

Indian Airlines Corporation

Vs

Capt. K. C. Shukla and Others

Civil Appeal No. 3929 of 1992

(S. R. Pandian, R. M. Sahai JJ)

23.09.1992

JUDGMENT

R. M. SAHAI, J.

1. Indian Airlines is aggrieved by the order of the Delhi High Court passed in exercise of its writ jurisdiction quashing the order dated April 10, 1990, promoting respondents 2 to 25 as illegal and in the alternative directing the Corporation to promote the appellant to the post of Dy. Operations Manager with effect from the date the other respondents were promoted and grant all consequential benefits. Reasons for such directions were both legal and factual. It was found that the post of Dy. Operations Manager was mere redesignation of the earlier post of Chief Pilot therefore the respondent was entitled to claim promotion on his Annual Confidential Reports (ACRs) and entire procedure of selection on ACR and interview was contrary to rules. Selection was found to be vitiated as the committee was not constituted in accordance with rules and regulation. Method of evaluation based 50 per cent on ACR and 50 per cent on interview, when the field of eligibility comprised officers immediately below, was held to be arbitrary as such wide gap between ACR evaluation and personality test was liable to reduce entire selection process to a farce leaving ample scope for pick and choose. On facts it was found that since there was overwriting in marks awarded to some of the candidates the Board did not appear to have acted fairly. It was further found that an officer who secured high percentage on ACR could not be imagined to have secured so low marks in personality test as was indicated to have been awarded to the respondent in the test sheet.

2. Whether the decision of the High Court is well founded on various aspects shall be examined presently but the alternative relief granted by the High Court probably in an anxiety to be fair and just to those others who had been selected by reducing the interview percentage to 12.5 per cent then working out proportionally the marks obtained by respondent on ACR evaluation and interview and directing to promote him as by this method he would secure the minimum required cannot be accepted as proper exercise of jurisdiction under Article 226. Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming its role of selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been expunged the Court would be within jurisdiction to issue necessary direction. But it would be going too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case.

3. Law on the proportion between written test and interview or evaluation on confidential entries

and personality test have been laid down in a series of decisions by this Court commencing from *Ajay Hasia v. Khalid Mujib Sehravardi* ((1981) 1 SCC 722 : 1981 SCC (L&S) 258) *Lila Dhar v. State of Rajasthan* ((1981) 4 SCC 159 : 1981 SCC (L&S) 588) *Ashok Kumar Yadav v. State of Haryana* ((1985) 4 SCC 417 : 1986 SCC (L&S) 88) and *State of U.P. v. Rafiquddin* (1987 Supp SCC 401 : 1988 SCC (L&S) 183 : (1987) 5ATC 257). Distinction appears to have been drawn in interview held for competitive examinations or admission in educational institution and selection for higher posts. Effort has been made to eliminate scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in. But same standard cannot be applied for higher selections. *Lila Dhar* case brings it out fully. In respondent's case the personality of the respondent was being judged by a Committee constituted under the rules for purposes of higher promotional posts and, therefore, it was governed by the ratio laid down in *Lila Dhar* case and it would be unsafe to strike down the rules as arbitrary when the evaluation was job oriented. Marks to be allotted by the Committee were on professional ability and management capacity. Further the Corporation has amended the rules and narrowed it down in 1991 by reducing the interview marks to 40 percent only. Moreover after examining the record, which was examined by the High Court, as well, it appears the Committee was neither guilty of arbitrariness nor it violated any rule or regulation in allotting the marks which of course were very low in interview.

4. Much has been made out by the High Court on the nature of post being selective or promotional. A pilot when selected is designated as First Officer. His promotional hierarchy is Captain, Commander Pilot, Deputy Operations Manager, Operations Manager/Deputy Director of Operations, Director of Operations/Director of Training. Till 1970 the next higher post after Commander Pilot was Chief Pilot. His duties were more or less the same as of Deputy Operations Manager except that the Deputy Manager has to exercise more administrative control on wider range. Categories 1 and 2 are admittedly categories of workmen and 3 to 6 are admittedly posts in management categories with administrative functions. From the regulations which have been framed and which were in operation prior to 1970 and after it, the post of Chief Pilot or Deputy Operations Manager were considered posts of the Officer's category. Method of selection for such post was by promotion but since 1970 in view of minute recorded by the Corporation it became both a selection and a promotion post. If the regulations would have stood only like that probably it could be said to be arbitrary. But that has been effectively controlled and curtailed by regulations framed from time to time. Result is that normally it is by selection and the field of eligibility is confined to Commander Pilots. Whether a post should be filled by promotion or by selection is a matter which is governed by Promotion and Recruitment Rules. So long as the rules are not violative either of the regulations or the Act or arbitrary the courts will have little jurisdiction to interfere with it. Since in this case promotion or selection to the post of Deputy Operations Manager is governed by Rules they appear to be valid and do not suffer from any infirmity. Nor it can be said that the Corporation in limiting the field of eligibility to Commander Pilots acted contrary to any rules. The High Court did not dispute that when the post of Chief Pilot Officer was redesignated and was placed in higher category it was provided that the posts shall be filled by selection and promotion. But from a letter issued in 1987 by the Managing Director that while making selection to the post of Operations Manager it was advised that normally seniority should be adhered to it was of opinion that the letter was a directive by Central Government under Section 34 of the Act. Since promotion to the post is governed by Recruitment and Promotion Rules which were amended by the Board and it was provided by Rule 8 that "The post of Deputy Operations Manger belongs to upper managerial cadre and, therefore, it was essential that it should be filled up by direct recruitment or promotion at the discretion of the Management" it cannot be taken to be amended by the letter of the Central Government which was issued as an advice due to greater margin in the marks for interview and

evaluation on ACR. Further seniority was not ignored but while judging ability of various officers the method adopted was inter-view.

5. Nor was the High Court justified in its finding that the Committee was illegally constituted as proviso to Rule 10 empowers the General Manager to constitute a Board other than the one mentioned in Rule 10. From the record it appears the power was exercised by the Director under the proviso and the exercise of power does not appear to be vitiated for any reason.

6. The High Court appears to have been persuaded more by the arbitrariness of the Interview, Board, particularly by some overwriting in the marks which were awarded against some of the officer and drew an inference that probably it was not fair. We do not find any justification for the same after perusal of the record. Moreover so far respondent is concerned average marks allotted by all the four members did not give an impression that either the marking was arbitrary or that they were biased against him.

7. In the result the appeal succeeds and is allowed. The order passed by the High Court is set aside and the writ petition is dismissed. But there shall be no order as to costs.

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