

**(2014) 05 DEL CK 0016**  
**In the Delhi High Court**  
**Case No : WP (C) 295/2012**

Indian Commercial Pilots Association

APPELLANT

Vs

Air India Ltd. and Others

RESPONDENT

**Date of Decision :** 28-05-2014

**Acts Referred:**

Companies Act, 1956 — Section 391, 394  
Constitution of India, 1950 — Article 14, 226

**Citation :** (2014) 211 DLT 189 : (2014) 143 DRJ 690

**Hon'ble Judges :** Rajiv Shakdher, J

**Bench :** Single Bench

**Advocate :** Niraj Kishan Kaul, Sr. Advocate, Mr. Gopal Shankaranarayanan, Mrs. Misha Rohatagi, Mrs. Aitreji Chatterjee, Mr. Vikramaditya and Mr. Rohit Gupta, Advocate for the Appellant; Lalit Bhasin, Ms. Ratna D. Dhingra and Ms. Bhavna Dhami, Advocates for R-1, Mr. Parag P. Tripathi, Sr. Advocate, Ms. Anjana Gosain, Ms. Kanika Tandon and Mr. Pradeep Desodhya, Advocates for R-2, Mr. Vivek Kohli, Ms. Shivambika Sinha, Ms. Mridul Chawla and Mr. Atul Chaubey, Advocates for R-3, Advocate for the Respondent

**Final Decision :** Dismissed

## Judgement

Rajiv Shakdher, J.—The petitioner herein is a Trade Union of pilots, comprising of the employees of the erstwhile Indian Airlines. Their battle, if one may say, is principally against with their employer-Air India, i.e., respondent no. 1, and respondent no. 3, which is the other Trade Union of pilots, representing the erstwhile Air India. Respondent no. 2 is Union of India, which is being sued through Ministry of Civil Aviation (in short MOCA). The dispute, essentially involves assertion of right by the members of the petitioner association to fly advanced/wide bodied aircrafts i.e., Boeing 777s (in short B-777). The dispute has been given a legalistic form, which is, broadly as follows:

1.1. whether the erstwhile Air India pilots could directly take command of an advanced/wide bodied aircraft, such as, B-777, without gaining command experience on a basic/narrow bodied aircraft, such as, Boeing-737, Airbus-310

and Airbus-320?

1.2. As a necessary corollary to what is stated above, it is the contention of the petitioner that the erstwhile Indian Airlines pilots, who have the necessary command experience on basic/narrow bodied aircraft could be given command training, vis-a-vis advanced/wide bodied aircraft, i.e., B-777.

1.3. In support of these issues, several arguments have been raised by the two competing sets of pilots, represented by the two trade unions. For the sake of convenience, from hereon, I would be referring to the petitioner as ICPA, respondent no. 1 as AIL, respondent no. 2, as indicated above, as MOCA, and respondent no. 3 as IPG.

2. In order to appreciate the contours of the dispute, one would have to briefly touch upon the facts which pre-date the merger of the two entities, i.e., erstwhile Indian Airlines and Air India.

2.1. Evidently, in 2005 erstwhile Air India had ordered a purchase of a fleet of 50 Boeing aircrafts, which included, 23 B-777s and 27 B-787s. These being advanced/wide bodied aircrafts, were intended to be used for long and medium haul operations. Around the same time, the erstwhile Indian Airlines had also placed an order for 43 Airbus aircrafts. No order was placed for Airbus A-330. Between 2006 and 2010, 43 Airbus aircrafts were delivered. Though the exact period is not known, 23 B-777s were also delivered. Consequently, by 2010 the fleet strength of Airbus aircrafts went up to 68, while the B-777s added upto 26 aircrafts.

2.2. On 22.12.2005, the erstwhile Air India entered into a wage revision agreement with its employees, which envisaged revision of wages for its pilots. The period in issue was: 01.01.1997 to 31.12.2006. Since, this agreement is relied upon heavily by ICPA, I may briefly refer to certain provisions of the aforementioned agreement. Clause 8(a) of the said agreement refers to classification of fleet. While, referring to classification of fleet, the said clause adverts to basic and advanced aircrafts. Basic aircrafts are shown as B-737/ A-310, while advanced aircrafts are shown as B-747-400/300, B-777 and B-787. Clause 10(e), which falls under the heading "career progression", makes the following provision: "All co-pilots will commence command training on the basic type of aircraft. Thereafter, command conversion on any advanced type of aircraft will be as per line seniority and the need of the company."

2.3. Continuing with the narrative, the Government of India (in short GOI), in 2007, decided to amalgamate the erstwhile Indian Airlines and Air India with National Aviation Company of India Ltd. (in short NACIL). A scheme of amalgamation was prepared in terms of Section 391 and 394 of the Companies Act, 1956 (in short the 1956 Companies Act). All three companies, referred to above, filed their petitions for sanctioning of the scheme of amalgamation with the GOI between 05.06.2007 and 10.07.2007. Prior to the institution of the said petitions, all preliminary steps were taken, as required under the extant

provisions of the law.

2.4. Objections to the scheme were entertained. The GOI after hearing the objectors, either personally or through counsel, passed an order dated 22.08.2007; sanctioning the scheme. The scheme of amalgamation was brought into force w.e.f. 01.04.2007. NACIL, which was the entity with which erstwhile Indian Airlines and Air India had merged, was at a latter point in time rechristened as Air India Limited, which, as indicated above, is referred to herein as AIL.

