

## SUPREME COURT OF INDIA

K.A. Nagamani

Vs.

Indian Airlines

C.A.No. 5314 of 2007

(Lokeshwar Singh Panta and B. Sudershan Reddy JJ)

27.03.2009

### JUDGEMENT

#### **B.SUDERSHAN REDDY, J.**

1. This appeal has been filed against the judgment and order of the High Court of Delhi passed in LPA (C) No. 1069 of 2004 affirming the judgment of the learned Single Judge in CWP No. 2338 of 1991.

2. Brief facts needed for disposal of this appeal are as under:

3. The appellant Ms. K.A. Nagamani was appointed as a Programmer with the Indian Airlines in the year 1984. The designation of the post of Programmer was changed to that of System Officer in the year 1985.

The appellant was promoted to the next higher post of Assistant Manager (Systems) in the Department of Electronic Data Processing (for short 'EDP') sometime in the year 1986 and confirmed in the said post on 15.9.1987. The EDP consisted of four divisions viz.

Software, Hardware, Data Communications and Computer Operations. Indian Airlines Officers' Association vide its representations dated 19.9.1990 and 28.9.1990 suggested and requested the Management to merge the hardware and software cadres and to prepare a common seniority list. A common seniority list dated 24.9.1990 had been drawn for the purpose of promotions.

4. Thereafter interviews were held on 15.10.1990 for the post of Deputy Manager (Maintenance/Systems).

The said post was to be filled from the merged seniority list of hardware and software cadres. The Management vide its letter dated 23.11.1990 informed the appellant and others that their candidatures were being considered for filling up the post of Deputy Manager (Maintenance/Systems). Thereafter, respondent nos. 2, 3 and 4 were selected for the post of Deputy Manager (Maintenance/Systems). The appellant unsuccessfully challenged the promotion of respondent nos. 2 to 4 as the writ petition filed by her was dismissed and confirmed in Letters Patent Appeal by the Division Bench of the High Court.

5. The High Court inter alia held that promotion to the post of Deputy Manager (Maintenance/Systems) is to be on the basis of merit and, therefore, found no merit in the

submission of the appellant that her juniors (respondent nos. 3 & 4) could not have been promoted to the said post. That so far as the promotion of the second respondent is concerned the Division Bench while confirming the order of the learned Single Judge found that his promotion had been upheld by the court in Civil Writ Petition No.

Indian Airlines & Ors. in which the appellant herein was also arrayed as a party respondent.

6. The main thrust of the submission made by the appellant in-person was that the promotion to the post of Deputy Manager (Maintenance/Systems) could not have been made based on the terms of the settlement between the Indian Airlines and its Officers' Association. That all along there has been separate seniority list of Assistant Managers and Senior 5 Computer Officers in EDP Department of the Corporation. The respondent no. 2 was on seniority list of Systems Officers who was promoted as Assistant Manager (Systems) in 1985 and continued to be borne on the seniority list of Assistant Manager (Systems) till 1988. Though, he was on the cadre of Systems called for interview for the post of Senior Computer Officer (Technical) in 1988 and was illegally shown at sl. no. 1 in the seniority list of Senior Computer Officer. He was not eligible to be considered for the higher post. That Rule 4 (d) of the Recruitment and Promotion Rules provides that within a department, employees will be divided into kindred occupational groups called cadres as shown in the annexed schedule to the Rules and seniority shall be on the basis of such cadres. That the cadres of Systems and Maintenance being new cadres have not been shown in the annexed schedule but have been shown separately on seniority lists. The submission was: two separate cadres could not have been merged into one based on agreement arrived at between the Corporation and the Officers' Association.

It was submitted that settlement arrived at between the Management and the Officers' Association is contrary to the Recruitment and Promotion Rules which govern the promotions of the officers from the lower post to the higher post. It was submitted that the Recruitment and Promotion Rules are statutory in nature and binding upon the Management. The agreement/settlement is contrary to the Recruitment and Promotion Rules.

7. Shri P.S. Narasimha, learned senior counsel appearing on behalf of the first respondent ably supported the judgment under appeal and submitted that the impugned judgment does not suffer from any errors requiring interference of this court.

