person available in the cadre of junior executive [E1], a policy decision was taken to fill up those 50% also from the cadre of senior superintendent [NE-9]. In view of that, an additional 25% in the cadre strength will be given to the senior superintendent through promotion to the post of Assistant Manager. Similarly, the remaining 25% quota for promotion through departmental examination was

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made available pursuant to the decision taken on 07.12.2006.

5. So far as the vacancies in the post of Assistant manager[Official Language] is concerned, 50% quota reserved for promotion based on seniority-cum-suitability was filled on 28.12.2006. However, 50% examination quota for Assistant Manager (E2) vacancies across various disciplines for the years 2006 and 2007 was conducted on 27.7.2008. Only one vacancy was available for the post of Assistant Manager (Official Language). The petitioner participated in the examination, succeeded and he got selected as the sole candidate for the said post under the examination quota for the lone available vacancy. The results were declared on 20.09.2013. Despite this, the petitioner was not issued with a posting order, though posting orders were issued for other candidates selected through the same examination (held on 27.7.2008) for vacancies in other disciplines. After a delay of nearly one year, the petitioner was finally granted promotion through an order dated 7.8.2009.

6. The petitioner's grievance is that due to the delayed issuance of her promotion order, she was denied with the opportunity to secure her next-level promotion at the time when her counterparts appeared for the examinations

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conducted on the same date (27.07.2008) for other disciplines. Despite making repeated representations, the petitioner's appeals were not favourably considered. However, without prejudice to her rights in her parent department in respect of her claim for timely promotion to the post of Assistant Manager (Official Language), the petitioner opted for a lateral movement to the Security Division on 23.02.2012.

7. However, the petitioner was permitted to retain a lien in her parent department for a period of two years, as per Circular No. 38/12. Despite seniority lists being issued for various other disciplines, no such seniority list was issued for Senior Superintendents (Official Language). The petitioner was permanently absorbed into the Security Directorate with effect from 20.03.2012. Consequently, the petitioner contends that the delay in releasing her posting order should not result in any disparity between her, and her counterparts from other disciplines who cleared the same examination on same dates but received earlier posting orders; and candidates who were promoted on the basis of seniority-cum-suitability.

8. The learned counsel for the petitioner submitted that the administrative delay caused in releasing the promotional orders had been redressed in certain

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cases by giving effect to the promotion with retrospective date and that should be extended to the petitioner as well. It is further submitted that respondents 2 to 4, who are juniors to the petitioner in the cadre of Senior Superintendent (Official Language), have been granted promotion ahead of the petitioner, causing serious prejudice to her and hence, the petitioner is justified in seeking the relief prayed for.

9. The learned senior counsel for the respondents 1 to 4 submitted that as per the All India Common merged Seniority List of superintendent/senior superintendent [official language] as on 1.2.2005, the petitioner is not senior to the private respondents 2 to 4. It is further submitted that the date of joining of the fifth respondent Shri Chandersekhar Phuloria is 21.3.1990; the sixth respondent Mrs.G.Shanthi is 3.9.1997 and the 7th respondent Mr.Durga Saranmisra is 2.4.1993. Whereas the date of joining of the petitioner to the post of superintendent [official language] is 29.7.1999. However it is claimed by the petitioner that it is not an authenticated seniority list for the post of superintendent/senior superintendent [official language] and it is only an unofficial copy.

10. The learned senior counsel for the respondents 1 to 4 further submitted

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that each time such list was released through the website of the official respondents the list published has got crashed due to some technical glitch.

11. Even according to the petitioner her date of joining in the post of superintendent [official language] was on 29.7.1999, so the above fact cannot be disputed by the petitioner. It is noted that prior to conducting departmental examinations for promotion to Assistant Manager (Official Language), a Departmental Promotion Committee (DPC) meeting was convened in the year 2006 to fill 50% of vacancies through merit-cum-seniority quota. Records indicate that Respondents 5 and 7 were promoted under this quota in 2006. As no additional vacancies were available under the merit-cum-seniority quota for that year, the petitioner opted to pursue an earlier promotion through the departmental examination route.

