

CASE NO.:
Appeal (civil) 1916 of 2008

PETITIONER:
ASHOK SHANKAR GUHA

RESPONDENT:
AIR INDIA LTD

DATE OF JUDGMENT: 11/03/2008

BENCH:
P.P. Naolekar & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO.1916 OF 2008
[ARISING OUT OF SLP (CIVIL) NO.17014 OF 2005]

1. Leave granted.

2. The appellant filed a Writ Petition in the Bombay High Court challenging the action of the Management withdrawing the promotion of the appellant as Senior Check Flight Purser (Grade 26) and directing recovery of the excess payment made to him during the period 1.1.2000 to 31.12.2002. The Division Bench of the Bombay High Court by its order dated 13th July, 2004 set aside the order withdrawing the promotion and referred the matter back to the Respondent to reconsider the same after giving an opportunity to the appellant.

3. Pursuant to the order dated 13th July, 2004, a show cause notice was issued to the appellant whereby he was asked to show cause as to why the promotion of Senior Check Flight Purser should not be withdrawn and his pay be re-fixed as Flight Purser.

4. After hearing the appellant, the Respondent passed an order to the effect that the order dated 24th August, 2000 promoting the appellant to the post of Senior Check Flight Purser (Grade 26) is cancelled. The balance recovery, if any, of the payment to be made of the period 1.1.2000 to 31.12.2002 will be recovered from the appellant's monthly salary from November, 2004 onwards.

5. This order of the Management was challenged by the appellant by filing second Writ Petition No.497/2005. The High Court by its order dated 2nd May, 2005 dismissed the Writ Petition observing that the appellant has only a right for being considered for promotion but it is not necessary that he should be given promotion. The High Court was of the view that the appellant's case for promotion was considered and was rightly rejected. Hence, the appellant is before this Court.

6. It is contended by learned counsel for the appellant that under the promotion policy dated 5.6.1997, promotion to different category of posts depends on the number of years an incumbent serves the Respondent-Organization. Although the promotion policy has referred to suitability of criteria for promotion to different posts but it appears that no such suitability criteria has been made applicable for promotion in Air India. The appellant joined Air India on 1st January, 1980 and was confirmed as an Assistant Flight Purser w.e.f. 1st July, 1980. After completion of 17 years of service he would have been eligible for promotion to the post of Additional Senior Check Flight Purser on 1st January, 1997. That promotion has not been given to the appellant. On 6th August, 1997 after the promotion committee met he was served with a charge-sheet and placed under suspension pending enquiry. On 22.9.1998 a punishment of stoppage of two annual increments due on 1.1.1998 and 1.1.1999 was imposed on the appellant. Thus, the stoppage of two annual increments

was upto 1.1.2000 and he was eligible to receive his annual increment as on January 1, 2000 and the ineligibility imposed on the appellant for future promotion to the post of Senior Check Flight Purser on completion of 18 years of service stood removed and the appellant would have been entitled for promotion to the said post on 1.1.2000.

7. The promotion policy refers to promotion only on the basis of particular number of years completed in the service. The appellant would have become entitled for promotion to the post of Senior Check Flight Purser on 15.7.1998 itself but due to departmental enquiry and suspension during that period and later on imposition of punishment of the stoppage of two annual increments he was denied promotion. But once the period of stoppage of two increments was over, he was entitled for promotion w.e.f. 1.1.2000 to the post of Senior Check Flight Purser. Accordingly, the respondent by its order dated 24.8.2000 promoted the appellant as Senior Check Flight Purser w.e.f. 1.1.2000, which was, according to us, later on wrongly withdrawn.

8. For the aforesaid reasons, the impugned order of the High Court is set aside. The appellant is entitled for promotion to the post of Senior Check Flight Purser from 1.1.2000 and the appellant shall be entitled for all other consequential benefits.

9. The appeal stands disposed of accordingly.