2.5. One of the provisions of the scheme of amalgamation, which is clause 3.13(a) has been relied upon by ICPA to contend that there could have been no change in the terms and conditions of services of employees of the transferor companies, which included the pilots of erstwhile Indian Airline and Air India. As to what is the effect of this clause and, how it would have to be construed with reference to other clauses in the amalgamation scheme, is discussed by me in the latter part of my judgment.

2.6. The thrust of the submissions of ICPA is, that upon merger of the two entities, the assets of the two companies, which included their respective fleet of aircrafts, should be available for operation without discrimination to the erstwhile Indian Airlines pilots. To buttress this submission, attention is drawn to the fact that all Aircrafts now belonging to AIL, stand registered under a common Air Operators Permit, with the Director General of Civil Aviation (in short DGCA).

2.7. It is the case of the petitioner that on 27.07.2010, the AIL took out an advertisement for recruitment of rated pilots for B-777. This was objected to by ICPA, on the ground that with the amalgamation of the two erstwhile entities, i.e., Indian Airlines and Air India, there was a new synergy created, which logically should entail use of resources, available internally. In other words, ICPA members were offering their services for flying aircrafts instead of having AIL recruit pilots from external sources.

2.8. The fact that there was scarcity of pilots, who could command B-777s, is attempted to be highlighted by ICPA with reference to notice dated 14.09.2010 issued by NACIL (i.e., AIL), whereby all B-747 commanders, below the age of 61 years, as on 01.01.2011, were asked to apply for voluntary conversion for commanding B-777s.

3. According to ICPA, since the said exercise did not achieve the desired result; on 01.02.2011, an office order was circulated, which indicated that the Chairman and Managing Director (in short CMD) of then NACIL, was desirous of inviting applications from pilots having requisite command experience to fly B-777s. In terms of the said office order, Commanders with requisite experience on jet aircrafts could also volunteer for command on B-777. Pursuant to this office order, it is averred that 137 pilots belonging to erstwhile Indian Airlines filed their applications. Evidently, no action was taken qua the request of the said applicants.

3.1. In the interregnum, it is averred by ICPA, a Parliamentary Standing Committee on Transport, Tourism and Culture, submitted its report in January, 2010, which highlighted the fact that B-777 aircrafts, acquired by the GOI at a huge expense, were lying unused, as pilots, required to fly these aircrafts, were not available.

3.2. Apparently, in November-December, 2011 members of ICPA got a whiff of the fact that the AIL was training co-pilots of erstwhile Air India for taking command of B-777s. It is averred that this fact also came to their notice by virtue of a news report published in the Times of India on 05.01.2011.

4. Being aggrieved by the aforesaid development, ICPA instituted the instant writ petition, which was moved before this court, on 13.01.2012. Notice in the writ petition was issued though, on 18.01.2012. IPG was impleaded as party to the present proceedings based on the application moved by ICPA, being: CM 3043/2012, vide order dated 04.05.2012. To be noted, IPG itself, had also moved an application for the very same purpose, being: CM 5925/2012, which the court noted in its order dated 08.05.2012, had become infructuous in view of its impleadment already having been ordered vide order dated 04.05.2012.

4.1. ICPA's application for stay, being: CM 613/2012 was finally disposed of vide order dated 11.05.2012. The operative directions, as contained in paragraph 46 and 47 of the order, are as follows:

....46. Therefore, in view of the discussion and submissions of the parties, I am of the considered opinion that till the report submitted by Justice Dharmadhikari Committee is implemented, the imparting of training on advanced aircraft, in this manner, shall remain stayed.

47. I hereby make it clear that the pilots of Air India those who are already on training on advanced aircrafts, they shall not be disturbed and those who already taken the training on advanced aircraft shall be subject to the outcome of the instant petition....

4.2. Significantly, at the hearing held on 22.08.2012, counsel for both parties conveyed to the court that the report submitted by Justice Dharmadhikari's Committee had no bearing on the issue adverted to in the instant writ petition. The learned Judge disagreed with the contention and directed parties to file their written synopsis.

4.3. On 06.03.2013 when, the matter was listed before the court in its usual course, a direction was issued calling upon both sides to take instructions, whether pilots of both, Indian Airlines and Air India could be trained on advanced aircrafts, without being conferred commands; making it clear that if, such an arrangement is put in place, it will be subject to the final outcome of the writ petition. The Board of Directors of AIL were also directed to deliberate on the issue and file a report qua this aspect on the next date of hearing. At this hearing, notice was also issued on an application (being: CM No. 2569/2013)

moved by IPG for vacating the interim order dated 11.05.2012. The next returnable date was fixed as 23.04.2013.

4.4. On the aforesaid date the court was informed that a High-Powered Committee had been constituted to look into the issue and submit its report to the Board of Directors of AIL for consideration of the suggestion made at the hearing held on 06.03.2013. The matter was made returnable on 29.07.2013.

4.5 The matter reached hearing on 13.01.2014, on this date a direction was issued, fixing dates of final hearing in the writ petition itself and, consequently, the application filed by IPG being: CM 2569/2013 for vacation of stay was disposed of. As indicated in the order dated 13.01.2014; on 12th and 13th March, 2013, counsels for the parties were heard and the judgment in the matter was reserved.

#### Submissions of Counsels

5. Arguments on behalf of the IPCL were advanced by Mr. Neeraj Kishan Kaul, learned senior counsel assisted by Mr. Gopal Shankaranarayanan, Advocate, while arguments on behalf of AIL, i.e., respondent no. 1 were advanced by Mr. Lalit Bhasin, Advocate. Union of India, i.e., respondent no. 2 (MOCA) was represented by Mr. Parag P. Tripathi, learned senior counsel assisted by Ms. Anjana Gosain, Advocate. Submissions on behalf of IPG, i.e., respondent no. 3 were advanced by Mr. Vivek Kohli, Advocate.

