



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities

सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment

भारत सरकार / Government of India

Case No.5478/1021/2015

Dated:-20.05.2016

In the matter of:

Ms. Rajni Gupta,
14C, J&K Extension,
Laxmi Nagar,
Delhi-110092

DS1

..... Complainant

Versus

Air India,
(Through Chairman & Managing Director),
Air India Ltd.,
Air Lines House,
113, Gurudwara Rakabganj Road,
New Delhi-110001

DS2

.... Respondent

Date of hearing : 28.03.2016, 19.04.2016

Present :

28.03.2016

1. Ms. Rajni Gupta, Complainant..
2. Shri Ashwani Sehgal, DGM(HR) and Ms. Varsha Yadav, Manager (Pers) on behalf of Respondent.

19.04.2016

1. Ms. Rajni Gupta, Complainant..
2. Shri Suneet K. Kauldhar, Sr. AGM(P) and Ms. Varsha Yadav, Manager (Pers) on behalf of Respondent.

ORDER

The above named complainant, a person with disability filed a complaint dated 15.11.2015 before the Chief Commissioner for the Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the 'Act' regarding her promotion and grant of all consequential benefits with all incentives

2. The complainant has submitted that she joined the service on 10.08.1987 in Yayudoot and after its merger with Air India in 1995 she joined Air India. The competent authority of Air India did not give any weight to her. She was not given any benefit from 1995 to 2015. On 29.05.2015, an interview was conducted for the post of Assistant Manager in which she also participated but she was not promoted. Her representation in regard to her grievance to CMD on 13.07.2015 followed by reminders dated 10.08.2015 and 15.09.2015 did not fructify. She received a letter dated 20.10.2015 from the General Manager (Finance) on 06.11.2015 stating that her request has been examined and they would like to inform her that during the course of the interview you were not found suitable for promotion by the Selection Board. She prayed for taking action and restrain harassment of the employee with disability.

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3. The matter was taken up with the respondent vide this Court's letter dated 24.11.2015
4. The Executive Director (Pers. & IR), Air India vide letter No. HPDO1/W-8 dated 04.01.2016 stated therein that the complainant joined the erstwhile Vayudoot Limited on 01.05.1988 as Accounts Assistant. After the merger of Vayudoot Limited, Air India and Indian Airlines, she joined Air India as Accounts Clerk on 16.05.1995. She was promoted to the post of Officer-Finance on 01.06.2009. She appeared for interview for the post of Assistant Manager-Finance. She secured 35 marks out of 70 in last three years APARs. Further, she was interviewed by a duly constituted Selection Board including a SC/ST representative on the Board and secured 19.8 marks out of 30. Thus she secured a total of 54.8 marks out of 100 while the qualifying marks are 75. Therefore, she could not be promoted to the post of Assistant Manager-Finance. They have further stated in their reply that Air India has imposed a ban on recruitment in 2002 and it is still in force.
5. The complainant vide her rejoinder dated 18.01.2016 has submitted that she had received Air India's letter No. HPDOI/W-R dated 04.01.2016 (received on 9.1.2016). She stated that out of last 3 years' APARs, her signatures were obtained only on one APAR for the period 1.4.2012 to 31.03.2013. She had signed that APAR in July, 2014. She has got one outstanding and six good remarks. Regarding the above mentioned facts, she had written a letter to CMD on 13.07.2015, its Reminder-II on 6.10.2015 and she had put up her request in the personal meeting also on 8.10.2015. She does not understand how she was denied promotion. She further submitted that the facts have been suppressed and manipulated. She also submitted that her retirement is due in June, 2017.
6. The copy of the complainant's rejoinder letter dated 18.01.2016 was forwarded to the respondent vide this Court's letter dated 01.02.2016 for furnishing the comments and to intimate about the basis on which a criteria of 75/100 as qualifying marks have been fixed for persons with disabilities to this Court but no reply was received from the respondent.
7. After considering respondent's reply dated 04.01.2016 and complainant's rejoinder dated 18.01.2016, a hearing was scheduled in this case on dated 28.03.2016.
8. The respondent vide letter No. HPDOI/W-8 dated 11.03.2016 submitted that the approved Performance Appraisal Format of erstwhile Air India Limited does not have any provision for counseling action with her. However, there is a provision to communicate the adverse entry, if any, in respect of the employee. As there was no adverse entry in the APARs of the complainant during the relevant period, the question of communicating the same to the complainant did not arise.

....3/-



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9. On 28.03.2016, the complainant submitted that the interviews were conducted for promotion to the post of Assistant Manager on 29.05.2015 in which she also participated. She was not considered for promotion on the basis of Annual Performance Appraisal Reports (APARs). She questioned being given less marks on the basis of APARs. Persons junior to her who were appointed during the years from 1989 to 1995 have also been promoted as Assistant Manager and are presently working as Manager. She has been overlooked by the respondent without any valid reason. She produced extracts of the merged seniority list of Officer Finance as on 01.01.2014. Mrs. R. Chopra was reported to have been selected without having six years of service at her credit. She complained that on the last two APARs, her signatures had not been taken. In spite of her representation, the reasons for her non-selection have not been intimated to her.