12. It is not the contention of either of the parties that department promotion committee meeting was held once again before the department examinations was held in the year 2008. The petitioner had cleared the departmental examination and had secured one post of Assistant Manager [official language] which was earmarked during the relevant point of time for filling up through examinations. In the selection list which was released on 2.9.2008, the petitioner's name is very

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much available. However the petitioner was given with a posting order on 7.8.2009. But the promotional posting orders were given to the other candidates of other disciplines who were selected through similar departmental examinations conducted on the same day. The said fact was not denied by the official respondents.

13. It is the contention of the official respondents that the Airport Authority had taken a policy decision to fill up the operational cadre first and then the non-operational cadres. It is submitted that the post of assistant manager [official language] would fall under the non-operational cadre and hence the delay had occurred in releasing the promotional posting order to the petitioner.

14. Reliance was placed on the judgement in ***Union of India and another Vs. A.Shainamol, IAS and another*** reported in ***(2021) 20 Supreme Court Cases 267*** to canvass the point that even in case where a candidate's name appears in the merit list, such candidate cannot have any right to claim appointment and the State has a right to take a decision to issue appointment order or not. However such a decision shall not be taken in an arbitrary manner but for bona fide and appropriate reasons and on which the candidate cannot have any say.

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15. In the instant case the Airport Authority did not take any decision that assistant manager [official language] is unnecessary and hence it need not be filled up. The post was very much needed and a posting order was very much issued for considering the selection list released after the conduction of departmental examinations.

16. The examinations were conducted for the respondent Airport Authority for the vacancies available in all disciplines in one and the same time. During that point of time there was no necessity to delay the examinations to be conducted for the post of Assistant Manager [official language] by considering it as non-operative post. When the necessity was felt in the one and the same time and the candidates selected for other disciplines were allowed to enjoy the benefit of the postings shortly after a selection list was released, there cannot be any other reason for delaying the issuance of the posting orders to the post of Assistant Manger [official language] alone. Even though the candidates cannot have any entitlement to claim that the appointment order should be immediately released after the selection list was published, the delay shall not be arbitrary and unreasonable.

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17. If one candidate in the selection list is affected due to the delayed release of the posting order, then discrimination is caused between the persons stand in similar position. As the examinations were conducted for both non-operational cadre and operational cadre posts in one and the same panel, the petitioner cannot take up a defence that the posting orders were released in the case of the petitioner at some belated stage, in view of it's non-operational nature. At the same time, the petitioner cannot claim parity with her batch mates who had got their promotion to the post of Assistant Manager [official language] through merit cum seniority to the vacancies available against that quota in the year 2006 itself.

18. Having got one post reserved for examination quota and given promotion to the other 50% reserved for merit cum seniority in the year 2006 itself , it would have been desirable and reasonable had the authority conducted the examinations in the year 2006 itself. However the impact is same on all other candidates who have appeared for the departmental examination as against the vacancies that arose in the other disciplines as well. Hence the petitioner alone cannot claim any preferential advantage, despite the delay adversely affecting the future career prospects of the other candidates. It can be put in this way also, had one post reserved for departmental competitive examinations was also

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allotted under the merit cum seniority quota, the deserving candidate would have got the promotion in the year 2006 itself.

19. It is to be noted that no further departmental promotional committee meeting has taken place after 2006 and before 2008 when the departmental examinations were conducted. So it cannot be concluded that the petitioner alone was specially prejudiced in view of the delay involved in conducting the departmental examinations for promotion. But the petitioner has justified claiming that the delay in releasing the posting order in the cadre of her promoted post of Assistant Manager [official language] has placed her in a different position than her counterparts of the other disciplines who had also written the examination in one and the same day .

20. But the senior counsel for the respondent Airport Authority stated that the petitioner has received the order in the year 2009 itself and she has raised the dispute only in the year 2019 after ten years with an inordinate delay. So it is claimed that the delay and latches will affect the claim of the petitioner and she is not entitled to the relief as prayed. In support of his above contention, the decision reported in the case of ***Shiba Shankar Mohapatra and others Vs. State of Orissa and others*** reported in ***(2010)12 Supreme Court cases 471*** is relied. In

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the said judgment, it is held that a party should approach the Court only after exhausting all the appropriate remedies available, and when a cause of action has arisen at the earliest instance and in such cases, the delay and latches can be the reason for refusing the relief claimed by the petitioner. In this regard it is relevant to extract para No.18 of the above judgement:

> *" 18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shankar Deodhar v. State of Maharashtra13 considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi4, wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as*