6. Mr. Kaul briefly submitted that the purpose of the amalgamation of the two erstwhile entities, i.e., Indian Airlines and Air India was to leverage the skill and experience available in the two organizations so that the true potentiality of the organization could be reached.

6.1. It was contended that the assets, i.e., the fleet of aircrafts available with the merged entity, i.e., AIL, would thus have to be made available without discrimination to both, the pilots of erstwhile Indian Airlines as well as Air India. Therefore, the submission was that command training of advanced/wide bodied aircrafts should be available to both, sets of pilots, that is, those who were originally employed with Indian Airlines as well as those who were employed by Air India. In other words, application of a ratio of 1:1 for the purposes of command training on B-777, according to the learned counsel, in such a situation would be an eminently fair, reasonable and a non-discriminatory approach. According to the counsel, this approach if, adopted in the matter, would do away with rancour and dissatisfaction. To buttress this submission, the learned senior counsel placed reliance on the following:

(i) Firstly, clause 3.13(a) of the scheme of amalgamation, which inter alia, provided that the terms and conditions of the employees of the transferor company, which necessarily would include the employees of erstwhile Indian Airlines, would not be less favourable than those available to them on the effective date, that is a date on which the scheme of amalgamation kicked-in.

(ii) Clause 10(e) of the wage revision agreement executed between AIL and IPG, which provided that all co-pilots will commence command training on basic aircrafts. It was contended that under the same agreement in clause 8(a), a classification was made of the fleet available with erstwhile Air India into basic and advanced aircrafts. The aircraft in issue, i.e., B-777s, fell in the category of advanced aircrafts. Therefore, by logical corollary the pilots of erstwhile Air India could not straight away be given command of advanced/wide bodied aircraft, prior to having commenced command training on basic/narrow bodied aircrafts. In this connection, reference was also made to the operations training manual-I, Pilot-in-Command (PIC) Training.

6.2. It was submitted that this was the precise practice and policy both, in the erstwhile Indian Airlines and Air India, which apart from anything else, was put into place, keeping in mind the career progression of the pilots and, passenger/flight safety. The changed policy of conferring command of advanced/wide bodied B-777s on first officers/co-pilots of advanced/wide bodied aircrafts, had damaged, according to the learned counsel, not only the career prospects of the members of ICPA, but had also put at risk the safety of passengers.

6.3. In this behalf, learned counsel emphasised the fact that the erstwhile Indian Airlines and Air India, in the past, would give the first command to a pilot on a narrow bodied aircraft. It was sought to be explained that the erstwhile Air India infact followed an inverted "N" policy, which ordinarily required that a pilot, who was inducted as a first officer in a narrow bodied aircraft, such as A-320, and would move thereafter, either as a first officer to a wide bodied aircraft, such as A-330, or as a commander on a narrow bodied aircraft, i.e., A-320. The movement of the pilot, though requirement based, was guided by the fact that the first command could only be given on a narrow bodied aircraft. According to the learned counsel, this was a world-wide practice which was globally followed by other airlines save and except Emirates, which had in its fleet only wide bodied aircrafts.

6.4. The aspect of safety was highlighted by reference to certain mishaps which had occurred on account of crew error. It was sought to be emphasised that, if the new policy of AIL to give first command on wide bodied aircrafts, such as B-777, were to succeed, it would compromise flight safety. The learned counsel in this behalf also referred to the extracts of the audit report pertaining to Air India Charters Ltd.

6.5. The learned counsel submitted that before the new policy was put into place, the pilots belonging to the erstwhile Air India were given training on A-310 aircrafts, which having been phased out, had perhaps led to this situation. In this context, it was stated that, as a matter of fact, command training to erstwhile pilots of Air India was given on B-737-800, owned by Air India Express; which was an aircraft classified as a basic aircraft for conferring command on pilots of erstwhile Air India. Reliance in this behalf was placed on a letter dated 12.10.2010 addressed by IPG to the CMD and the Chief Operating Operation

(C.O.O) of the then NACIL.

6.6. It was contended by the learned counsel that the fact that there was shortage of pilots, who could command B-777s, was clearly established by reference to the answer provided by MOCA on 07.03.2013, to an unstarred question no. 1093, raised in the Rajya Sabha.

7. On behalf of AIL, Mr. Bhasin contended that members of ICPA even before merger had been raising disputes concerning parity with the pilots of Air India; an issue which was pending adjudication with the National Industrial Tribunal. According to him, in essence, this dispute was no different.

7.1. It was further contended that after the merger of erstwhile Indian Airlines and Air India, into a common entity, i.e., NACIL, the process of integration of employees had commenced and was on-going. Therefore, pending integration of employees, the merged entity, which is now AIL, is obliged to abide by agreements/settlements entered into with the respective Trade Unions, such as, ICPA and IPG. A provision to that effect, according to learned counsel, is contained in clause 3.13(e) of the amalgamation scheme.

7.2. It was next contended that AIL's position with regard to these agreements had to be seen in the context of the sanction order dated 22.08.2007, which envisaged that while the existing terms and conditions of the services of transferee company, i.e., NACIL (now AIL) would not be less favourable to the terms and conditions available to them in the transferor company, i.e., erstwhile Indian Airlines and Air India, it was possible to review or even recast the role of employees on the basis of their qualifications, keeping in mind the interest of AIL and other stake holders, such as, passengers. To say that service conditions would remain unchanged, de hors the duties and responsibilities entrusted to an employee, would not be correct, according to the learned counsel, as long as the change brought about did not put them at a disadvantageous position, when compared to what they were prior to the merger. In this context, the learned counsel relied upon the extracts of the sanction order dated 22.08.2007.