10. The representative of the respondent submitted that the complainant joined the erstwhile Vayudoot Limited on 01.05.1988 as Accounts Assistant. After the merger of Vayudoot Limited, Air India and Indian Airlines, she joined Air India as Accounts Clerk on 16.05.1995. She was promoted to the post of Officer-Finance on 01.06.2009. According to Dharamadhikari Committee Report, an interview was conducted for the post of Assistant Manager in which she also participated. She secured 35 marks out of 70 marks in last three years APARs and 19.8 marks out of 30 in the interview. Thus she secured a total 54.8 marks out of 100 while the qualifying marks were 75. Therefore, she could not be promoted to the post of Assistant Manager-Finance. The respondent also submitted that there were 107 candidates eligible for the post, out of which 106 candidates appeared for interview. Out of 106 candidates, 104 candidates were promoted as the remaining two candidates were found unsuitable by the Board. Questioned about the recruitment rules and criteria for promotions, the respondent informed that it was a special exercise to give career progression to stagnating employees.

11. After hearing both the parties, the Court asked for the following information/documents to be submitted on or before 16.04.2016:-

- (i) The details of her APARs for the last nine years (including six years in the capacity of Officer Finance) disclosed to the complainant. In case of non-disclosure for any particular year, reasons thereof.
- (ii) Was the candidature of Smt. Rajni Gupta considered with any relaxed standards as is done in the case of Scheduled Castes and Scheduled Tribes candidates. If so, details thereof.

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- (iii) The number of candidates with same length of service as the complainant and their educational qualifications vis-à-vis their seniority position as per the merged seniority list.
- (iv) Number of Finance Officers or equivalent promoted with less than six years of service with reasons thereof.

12. It was also recorded in the Proceedings that the Court will be pleased if the promotion of Smt. Rajni Gupta, complainant is considered with relaxed standards keeping her disability in view as she is going to retire in June, 2017, especially in view of the submission that this was a special exercise for career progression over and above the provision of departmental rules. Necessary relaxations by the Competent Authority, if any required, may also be considered and decisions conveyed to this Court. The case is fixed for next hearing on 19.4.2016.

13. On 19.04.2016, the complainant reiterated her written submissions and submitted that on the last two APARs, her signatures were not taken. She was not given the copy of rating given to her in her APARs. In spite of her representation, the reasons of her non-selection have not been intimated to her. Juniors to her have been promoted to the post of Assistant Manager ignoring her claim.

14. The representative of the respondent submitted that the reply dated 18.04.2016 alongwith copies of the APARs from the year 2006 to 2014, which were taken on record. He submitted that merger of erstwhile Air India and erstwhile Indian Airlines was announced in August, 2007 and pending integration of cadres, the promotions were put on hold. According to the recommendations of the Justice Dharmamukhi Committee Report, seniorities as on 01.04.2007 and 01.01.2012 of erstwhile Air India Ltd. and erstwhile Indian Airlines Ltd. were merged cadre-wise. Out of the 9 APARs from the year 2006 to 2014, the complainant has not signed the APARs for the years 2013 and 2014 though she has signed the APARs for the remaining years except for 2009 which is not traceable. In case of any adverse remarks in the appraisal report, it is essential that the same is communicated to employee concerned and also report is duly signed by the employee. In the APAR for the year 2012, there are remarks of the Countersigning Authority as "employee was communicated and shown the report. She was unwilling to sign for reason best known to her". Thereafter she had not signed the reports for the year 2013 and 2014. In the Air India, there is no provision for giving the copy of APAR to its employees.

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15. As per DoP&T's O.M. No. 21011/1/2005-Estt.(A)(Pt.II) dated 14.05.2009, The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment. The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.

16. As per O.M. No.20(10)/99-DPE-GM-Part-2014FTS-1517 dated 25.02.2015 of Department of Public Enterprises, the issues of applicability of instructions regarding reservation to SC/ST/OBC/Disability & Ex-servicemen as issued by Government Ministries/Departments to CPSEs are reviewed by Department of Public Enterprises (DPE) and it was found that in general instructions on reservation matters as issued by Government departments are extended to CPSEs as mutatis mutandis. As such, it is decided that instructions as issued by Government in respect of reservations to SC/ST/OBC/Disability & Ex-servicemen are to be taken as mutatis mutandis extended to all the CPSEs concerned unless specifically specified otherwise by DPE.

17. The respondent was asked to show the proof that the APARs for the years 2013 and 2014 were communicated to complainant but she refused to sign. The representative of the respondent submitted that as the APARs are not adverse and hence the same were not communicated to the complainant. The averment is not tenable as it is seen from the APARs for the years 2006, 2007, 2008, 2010 and 2011 that these APARs were not adverse but the same were signed by the complainant. It is further noted that from 2006 to 2012 the grading of complainant's APARs is Good. It is only in 2013 and 2014 that she was given 'Average'. Moreover, these are the only two APARs not shown to have been communicated to the complainant. Even in these two APARs, the reporting officer has assessed her job knowledge and efficiency as Good. It is in other aspects like attitude, general disposition and leadership that she gets average.

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18. After perusing the record available on file, hearing both the parties and evaluation of evidence on record, this Court is of the view that the contention of the respondent that the complainant scored less marks than required in the interview and APAR assessment is not tenable. On the other hand, contention of the complainant that she was not communicated the APARs for the last two years appears correct. In view of the fact that this was a one time stagnation promotion exercise conducted in the year, 2015 and incumbents who had stagnated in the existing post for more than 06 years were considered for the post of Assistant Manager and out of 107 eligible candidates, 106 candidates appeared for interview and 104 candidates were promoted leaving the complainant and one other. The Court feels that injustice has been done to the complainant who is a person with disability and must be rectified. The complainant may be considered for promotion to the post of Assistant Manager with effect from the date from which her juniors were promoted. Ordered accordingly. Compliance report may be submitted to this Court within 30 days from the date of receipt of this order.

(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
for Persons with Disabilities

N.O.O.

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