
(2012) 05 DEL CK 0181

In the Delhi High Court

Case No : CM No. 613 of 2012 (stay) in Writ Petition (C) 295 of 2012

Indian Commerical Pilots Association

APPELLANT

Vs

Air India Ltd.

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2012) 05 DEL CK 0181

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Rajiv Nayar, Mr. Neeraj Kaul, Mr. Sudhir Nandrajog, s with Mr. Gopal Sankarnaryanam, Ms. Misha Rohatgi, Mr. Nikhil Rohatgi and Mr. Tanmaya Mehta, for the Appellant; Lalit Bhasin, Ms. Shreya S. Dabas, Ms. Bhavna Dhami for respondent No.1., Ms. Anjana Gosain, Adv for respondent No.2., Mr. Darpan Wadhwa, Gopal Jain, Ms. Nandini Gore and Mr. Aditya, Advs for respondent No.3, for the Respondent

Judgement

Suresh Kait

1. On the issue, the arguments of learned counsel for parties were heard on 01.05.2012 and matter was notified for orders on 04.05.2012. On the said date i.e. 04.05.2012, Mr. Darpan Wadhwa, learned counsel appeared and submitted that the petitioner had filed one CM No.3043/2012 for impleadment of "Indian Pilots Guild" as respondent No. 3 and same may be allowed; before passing any order opportunity of hearing be given accordingly.

2. It is pertinent to mention here that notice in the above mentioned application has already been issued and served to the proposed respondent No.3. Despite service, they preferred not to appear, when arguments heard on the issue in question.

3. However, finding force in the submission of above named counsel, CM No.3043/2012 was allowed and above mentioned respondent No.3 were impleaded as respondent No.3. Submissions on behalf of newly impleaded

respondent No.3 were heard on 08.05.2012 and instant application was notified for today for orders.

4. The relief's sought by the petitioners in the instant application are as under:-

(a) Pending hearing and final disposal of the petition stay the training of the pilots who are to undergo/undergoing training for Commanders of B777 who have been selected arbitrarily and against the norms and practice of career progression plan;

(b) Direct the respondents to include the members of the petitioners in the training of Commanders to fly B777 or any other wide body aircraft of the respondent no. 1.

5. Mr. Sudhir Nandrajog, Senior Advocate appearing on behalf the petitioners has argued that as per the "General Conditions of Service", the classification of fleet in Air India will be as under:-

(i) Basic - B737-A310;

(ii) Advance - B747 - 400 - 300, B777, B787.

6. He further submitted that all pilots will be inducted in the Company as

trainee pilots on a stipend. On successful completion of training and endorsement and released as a co-pilot on a stipulated aircraft type at the time of induction, the pilot will be placed in the co-pilot category/scale of pay and will be on probation for a period of 12 months, which could be extended at the discretion of the Director of Operations.

7. It is further submitted that for the purposes of career progression of co-pilots, that will commence command training on the basic types of aircraft. Thereafter, command conversion on any advance type of aircraft will be as per line seniority and the need of the Company.

8. Ld. Sr. Advocate has drawn the attention of this Court to Annexure-P.3 at page 114, which is reproduced as under:-

9. He has further drawn the attention of this Court to Annexure P.5 at page 116 whereby GM(Ops.) In-charge Air India (Ops.)-Narrow Body sent communication to GM(Ops.) NACIL-1 NR/ER/SR/WR/DEL/CCU/MAA/ BOM dated 01.02.2011 as under:-

The CMD desires that NACIL-I Pilots having requisite command experience shall be invited to fly B-777 aircraft in erstwhile Air India.

Applications may be sought from commanders on NACIL-I fleet having command experience of 10:00 hrs. on Jet aircraft to volunteers for the same.

The applications should be forwarded to this office, so as to reach by 10th Feb. 2011.

10. Ld. Sr. counsel further referred to Annexure P.12 at page 173 which is an e-mail dated 07.03.2011 sent to all pilots, relevant portion is reproduced as under:-

...Our top most priority should be to ensure that we as a company not only ensure absolute normal operations but also accept the challenge of evacuating the maximum number of stranded fellow country people from disturbed countries like Libya. There is an opportunity being made available to Air India by the government and we must unitedly respond and grab the opportunity to ensure maximum evacuation. This would assist, though partially and in the short-term, in taking care of the need to log more flying hours.