7.3. Mr. Bhasin emphasised the point that there was no merging of the two streams of pilots available in AIL. It was stressed that the source of recruitment, pay and allowances and seniority of the two streams remained separate, contrary to what was contended by the counsels for ICPA.

7.4. In this context, Mr. Basin further submitted that the classification of an aircraft into a basic and advanced aircraft was dependent on the kind of aircrafts available with the airline. It was submitted that, the career progression from co-pilot to a commander of a narrow bodied aircraft, such as, A-319/320/321, was made because such aircrafts were available as a part of erstwhile Indian Airlines. In so far as the erstwhile Air India was concerned, at present, it had only a wide bodied aircrafts available with it comprising of B-777 fleet and, therefore, for career progression of pilots in erstwhile Air India, they could be given command only on B-777s.

7.5. Learned counsel submitted that this decision was in accord with the wage revision agreement executed between AIL and IPG. In this behalf reference was made to clauses 8(b), (d) and (f) of the wage revision agreement.

7.6. Mr. Bhasin also made it a point to refer to a parallel litigation, which is pending adjudication in the Bombay High Court, [being WP(C) No. 325/2012 titled Indian Pilots Guild vs. Air India & Ors.]. The said case, which concerns a new Boeing aircraft, i.e., B-787; involves a challenge to a policy decision taken by AIL to train the pilots of the two erstwhile airlines on the said aircrafts on a 1:1 basis. Averments made in an affidavit filed on behalf of ICPA (in WP(C) 2399/2011, titled Indian Pilots Guild vs. Air India Ltd. & Ors., which is part of the record of WP(C) 325/2012), were highlighted to bring home the point that ICPA in the present litigation had taken a stand of convenience, which was not in conformity with its stand before the Bombay High Court. In this context, attention was drawn to the averments made in the said affidavit, which can broadly be paraphrased as follows:

(i) That the wage revision agreement, signed between AIL and IPG; wherein classification was made for the purposes of progression of seniority on a particular aircraft, was related to and restricted to the pilots of erstwhile Air India.

(ii) The "harmonization" of services of pilots from the two streams, slowly merging into one, would more easily be achieved in a "new operation", than in an "existing one."

7.7. Learned counsel thus contended that, in so far as B-777s were concerned, it is an aircraft which had always remained in the exclusive use of the pilots of erstwhile Air India and, not being a new aircraft, such as, B-787, under the present dispensation, could only be used for career progression of pilots of erstwhile Air India. The training parameter of 1:1, applied in respect of B 787 aircrafts, thus, could not be applied to B-777, as it would breach the existing settlement and past practice followed by the management; till such time, integration of two streams is brought about and finalized.

7.8. The counsel laid emphasis, that ICPA's contention that, career progression of pilots of erstwhile Air India in the same fleet, i.e., B-777, would impact flight safety, was baseless and, wholly untenable. Mr. Bhasin submitted that AIL had adhered to the stipulated practices and procedures put in place for recruitment, training and licensing of pilots, and that, all operational aspects were adhered to ensure flight safety. The learned counsel stressed that B-777s flights were operated in compliance with the mandatory requirements put in place by the manufacturer of the said aircraft and the regulatory body, which is, the DGCA.

8. It was also contended that, having regard to the fact that the issue raised, was an industrial dispute; only a remedy under the Industrial Disputes Act, 1947 (in short the I.D. Act) was available to the members of the ICPA; who without doubt fell within the definition "workmen", under the said Act. The learned counsel further submitted since, disputes, raised by ICPA, impinge upon the

service conditions of pilots of erstwhile Air India and Indian Airlines, they could only be adjudicated upon by the concerned forum under the I.D. Act.

8.1. It was stated, since Justice Dharmadhikari Committee had submitted its report; the implementation of which was under consideration of a Committee formed by the GOI for the said purpose, the present petition was premature and, was thus, contrary to the agreement arrived at with AIL, on 06.05.2011. Learned counsel pointed out that the said agreement was arrived at pursuant to a notice of strike dated 23.02.2011, by which, strike was contemplated on 09.03.2011. Mr. Bhasin informed that, in a suit filed in this court, being: CS(OS) 545/2011, the members of ICPA were restrained from proceeding with strike, and because, there was disobedience of the order of this court, contempt proceedings were initiated, whereupon an agreement dated 06.05.2011, was arrived at between the parties. Specific reference was made to paragraph 5 of the said agreement which, apparently, was arrived at with the intercession of the MOCA. It was submitted that parties had thus agreed that, matters relating to parity and working conditions would be considered by the Justice Dharmadhikari Committee and, therefore, as indicated above, ICPA could not have taken recourse to the present writ action.

8.2. In this context Mr. Bhasin also relied upon extracts from Justice Dharmadhikari Committee's report which adverted to aspects of inter-se seniority and career progression. The fact that an Implementation-cum-Anomaly Rectification Committee (in short the Implementation Committee) had been constituted vide notification dated 19.06.2012, was also adverted to, in the course of his submissions.

8.3. Attention was also drawn by Mr. Bhasin to memorandum of settlement dated 15.01.2009 executed between NACIL (now AIL) and ICPA. Specific reference was made to clause 10 and 11 of the said memorandum of settlement.

8.4. Mr. Bhasin, also made reference to the deliberations of the committee set up by the Board of Directors of the AIL, pursuant to the order dated 06.03.2013, to demonstrate that a conscious decision had been taken by the management, for good reason, to, not give command to those pilots, who had commanded narrow bodied aircrafts.