8. Be it noted, the appellant did not make any challenge in the writ petition as regards the validity of the merger of two cadres. She, however, appears to have raised the dispute for the first time in her rejoinder affidavit filed in the High Court. There is no prayer to set aside the settlement arrived at between the Management and the Officers' Association of which she is also a member. It is not as if the appellant was not aware of the merger of two streams in the EDP Department and consequent preparation of a combined seniority list. The appellant was a party- respondent in writ petition No. 3647/93 in which the same issue as the one raised by the appellant had fallen for consideration and the High Court after an elaborate consideration found nothing wrong with the settlement and merger of the cadres. The Letters Patent Appeal no. 75/94 preferred against the said judgment of the learned Single Judge came to be dismissed because of the non-appearance of the appellant vide order dated 7.5.2001.

9. The main issue that arises for our consideration is whether the Recruitment & Promotion Rules are statutory in nature or mere administrative instructions? The said Rules are issued in exercise of the powers conferred by Rule 4 read with Rules 8 to 15 of Indian Airlines (Flying Crew) Service

Rules, Indian Airlines (Aircraft Engineering Department) Service Rules and Indian Airlines (Employees other than Flying Crew and those in the Aircraft Engineering Department) Service Rules. The Air Corporations Act, 1953 (for short 'the Act') is an Act to provide for the establishment of Air Corporations, to facilitate the acquisition by the Air Corporations of undertakings belonging to certain existing air companies and generally to make further and better provisions for the operation of air transport services. The Central Government by notification established two Corporations to be known as 'Indian Airlines' and 'Air- India International'. Under Section 4 of the Act the general superintendence, direction and management of the affairs and business of each of the Corporations vest in a Board of directors which consists of a Chairman and other Directors appointed by the Central Government. Section 8 provides for appointment of officers and other employees of the Corporations. The appointment of the Managing Director and such other categories of officers as specified after consultation with the Chairman shall be subject to such rules and approval of the Central Government. Section 44 of the Act, which is crucial for our purpose empowers the Central Government to make rules to give effect to the provisions of the Act; in particular, and without prejudice to the generality, such rules may provide for all or any of the matters, namely: the terms and conditions of service of the Managing Director of the two Corporations; and such other categories of officers as may be specified from time to time under sub-section (1) of Section 8. The rules so made are required to be published by notification in the official gazette. Every rule made under Section 44, shall be laid as soon as may be after it is made before each House of Parliament as provided for. Section 45, confers power on Corporations to make regulations. It provides that each of the Corporations may subject to the rules made by the Government, by notification in the Official Gazette, make regulations not inconsistent with the Act or the rules made thereunder for the administration of the affairs of the Corporation and for carrying out its functions; the regulations inter alia may provide for the terms and conditions of service of officers and other employees of the Corporation other than the Managing Director and officers of any other categories referred to in Section 44. The regulations made are also required to be placed before each House of Parliament. The Parliament is entitled to make modifications.

10. The Indian Airlines Corporation vide its Notification dated 6th April, 1955 in exercise of the powers conferred by clauses (b) and (c) of sub-section (2) of Section 45 of the Act (27 of 1953) with the previous approval of the Central Government notified the regulations which have come into force from 1st January, 1955. The Regulations are called the Indian Airlines Corporation Employees Service Regulations, 1955. The Regulations deal with the conditions of service, recruitment, promotion, discipline, control and appeal, pay and allowances, leave and retirement benefits of (a) Flying Crew; (b) Aircraft Engineering and (c) other employees, which shall be respectively as in the following rules namely:- 12 a) The Indian Airlines Corporation (Flying Crew) Service Rules;

b) The Indian Airlines Corporation (Aircraft Engineering Department) Service Rules;

c) The Indian Airlines Corporation (Employees other than Flying Crew and Aircraft Engineering Department) Service Rules.

11. Rule 4 of Service Rules for employees other than the Flying Crew and Aircraft Engineering Department with which we are concerned provides the Corporation with a right to modify, cancel, or amend all or any of these rules or supplementary rules issued in connection with these rules, without previous notice of their intention, and the right to give effect thereto immediately from the time or date of issue. Rule 8 provides for appointments to various posts to be made by promotion or direct recruitment in accordance with such conditions as the Corporation may determine from time

to time. Rule 14 provides that the employees of the Corporation will be eligible for promotion to the higher grade subject to possessing the requisite educational, technical and other qualifications and is considered fit in all respects for the promotion.

Promotions normally will be made on the basis of merit.