Other initiatives we are working on include:

(a) Minimizing and completely eliminating the deployment of Expert Pilots for our B-777 type of aircrafts

(b) 40 Narrow Body Commanders to be converted on B-777 type of aircraft - this would enable flying on Airbus family Narrow Body to increase up to 70 hours;

(c) Induction of more A-320 Airbus;

(d) Induction of seven B-787 aircraft- this would require 40 sets of pilots for which up-gradation and training would commence in the second part of this calendar year.

11. Ld. counsel has referred to affidavit filed by the respondent No.1 on 09.04.2012 wherein they have stated as under:-

(XV). The prayers made by the petitioners ought not to be granted for the reason that Air India Ltd. has separate promotion/career progression policies for the pilots of erstwhile Air India Ltd and Indian Airlines Ltd. The sets of pilots of erstwhile two Airlines are still enjoying the same career progression / salary and allowances which was prevalent prior to merger. The seniority of pilots of both the Airlines are separate. Accordingly, the demand of ICPA in respect of B-777 cannot be considered in isolation.

12. Mr. Sudhir Nandrajog, learned Senior Advocate, submitted that as per the Annexure P-3 which is reproduced in para No.5 of this order, co-pilot could be commander on "Basic Aircraft" in two ways, viz; (i) Newly recruited pilot to co-pilot and then commander on basic aircraft (Airbus 320.); (ii) Co-pilot to direct commander on basic aircraft and then commander on an advanced aircraft. Respondent No.1 is imparting training on advanced aircraft to the co-pilots directly, without giving them training on basic aircrafts as commander.

13. Whereas, the petitioners are already commander on basic aircraft. Therefore, by this system the co-pilot of respondent No.1 will be commander directly on advance aircraft. If they continued to impart training to co-pilots directly to commander on advance aircraft, then the petitioners shall remain commander on basic aircrafts. Therefore, at the time of seniority this arrangement will come in their way. Thus, their seniority will be affected by the decision of respondent

No.1.

14. He further submitted that even in communication dated 01.02.2011 (annexure P-57 at page No.116, the applications were directed to sought from commanders whereas respondent No.1 imparting training to co-pilots,- who did not remain commander even on basic aircraft. Therefore, it is contrary to their own arrangements made. If this system is not stopped at this stage then the career of the petitioners would be in jeopardy.

15. Learned counsel further submitted that pilots of the petitioner association also have the experience on the aircrafts going abroad i.e. London, Paris and some other parts of the World. Therefore, it is wrong to submit that the pilots of the petitioner association have no experience of the flying "long hours". Therefore, if the respondent no.1 impart the training of the pilots of the petitioner association those who are commander of basis aircrafts, they will also be equally trained in comparison of the erstwhile Air India pilots.

16. Mr. Gopal Jain, learned counsel appearing on behalf of respondent No.3 has submitted that respondent No.1 took the decision to impart training on advanced aircraft - 787 (Dreamlines) (domestic and international flights) in ratio 1:1 (erstwhile Indian Airlines Pilots and erstwhile Air India Pilots). The respondent No.3 challenged the decision of respondent No.1 vide W.P. (C) No.325/2012 before High Court of Judicature at Bombay wherein the following order passed by the High Court:-

(1) Heard learned counsel of both the sides.

(2) Rule.

(3) So far as question of grant of interim relief is concerned, it is clear that though a Committee has been appointed and the Committee has submitted its report, there is no final decision yet taken as to whether the cadre of pilots in Erstwhile Air India and Erstwhile Indian Airlines is to be integrated or not. After merger of two Airlines in the year 2007, it is common ground that till the decision which is impugned in the petition was taken, the cadre of Pilots with Erstwhile Air India and Erstwhile Indian Airlines were being treated as distinct and separate cadres for all purposes including training the Pilots. In our opinion therefore there is no reason why till the final policy decision is taken by the Government, the position should be changed to the disadvantage of the petitioners. In our opinion therefore it will be appropriate to grant interim relief in terms of prayer clause (e), excluding the bracketed portion.

It is accordingly so ordered.

4. At the request of Bharucha, learned counsel appearing for Respondent no. 3, it is clarified that the Respondents shall be at liberty to apply for modification or vacation of this interim order, in case there is change in the situation.

