

Capt. Anjit Singh Vs. State of U.P. and Others

Capt. Anjit Singh Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/473328

Court : Allahabad

Decided On : Aug-13-1999

Reported in : 2000(2)AWC1422

Judge : A.S. Gill and; Dev Kant Trivedi, JJ.

Acts : Uttar Pradesh State Civil Aviation Pilot Service Rules, 1991 - Rule 5(5)

Appeal No. : Writ Petition No. 192 (S/B) of 1999

Appellant : Capt. Anjit Singh

Respondent : State of U.P. and Others

Advocate for Def. : M.P. Singh, ;Ram Raj and ;Vinod Singh, Advs.

Advocate for Pet/Ap. : S.D. Singh, Adv.

Judgement :

A.S. Gill and Dev Kant Trivedi, JJ.

1. By means of the present writ petition Capt. Anjit Singh, Chief Flight Instructor of Civil Aviation Department of the Government of U. P. has claimed promotion to the post of Government Pilot (Fixed Wing) after ousting the opposite party No. 5 Sri Ali Amir. The petitioner has also prayed for a mandamus staying the deliberations of the Departmental Selection Committee for promotion to the post of Government

Pilot (Helicopter Wing). The petitioner has also assailed the order of his transfer to Faizabad from Lucknow.

2. According to the petitioner, he started working as a Pilot in the year 1970 while the opposite party No. 6 Pragyesh Misra started working on the said post in the year 1987. He was appointed as a regular Pilot in the Civil Aviation Department of the State Government of U. P. in the year 1975. The opposite party No. 6 was promoted to the post of Senior Pilot (Helicopter Wing) in the year 1995 and is likely to be recommended by the Departmental Selection Committee for further promotion which was scheduled to meet on 8th February, 1999. According to the petitioner, there are two posts of the Government Pilots in Civil Aviation Department of the State of U. P. One post is of the Government Pilot (Fixed Wing) while the other post is of the Government Pilot (Helicopter Wing). The vacancies in these posts are to be filled in 50% by direct recruitment and 50% from substantively appointed Junior Pilots and Pilot Instructors Incharge who have completed 3 years' service on the post of Senior Pilot or Chief Pilot Instructors, and it is only in case suitable eligible persons are not available for promotion, the vacancies can be filled up by direct recruitment.

3. The petitioner claims that Sri Ali Amir, opposite party No. 5 was appointed as Government Pilot (Fixed Wing) on contract basis without any advertisement and without following the procedure provided in the Rules, even though he was unfit to hold the post. Ali Amir has been holding the post of Government Pilot (Fixed Wing) though the petitioner is eligible, fit and competent to be promoted on the said post from 15th April, 1998. According to the petitioner. Sri Ali Amir, the opposite party No. 5 was declared permanently unfit for all flying licences from 24th November, 1992 and he is being allowed unlawfully to continue as Government Pilot (Fixed Wing) in violation and disregard of Rules despite his incapacity and incompetence. Petitioner claims that he was also entrusted with the responsibility of Officer Incharge Simulator and Captain Pragyesh Misra, the opposite party No. 6 and Captain Shivaji Singh were placed to work under him by letter dated July 9, 1996, of Joint Director (Operations), Directorate of Civil Aviation, U. P. Petitioner made an application on 15th April, 1998 for promotion to the post of Government Pilot (Fixed Wing) but no orders were passed on the said application. The petitioner

was selected and offered the post of Chief Pilot by the Government of Punjab in 1996 in the higher pay scale at a higher rank but he was not relieved by the State Government. The petitioner claims promotion to the post of Government Pilot prior to the promotion of the opposite party No. 6 Capt. Pragyesh Misra who worked as a trainee under the petitioner and was given promotions to the post of Senior Pilot and now was being considered for promotion to the post of Government Pilot earlier to the promotion of petitioner. The grievance of the petitioner is that when he prayed for his promotion, he was transferred to Faizabad by order dated 29th January, 1999, which tantamounts to his reversion, inasmuch as he will get lesser emoluments and will have to work on the post of Flight Instructor instead of Chief Flight Instructor.