12. As noticed herein above the Recruitment and Promotion Rules were framed in exercise of the powers conferred under the Regulations referred to herein above. Be it noted, there is no power vested in the Corporation to make any rules since Section 44 of the Act confers power to make rules only in the Central Government and not in the Corporation. The Corporation is entitled to make only regulations which it did and published by way of Notification referred to herein above dated 6th April, 1955. The Recruitment and Promotion Rules are not even notified in the Gazette as it is not required whereas the service Regulations referred to herein above have been gazetted. The Indian Airlines Corporation Employees Service Regulations, 1955 which are made in exercise of the powers conferred upon the Corporation by the Act are undoubtedly statutory in nature but the Recruitment and Promotion Rules are not statutory in their nature. These Rules are not framed in exercise of any Rule Making Power. Mere administrative rules are not legislation of any kind. They are in the nature of statements of policy and the practice of government departments, statutory authorities, whether published or otherwise. Statutory rules, which are made under the provisions of any enactment and regulations, subject to Parliamentary approval stand on entirely different footing. The administrative rules are always considered and have repeatedly been held to be rules of administrative practice merely, not rules of law and not delegated legislation and they have no statutory force. Mere description of such rules of administrative practice as "rules" does not make them to be statutory rules. Such administrative rules can be modified, amended or consolidated by the authorities without following any particular procedure. There are no legal restrictions to do so as long as they do not offend the provisions of the Constitution or statutes or statutory rules as the case may be.

13. In the present case the agreement/settlement arrived at between the Management and its Officers' Association has the effect of protanto amending the Recruitment and Promotion Rules. The Rules and the agreement/settlement are complimentary to each other and have to be read together.

Bhagat Ram Sardar Singh Raghuvanshi [ AIR 1975 SC 1331], B.K. Srinivasan Versus State of Karnataka [ AIR 1987 SC 1059] and Inder Pradash [(2004) 6 SCC 786], in no manner assist the point urged by the appellant. The High Court having analysed those decisions came to the right conclusion that they are not applicable in deciding the issue whether the Recruitment and Promotion Rules are statutory in nature? We are in agreement with the view taken by the High Court. It is unnecessary to burden this short order of ours with the various authorities upon which the appellant sought to place reliance as we have no doubt in our mind whatsoever that the Recruitment and Promotion Rules are not statutory in nature.

15. For the aforesaid reasons, we are in complete agreement with the view taken by the Division Bench of the High Court and as well as the learned Single judge in coming to the conclusion that the Recruitment 17 and Promotions Rules do not draw any statutory flavour from the service Regulations.

16. The next question that requires consideration is whether the merger of the two cadres is valid? The Indian Airlines Officers' Association of which the appellant is also a member had requested the Corporation for merger of seniority of the cadres. The Corporation having considered the

representations so made decided that the software and hardware divisions of EDP Department should be merged and a common seniority list should be maintained. It was also decided that the vacancies of Deputy Manager (Maintenance/Systems) may be filled up through the merged cadre of software and hardware where technically qualified personnel are available. Later, pursuant to a further request by the Officers' Association, it was decided that the seniority of software and maintenance cadre be merged.

17. We find it difficult to agree with the contention of the appellant that the respondents could not have entered into agreement/settlement with the Indian Airlines Officers Association and decided to make promotions/appointments as per the said agreement contrary to Recruitment and Promotion Rules. It is not unusual for the Managements to consider the representation of its Officers' Association and arrive at a mutually agreed settlement after negotiations as long as such settlement does not run counter or contrary to any statutory instrument. Once it is to be held that the Recruitment and Promotions Rules are not statutory in nature but are in the nature of guidelines, there are no impediments to uphold the merger of software and hardware cadres into one cadre. Be it noted, the appellant did not question the merger of cadres in the 19 writ petition filed by her except contending the decision of the authorities of merger of two cadres into one was in violation of the Recruitment and Promotion Rules. No doubt an attempt was made by the appellant to contend before us that the merger of the two cadres into one is violative of Articles 14 and 16 of the Constitution of India. This belated attempt on the part of the appellant cannot be countenanced and we cannot entertain any such plea at this stage without there being any pleadings in that regard in the writ petition filed in the High Court.

18. The appellant herself relied on number of recruitments and promotion guidelines issued from time to time without questioning and challenging the same. The agreement between the Corporation and its Officers' Association including the promotion of 2nd respondent as noted herein above was subject matter of the writ petition filed by Joydev Chakraborty in which the appellant was arrayed as respondent. The High Court upheld the promotion of the 2nd respondent as Deputy Manager (Maintenance/Systems) based on the agreement between Indian Airlines and its Officers' Association. The High Court upheld the merger of the two cadres/streams. The judgment of the High Court attained its finality.