17. Being aggrieved, the petitioner herein challenged the same before the Apex

Court vide SLP (Civil) No.13046/2012.

18. Vide order dated 23.04.2012, Hon"ble Supreme Court passed the order as under:-

Issue notice.

Operation of the impugned order shall remain stayed pending further orders from this Court.

We make it clear that the training imparted to the members of the petitioner-Association shall remain subject to the final outcome of the writ petition and shall not prejudice the rights and contentions of the writ petitioners before the High Court in any manner.

The High Court is requested to expedite the hearing of the main petition and dispose the same off as far as possible within six months.

19. Learned counsel submits that same view can be taken by this Court as observed by the Supreme Court.

20. He further submitted that as a result of the "separation policy" being followed by the respondent No.1, prior and post the merger in 2007, the pilots of erstwhile Indian Airlines had access to approximately 68 Airbus aircraft for career progression while on the other hand, the pilots of erstwhile Air India had access to only 26 Boeing aircrafts. Because of which, the pilots of erstwhile Indian Airlines were permitted to promoted to the grade of commander within 4-5 years of joining of the company; whereas it took 10-11 years for the pilots of erstwhile Air India to be promoted to the grade of commander.

21. Learned counsel referred the case of Uttar Pradesh Power Corporation Ltd v. Ayodhya Prasad Mishra & Ors : (2008) 10 SCC 139 wherein the Apex Court has clearly stated that the Article 14 provides that unequals cannot be treated equally and classification as in the present case in such circumstances is legal, valid and permissible as founded on an intelligible differentia which distinguishes persons or things that the grouped together from others, left out of the group.

22. He further referred to the 4th Report Committee on Public Undertakings 2009-10, relied upon by the petitioners herein, the subject matter is pending before the Apex Court in SLP mentioned above. The post merger scenario clearly vindicates lack of proper scrutiny and consideration of many critical issues of two separate and distinct entities having wide variances in critical areas, viz, i) Operations; ii) Fleet requirements; iii) Conditions of recruitment; iv) Requisite expertise; v) Service conditions; vi) Pay structure; & vii) IT requirements etc. Since no integration efforts were made by the respondent No.1 from the year 2007-2011, therefore, Justice Dharmadhikari Committee was appointed to look into the issues concerning integration. Without waiting for the recommendations of the Justice Dharmadhikari Committee, respondent No.1 has been taking arbitrary decisions in this regard.

23. Learned counsel further submitted that the rationale for differentiation, it has been the company's policy even after merger to maintain a policy of separation between the pilots of erstwhile Airlines due to the different nature of job and different experience profiles. It is common knowledge in the aviation profession that it is the quality and relevance of the experience namely international, wide-body, long-haul experience which is desirable and necessary in order to train a commander on B-777, which is specifically designed for such operations. All co-pilots of erstwhile who are presently under command training on B-777 have immense flying experience on wide-bodied heavy jets almost entire on international routes, and on the same routes, sectors, destinations operated by the company's Boeing 777. The pilots of erstwhile Indian Airlines have very little such relevant or equivalent experience of the same or similar nature. Therefore, the company have to spend huge amounts of time and money to train pilots of such background, for route familiarization and qualifications such as and not limited to the North Atlantic Minimum Navigation Performance Specification (NAT-MNPS) qualification.

24. Learned counsel further submitted that in view of the aforesaid policy and precedent of separation being followed by the respondent No.3, in respect of pilots of erstwhile Air India and erstwhile Indian Airlines, the petitioners cannot seek a transgression from the said policy and that the respondent No.3 cannot be precluded from acting contrary to the aid precedent in respect of B-777 aircrafts, at the minimum, till such time the recommendations on seniority and/or career progression and received from the Justice Dharmadhikari Committee and an appropriate seniority and / or career progression policy is mutually agreed upon by the petitioner and respondent Nos.1 & 3.

25. Learned counsel further submitted that the qualifications and experience requirement of these erstwhile Air India co-pilots more than adequately meet and even exceed the company stipulated qualifications and experience for the same, which was approved by the DGCA. The said DGCA is the Regulatory Authority of India and is the only authority competent to determine the eligibility requirements for any pilot training in India.

