

Supreme Court of India

Sh. V. Kashyap And Another vs Indian Airlines And Others on 7 April, 1994

Equivalent citations: AIR 1994 SC 2128, 1994 (1) UJ 572 SC

Bench: S Agrawal, B Hansaria

ORDER

1. Leave granted.

2. The two appellants were appointed as Deputy Director (Finance) on promotion vide notification No. 14 of 1991 issued by respondent No. 1, Indian Airlines. The validity of the same came to be challenged by filing a writ petition in the High Court of Delhi by one Sushma Chawla (respondent No. 4 herein) on the ground that while promoting the appellants as aforesaid the relevant guidelines holding the field were noted adhered to and as such their promotions were not in accordance with law. The High Court accepted the contention of the writ petitioner and set aside the promotion of the appellants. Feeling aggrieved, this Court has been approached under Article 136 of the Constitution.

3. The short point which needs determination is whether there was violation of the guidelines, the applicability of which has not been questioned before us. The requirement of the guidelines which is said to have been violated is that in judging the suitability of the persons within the zone of consideration last three years "Annual Performance Appraisal" (APR) would be considered. It is an admitted position that while considering the case of the appellants APRs of the immediately preceding three years had not been taken into consideration; what had instead been done was to take into consideration three years' immediately preceding available APRs. According to the High Court this was not permissible, because that would amount to adding the word "available" in the guidelines, which is not permissible.

4. The three APRs as required by the guidelines could not be considered in the case of the appellants for a cogent and adequate reason. The same was that the Managing Director of respondent No. 1 who was to write the APRs for the years in question, namely, 1988-89 and 1989-90, did not do so as the then incumbent (one Shri R. Prasad) had resigned in February, 1990; and despite efforts being made by respondent No. 1 to get the concerned APRs written by him after resignation the same did not bear fruit as he did not agree to do so. It is for this reason that these APRs being not available could not be considered while considering and promoting the appellants.

5. On the aforesaid facts the question is whether the view taken by the High Court can be sustained. The reason given by the High Court is that Shri Prasad being available, the fact that he did not agree to write the APRs could not be used against the writ petitioner permitting respondent No. 1 to attach an other criterion beyond prescribed guidelines. We are, however, of the view that for the aforesaid disinclination of Shri Prasad to write the two APRs, the reasons of which cannot be said to be motivated or untenable, the High Court took an unreasonable view by observing that the non-writing of two APRs was due to 'lapse and fault of respondent No. 1'. It is really not a question of taking advantage of 'one's own default' as observed by the High Court. According to us, in the facts and circumstances of the case the consideration of the APRs of the years 1985- 86, 1986-87 and

1987-88, which were the APRs of the three preceding available years, has to be taken as a due compliance of the guidelines in this regard. The ratings as per these three APRs gave a total of 35.68 insofar as respondent No. 4 is concerned, whereas the two appellants got 39.84 and 39.68 respectively. In the interview also the two appellants got more marks than respondent No. 4 as would appear from the averment made in para 7 of the Special Leave Petition, which fact has not been disputed in the counter- affidavit filed by respondent No. 4.

6. The aforesaid being the position, we are of the opinion that the High Court committed an error in setting aside the pro motion of the appellants to the post of Deputy Director (Finance). We, therefore, allow the appeal by quashing the impugned judgment and dismissing the writ petition filed by respondent No. 4. In the facts and circum stances of the case, we leave the parties to bear their own costs.