8.5. Mr. Bhasin brought to my notice the interim order of the Bombay High Court dated 13.03.2012, passed in WP(C) No. 325/2012, whereby a Division Bench of that Court had granted an interim stay in terms of prayer (e) made in the writ petition excluding the bracketed portion. In effect, AIL was restrained by that order from sending erstwhile India Airlines pilots for training on B-787 aircrafts, pending a final determination/decision on issues pertaining to integration of seniority and career progression of pilots of erstwhile Indian Airlines and Air India. This order was, in a SLP filed by ICPA, stayed vide order dated 23.04.2012, passed in SLP No. 13046/2012, titled: ICPA vs. Air India & Ors.

8.6. While staying the operation of the Bombay High Court order dated

13.03.2012, the Supreme Court, made it clear that the training given to the ICPA members shall remain subject to the final outcome of the writ petition and shall not prejudice the rights and contentions of the writ petitioners (i.e., the members of IPG) before the High Court in any manner. This order, I was informed, was made absolute by the Supreme Court vide its order dated 27.08.2012, with a request to the Bombay High Court to expedite hearing in the writ petition as early as possible, preferably within a period of four months from that date.

8.7. It was further submitted that both, on the ground that this petition involved disputed questions of fact and/or policy, this court ought not to entertain the present writ petition.

8.8. Mr. Bhasin in support of his submissions, placed reliance on the following judgments: The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, ; Indian Airlines Ltd. Vs. Union of India (UOI) and Another, ; LPA No. 806/2012 dated 19.02.2013 titled Sheela Joshi & Ors. vs. Air India (formally known as National Aviation Company of India Ltd. (NACIL) Thr. General Manager; Air India Cabin Crew Association and others Vs. Air India, ; Judgment of the Supreme Court dated 30.07.2007, in Civil Appeal Nos. 1269/2007, titled Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, ; Transport and Dock Workers Union and Others Vs. Mumbai Port Trust and Another, ; and the judgment of Bombay High Court in WP(C) No. 1606/2013, dated 27.01.2014, titled Air India Employees" Union vs. Air India Ltd. & Anr.

9. Mr. Parag P. Tripathi, learned senior counsel, appearing on behalf of the UOI/MOCA, in his submissions emphasised the point that the manner in which an airline had to be run and managed was a policy decision. Policy itself required some play in the joints, and could thus, more eminently, be implemented by the management of AIL. The learned senior counsel further submitted, since there were no allegations of malafides, this court ought not to interdict the decision of the management, at the say so of the ICPA.

9.1. Learned senior counsel next submitted that it was not the grievance of the ICPA that the management had failed to implement the provisions of any wage agreement/settlement entered into with them. According to the learned senior counsel, the petitioner's attempt was to somehow get the management of the AIL to adhere to clause 10(e) of the wage revision agreement, executed between the management of AIL and IPG, without realising that it neither was the concerned Trade Union, i.e., IPG, which could perhaps be aggrieved by its non-implementation nor, were the circumstances presently obtaining, conducive for implementation of the said clause. In other words, it was his contention that ICPA had no locus qua the said wage revision agreement and, if at all, its members were aggrieved by the same; writ petition was not the proper remedy in the matter. In so far as the change in the circumstances was concerned, he highlighted the fact that, at present, no basic/narrow bodied aircraft was available for giving first command to the pilot of the erstwhile Air India.

9.2. The learned senior counsel emphasized the fact that the AIL was carrying cumulative losses in the range of nearly Rs. 30,000/- crores. According to the learned counsel, when seen in the light of this one particular fact, it would be clear that such litigation, if entertained, could only hamper the turn-around of AIL.

9.3. Learned senior counsel also made it a point to state that both unions were averse to the recommendations made by Justice Dharmadhikari Committee. Learned counsel highlighted the fact that at the point in time when, employees of erstwhile Indian Airlines had initially taken up employments, they were clearly aware of the fact that they would be flying domestic destinations. This writ petition, according to him, was an attempt at taking advantage of the fact that an amalgamation had been brought about, whereby the assets of the two airlines had come to be owned by a single entity, which is now, AIL. Mr. Tripathi thus stated, that there was, no public interest involved, which could have perhaps, otherwise compelled the court to intercede in the matter. On the contrary, according to Mr. Tripathi, the public interest was in allowing the policy of the management to have its full play till a decision was taken vis-a-vis the recommendations made by the Justice Dharmadhikari Committee.

10. Mr. Kohli, who advanced submissions on behalf of IPG, submitted that the petition was not maintainable as, it failed to demonstrate subsistence of any enforceable right or entitlement. Learned counsel contended that the seniority of a personnel in AIL had nothing to do with the type of aircraft that was flown by him.

10.1. According to the counsel, the two streams of pilots being separate, unequals, could not be treated equally. GOI in its order dated 22.08.2007 had considered objections pertaining to parity, working conditions, seniority, and pay and allowances. The issue of integration of manpower was left open; though broad principles regarding the same were set down in the said order of the GOI.

10.2. Mr. Kohli submitted that the position which clearly emanates from the record is that manpower integration had not taken place. In this context, reference was made to memorandum of settlement dated 15.01.2009 arrived at between NACIL (now AIL) and ICPA. Reference was also made to yet another memorandum of settlement dated 30.11.2009. In this context reliance was also placed by him, on paragraphs 90 and 91 of the report of dated 22.01.2010 submitted by the Parliamentary Standing Committee of the Rajya Sabha on Transport Tourism and Culture.