26. Mr. Lalit Bhasin, learned Advocate appearing on behalf of respondent no.1, submitted that as per the policy, the issues relating to demand of 75 hours of flying allowance and monthly grant of \$1600 shall be referred to Justice Dharmadhikari Committee, requesting it to consider it on a priority basis. The management of the Airline shall take immediate measures to enhance daily utilization of the aircraft and working hours.

27. Learned counsel submitted that the Ministry of Civil Aviation, Government of India issued a notification dated 11.05.2011 and the terms of reference of the Committee are as under:-

2.The terms of reference of the Committee are as under:-

(a) To examine the principles of integration across various cadres and

determination of level and seniority.

(b) To examine the principles of Pay/wage rationalization and restructuring between all the employees of the erstwhile airlines.

(c) To examine and suggest harmonized working conditions of various categories of employees of erstwhile airlines depending upon the requirements.

(d) ...

(e) ...

(f) ...

(g) ...

28. Ld. counsel has drawn the attention of this Court to Annexure-A page 608 which reads as under:-

NAME OF THE PARTIES :

NATIONAL AVIATION COMPANY

OF INDIA LTD. 113, GURUDWARA

RAKABGANJ ROAD

NEW DELHI-110001

INDIAN COMMERCIAL PILOTS

ASSOCIATION,

CENTRAL OFFICE

DELHI.

10. GENERAL

(1) Except where otherwise provided, the terms of the Settlement relating to the wages for the period 01.01.1997 to 31.12.2006 shall remain in force till 31.12.2006 and thereafter until the Settlement is terminated by either party by giving a notice of termination in writing and for a period of two months from the date of such notice of termination.

...

(5) It is further agreed that all existing benefits, obligations and practices, awards, settlements and agreements, etc shall continue unaffected except in so far as it is specifically modified by any terms of this Settlement or under provisions of any law, for the time being in force.

...

(10) On account of merger of Indian Airlines and Air India, Undertakings arrived

at with Indian Commercial Pilots Association (ICPA) may be reviewed if instructed so by the Government of India.

(11) On the issue of seniority integration consequent to merger of Air India Ltd and Indian Airlines Ltd for categories represented by ICPA reference be made to letter No.HPD02/1650/6856 dated 15.01.2009.

29. Mr. Bhasin, further submitted that vide communication dated 15.01.2009 regarding seniority consequent to merger of the Air India Ltd. and the Indian Airlines into the NACIL in which it is stated as under:-

Sub: Seniority integration consequent to merger of Air India Ltd and Indian Airlines Ltd into NACIL.

... It may be noted that no common principle can be laid down for all categories of employees and category/level specific solutions will have to be found.

It is also clarified that in respect of categories of employees represented by different recognized Union/ Associations, due participation of different Union/ Association would be allowed and their views taken into account before any final decision is taken in the matter.

As regards category of employees represented by you it is proposed that seniority integration would be on the basis of level mapping exercise rather than on the basis of scales of pay, which will be separately taken up.

30. He further submitted that Justice Dharmadhikari Committee has already submitted his report on the issues raised in the instant petition and, thereafter, an Implementation Commission has been constituted by the Government of India.

31. It is further submitted that Ms. Anjana Gosain, Id. counsel for the respondent No.2 has sought instructions from the Government of India in pursuance of the order passed by this Court vide dated 16.04.2012 and submitted that the report submitted by Justice Dharmadhikari shall be implemented within a maximum period of 45 to 60 days, therefore, till the Government implement the same, the instant matter may be kept pending for disposal.

32. Moreover, in the minutes of an Informal Meeting held between petitioners/ erstwhile Indian Airline Pilots and officials of the Ministry of Civil Aviation held at New Delhi from 4th to 6th May, 2011, it was agreed that the matters relating to parity and working conditions will be considered by the Justice Dharmadhikari Committee and would be implemented by November, 2011. However, due to certain reasons this could not be done.

33. Id. counsel further submitted that, as prayed by the petitioner, it will amount to decide the main relief sought in the petition, if their prayer is accepted by this Court.

34. Mr. Bhasin has further submitted that for imparting training for Indian Airlines pilots on B-787 (Advanced Aircrafts), the aggrieved Air India pilots have

filed a Writ Petition No.325/2012 before the High Court of Bombay in which vide order dated 13.03.2012 has been passed, as mentioned above.