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under : (Tilokchand case, SCC p. 115, para 7)

> *"7. ... The party claiming fundamental rights must move the Court before other rights come into existence.*
>
> *The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."*

21. But in the case on hand, on perusal of the records it is seen that the petitioner has been giving the representations time and again, and in fact only on 27.06.2016 in the review of the departmental promotional committee meeting held she was given to understand that for 2 years after her lateral movement she has a right to keep an active lien and the seniority of the employee shall take place only accordance with the parent cadre only. What the petitioner had understood from the above communication is that though she had moved to security department through lateral movement her seniority will be counted on the basis of her parental cadre and she has got a cause of action to agitate the matter in issue. Even though the delay is the reason to refuse the relief sought by the petitioner, that alone can not be the reason to deny the relief, if the relief claimed by the petitioner does not affect the rights of other persons or the period of delay has not resulted in change of position of other candidates. All that the

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petitioner has requested in this writ petition is to give some retrospective effect to her promotion at least from the date on which her counterparts of other department candidates who have also been selected along with her for getting their respective promotion.

22.Even though the petitioner had impleaded the private respondents 5 to 7 as her juniors actually the respondents 5 and 7 were her seniors in the cadre of senior superintendent [official language], who have got their promotion to the post of Assistant manager [official language]through merit cum seniority in the year 2006. So there may not be any change in the position of respondents 5 and 7 in view of the relief now sought by the petitioner. So far as the 6th respondent is concerned, though she was senior to the petitioner in the cadre of senior superintendent [official language] she relinquished promotion for two years and her promotion to the post of Assistant Manager [official language] has been given only in the year 2011. So obviously the 5th respondent can be the junior of the petitioner in the cadre of assistant manager [official language]. The petitioner had moved to the security department only in the year 20.3.2012 but her claim for retrospective promotion relates to the period during which she was serving in her parent cadre.

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23. The learned counsel for the petitioner relied on the judgement of the High Court of Kerela in ***Airports Authority of India, represented by its Executive Director. Vs. Meena David*** reported in ***2019 SCC online Ker 18554*** in support of his contention that her lateral movement to the security department will not affect the relief which she claims in respect of her promotion attached to the parental cadre. In this regard it is appropriate to extract Para No.6 of the above judgement:

> "*6. We have to notice that this is not a promotion which occurred in the parent department after the lateral movement of the petitioner had been effected. Though the order at Exhibit P5, on the basis of the recommendations of the Review DPC, was issued in the year 2014, it related to a period when the petitioner was borne in the Operations cadre, i.e., as on 22.05.2009. The policy, as we noticed herein above, cannot stand against such promotion being granted to the petitioner, which she was entitled to at the time when she continued in the parent cadre. The subsequent lateral movement cannot disentitle her from promotions in the parent cadre which she was entitled to in the period when she continued there. What is prohibited by the policy guidelines is the claim for any promotion in the parent cadre after the absorption in the new cadre on any grounds, like promotion of a junior in the parent cadre to a higher post than that occupied by the employee who was moved on lateral basis in the new department. We reiterate that in the*

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case of the petitioner herself Exhibit P1, dated 26.08.2014, was passed pre-poning her promotion as Manager (Operations) to 18.10.2005 by virtue of a Review DPC. We do not then understand how the benefit, of a further Review DPC, relevant to the time, the petitioner was borne on the parent cadre cannot inure to her."

24. The petitioner can not claim promotion or benefit of lien in her parent department after the date of 20.3.2012 . All that she can claim could be only prior to the said date during which time the petitioner was very much serving in her parent department. So in all fairness the petitioner can be given with the retrospective effect to her promotion to the date on which her counterparts in other discipline which is now said as operative cadre have been given with promotion to the post of Assistant Manager [official language] of the respective discipline.

25. To this limited aspect the writ petition is **partly allowed** by directing the 2nd respondent to issue orders for giving retrospective effect to promotion of the petitioner to the post of Assistant Manager [Official language] on par with those candidates of the other discipline who got their promotions to the post of Assistant Manager [Official Language] in their respective discipline by

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completing the examinations conducted on 22.7.2008 with consequential and attendant benefits, within a period of eight [8] weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition if any is closed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition, if any, is closed.

22.04.2025

Index : Yes
Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs

To
1.Airports Authority of India,
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