10.3. Mr. Kohli submitted that since the pilots were sourced from two streams they fell in different classes. The classification being rationale, which had a reasonable nexus with the policy formulated by AIL, the same ought not to be interfered with, at the behest of ICPA. According to Mr. Kohli, there was no violation of Article 14, as alleged or at all.

10.4. Mr. Kohli, like Mr. Bhasin, relied upon the report of the High-Powered

Committee dated 24.06.2013 constituted by the Board of Directors of AIL pursuant to the order of this court dated 06.03.2013, and also, on the subsequent decision of the board of director dated 19.07.2013; to contend that the rationale with which the impugned policy was put in place was clearly reflected in the decision of the said Committee. In support of his submissions Mr. Kohli relied upon the following judgments: BALCO Employees Union (Regd.) Vs. Union of India and Others, ; State of Punjab Vs. Joginder Singh, ; M. Jagdish Vyas and Others Vs. Union of India (UOI) and Others, ; All India ITDC Workers Union and Others Vs. ITDC and Others, ; and Academy of Nutrition Improvement and Others Vs. Union of India (UOI), .

11. Mr. Gopal Shankaranarayanan, who addressed arguments in rejoinder on behalf of ICPA, apart from reiterating what was stated in the opening, stressed the fact that though AIL was to acquire advanced/wide bodied aircrafts, such as, A-330, post the merger, the acquisition of these aircrafts was discontinued. The learned counsel re-emphasised that it is not as if the members of IPG had not flown airbus aircrafts. For this purpose, he drew my attention to paragraph 4(b) of the writ petition filed in Bombay High Court.

11.1. It was stressed that it was the case of IPG before the Bombay High Court that only after a pilot belonging to erstwhile Air India took command of a basic/narrow bodied aircraft, did he graduate and take command of an advanced/wide bodied aircraft, such as, B-747/B-777 and B-787. The learned counsel re-emphasised the fact that the operations training manual required a minimum experience of 1000 hours as PIC on B-737s or, 750 hours as PIC on A-310 aircraft, before a commander could be upgraded to an advanced aircraft, such as, B-777.

11.2. Learned counsel also submitted, the argument that the present petition, in a sense, overlapped with the matter pending in the Industrial Tribunal, was erroneous, as the issue involved in the present petition concerned career progression which, in turn, impinged upon the "prestige" of the members of the ICPA. Learned counsel thus submitted, in that sense, the issue raised in the present petition was different from a wage dispute or line seniority issues.

11.3. Learned counsel in this context relied upon clause 3.23 and 3.28 of the Justice Dharmadhikari Committee report, to emphasise the point that even the said committee had recommended not only cross-utilization of engineers and pilots from one aircraft to another upon requisite licenses being obtained under the DGCA Rules, but also that pilots and crew who flew on domestic routes should also be given an opportunity to fly international routes. The recommendation, according to learned counsel, should work in the reverse, as well, so as to ensure career growth of pilots under both streams.

11.4. Mr. Shankaranarayanan, lastly stressed the point that the grievance of ICPA members, was that, there was in fact no policy in place qua the manner in which command had to be conferred on pilots in respect of B-777 aircrafts.

## Reasons

12. After having perused the record and heard submissions of learned counsels for parties at great length, what has clearly emerged from the record is, broadly, as follows:

(i) The two airlines, i.e., Indian Airlines and Air India, prior to their merger, had formulated their own plans for running and managing their respective airlines. In this context, in 2005 a decision was taken to expand their respective fleets by new acquisitions. It has emerged from the record that, a decision had been taken by the erstwhile management of Indian Airlines to acquire 43 Airbus aircrafts. A somewhat similar decision was taken by the then management of Air India, which envisaged, purchase of 50 Boeing aircrafts, which included 23 B-777s and 27 B-787s.

(ii) While 43 Airbus aircrafts were delivered between 2006 and 2010; which led to the increase of Airbus fleet to 68 aircrafts, the fleet strength of Boeing aircraft remained at 26.

(iii) In the interregnum, the erstwhile Indian Airlines and Air India were merged with NACIL (now known as AIL). Concededly, there have been difficulties on various fronts in the implementation of the scheme of amalgamation. That, difficulties were envisaged, is clearly discernible, upon perusal of the sanction order dated 22.08.2007, passed by GOI.

(iii)(a) The 151st Report of the Rajya Sabha Parliamentary Standing Committee on Transport, Tourism and Culture, also observes that there were various differences in pay/allowances/emoluments between employees of erstwhile Indian Airlines and Air India due to bilateral agreements executed prior to merger, though post merger, these employees, performed the same work. The Parliamentary Committee also took note of the fact that this was causing heartburn, and that, the integration process, post the merger, was faced with complex and peculiar problems; which required a solution.

(iii)(b). It was in this context, perhaps, that Justice Dharmadhikari Committee was constituted by the GOI, MOCA vide notification dated 11.05.2011. The terms of reference, inter alia, required the said Committee: to examine the principles of integration across various cadres and determination of level and seniority; the principles to be applied for pay and wage rationalisation and restructuring between all employees of the erstwhile airlines; to examine and suggest harmonized working conditions of various categories of employees of erstwhile airlines depending upon requirement; and to evaluate the above issues in the context of cost neutrality principle.

(iii)(c) Justice Dharamadhikari Committee submitted its report dated 31.01.2012, pursuant to which the GOI, MOCA, on 18.06.2012, directed AIL, to constitute an Implementation Committee, to ensure implementation and removal of anomalies, if any.

(iii)(d). AIL on its part notified the constitution of the said Implementation Committee vide notification dated 19.06.2012, in terms of the direction issued by the GOI, MOCA. The Implementation Committee comprises of 4 persons, one of whom is a former member of Justice Dharmadhikari Committee. Out of the remaining 3 members, one person each, represents the interest of erstwhile Indian Airlines and Air India, while the third person belong to the Finance Department of AIL. The deliberations of this Committee though have not reached culmination.