4. Counter-affidavit has been filed on behalf of the opposite parties 1 to 4, State of U. P. and Director, Civil Aviation. It is admitted that the petitioner has been working as Chief Pilot Instructor with effect from 13th August, 1990, while opposite party No. 6 Sri Pragyesh Misra was given regular promotion on the post of Senior Pilot on 9th February, 1995. It is also admitted that opposite party No. 6 Pragyesh Misra was earlier working as Junior Pilot (Helicopter Wing). It is also admitted that the petitioner was earlier appointed as Assistant Flying Instructor on 7th October, 1970, while opposite party No. 6 Pragyesh Misra was appointed in the year 1987 on the post of Junior Pilot (Helicopter Wing). It is also admitted that the petitioner was appointed as Pilot Instructor, Senior Grade on 4th April, 1975 and with effect from 1st August, 1980. Cooperative Hind Flying Club was liquidated and in its place Directorate of State Civil Aviation started to function. It is also admitted that the opposite party No. 6 Pragyesh Misra was appointed initially as apprentice Pilot on 30.5.1987 for a fixed period of one year on fixed pay and he was regularly appointed as Junior Pilot on 27.10.1988. According to the opposite parties 1 to 4, the petitioner was not eligible for promotion to the post of Government Pilot (Helicopter Wing) and the Selection Committee was considering promotion only on the post of Government Pilot (Helicopter Wing) and not to the Post of Government Pilot (Fixed Wing).

5. The case of the opposite parties 1 to 4 further is that Sri Ali Amir opposite party No. 5 was working as Group Captain in the Indian Air Force and was taken on

deputation in the Directorate of State Civil Aviation on 7th January, 1991, for a period of two years on the post of Government Pilot (Fixed Wing). Subsequently the period of deputation was extended upto 31st August, 1996. Sri Ali Amir retired on 31.8.1996 and thereafter he was appointed with effect from 1.9.1996 on fixed pay on contract basis for a period of 3 years, and since the post of Government Pilot was not vacant, no promotion was made against the said post. The Selection Committee has been constituted for promotion only to the Post of Government Pilot (Helicopter Wing). It is admitted by the opposite parties 1 to 4 that Sri Ali Amir, opposite party No. 5 was declared unfit for flying licence by means of letter dated 7th January, 1993, but still continued to work on the post of Government Pilot (Fixed Wing) till 31st August, 1996, as he was not unfit for other administrative work of the department, and, therefore, he was engaged on contractual basis for a further period of 3 years. Since there was no person eligible for promotion to the post of Government Pilot (Fixed Wing) the post was filled in on contract basis, and that the petitioner has no claim as he became eligible for promotion on the said post only on 15th April, 1998. According to the opposite parties 1 to 4, the petitioner has been transferred to Government Flying Training Centre, Faizabad, in public interest, though admittedly there is only one Aeroplane, and the Government thought it fit to transfer him in the public interest, looking into the experience of the petitioner to impart better training to the trainees at Faizabad. Besides that he had been posted at Lucknow for a long time.

6. It is claimed that the petitioner being Pilot of Fixed Wing cannot claim promotion on the post of Government Pilot (Helicopter Wing) for which he has no qualification and is not eligible for consideration.

7. In his counter-affidavit, opposite party No. 6 claims that he started his career as Trainee Pilot from July 12, 1984 and obtained Private Pilot Licence in the year, 1985 and that he was appointed as Junior Pilot Officer in Directorate of State Civil Aviation in October, 1988 and thereafter was promoted as Senior Pilot on 9th February, 1995. Since he was fulfilling all essential qualifications for the post of Government Pilot (Helicopter Wing), he was selected on 8th February, 1999 and was promoted to the post of Government Pilot (Helicopter Wing) which was vacant. He claimed that the petitioner may be fulfilling essential qualifications for

the post of Government Pilot (Fixed Wing), but he was not qualified, nor was he possessing the essential qualifications for the post of Government Pilot (Helicopter Wing).

