
(1995) 05 DEL CK 0027

In the Delhi High Court

Case No : Civil Writ Petition No. 598 of 1994

Mrs. Jolly Pal

APPELLANT

Vs

Indian Airlines Corporation and Others

RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Citation : (1995) 05 DEL CK 0027

Hon'ble Judges : S.D. Pandit, J;P.K. Bahri, J

Bench : Division Bench

Judgement

S. D. Pandit, J.—Rule D.B.

2. We have heard learned counsel for the parties in detail and have also carefully examined the record. We proceed to decide this petition finally.

3. Petitioner Jolly Paul was selected as an air hostess and was appointed as a trainee air hostess on 18.7.1975 and after completing her training she joined as a regular air hostess on 27.10.1975 at Bombay. She had also completed her probation period satisfactorily was confirmed as an air hostess after completing probation period.

4. There are two categories of air hostesses and they are having different pay scales. The air hostess in the junior category are having pay scales of Rs. 1555-2465 an air hostess in senior category are having the pay scale of Rs. 1755-2765. Petitioner had become air hostess senior grade on 21.7.89 and she was given the air hostess senior category grade with effect from 1.10.1985. But thereafter, petitioner, who was posted at Bombay, i.e. the Western Region of the respondent No. 1 had voluntarily sought her transfer to Delhi, i.e. Northern Region on 19.7.1991. According to her she had applied for the said transfer on compassionate grounds. Her request for transfer was allowed on certain conditions which were accepted by her and, Therefore, she was posted in Delhi. She joined her posting at Delhi on 14.10.1991. In the northern region petitioner was placed at the bottom in the list of air-hostesses in the grade of Rs.

1555-2465. It is her claim that her placement in the said grade was not all proper and justified. She had, Therefore, made a representation which has been rejected but ultimately she was promoted to the senior grade air hostess category in the pay scale of Rs. 1755-2765 on 30.6.92 and she was given the said grade with effect from 30.1.1991. She has, Therefore, filed the present petition to quash the order passed by the respondent on 26.9.91 regarding her reversion to the junior category as well as her placement at the bottom in the category of air hostess junior grade on her transfer to Delhi. She has claimed seniority as it stood prior to her transfer to Delhi in the senior category of air hostess senior grade.

5. The claim of the petitioner is contested by respondents. It is conceded that there is neither violation nor infringement of any fundamental right of the petitioner. There is no violation or infringement of Article 14 or Article 16 of the Constitution of India. Therefore, in these circumstances, the present petition is not maintainable in law. It is further conceded by the learned counsel for the respondents that respondent is having four divisions known as Northern, Eastern, Western and Southern divisions. The seniority list of the employees of respondent No. 1 is maintained region-wise. In these circumstances, when an employee seeks his transfer from one region to another region on his own request, he is not entitled to claim his seniority which he was having in his parent region. In the instant case when the petitioner had applied for her transfer from Western to Northern region she was told that she would have to accept her posting at the bottom of the seniority list of the air hostess for northern region in the pay scale of Rs. 1555-2465 and she had accepted the said condition and only on her acceptance of the said condition she has been transferred to the Northern region. Thus, her posting in the northern region is as per the terms of the agreement between the parties and, Therefore, it is not now open to her to go back on the said terms. It is, Therefore, contended that her petition should be dismissed with costs.

6. The respondent has clearly stated in the counter affidavit that the respondent is having four different regions, viz., Northern, Eastern, Western and Southern and the employees in the said regions are recruited region-wise. The seniority of the employees is maintained region-wise. The said claim of the respondent is merely denied by the petitioner in her rejoinder affidavit but besides this mere denial there is nothing on record to show that that claim of respondent No. 1 is false. The documents produced by the petitioner herself clearly show that separate seniority lists are maintained region-wise. Therefore, the claim of the respondents that there is separate recruitment region-wise and the seniority of the employees is maintained region-wise will have to be accepted. There is no illegality or any breach of the principles of natural justice in maintaining separate seniority list region-wise.

7. Admittedly, petitioner was recruited in the Western Region and she was posted at Bombay and on her completion of the training she was appointed a as a

regular air hostess on 27.10.1975 and was working there till October 1991. During this period she was given the promotions and other benefits to which she was entitled on account of her employment in the Western Region and she has availed of all those promotions and benefits. Thereafter, she had applied for her transfer on 19.7.1991 from the Western Region to Northern Region and she had sought transfer of her posting from Bombay to New Delhi. Here request for transfer has been acceded subject to certain terms and conditions as mentioned in the letter dated 26.9.91 produced by her as Annexure 6. The relevant contents of the said letter are as under.

"Your request has been acceded to, subject to the following terms and conditions :-

1. You will accept your seniority at the bottom to the seniority list of Airhostesses in the pay scale of Rs. 1555-2465 in the Northern Region, Delhi from the date you report for duty at Delhi.
2. You will not be entitled to permanent transfer benefits except free passage(s) for self on definite basis and for family on subject to load basis for the sector Bombay/Delhi. You are also entitled to carry your household effects by air on subject to load basis, as per your entitlement.

You are advised to report to the Operations Manager, Indian Airlines, Northern Region, Delhi, on being relieved of your duties by Operations Manager, Indian Airlines, Bombay."

8. After receiving the said letter the present petitioner had unequivocally and in clear terms accepted the said conditions by writing her letter dated 26.9.91. Annexure 7, in which she had stated that she would accept her seniority at the bottom of the seniority list. Therefore, once her request for transfer was accepted on certain conditions and she had accepted those conditions it is not possible to hold that any injustice is caused to her or there is any infringement of her legal or fundamental right. It is a contract between the employer and the employee for getting transfer from one region to another region.

9. At the cost of repetition it must be stated here that the employer is having independent recruitment as well as seniority for the four different regions. The promotions are consequently within the said regions. If the petitioner is to be posted in the category of air hostess senior grade it would definitely affect the chances as well as the right to get promotion of the junior air hostesses in the northern region. The documents filed by the petitioner herself clearly show that the respondents have treated the other employees in the same manner. The seniority list produced by her shows that the persons from eastern region, western region and southern region who are transferred to the northern region are treated in the same manner as the petitioner is treated. The treatment which the petitioner has received on account of her transfer from western region to northern region is not of any discrimination. She is given the promotion as per the policy and she has voluntarily accept be the said treatment. Therefore, in

these circumstances, the acceptance by her of the conditions for her transfer from western region to northern region could not be said to be an unconscionable contract. It could also not be said to be against public policy. Thus, there is no infringement of her legal right or any fundamental right so as to have interference of this Court by invocation of the powers under Article 226 of the Constitution of India.

10. Learned counsel for the petitioner has cited before us the case of Central Inland Water Transport Corporation v. Brojo Nath Ganguly 1986 2 CLR 322. The facts of the said case clearly show that it has no bearing on the facts before us. In that case on the terms in the contract of employment as also service rules of the company provided for termination of service of permanent employees without assigning reasons or three months' notice or pay in lieu thereof on either side. It was found that the said Company was a State under Article 12 of the Constitution of India and the said company was found to be wholly owned by the Government of India and the employees were having the same rights as the government employees and, Therefore, the said clause and term in the contract of employment as also service rules of the said company had been struck down as unconscionable term in the contract of employment. Therefore, the said case is of no help to the petitioner.

11. In view of the above discussion, we hold that the present petition deserves to be dismissed and is dismissed as such. However, in the circumstances of the case we direct the parties to bear their own costs.