(iv). Pursuant to order dated 06.03.2013, the Board of Directors of AIL did deliberate upon the issue as to whether it would be possible to give training to pilots from erstwhile Indian Airlines and Air India on a 1:1 basis. For this purpose, the Board of Directors of AIL, had constituted a High-Powered Committee. The High-Powered Committee, after examination of the issue at great length [for which purpose they took inputs from General Manager (Operations), wide bodied aircrafts and General Manager (Operations) narrow bodied aircrafts], came to the conclusion that when examined in the light of cost, time and safety factors, the suggestion was not feasible. In their report the said Committee noted the fact that in so far as the career progression of pilots operating narrow bodied aircrafts was concerned, the management, had addressed the same by taking a conscious decision to train these pilots on a 1:1 basis, on B-787s, which is a wide bodied aircraft, despite the fact that it involved increased costs and time. This decision was taken to cater to the requirement of the pilots, who had flown narrow bodied aircrafts - keeping in mind their career progression and, to address their demand for command, on wide bodied aircrafts.

(iv)(a) The High-Powered Committee, however, felt that this decision could not be replicated qua pilots operating narrow bodied aircrafts for command on B-777 for the following reasons:

(iv)(a.1) the time and the money involved was very high;

(iv)(a.2) since, large numbers of pilots would be diverted for training, there would be paucity of pilots to man aircrafts;

(iv)(a.3) the syllabus for conversion of commanders of A-320 to commanders of B-777 was yet to be formulated and approved, whereas the syllabus for conversion of B-777 co-pilot to B-777 commander, had already been approved by DGCA, after due process;

(iv)(a.4) expansion of A-320 aircrafts was envisaged under the turn-around plan. Therefore, a greater requirement of pilots for A-320s was foreseen, and if, these pilots were given commands of B-777s, it would not be prudent and would cause shortages at the relevant time qua both fleets.

(iv)(a.5) on the other hand, there was likelihood of B-777s being phased out in future, and therefore, requirement of commanders on that fleet would reduce;

(iv)(a.6) B-777s, which was a fleet of erstwhile Air India; statistically, had shown

slower career progression for pilots manning these aircrafts. Therefore, by allowing A-320 commanders to be trained as commanders on B-777, the career progression of existing co-pilots of B-777, would get slowed down.

(iv)(a-7) since, induction of nearly 27 B-787s is envisaged by 2016, the career progression of pilots operating narrow bodied aircrafts would get addressed, in view of the decision of the management to train them on 1:1 basis; and

(iv)(a.8) lastly, because Justice Dharmadhikari Committee had advised maintenance of separate seniority of pilots from the two streams, there would be no justification for training A-320 commanders to take command of existing B-777 fleet.

13. The record, would also show that the members of both associations, i.e., IPA and IPG have taken a stance from time to time as per their convenience, which is not necessarily consistent. In IPG's writ petition, being: WP(C) 325/2012, filed in the Bombay High Court, essentially, challenge was laid to the decision of AIL to train pilots, who had flown narrow and wide bodied aircrafts on a 1:1 basis qua B-787 aircrafts; which were relatively new acquisitions. The challenge was, therefore, instituted by IPG keeping in mind its wage revision agreement, which in clause 8(a) refers to B-787s. At that stage, ICPA did convey that the "...harmonization of services of pilots from two streams merging into one is more easily achieved in a new operation than in an existing one...".

14. In this writ petition, however, the members of ICPA knowing fully well that the harmonization of the two streams has not taken place, are insisting that the same decision should be replicated.

15. The record clearly shows that the two streams of pilots, who are sourced from erstwhile Indian Airlines and Air India are at present separate, while the assets, i.e., the fleets owned by erstwhile Indian Airlines and Air India have been brought under one umbrella, i.e., AIL, which is the merged entity. Issues with respect to: utilization of the fleet of various kinds of aircrafts, which includes, B-777; line seniority, rationalization of pay and allowances, for persons who do the same kind of work which they did prior to merger - have not been resolved. The fact that recommendations of the Justice Dharmadhikari Committee report are being examined by an Implementation Committee, is not in dispute.

16. The record also shows that, as of today, the erstwhile Air India does not have any basic/narrow bodied aircraft, available with it. The erstwhile Indian Airlines has a fleet of 68 Airbuses, whereas only 26 B-777s are available with erstwhile Air India. As things stand today, there is some merit in the argument advanced on behalf of IPG, that if commanders of A-320 were to be trained for taking command of B-777s, the career progression of pilots sourced from erstwhile Air India, would be slow.

16.1. On the other hand, there is a genuine demand of the pilots commanding A-320s to be allowed to take command on wide bodied aircrafts, such as, B-777.

The fact that the acquisition of A-330, which I am told is a wide bodied aircraft, has not taken place, has perhaps, put the pilots of erstwhile Indian Airlines, on the back foot.

16.2. The management in its wisdom though has attempted to assuage this feeling of an impediment being created, in the career progression of commanders of A-320, by giving them a chance to train on B-787s.

16.3. But that by itself, in my view, would not create an enforceable right in members of ICPA vis-a-vis B-777s. The attempt of ICPA to seek support qua this argument, based on clause 10(e) of the wage revision agreement, executed between IPG and NACIL (now AIL), is untenable, as subsequent circumstances have rendered the applicability of this clause impossible; this is de hors the fact that I have grave doubt whether ICPA would have any locus to seek enforcement of the said clause, which requires training on a basic aircraft before command is given on an advanced aircraft. The subsequent circumstance, which has rendered the clause inapplicable, is the fact that the erstwhile Air India, as indicated above, does not have within its fleet a basic/narrow bodied aircraft.