19. Now we proceed to consider the case on merits as to whether the promotion of the respondent nos. 2, 3 and 4 is not in accordance with law? The appellant nowhere disputed the fact that respondent no. 2 - Mr. M.M. Narula is senior to her in terms of "length of service". It is apparent from the record that when seniority of two cadres was merged, the Senior Computer Officers (Technical/Assistant Manager (Systems), who had completed two years in any capacity in any of the divisions were taken into consideration. Respondent No. 2 was initially appointed as an Assistant Manager (Systems) in the erstwhile grade 13/14 w.e.f. August, 1985 and later appointed as Senior Computer Officer (Tech.) which was also in the same department. The appellant herein was appointed to the post of Assistant Manager (Systems) much later to the respondent no. 2 and only on 5.9.1986. The attack is mounted only on the ground that the respondent no. 2 belonged to different cadre, namely hardware cadre and therefore, he was not eligible to be considered for promotion. It is by virtue of the agreement/settlement, Senior Computer Officers (Technical/Assistant Manager (Systems) who had completed two years in any division - be it hardware or software, were considered for the post of Deputy Manager (Maintenance/Systems) and a common seniority list was prepared. It is on that basis the Corporation has rightly considered the case of the 2nd respondent and selected him to the post of Deputy Manager (Systems/Maintenance). There is no substantial challenge to the decision of merger of software and hardware cadres into one

cadre having the common seniority list as arbitrary or on the ground of mala fide on the part of the Corporation. The challenge is based on violation of the Recruitment and Promotion Rules about which we have already dealt with in preceding paragraphs. It needs no restatement that the authorities are entitled to determine all conditions of service, alteration thereof by amending rules, constitution, classification, abolition of posts, cadres or categories of service, amalgamation or bifurcation of departments, reconstitution, restructuring of the pattern etc. as the same pertain to the field of policy within the exclusive jurisdiction of the employer, subject to limitations or restrictions envisaged in the Constitution. "There is no right in any employee to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules Accountant General [(2003) 2 SCC 632]. The High Court came to the right conclusion that the promotion of the respondent no. 2 as Deputy Manager (Maintenance/Systems) is not vitiated for any reason whatsoever requiring interference.

20. Now we shall consider the question whether promotion of respondent no. 3 and 4 was valid? The selection of respondent no. 3 and 4 by a duly constituted Selection Committee was made on the basis of assessment of comparative merit, as per Rules 19 to 22 of the Recruitment and Promotion Rules.

Rules 19 to 22 of the Recruitment and Promotion Rules are as follows:

"19. The recommendations of the Promotion Committees will be passed on to the Competent Authority in the matter of appointments as defined in the 'Instrument of Delegation of certain powers and Functions I.A.'

20. Promotions will be considered on the basis of suitability-cum-seniority in the grades or inter-linked grade below the grade for which promotions are being considered subject to fitness of the employee being certified by the Sectional/Departmental Head for the employee in the following form:

`Certified that Shri /Smt. ....

Designation ..... Grade .....

..... in view of his/her integrity/ability is fit to be considered for promotion/selection to scale or pay.....

....'

21. No employee can claim promotion as a matter of right. The advancement of an employee will depend as much on his suitability as on his relative standing with the others eligible for promotion.

22. Promotions to Selection Grade will be on the basis of rigorous selection on merit from amongst the employees in grades or inter-linked grades below the grade concerned and shall be limited to the number of posts declared as such on the cadre according to the sanctioned strength from time to time."

21. The appointments to the post of Deputy Manager (Maintenance/Systems) in the present case were obviously not made on the basis of direct recruitment but the selection and appointment were

made on the basis of promotion. The list of candidates called for selection was only of serving employees and no claim of any outsider was considered. It is evident from a bare reading of Rule 21, that no employee can claim promotion as a matter of right. It will depend on one's own suitability as on his relative standing with the others eligible for promotion. Rule 20, provides that promotions will be considered on the basis of 'suitability-cum-seniority' in the grades or inter-linked grade below the grade for which the promotions are being considered subject to fitness of the employee being certified by the Head of the Department. A combined reading of Rules 20, 21 and 22 makes it abundantly clear that suitability of a candidate for promotion has to be compared with others eligible for promotion. Promotion to selection grade is to be on the basis of 'selection on merit' from amongst the employees in grades or inter-linked grades below the grade concerned and shall be limited to the number of posts declared as such on the cadre according to the sanctioned strength from time to time. Rule 22 is specific in its terms. It says, in case of 'selection grade posts', the selection is a 'rigorous selection on merit'.