8. No counter-affidavit has been filed on behalf of the opposite party No. 5, Ali Amir.

9. As would be evident from the above narration of the respective cases of the parties, there is only one post each of the Government Pilot (Fixed Wing) and Government Pilot (Helicopter Wing) in the Civil Aviation Department of the State of U. P. So far as the post of Government Pilot (Fixed Wing) is concerned, the case of the petitioner is that it has been wrongly filled in by the State Government firstly by having ondeputation the services of Sri Ali Amir, opposite party No. 5, even though he was not competent to hold the said post, and secondly there was no occasion to appoint Ali Amir, opposite party No. 5 against the post of Government Pilot (Fixed Wing) on contract with effect from 1st of September, 1996, as he was not competent to hold the office of Government Pilot.

10. So Far as the post of Government Pilot (Helicopter Wing) is concerned, the petitioner does not claim that he possesses the requisite qualification for the said post. His only grievance in respect of the said post hovers around the fact that the said post was sought to be filled in and was actually filled in by selecting Capt. Pragyesh Misra, opposite party No. 6 who got the training from the petitioner and was appointed in the Civil Aviation Department only in the year, 1984 and was promoted to the post of Senior Government Pilot only in February. 1995.

11. The grievance of the petitioner is that on the one hand the opposite party No. 6 has been given accelerated promotions whereby the petitioner's own trainee has superseded him in the department thereby getting the chance of becoming Government Pilot, while he has been denied promotion by filling in the post of Government Pilot initially on deputation and_ subsequently by giving a contractual appointment to a person who was incompetent to hold that post.

12. It is not disputed by the opposite parties that Capt. Pragyesh Misra came into the department much after the petitioner. It is also not disputed that the opposite

party No. 6 Capt. Pragyesh Misra has been able to get promotion to the post of Government Pilot (Helicopter Wing) within a short span of 14 years of service. Capt. Anjit Singh, the petitioner has been serving the Department of Civil Aviation right from the very inception, and even prior to that he was working in Hind Flying Club which was liquidated and substituted by Civil Aviation Department. The grievance of the petitioner vis-a-vis opposite party No. 6 Capt. Pragyesh Misra is based on the accelerated promotions given to the opposite party No. 6. However, the petitioner does not claim that he was competent to be promoted to the post of Government Pilot (Helicopter Wing) and, therefore, the promotion of the opposite party No. 6 to the post of Government Pilot (Fixed Wing) cannot be assailed by the petitioner. Howsoever, accelerated the promotions may be, the post was filled in by the promotion of the opposite party No. 6 Pragyesh Misra to the post of Government Pilot (Helicopter Wing) in accordance with Rules. The grievance of the petitioner, therefore, is not well-founded, though apparently the denial of further promotion to the petitioner seems to be inequitable, but since the petitioner has no right to claim the promotion to the post of Government Pilot (Helicopter Wing), the promotion of opposite party No. 6 cannot be invalidated at petitioner's instance.

13. The case of the petitioner otherwise for his promotion to the post of Government Pilot (Fixed Wing) that he was eligible to hold this post, is well-founded. The appointment to the post of Government Pilot is provided in the Uttar Pradesh State Civil Aviation Pilot Service Rules, 1991. The recruitment to the post of Government Pilot is provided in sub-rule (5) of Rule 5 of the aforesaid Rules, which provides as under :

'Government Pilot (Fixed Wing) (i) 50 per cent by direct recruitment, and

Government Pilot (Helicopter Wing) (ii) 50 per cent by promotion from amongst substantially appointed Junior Pilots. Pilot Instructors, Pilot Instructor Incharge. Chief Pilot Instructors and Senior Pilots who have completed either five year service on the post of Junior Pilots, Pilot Instructors. Pilot Instructor Incharge or have completed three years service on the post of Senior Pilot or Chief Pilot Instructor, on the first day of the year of recruitment and who possess the

qualifications and experience prescribed for the respective posts in Appendix 'B' provided that the Government may, on the recommendation of the Selection Committee, constituted under Rule 15, relax the prescribed qualifications and experience to such extent as it may deem proper in respect of a candidate, who is otherwise suitable for recruitment by promotion.

