

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/00120/2016

Dated this Wednesday the 28th day of August, 2019.

Coram: Dr.Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).

S.K. Bramhane,
Working as Deputy Director
of Air Safety,
O/o Deputy Director General
Civil Aviation Department,
Mumbai Airport (Old),
Mumbai - 400 029.
IA/17, Westwind Tower,
Air India Complex, Sector-27,
Seawoods, Navi Mumbai-400705. .. Applicant.

(By Advocate Ms.Priyanka Mehndiratta).

Versus

1. The Union of India, through
the Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan,
Safdar Jang Airport,
New Delhi - 110 003.
2. The Director of Civil Aviation,
Civil Aviation Department,
Opp. Safdar Jung Airport,
New Delhi - 110 003.
3. The Deputy Director General,
Civil Aviation Department,
Mumbai Airport (Old),
Mumbai - 400 029. ..Respondents.

(By Advocates Shri V.S. Masurkar and
Shri V.B. Joshi).

Order reserved on : 12.06.2019
Order delivered on : 28.08.2019.

O R D E R

Per : Dr.Bhagwan Sahai, Member (A).

Shri Sanjay K. Brahmane has filed this

O.A. on 23.02.2016 under Section 19 of the Administrative Tribunals Act, 1985. In this he seeks direction to respondents to quash and set aside order dated 29.12.2014 and to declare him as eligible and entitled to be considered by holding a review DPC for promotion with consequential benefits as Deputy Director, Air Safety from 2008-2009 and further as Director, Air Safety from January, 2014 along with his batch-mate Shri Maneesh Kumar Chopra, who was considered and promoted.

2. Summarized facts:

2(a). The applicant has stated that he joined as Senior Air Safety Officer on 29.01.1996. In merit list of UPSC, he was junior to Shri Maneesh Kumar Chopra and Shri Bharat Bhushan. He was confirmed on that position by order dated 04.07.2003. Subsequently Shri Bharat Bhushan left the Directorate of Air Safety and joined Operations Directorate and therefore, in the Directorate of Air Safety, only Shri Maneesh Kumar Chopra remained senior to him.

2(b). By order of 13.01.2012, based on recommendations of the DPC, he was appointed as Deputy Director, Air Safety with effect from 21.11.2011 (copy at Annex-A-3). Five posts of Deputy Director were vacant from 2006-2007 and if

he had been promoted as Deputy Director in 2006-2007 along with Shri Maneesh Kumar Chopra, he also would have been promoted as Director, Air Safety from January, 2014, when his immediate senior Shri Maneesh Kumar Chopra was promoted.

2(c). Due to creation of additional five posts of Deputy Director in 2009-2010, there were total 7 vacancies of Deputy Director, Air Safety but without approval of UPSC/DOPT, the Director General Civil Aviation decided to fill up 1/3rd of those vacancies in each year. However, under that policy Shri Maneesh Kumar Chopra, the applicant himself and Shri K.L. Meena could have been promoted but they were not promoted by the respondents from the seniority list circulated from 2014. He came to know later on about promotion of Shri Chopra and he being overlooked for promotion at that time.

2(d). By order of 21.05.2009, cadre restructuring was effected which resulted in creation of additional posts (Annex-A-8). Therefore, the Respondent No.2 invited applications for appointment on contract basis as per Advertisement dated 07.05.2011 (Annex-A-9). Thus the respondents were willing to appoint retired persons as Consultants on contract basis but they are not consider the genuine case of the

applicant.

2(e). As per order dated 20.03.2008, the applicant had also been declared Head of Office for Air Safety (Annex-A-6). Since he has been functioning and exercising duties and responsibilities of Director, Air Safety, as per DPC rules he was in the zone of consideration but even then he had to wait for 14 years to get promoted as Deputy Director, Air Safety.

2(f). The applicant was granted adhoc promotion as Deputy Director, Air Safety only in January, 2010 and regular DPC for promotion for the vacancies of 2009-2010 was held only in November, 2011. As per DOPT OM dated 27.10.2005, the crucial date to be reckoned for eligibility of candidates is 1st January of the year. As directed by Respondent No.2, he submitted his complete ACRs on 16.03.2015 to be placed before the DPC, even then the DPC was not held. Because of this the present O.A. has been filed.

