

(2004) 08 DEL CK 0094

In the Delhi High Court

Case No : Writ Petition (C) No. 2217 of 1999

Rakesh Bedi

APPELLANT

Vs

Air India Ltd. and Another

RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Constitution of India, 1950 — Article 21, 38, 39, 41, 43

Industrial Disputes Act, 1947 — Section 33(2)

Industrial Employment (Standing Orders) Act, 1946 — Section 7

Citation : (2005) 104 FLR 38

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; Rajiv Nayyar, Ravi Kini and Krishan Kumar, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner Rakesh Bedi, a Sr. Traffic Assistant working with Air India, was issued a charge-sheet on 29.7.1996, accusing him of misconduct and breach of Standing Order. The of the charge was habitual absence without leave for extended periods of time, wilful insubordination subversive of discipline. An Inquiry Committee was constituted. Repeated adjournments were sought on medical and other grounds. Inquiry Committee after considering the entire record, including the explanation, as furnished by the petitioner submitted its report. A copy of report was sent to petitioner. This was followed by a show-cause notice, proposing penalty on petitioner. Petitioner replied to the same. Respondent vide its order of 12.5.1998 meted out the punishment of "Dismissal with retirement benefits in full".

Respondent-Air India Limited had also sought approval u/s 33(2)(b) of the Industrial Disputes Act from the National Industrial Tribunal at Mumbai, since petitioner was a protected workman.

2. By this writ petition, petitioner sought quashing of the disciplinary proceedings and order of punishment dated 12.5.1998 and his reinstatement with full arrears

of salary and consequential benefits. Petitioner in the alternative sought full retirement benefits including the benefit of provident fund, pensionary benefits, medical benefit and free air travel benefits, given to an employee, retiring in the normal course on superannuation. Alternatively, petitioner prayed for the quashing of proceedings u/s 33(2)(b) of the Industrial Disputes Act, 1947 before the National Industrial Tribunal, Mumbai. Counter-affidavit and rejoinder filed by respondents and petitioner.

3. I have heard learned Counsel for the petitioner and Senior Counsel, Mr. Rajiv Nayyar, Counsel for the respondent, at length.

During the writ proceedings respondent had admitted that pension, gratuity and provident fund, are payable to the petitioner, This was recorded in order dated 10.5.2004. The gratuity and provident fund already stand paid to the petitioner. As regards pension, it is stated that upon the petitioner attaining the age of 58 years, pension as admissible, would be paid to the petitioner.

4. The bone of contention between the parties is thus confined to the petitioner's claim for medical benefits and free air passage facility, which is (sic) to be denied by the respondent. Learned Counsel for the petitioner on (sic) from the petitioner confined his relief in this writ petition to the grant of medical benefits and free air passage.

On behalf of the petitioner, Mr. Vinay Sabharwal urged that petitioner is a patient of acute diabetes. The availability of medical benefit is essential for his very survival. Apart from the legal entitlement, having served the Corporation for ever two decades, petitioner ought not to be denied medical benefit especially when he had been, "dismissed with full (sic). In support of his claim for entitlement to medical benefits and (sic). Mr. Sabharwal refers to Clause 20 of the Standing Orders of Air India. He submits that the Standing Orders have been framed in accordance with Section 7 of the Industrial Employment (Standing Orders) Act, 1946. These are statutory in character and have a binding effect. The provisions of the Standing Orders would prevail over any in-house rules, regulations or schemes, as may be framed by the Air India in the event of any conflict. He refers to Clause 20 of the Standing Orders under the head, Punishment, which is reproduced as under for facility of reference:

20. Punishment-

Any one or more of the following punishments may, for good and sufficient reasons, be imposed by Competent Authority on any workman of the Corporation:

- (a) Censure.
- (b) Fine as provided in the Payment of Wages Act where applicable.
- (c) Withholding of increment.
- (d) Withholding of passage facility.

(e) Recovery from wage of the whole or part of any loss caused to the Corporation by the workmen's negligence, default or any breach of any regulations or orders.

(f) Suspension on loss of pay and allowances not exceeding 4 days.

(g) Reduction to a lower grade of pay or lower scale in the time-scale of pay.

(h) Reduction to a lower post/grade.

(i) Removal from service.

(j) Dismissal with or without retirement benefits in part or in full.

5. He submits that the Competent Authority is empowered under the aforesaid clause to impose any one or more of the punishments mentioned therein. He submits that withholding of air passage facility, removal from service, dismissal with or without retirement benefits in part or in full are distinct punishments. In the instant case. Air India has taken a conscious decision to impose only the punishment of dismissal with retirement benefits in full. The punishment of withholding of air passage facility, which could have been imposed, was not imposed. In the absence of punishment of withholding of air passage being specifically imposed, for which a specific provision exists and punishment being with full retirement benefits, petitioner is entitled to air passage as also the medical benefits, which would fall within the conspectus of "full retiral benefits".