35. Being aggrieved, the Indian Commercial Pilots Association preferred an SLP(Civil) No.13046/2012 before the Supreme Court, wherein on 23.04.2012, operation of the impugned order shall remain stayed pending

further orders from this Court. The training imparted to the members of the petitioner- Association shall remain subject to the final outcome of the writ petition and shall not prejudice the rights and contentions of the writ petitioners before the High Court in any manner.

36. Mr. Bhasin, learned counsel submitted that regarding training, the Supreme Court has observed that the Association shall remain subject to the final outcome of the writ petition and shall not prejudice the rights and contentions of the writ petitioners before the High Court in any manner. Therefore, the training shall be subject to the final outcome of the petition. 37. I have heard learned counsels appearing on behalf of the parties.

38. It is emerged that respondent No.1 had taken decision for imparting training of Indian Airlines pilots and Air India pilots as well on "Advanced Aircrafts". However, against imparting training for Indian Airlines pilots, aggrieved Air India pilots have filed a writ petition mentioned above before the Bombay High Court, whereby the High Court opined that there is no reason as to why till the final policy decision is taken by the Government, the position should be changed to disadvantage of the petitioners. Therefore, interim relief in terms of prayer made in clause (e) excluding bracketed portion was granted. Liberty also granted at request of learned counsel appearing on behalf of respondent No.3 that the respondent shall be at liberty to apply for modification or vacation of interim order, in case there is change in situation.

39. Aggrieved Pilots Association, preferred SLP(C) mentioned above. The order of the Bombay High Court has been stayed by the Supreme Court pending further orders.

40. I am conscious, Hon"ble Supreme Court has made clear that training imparted to the members of the petitioner association shall remain subject to final outcome of the writ petition and shall not prejudice to the rights and contention of the petitioners before the High Court in any manner. Therefore, it would be improper to record any opinion about the case mentioned above, when matter is seized before the Apex Court.

41. Undisputedly, as argued by learned counsel for petitioner that the issue before High Court of Bombay is that respondent No.1 took the decision to impart training "Advanced Air Craft" B-787 to the pilots of erstwhile India Airlines and Air India in a ratio of 1:1. From both the Airlines pilots were selected who were already commander on "Basic Air Craft". But in this case, situation is totally different. As argued above, respondent No.1 have started to impart training to

co-pilots, who never remained commander even on "Basic Air - Craft"; whereas the pilots of the petitioner association are already commander on "Basic Air-Craft".

42. However, for the case in hand, if the same system is allowed to go on, then definitely, in my considered opinion, it will cause prejudice to the rights and contention of the petitioners. Because, the petitioners shall remain commander of basic aircraft, and the co-pilot of Air India even without holding the position of commander of basic aircraft would be commander on advance aircraft. This imparity would be a great hurdle in the seniority of the erstwhile Indian Airlines pilots with Air India pilots at the time of

implementation of report submitted by Justice Dharamadhikari Committee. 43. Though, the domain of the Courts are not to step into the domain of the Government policies; however, if the Government policy causes harms to the rights of the citizens, and the decision is arbitrary, then the Courts certainly can interfere with. Therefore, if at this stage, it is not interfered then the seniority of the petitioners would definitely be disturbed.

44. Here I make is clear that if the relief"s sought by the applicants/petitioners are granted that will not amount to giving relief sought in the main petition which are as under:

(a) Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the respondents to implement the career progression plan wherein a co-pilot for the first command progression is at basic air craft and not in an advanced wide-body aircraft as the same is in violation of Article 14 and 21 of the Constitution of India.

(b) Issue a writ of Mandamus or any other appropriate writ, or direction to the Respondent to treat the petitioners and other pilots of erstwhile Indian Airlines on par with the erstwhile Air India Pilots and grant them similar opportunity for career progression;

(c) Issue a Writ or direction to the respondents to follow the career progression norms, practice which are followed worldwide by leading Airlines while deciding on the career progression norms of pilots of the Respondent.

45. 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.

46. 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 advance aircraft shall be subject to the outcome of the instant petition.

47. CM No.613/2012 stands disposed of. Copy of order dasti to all the parties for

compliance.