3. Contentions of the parties:

The applicant contends that -

3(a). the impugned order dated 29.12.2014 (date mentioned as 29.12.2015 in the OA) is illegal, unjust, unfair and it has been issued without application of mind. The respondents did not follow the model calender for holding DPC meetings

circulated by DOPT by its OM dated 13.12.2013 (Annex-A-7). The respondents have not held DPC meetings as per DOPT Guidelines, so inaction on the part of the respondents in holding DPC is discriminatory, arbitrary, capricious, unlawful and in violation of Articles 14 and 16 of the Constitution as the applicant has not been promoted on time;

3(b). the respondents were not able to fill up the vacancies even on contract basis till 09.01.2013, when another advertisement was issued. In spite of clear vacancies available for the year 2009-2010, the applicant was promoted only on adhoc basis. Thus non-consideration of his case by the respondents is erroneous relying upon the requirement of 5 years of experience in the feeder cadre;

3(c). because of filing of this O.A., the respondents have sought to transfer him to Hyderabad and he has also been asked to explain as to why he remained absent from duty on 05.05.2016 and 13.05.2016 without permission and approval of the competent authority. The respondents did not even reply to this O.A. for seven months. Because of this, when the pleadings got completed, it was scheduled on 29.10.2018;

3(d). the mode of recruitment prescribed by the

Recruitment Rules in force till 19.11.2010 was 50% by direct recruitment and 50% by promotion, failing which by transfer on deputation and failing both, by direct recruitment. While seeking amendment to the Recruitment Rules in consultation with DOPT, the respondents had also stated that requirement of 5 years of experience in the feeder cadre would be amended and officers of 3 years of experience would be considered;

3(e). the Department had already proposed new Recruitment Rules providing for filling up of posts of Deputy Director, Air Safety by 100% departmental promotions, but even then the applicant was not promoted. When the applicant has performed duties of Director of Air Safety, he cannot be considered as not eligible for promotion to that post; and

3(f). full facts of vacancies were not brought to the notice of the DPC and, therefore, the DPC could not consider case of the applicant. The Department has been traditionally calling for ACRs only just before holding the DPC, which proves that his case was not considered for promotion on time and thus he has been discriminated against.

3(g). The applicant has also attempted to benefit from **Delhi High Court decision dated 11.08.2016, in Writ Petition No.5802/2015**

(Dr. Ramakant Singh Vs. Union of India & Ors), in which, referring to decision in another case of Union of India & Ors. Vs. N.R. Banerjee & Ors., 1997(9) SCC 287, it was held that DPC should be convened every year, if necessary, on fixed date i.e. 1st of April or 1st May. The DOPT OM dated 08.09.1998 also emphasised that DPC should be convened at a regular annual interval to fill up the vacancies during course of a particular year and that is why in the case of Dr. Ramakant Singh Vs. Union of India (Para 15) it was held that delay in holding DPC was not for any justifiable reasons and the petitioner was granted promotion from the date when the vacancy arose.

In view of these stipulations, the applicant also should have been promoted when the vacancies were available in 2007-08. In view of these submissions, the O.A. should be allowed.

The respondents in their reply contend that -

3(h). as per Civil Aviation Department (Group 'A' posts) Recruitment Rules, 1980, which were in vogue till 20.11.2010, the method of recruitment was 50% posts of Deputy Director, Air Safety and Regional Controller of Air Safety were to be filled up by direct recruitment and 50% by promotion, failing which by transfer on deputation

and failing both, by direct recruitment. Shri Maneesh Kumar, then Assistant Director of Air Safety was promoted to the post of Deputy Director, Air Safety on the basis of seniority-cum-fitness against one vacancy meant for recruitment through DPC.

Out of the 3 vacancies of Deputy Director Air Safety in 2007, as per the Recruitment Rules applicable at that time, one vacancy was filled up on promotion through DPC and the other 2 were filled up through direct recruitment. Because of this Shri Maneesh Kumar came to be promoted with effect from 08.04.2008. Before that he had been promoted as Deputy Director, Air Safety on adhoc basis. The present applicant and Shri K.L. Meena could not be promoted as there was only one vacancy to be filled up through promotion in that year. Therefore, the claim of the applicant in Para 4.4 of the O.A. that there were 5 vacancies of Deputy Directors in 2006-2007 and additional 5 posts of Deputy Director were created in 2009-2010, is false and misleading;

3(i). after the new Recruitment Rules were notified on 16.11.2010, providing for 100% recruitment of Deputy Directors, Air Safety by promotion through DPC, promotion process was taken up and 3 posts of Deputy Director Air Safety were

filled up from the eligible candidates upto 21.11.2011. That is how other officers below Shri Maneesh Kumar seniority including the applicant, were promoted as Deputy Directors Air Safety on regular basis with effect from 15.11.2011.

3(j). Shri Bharat Bhushan joined a direct recruit through UPSC in the newly formed Operations Directorate and got promoted as Director of Operations in 2014. However, the present applicant made no representation with respect to seniority list notified in 2014. As per the revised Recruitment Rules notified on 16.10.2010, for the post of Director, Air Safety, residency period of 5 years is required in the feeder cadre of Deputy Director, Air Safety before they could be considered for promotion. During the DPC held for that post in 2014, all eligible candidates were considered. Since the applicant did not meet the requirement of the Recruitment Rules i.e. of 5 years residency period as Deputy Director, he could not be considered;

3(k). the applicant has performed the duties of Head of Office only for the purpose of release of pay and allowances as per order dated 20.03.2008, for which any officer of Under Secretary rank can be authorized to perform and that is not to be confused as officiating as Director of Air Safety.