6. Mr. Sabharwal next submitted that dismissal itself involved premature termination of tenure of the employee prior to its term. This by itself is sufficient punishment. The punishment of dismissal with "full retiral benefits", would imply that petitioner is to be notionally treated as a superannuated employee for the purpose of retiral benefits. It is apparent from Sub-clause J that it contemplates three contingencies, (i) dismissal without any retiral benefits; (ii) dismissal with part retiral benefits; and (iii) dismissal with full retiral benefits. Any of the three could be imposed, based on the gravity of misconduct. In the instant case, Mr. Sabharwal submits that petitioner was unable to attend on account of bona fide medical reasons. Hence Disciplinary Authority had deemed it fit to give him full retiral benefits. In these circumstances, respondent ought not to deny the medical benefits and air passage.

Learned Counsel further places reliance on Annexure-I, filed by the respondents, with the counter affidavit. The said annexure carries the caption "Retirement benefits to employees of Air India. At S. Nos. 3 and 4, passage and medical benefits are, mentioned. Thus as per the respondents own perception and understanding air passage and medical benefits fall within the ambit of retirement benefits. These, therefore, can't be withheld, when the petitioner's dismissed is with full retrial benefits.

Mt. Rajiv Nayar, learned Senior Counsel appearing on behalf of respondents, in response to the submissions made and in opposition to the writ petition, submits

that petitioner's conduct is such which disentitles him to exercise of any favourable discretion in writ jurisdiction. He submits that the petitioner who was transferred from the City Office to Airport Office, did not find it to be to his liking. In complete defiance of the rules, he did not attend to his duties for a period of 507 days feigning sickness such as stomach upset, advised rest by Doctor, ill health, dizziness, blood sugar, hypertension, etc. So much so, while he was transferred on 26.7.1994, he reported for duty only on 24.3.1995. Again he commenced absenting himself for several days in the month of April and May till issuance of the charge sheet on 29.7.1996. It was a clear case of reckless absenteeism. He did not get himself treated from the company Doctors. The medical opinion was that he was not suffering from any serious ailment which would have necessitated such frequent and prolonged absenteeism. Given this background, the respondent-Corporation as a model employer has still taken a lenient view of the matter and dismissed him with full retiral benefits.

7. As regards the plea that non-imposition of the penalty of withholding air passage, showed that respondents did not intend to withhold air passage, he submits that the plea was misconceived. Inference drawn was unwarranted. Clause 20 of the Standing Orders specifically provided for either one or more punishments being imposed. Hence, when punishment of withholding of passage facility was not imposed, it did not follow that non-imposition of the said punishment confer a right to receive the same. He seeks to draw support from Clause 20 of the Standing Orders which specifically provides for imposition of any one or more of the punishments. Reading this clause with Clause 23(4) of the Standing Order would show that when air passage facility is withheld under the Standing Orders, the order is to indicate the period for which it is to be withheld. This would indicate that the punishment was intended for serving employees for misconduct during their tenure. He submits that a dismissed employee was not entitled to this benefit. Besides the Air India Employees Passage Regulation, shows that it was in the nature of grant and there was no absolute right to it. The relevant clause clearly provides "the passage cannot be claimed by employees as of right". It is allowed at the convenience of the Corporation and sanctioned at the discretion of the Competent Authority. The passages are ordinarily non-cumulative. He submits that in the history of Air India not a single dismissed has ever been granted the facility of free passage.

8. Coming to medical benefits, he submits that under the Medical Benefits Scheme of Air India Limited, even retired employees are eligible for medical benefits upon payment of requisite contribution. The benefit is provided under the scheme in following circumstances:

- (i) Upon an employee being medically unfit for carrying out his/her duties;
- (ii) Upon the licence/endorsement of a member of flight crew being cancelled or withdrawn;
- (iii) Retirement, on attaining superannuation age or 25 years of continuous

service, with approval of Managing Director.

He submits that petitioner did not fall in any of the categories and hence was not entitled to medical benefits.

9. Having noted pleas of the rival parties and the provisions of Standing Orders, Medical Benefits Scheme and Air India Employees Passage Regulation, let us first consider as to what would fall within the term "retiral benefits" of a dismissed employee.

The meaning of the word "retire" as per Oxford English Dictionary is "leave one's job and cease to work especially because one has reached a particular age".