22. It is not the case of the appellant that her case was not at all considered for promotion to the post of Deputy Manager (Maintenance/Systems). It is clear from the record that the claim of the appellant for promotion was duly considered along with other eligible candidates including respondent nos. 3 and 4 who were ultimately found eligible and suitable for promotion. The Selection Board having assessed the ratings of each of the previous three years' annual performance appraisals and performance of the appellant in the interview found her not suitable for promotion. The respondent nos. 3 and 4 had outstanding ratings in their annual performance appraisals and were found suitable by the Selection Board. We cannot sit in appeal over the assessment made by the Selection Board and substitute our own opinion for that of the Board. In the result, we find the decision to select and appoint respondent nos. 3 and 4 is not vitiated for any reason whatsoever.

23. The post of Deputy Manager (Maintenance/Systems) is a an upper managerial post, which in terms of the existing Recruitment and Promotion Rules, could be filled either by direct recruitment or by promotion. If the vacancy was to be filled up by way of promotion, promotion in such cases obviously means promotion on the basis of suitability- cum-seniority. The process of selection on the basis of suitability-cum-seniority is in accordance with the package of Rules referred to herein above. It is not necessary in this case to restate and reiterate the difference between promotion based on seniority-cum- merit and merit-cum-seniority. The concept is different. In case of the former, greater emphasis is laid on seniority, though it is not the determinative factor, while in the latter, merit is the determinative Co. Ltd. [ (2004) 9 SCC 286].

24. For the aforesaid reasons, we concur with the view taken by the High Court that seniority alone was not the determinative criteria for promotion, merit or comparative merit was also taken into consideration by the Selection Board and the same is not contrary to law and guidelines.

25. Yet another aspect remains to be dealt with. The appellant made an attempt to challenge the selection procedure in which 50&percent; marks were reserved for interview and balance 50&percent; marks on the evaluation of the annual confidential reports. The High Court in this Indian Airlines Corporation & Ors. in W.P. (c) No.

3364/90 dated 31.8.1995 in which the Court took the view that post of Deputy Manager belongs to upper managerial cadre and allocation of 50&percent; marks for the interview and 50&percent; marks on the evaluation of the ACRs is not arbitrary. In R.S. Parti (supra) reliance was placed upon the decision of this Court in Indian [(1993) 1 SCC 17], in which the post of Deputy Operations Manager was in question and the method of evaluation was the same as in the present case. In the

said case, this Court held as under:

30 "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*; *Lila Dhar v. State of Rajasthan*; *Ashok Kumar Yadav v. State of Haryana and State of U.P. v. Rafiquddin*. Distinction appears to have been drawn in interview held for competitive examinations or admission in educational institutions 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."

This authoritative pronouncement of this Court, in our considered opinion, should put an end to the controversy raised by the appellant. It is not necessary to dilate any further on the subject.

26. Yet another aspect of the matter: That the appellant admittedly had participated in the similar selection process for erstwhile grade 15 and 16, Manager (Maintenance/Systems) and Senior Manager (Maintenance/Systems) respectively. The Corporation had given adequate opportunity to the appellant to compete with all other eligible candidates at the selection for consideration of the case of all eligible candidates to the post in question. The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the & Ors. [(1995) 3 SCC 486], this Court observed: "It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, 32 only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair: Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful." Reference may also be made to the decision of this Court in [(2002) 6 SCC 127].

27. No other point arises for consideration.

However, before parting with the case, we must make it clear that the appellant in her anxiety to persuade this Court to set aside the promotion of respondent nos. 2, 3 and 4 and to secure a writ of mandamus to grant her seniority, cited number of 33 authorities in her written submissions. On consideration, we find many of them are not relevant for the purposes of disposal of this appeal and for that reason we have relied upon only such of those judgments which are relevant to decide the appeal.

28. We are unable to grant any relief to the appellant but appreciate the manner in which the appellant presented her case before us.

29. The appeal is, accordingly, dismissed with no order as to costs.