The representation submitted by the applicant on 21.11.2014 has been replied by the respondents vide letter dated 29.12.2014 (Annex-A-1), which is the order impugned in the present O.A. (the date of which is wrongly mentioned by the applicant in Para 5, Page 8 of the OA is 29.12.2015);

3(1). the contention of the applicant in Para 4.12 of the OA that the respondents have not followed the model calender of holding DPC meetings circulated by DOPT dated 13.12.2013 is not correct. Because as per the then existing Recruitment Rules in 2008, only one post of Deputy Director Air Safety became available for promotion and accordingly the senior-most candidate Shri Maneesh Kumar was promoted. However, for the benefit of departmental candidates, a proposal was initiated for one time relaxation to the existing provisions of Recruitment Rules for making promotions through DPC for filling up 100% posts of Deputy Director, Air Safety and pending the revision of the Recruitment Rules as above, 4 officers including the present applicant were promoted as Deputy Directors, Air Safety on adhoc basis from 11.01.2010 and once the Recruitment Rules got revised, the process was initiated for filling up the posts without delay;

3(m). as per DOPT OM dated 30.03.1988 and

23.07.2001, no appointments can be made on adhoc basis by direct recruitment from open market and continuation of adhoc appointments beyond one year requires prior approval of DOPT. Also appointment on adhoc promotion does not bestow on any person a claim for regular appointment and the service rendered on adhoc basis also does not count for the purpose of seniority and promotion to the higher grade;

3(n). the applicant had also failed to submit his Annual Confidential Reports from 2009-2010 to 2013-2014 and, therefore, he was advised to submit his ACRs as per letter dated 09.02.2015. Since the applicant had not completed the required 5 years of regular service as Deputy Director after joining as Deputy Director on regular basis on 21.11.2011, and he would have completed 5 years regular service in that grade only on 20.11.2016 and become eligible for promotion for the post of Director, Air Safety from the vacancy year 2016-2017, his representation was correctly rejected as per impugned order dated 29.12.2014 (Annex-A-1);

3(o). the respondents have also relied on these Apex Court decisions.

(i). In *Union of India and Others Vs. Chaman Rana* in Civil Appeal Nos.2763/2018 with Civil Appeal No.2764/2018 i.e. *Union of India and Others*

Vs. Gulshan Kumar Sharma decided on 12.03.2018
{2018(3) SLR 15}, holding that in service matters especially with regard to promotion, there is always an urgency and the aggrieved person must approach the Court at the earliest opportunity, or within a reasonable time. Thereafter third party rights accrue in the meantime to those who are subsequently promoted, a belated interference is bound to have adverse effect on those already promoted and any directions at the belated stage to consider others for promotion with retrospective effect is bound to have serious administrative implications apart from the financial burden on the Government.

(ii) As held earlier in **P.S. Sadasivaswamy Vs. The State of Tamil Nadu, (1975) 1 SCC 152**, it was held that a period of six months or at the most one year would be reasonable time to approach the Court against denial of promotion and it would be a sound and wise exercise of discretion by the Courts to refuse to exercise extraordinary powers under Article 226 in the case of persons who do not approach expeditiously for relief, entertaining such petitions is a waste of time of the Court.

(iii). As held in **Union of India Vs. M.K. Sarkar (2010) 2 SCC 59**, a Court or Tribunal, before

directing consideration of a claim or representation should examine whether the claim or representation is with reference to a live issue or whether it is with reference to a dead or stale issue.

(iv). As held earlier in **Union of India and another Vs. Major Bahadur Singh, (2006) (1) SCC 368**, the Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

Observations of the Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the Courts are not to be construed as statutes;

3(p). it is important to be noted that Shri Maneesh Kumar was appointed as Deputy Director, Air Safety on regular basis with effect from 08.04.2008 by order dated 21.04.2008. Therefore, if the applicant had any grievance for his non-promotion in 2008, the cause of action for him arose in 2008, but he has filed the present O.A. Only in February, 2016 and, therefore, it suffers from delay and laches, and deserves dismissal.

For this delayed filing of the O.A., the applicant has also not filed any application for condoning the delay. Therefore, on this ground the O.A. should be dismissed.