16.4. Counsels for ICPA would argue that members of IPG could and should have access to A-320s for this purpose. As noted above, this was the very fact which was deliberated upon by the High Powered Committee constituted by the Board of Directors of AIL pursuant to the order dated 06.03.2013. The said Committee has concluded that such a move would involved wastage of time and cost in terms of training, apart from other difficulties which are noted by me hereinabove. These are not matters, which a court is, in a position to take an informed decision about, as it does not have the necessary wherewithal. The court, will necessarily have to rely upon the experts in the field. I have no reason to doubt, at the present juncture, the conclusions reached by the said committee.

17. Having regard to the above, I can, presently, come to only one conclusion, which is, that the management of AIL, should be allowed to run the airline in the manner which it thinks fit. The court's intercession in the matter could only complicate the matter further, specially having regard to the fact that the Implementation Committee is already examining as to what would be the best way forward. The recommendations of Justice Dharmadhikari's report as set out in various clauses of the said report perhaps need harmonization and reconciliation. These are clauses, to which I have already made a reference, during course of my discussion in foregoing paragraphs. As to the manner in which these recommendations have to be implemented can be decided by the concerned Committee of the AIL. This appears to be the correct approach notwithstanding the fact that both ICPA and IPG say (when convenient) that Justice Dharamadhikari report has nothing to do with the matter in issue.

18. Mr. Shankaranarayanan, in the concluding part of his arguments had stated that the issue involved in the present petition is one of "prestige". While, not in any way seeking to belittle the aspirations of the members of ICPA, I can only

say that prestige, as the basis of this action, cannot give them an enforceable right so as to maintain the instant petition under Article 226 of the Constitution. This may be an aspect which requires to be addressed before a different forum, but certainly, not by way of the present writ action.

19. ICPA had raised issues pertaining to flight safety, in command being given on B-777s straight away to first officers/co-pilots of B-777. Curiously, ICPA did not implead the regulator, which is, the DGCA as a party to the present proceedings. But more importantly, AIL's counsel in his submission assured the court that all safety requirements stand addressed. The fact that DGCA is involved in the exercise of handing over command on B-777s to first officers/co-pilots of B-777, is evident from the fact that syllabus for such conversion has the DGCA approval; ICPA counsel has not refuted this submission. The concern in my view, as is apparent from the record, is met. This is, however, not to say that if DGCA has any objections it cannot, on the grounds of flight safety intercede in the matter notwithstanding the decision taken in the instant writ petition. I must note here that ICPA itself has referred to the example of Emirates Airlines, which has within its stables a fleet comprising of only wide bodied aircrafts. Going by the averment made in the writ petition, co-pilots in that airline are conferred command on wide bodied aircrafts, without having to take command on narrow bodied aircrafts as none are available with the said airline. As to what should be the requisite flying experience before conferring command, is something that only the concerned regulator can decide. The point which does come though by this example, is that, the practice of giving co-pilots of wide bodied aircrafts first command on the same aircraft, is not unique to AIL.

20. Mr. Gopal Shankaranarayanan submitted that there was infact no policy in place vis-a-vis conferring of command on B-777s. The term policy, broadly defined, would mean general principles, by which a State or its instrumentalities are guided in their public affairs. Even if, one were to agree that there was nothing stated in cold print by AIL, its decision to give first command on B-777s to first officers/co-pilots of erstwhile Air India by itself articulates its future course of action. The decision of the Board of Directors of AIL made at its meeting dated 19.07.2013 (pursuant to the report of the High-Powered Committee dated 24.06.2013) is clearly reflective of this aspect of the matter. This argument by itself does not take the cause of ICPA any further as it is the decision, which is impugned in the present writ petition.

21. The learned counsel for ICPA had placed great emphasis on clause 3.13(a) of the amalgamation scheme to contend that the terms and conditions of transferor companies, which includes co-pilots, could not have been less favourable than, those that were applicable to them on the effective date. In other words, it was the contention of ICPA that the impugned decision of AIL was contrary to the said clause of the amalgamation scheme. According to me, this argument is untenable for the reason that the said clause is to be read with other clauses of the amalgamation scheme. For example, clause 3.13(e) requires AIL, which is

the new avatar of the transferee company i.e., NAICL, to continue to abide by any agreement/settlement entered into with any recognized labour union or employees. The Wage Revision Agreement, on which reliance is placed by ICPA is an agreement executed between AIL and IPG. Similarly, there are memorandums of settlements, to which I have made a reference above, executed between ICPA and AIL. AIL cannot act in a manner which would result in a breach of those agreements/settlements.

21.1. Having said so, as already indicated by me, ICPA cannot enforce a clause in a wage agreement executed between AIL and IPG. There is no case made out that either the line seniority or pay and allowances of ICPA members are impacted or, are less favourable than those, which obtained on the effective date. Therefore, quite clearly, there is no violation of clause 3.13(a) of the amalgamation scheme. I must note here that the decision of AIL to have the co-pilots of erstwhile Air India to command B-777 aircrafts (subject to flight safety requirements), does not impinge upon any term and condition of service applicable to members of ICPA.

22. Accordingly, I am of the view that the prayers sought for in the writ petition cannot be granted. The writ petition is, accordingly, dismissed. The net result of which would be that the interim order dated 11.05.2012, shall stand vacated. Having regard to the facts and circumstances of the case, parties will bear their own costs.