

National Airport Authority

Vs

Nilu Sharma and Others

Civil Appeal No. 5163 of 1998

(G.T. Nanavati, S.P. Kurdukar JJ)

16.10.1998

JUDGMENT

NANAVATI, J. -

1. Leave granted.

2. Heard learned counsel for the parties.

3. Nilu Sharma, Respondent 1, filed a writ petition in the Bombay High Court against the National Airport Authority (hereinafter referred to as "NAA") and others, challenging appointment of C. V. Marthandan, Respondent 9, as Private Secretary and for a direction to NAA to promote her as Private Secretary on the basis of her seniority. The High Court allowed the writ petition, quashed the appointment of Respondent 9 and directed NAA to consider Nilu Sharma for appointment as Private Secretary by applying the criterion of seniority-cum-suitability. NAA has, therefore, filed this appeal.

4. Prior to 1990, there was no post of "Private Secretary" in the organisation of NAA. In may 1990, it created four fresh posts of Private Secretary, one each for the offices at Bombay, Calcutta, Delhi and Madras, in the pay scale of Rs. 2000-3500. On 5-7-1990, it issued a memorandum informing all concerned that the said posts were to be filled up from amongst Stenographers Grade I and Grade II having a combined service of 8 years. By the same memorandum, Smt Khade and Nilu Sharma were requested to appear for the interview as they were the only two Stenographers found eligible for selection to the said post. Before they could be interviewed, the proposal to fill up the posts in that manner was cancelled by issuing a memorandum dated 12-7-1990. In 1992, to fill up the two vacant posts at Bombay and Delhi, Nilu Sharma and two others, namely, M. Ranganathan of the Madras office and Sheikh Asadullah of the Calcutta office were considered by the Departmental Promotion Committee. Only Sheikh Asadullah was found fit for appointment, but as he refused to move out of Calcutta, no appointment could be made. On 9-2-1993, NAA again informed the Regional Executive Directors of Delhi and Bombay offices that all Stenographers with a total of 20 years' combined service as Steno Grade I and Steno Grade II have been made eligible for the post of "Private Secretary"; and that the selection would be made on the basis of a written test followed by an interview. All those who were willing to appear in the test were required to submit their willingness by 28-2-1993. The test for the post in Delhi office was held in June 1993 and one Baljit Singh who stood first was appointed. For the vacant post in the Bombay officer, no test could be held. As Nilu Sharma was due to retire by January 1998, it was decided to consider her again for the said post. The DPC again found her unfit and, therefore, she could not be appointed. Probably, finding it difficult to fill up the post from amongst Grade I and Grade II Stenographers, having

combined service of 20 years, NAA decided to widen the zone of consideration and consequently all Stenographers Grade I and Grade II with an overall service of 20 years as Stenographers Grade III, Grade II and Grade I were made eligible for appearing in the test. NAA, thereafter, by its letter dated 17-3-1994 wrote to the Regional Executive Director, Bombay, to forward a list of eligible and willing candidates to the Headquarters by 30-3-1994. At the test held thereafter, Nilu Sharma, Respondent 9 and others appeared. Respondent 9 stood first. Nilu Sharma was again not found suitable. In view of his first position in the merit list, Respondent 9 was appointed as "Private Secretary" on 1-8-1994. Nilu Sharma then filed a writ petition as stated above.

5. Her main contention before the High Court was that the post of "Private Secretary" was required to be filled up by promotion of Stenographers Grade I on the basis of seniority-cum-suitability and as she was the seniormost Stenographer Grade I, she ought to have been promoted to that post. It was her contention that Respondent 9 was not in the cadre of Stenographer Grade I and, therefore, was not eligible for consideration and much less, for appointment as "Private Secretary". The High Court held that "undisputedly till before 1994 the post of Personal Secretary was to be filled in by promotion from amongst the Stenographers in Grade I on the basis of seniority-cum-suitability". It further held that "Undisputedly further, Respondent 9 was not in the cadre of Grade I Stenographers. ..." and therefore NAA was not justified in bypassing the claim of Nilu Sharma "under the guise of introducing a device of selection". Taking this view, the High Court allowed her petition.

6. Mrs Rachna Joshi, learned counsel for the appellant, drew our attention to the office memorandum dated 5-7-1990 wherein it is clearly stated that the four posts of "Private Secretary" for Executive Directors were to be filled in from amongst the Stenographers Grade I and Grade II, on the basis of the said office memorandum. She also drew our attention to the subsequent letters and submitted that right from the beginning, the rule was that both Stenographers Grade I and Grade II were eligible for appointment as "Private Secretary" and, therefore, the High Court has gone wrong in holding that till 1994, the practice was to appoint Private Secretary by promoting a suitable person from amongst the cadre of Stenographers Grade I only.

7. We have earlier referred to the memorandum dated 5-7-1990 which clearly stated that the four posts of Private Secretary for Executive Directors were to be filled up from amongst Stenographers Grade I and Grade II. The two subsequent letters dated 9-2-1993 and 17-3-1994 by NAA also made it clear that both Stenographers Grade I and Grade II were eligible for the post of "Private Secretary". What was stated in the letter dated 9-2-1993 was : "Accordingly, all Stenographers with a total of 20 years' combined service as Steno Grade I/Steno Grade II will be eligible to apply for the post." The same letter further stated that : "Selection will be on the basis of a written test and interview." In the letter dated 17-3-1994, it was again stated that : "All Stenographers Grade I and Grade II with an overall service of 20 years as Stenographer Grade III, Stenographer Grade II and Stenographer Grade I in your region are eligible to appear in the examination." Thus, right from 1990 till Respondent 9 was appointed as Private Secretary, the position was that all Stenographers in Grade I and Grade II were eligible for the said post. Earlier, their experience in Grade I and Grade II alone was to be counted, but after 17-3-1994 their experience as Stenographers Grade III was also to be taken into account. In its counter-affidavit filed in the High Court, NAA had stated that the post of "Private Secretary" is a selection post and not a promotional post. It is, therefore, difficult to appreciate how the High Court held that till 1994, the post of Private Secretary was to be filled up by promotion from amongst Stenographers Grade I. Learned counsel appearing for respondent Nilu Sharma was not in a position to point out any material on the basis of which it can be said that the view taken by the High Court is correct. The post being a selection post, was required to be filled up by selecting a suitable person from amongst Stenographers Grade I and Stenographers Grade II. The

selection was to be made on the basis of a written and an oral test. Respondent 9 stood first in the test and, therefore, he was rightly appointed as Private Secretary. For the reasons stated above, we hold that the High Court was wrong in quashing the appointment of Respondent 9 and directing NAA to consider Nilu Sharma for appointment as a Private Secretary by applying the criterion of seniority-cum-suitability.

8. We therefore, allow this appeal and set aside the judgment and order of the High Court. The writ petition filed by Nilu Sharma before the High Court shall stand dismissed. No order as to costs.