If suitable eligible persons are not available for promotion in any category of posts, the vacancies may be filled by direct recruitment.'

14. The aforesaid Rule leave no scope for appointment to the post of Government Pilot by deputation much less on contract basis.

15. Sri Ali Amir, opposite party No. 5 was taken on deputation by the opposite parties on the post of Government Pilot on 7th January, 1991, initially for 2 years. Subsequently the period of deputation was extended upto 31st August. 1996 and on 31st August. 1996, he was appointed on contract basis for a period of three years. Apparently the appointment of Sri Ali Amir, opposite party No. 5 initially on deputation and subsequently on contract basis was against the rules. Sri Ali Amir was still on deputation when the Director General of Civil Aviation, Government of India vide letter dated 7th January, 1993, copy of which is Annexure-1, declared him permanently unfit for all flying licences. His appeal against cancellation of his capacity as a Pilot/his licence was also dismissed by an order dated 11th January, 1993, copy of which is Annexure-2. In both these letters, Annexures-1 and 2 Ali Amir was directed to forward his licences to the Regional Director of Airworthiness for necessary endorsement on his licences, i.e., the endorsement to the effect that he was permanently unfit as a Pilot. The opposite parties were required to dispense with the services of Sri Ali Amir atleast from 7th January, 1993, on which Sri Ali Amir was declared permanently unfit for all flying licences. The opposite parties on the other hand claim that Sri Ali Amir, opposite party No. 5 was retained in service as he was not unfit for administrative work. Sri Ali Amir was taken on deputation on 7th January, 1991, for two years which expired on 6th January, 1993. He appeared for medical test on 24.11.1992 as indicated in Annexure-1 and was found medically unfit. There was no reason for retaining him as Government Pilot thereafter, but for the accommodation given to him by the opposite parties

manifestly against rules. The opposite parties do not deny the knowledge of Sri Ali Amir having been incompetent as a Pilot with effect from 7th January, 1993. Without condoning the conduct of the opposite parties in keeping the opposite party No. 5 in its service after disqualification as Pilot, the conduct of opposite parties of retaining opposite party No. 5 on contract basis with effect from 1.9.1996 is highly questionable which was neither permissible in view of his incapacity to work as Government Pilot, besides it was not permissible under rules applicable to this department, it appears that the authority whichever was concerned, in retaining Sri Ali Amir, opposite party No. 5 as Government Pilot after his declared disqualification as a Pilot on 7th January, 1993, was overtly interested to retain opposite party No. 5 at the expense of State Exchequer without any legal sanction. The appointment to the post of Government Pilot is an appointment to the public office. Even if the opposite parties considered in view of the rules applicable that no person could be promoted to the post of Government Pilot, it could make appointment by direct selection which is permissible under the rules. However, the rules were given go-by to favour opposite party No. 5 by the concerned authorities. It is really unfortunate. In the counter-affidavit of opposite parties 1 to 4 in para No. 20 while admitting that Sri Ali Amir was declared unfit as a Pilot from 7th January, 1993, onwards, have come up with a clear assertion that he was otherwise not unfit for administrative work of the department. If he was retained only for the administrative work of the department, there was no reason or occasion to give him the appointment on the post of Government Pilot (Fixed Wing) particularly when other officers of the rank of Chief Pilot Instructor, Pilot Instructor, Pilot Instructor Incharge, Senior Pilot, Joint Director (Operation and Training) and Director (Operation and Administration) were available in the Department as indicated in paragraph 31 of the counter-affidavit of the opposite parties. Any one of these officers could have been entrusted with administrative work of department. Retention of Sri Ali Amir, opposite party No. 5 as Government Pilot in the circumstances is writ large of favouritism. It is clear in the circumstances that the post of Government Pilot (Fixed Wing) was occupied by a person on 7th January, 1993 and onwards who was ineligible and incompetent to hold the post and, therefore, he continued to be usurper of the office since that date. Admittedly, opposite party No. 5 retired on 31.8.1996. Subsequently he was appointed on