4. Analysis and conclusions:

We have perused the O.A. its annexes, rejoinder of the applicant as well as reply. We have also considered the submissions of counsel for the parties on 12.06.2019. After consideration of these, our conclusions are as follows:

4(a). The applicant has filed this O.A. on 23.02.2016. However, the cause of action for him for promotion as Deputy Director, Air Safety actually arose in 2008 as he claims that he was not promoted as Deputy Director, Air Safety along with Shri Maneesh Kumar Chopra, when the latter was promoted as Deputy Director, Air Safety with effect from 08.04.2008. The case record reveals that the applicant filed a representation in this regard also only on 21.11.2014. This is surprising to note that he being vigilant about his right (mentioned in Para 3 of the OA), he filed representation only on 21.11.2014 which was rejected on 29.12.2014. Of course, filing of representation does not help him in extending the period of limitation. Therefore, this O.A.

suffers from delay and laches as contended by the respondents. For this delay in filing of the O.A., the applicant has neither filed an application for condonation nor has explained as to why he could not approach the Tribunal earlier in time.

4(b). In this regard the Supreme Court decision in **B. Madhuri Goud Vs. B. Damodar Reddy, 24(2012) 12 SCC 693** is proper in which it has been held that the concept of liberal approach while handling the application for condonation of delay has to encapsulate the conception of reasonableness and it cannot be allowed as a totally unfettered free play where there is inordinate delay, the doctrine of prejudice is attracted and it warrants strict approach whereas the delay of short duration or few days calls for a liberal delineation. The applicant has to justify the delay of every day which prevented him from filing of the O.A. in time.

4(c). Also this being a case related to delay in promotion, as per the Supreme Court view in **Union of India and others Vs. Chaman Rana and Union of India and others Vs. Gulshan Kumar Sharma decided on 12.03.2018 {2018(3) SLR 15}** (relied upon by the respondents), the applicant ought to have approached the Tribunal at the earliest

opportunity and within a period of six months or at the most one year (P.S. Sadasivaswamy Vs. The State of Tamil Nadu, (1975) 1 SCC 152).

4(d). Since the applicant has neither approached the Tribunal in time nor submitted any satisfactory justification for the delay through a proper application for its condonation, the present O.A. is beyond limitation provided under Section 21 of the Administrative Tribunals Act, 1985 and, therefore, it deserves dismissal on this ground itself.

4(e). The claim of the applicant that the respondents have not followed the model calender for holding DPC meetings as per DOPT OM dated 13.12.2013 is also without substance. As explained by the respondents, in the year 2007 there were only three vacancies of Deputy Director, Air Safety and as per the Recruitment Rules prevailing at that time, two vacancies were filled up through direct recruitment and only one vacancy was available for promotion. Accordingly the senior most eligible Assistant Director, Air Safety, Shri Maneesh Kumar Chopra was promoted. This submission of the respondents is correct.

4(f). The vacancy circular issued by the Director General, Civil Aviation, New Delhi on 07.05.2011 in pursuance to restructuring of

various posts under the Directorate was for inviting applications for appointment of Consultants on short term contract basis, for which retired Government employees were also made eligible. Therefore, this is not relevant to the case of promotion of the applicant.

4(g). As per vacancy Circular for the post of Director, Air Safety dated 03.02.2015, the requirement is of 5 years regular service in the feeder grade after appointment thereto on regular basis and as submitted by the respondents, because the appointment of the applicant as Deputy Director, Air Safety on regular basis only from 21.11.2011, he was not eligible for consideration for the post of Director, Air Safety before 20.11.2016. Therefore, the claim of the applicant that he should have been considered for promotion for the post of Director, Air Safety from January, 2014 is not justified.

4(h). The claim of the applicant that he has discharged the duties of Head of Office of the Director, Air Safety and, therefore, he was eligible for consideration for the post of Director, Air Safety from January, 2014 is also without substance. The submission of the respondents in this regard is correct that the power of HOD granted to him was only with respect

to release of pay and allowances and it cannot be confused with officiating as Director of Air Safety. This contention of the respondents is also correct.

4(i). As is clear from the case record and submissions of the respondents, the applicant himself had not submitted his Annual Confidential Reports after 2009-2010 to 2013-2014, which he submitted only on 16.03.2015. This was his own failure and the respondents cannot be held responsible in any manner on this ground.

4(j). From the facts of the case it is clear that the applicant could not be promoted before 2010 because of availability of only one vacancy for promotion of Deputy Director, Air Safety during 2008 when his senior Shri Maneesh Kumar Chopra was promoted. After the revised Recruitment Rules, 2010 came in force, providing for filling up of post of Deputy Director 100% by promotion, the respondents have taken the required steps leading to promotion of the applicant as well as other officers in 2011 and prior to that the applicant had also been promoted even on adhoc basis from January 2010.

4(k). Viewed in the perspective of the above facts, and legal position in the above referred caselaws, the claim of the applicant alleging

discrimination against him by the respondents is misleading and false. Also before him none of his juniors in the cadre of Assistant Director, Air Safety was promoted as Deputy Director, Air Safety. He was also not eligible for consideration for promotion as Director, Air Safety before November, 2016. Therefore, the O.A. is devoid of merits and it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
29/8/19