contract basis entered into between the parties on 22nd October. 1996, but the appointment on contract basis was given from a back date with effect from 1st September. 1996. The contract for appointment of Ali Amir on the post of Government Pilot in the circumstances was with a person who was no more having a licence of a Pilot and was considered and appointed on the post of Government Pilot with all the perks attached to the post. The contract obviously was to give undue and unfair advantage to Sri Ali Amir, opposite party No. 5 and to cause avoidable loss to the State Exchequer.

16. In view of what has been stated above. It is evident that the opposite party No. 5 Sri Ali Amir was not entitled to hold the office of the Government Pilot and he cannot be termed as Government Pilot (Fixed Wing), consequently there is a vacancy on the post of Government Pilot (Fixed Wing). The finding is, therefore, irresistible that the post of Government Pilot (Fixed Wing) should have been filled in by the Department of Civil Aviation long back in accordance with U. P. State Civil Aviation Pilot Service Rules. 1991.

17. In view of the illegal and unwarranted act of giving appointment to the opposite party No. 5 Sri Ali Amir firstly by extension of deputation inspite of his being disqualified from 7th January. 1993 and subsequently giving him contractual appointment with effect from 1.9.1996 amounts to deliberate attempts of the opposite parties 1 to 4 to deprive the petitioner or other persons who might have been eligible or could have been appointed to the post of Government Pilot (Fixed Wing). It may be that the petitioner was not eligible to get promoted to the post of Government Pilot (Fixed Wing) prior to 15th April, 1998, but that did not mean that the post of Government Pilot (Fixed Wing) was not required to be filled in terms of the U. P. State Civil Aviation Pilot Service Rules, 1991. The reasonable expectations of the Pilots of the Civil Aviation Department were thus throttled by the opposite parties 1 to 4 by giving appointment to a person who was disqualified for holding the post of Government Pilot (Fixed Wing).

18. It is really surprising that when the petitioner became eligible for being considered to the post of Government Pilot (Fixed Wing), his claim was side-tracked by taking the plea that the post was not vacant as the same was being

held by Sri Ali Amir on the basis of the contract. It was open to the State Government to terminate the said contract by giving a notice in writing for terminating the contract in terms of condition No. 4 of the agreement, instead of doing so and rectifying the error committed by the opposite parties 1 to 4, the petitioner's application for promotion was not at all considered. It may be seen that the D.P.C. was being called for promotion to the post of Government Pilot (Helicopter Wing) in February, 1999, but no effort was being made by the opposite parties 1 to 4 for filling in the post of the Government Pilot (Fixed Wing). though a person of approximately 20 years of service in the Civil Aviation Department and about 28 years of service in total was available for promotion and in case he was not suitable, the post could have been filled in by direct recruitment. It was not so done. The Rules were bypassed. Petitioner was transferred to Faizabad with a view to punish (him) an experienced Senior Pilot for his laying a rightful claim for promotion. It is really strange that the opposite parties 1 to 4 asserted in paragraph 30 of counter-affidavit that petitioner was transferred looking into his experience and to impart better training to the trainees at Faizabad. It is really unfortunate that the experience and expertise of the petitioner have resulted in loss of emoluments and loss of face to the petitioner when he was transferred from the headquarters to an insignificant training centre which had only one Aeroplane. It is strange that a person who is not qualified, was permitted to continue on deputation from 7th January, 1993 to 31st August, 1996 and thereafter on contract basis for a further period of 3 years. On the one hand Sri Ali Amir, the opposite party No. 5 was permitted to work for more than 8 years at Lucknow, but on the other hand the petitioner has been transferred, though admittedly he has been working only from 1.7.1991 at Lucknow. The case of the petitioner is that there is no post of Chief Pilot Instructor available at Faizabad and even then though there are Junior officers available as mentioned in paragraph 31 of the counter-affidavit of the opposite parties 1 to 4, only the petitioner has been chosen for transfer. The grievance of the petitioner, therefore, that his transfer was made firstly to Jeopardize his claim for promotion to the post of Government Pilot (Fixed Wing)] and secondly with a view to punish him by sending him to a place where he may not be able to get the flying experience requisite for renewal of the flying licence, the transfer order, therefore, suffers from apparent prejudice and malice. The said

transfer order from Lucknow to Faizabad is an exercise to cow down the petitioner so that he may not raise his voice against the undue advantage being conferred on Sri Ali Amir, the opposite party No. 5 and from raising his voice for granting accelerated promotion to the opposite party No. 6 Capt. Pragyesh Misra. This Court is generally reluctant to interfere with the transfer orders, but the circumstances of this case compel us to quash the order of transfer dated 29th January, 1999.

19. In view of the above discussion, it is evident that the petitioner has been subjected to unnecessary harassment by being transferred from Lucknow to Faizabad and the said order has to be quashed and it must be deemed to be non-est.

20. From the discussion as aforesaid, it is also evident that the office of Government Pilot (Fixed Wing) is being held by a person who is disqualified to hold the same and it is, therefore, held that the post of Government Pilot (Fixed Wing) is deemed to be vacant with effect from 7th January, 1993. Since the post of the Government Pilot (Fixed Wing) is held by a person who is not authorised to hold the said office, he is deemed to have ceased to work on the post with immediate effect. So far as the payment of salary and allowances which apparently seem to be 'fixed at Rs. 14,200', are not 'fixed' at that amount as in terms of condition No. 8, he was made entitled to all concessions for medical attendance. The opposite party No. 5 was also made entitled to receive the benefit of any improvement that may be sanctioned by the Government subsequent to 22nd of October, 1996, in the terms and conditions of service of the Civil Aviation Department as per provisions in condition No. 9 of the agreement dated 22.10.1996. The State Government is, therefore, duty bound to fix the responsibility of executing such an agreement with a disqualified person, namely, Sri Ali Amir and to recover the amount drained out from the State Exchequer by making payment to opposite party No. 5 Sri Ali Amir in pursuance of the said agreement from the person concerned or from the persons held responsible for the loss caused.

21. Since the office of Government Pilot (Fixed Wing) has been held to be vacant, the opposite parties 1 to 4 are directed to make appointment to the said post in terms of U. P. State Civil Aviation Pilot Service Rules, 1991, keeping in view the reasonable aspirations of employees of Civil Aviation Department and in doing so, they must consider the case of the petitioner who is eligible for promotion to the post of Government Pilot (Fixed Wing).

22. The writ petition is partly allowed. It is declared that the opposite party No. 5 Sri Ali Amir is not entitled to hold the office of Government Pilot (Fixed Wing) and he is directed to cease work with immediate effect. It is directed by a writ of mandamus that the opposite parties No. 1 to 4 will act in accordance with U. P. State Civil Aviation Pilot Service Rules, 1991 and will consider the case of the petitioner for promotion to the post of Government Pilot (Fixed Wing). The order of transfer of petitioner from Lucknow to Faizabad as contained in Annexure-17 is quashed and it is directed that the same shall be deemed to have never come into existence, and the petitioner will be entitled to salary and perquisites as admissible to him as Chief Pilot Instructor in the Civil Aviation Department at Lucknow.

23. No orders, however, are made with regard to the promotion of Government Pilot (Helicopter Wing) as the petitioner was not eligible to be promoted to the said post.

24. Petitioner will be entitled to the costs of the petition which we quantify at Rs. 5,000 payable to the petitioner by the opposite parties 1 to 4. A copy of this Judgment be sent to Chief Secretary of the State Government.