The expressions "retirement", "retiral benefits" and "medical benefit" have appeared in number of judicial pronouncements. In AIR 2000 SC 3513a the Supreme Court noted that an employee retiring after having rendered service, it is expected that all the payments of the retiral benefits should be paid on the date of retirement or soon thereafter. Retiral benefits i.e. group provident fund, encashment of leave, gratuity, commuted pension, etc. These are generally the benefits which are available on retirement.

10. Again in *Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. and Others*,), the Court observed that pension and gratuity coupled with contributory provident fund are well recognized retiral benefits. The Court noted that "As a return of long service he should be assured social security to some extent in the form of either pension, gratuity or provident fund whichever retiral benefit is operative in the industrial establishment." The Court held gratuity to be a retiral benefit. Pensionary benefits in various Government organisations are also being paid on retirement.

11. Having noted the nature of retiral benefits, let us consider whether the medical benefits can be treated as akin to or in the nature of retiral benefits or riot? and also as a part of social security. The Supreme Court in *Regional Director, E.S.I.C. v. Francis De Costa* : 1992 (65) FLR 316 (SC), while dealing with a question; whether an accident could be said to be arising out and in the course of employment, under the Employees State Insurance Act, 1948 made observations regarding the nature of medical and disability benefits, which may usefully be reproduced. The Court held:

The Act is a social security legislation. It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction. The Court must seek light from loadstar, Article 38 and 39 and the economic and social justice envisaged in the Preamble of the Constitution which would enliven meaningful right to life of the worker under Article 21. The State enjoined under Article 39(e) to protect I the health of the workers, under Article 41 to secure sickness and disablement benefits and Article 43 accords decent standard of life. Right to medical and disability benefits are

fundamental human rights and Article 25(2) of Universal Declaration Human Rights and Article 7(b) of International Convention on Economic, Social and Cultural Rights. Right to health, a fundamental human right stands enshrined in socio-economic justice of our Constitution and the Universal Declaration of Human Rights. Concomitantly right to medical benefit to a workman is his/her fundamental right. The Act seeks to succour the maintenance of health of an insured workman. The interpretative endeavour should to effectuate the above. Right to medical benefit is, thus, a fundamental right to the workman.

12. From the foregoing it would be seen that medical benefit has been held to be a fundamental right. It, therefore, falls in class different from a facility or perquisite. It would fall within the ambit of retiral benefit. This, liberal interpretation would be in consonance with the principles enunciated by the Supreme Court in Regional Director ESIC (supra). It is to be noted that in the instant case petitioner was dismissed from service but with full retiral benefits. It is not disputed before me that a person who retires from service is also eligible for the benefits under the medical scheme of Air India. Thus, every employee retiring from the service of the Corporation would be entitled to the benefit of this scheme which is also available post retirement. In the instant case, without the factum of retirement, the respondents in the ease of dismissal also carved out an exception where retiral benefits would be payable. Hence even though termination of an employee was not on account of being medically unfit or unable to carrying out his/her duties or a pilot whose licence/endorsement being cancelled or withdrawn. The intention here was to give to the employee retiral benefits even though he is dismissed from service. I am of the view that in these circumstances, medical benefits would form part of retiral benefits and the petitioner would be entitled to the same subject to payment of requisite contribution, if any.

13. Coming now to the question of free air passage facility, it is granted to serving employees and is also made available to retired employees. The petitioner's case is that respondents themselves have admitted flight passage to be one of the retirement benefits as per Annexure-1 page 157 by the heading "RETIREMENT BENEFITS TO EMPLOYEES OF AIR INDIA". In my view mere heading or title would not be determinative of the matter. It is at best an aid or guide to the contents of the document. Moreover it is to be noted that this very Annexure carries the following stipulation:

It may be observed that the employee who is dismissed from the services of the company will not be entitled to passage, medical benefits of the company. He is entitled for his own contribution of PF with interest as on date of his separation.

14. Accordingly, if the petitioner wishes to rely on the heading or title to Annexure-1, the entire document has to be read as a whole. Be that as it may, the Court has to consider the substance and nature of the benefit.

15. The mere fact that in the standing orders withholding of passage was one of

tine punishments which was not resorted to, would not make any difference or lead to an inference that in the absence of punishment, benefit has been granted. As noted earlier, the grant of flight passage is governed under the Air India Employees Passage Regulation. There is no other statutory or contractual right available to the petitioner for its enforcement. Clause 3 stipulates that the grant of passage under the regulation shall be subject to "passages cannot be claimed by employees as of right, they are allowed at the convenience of the Corporation and are sanctioned at the discretion of the Competent Authority. The passages are ordinarily non-cumulative." It is true that retired employees are also eligible for grant of passage. However, from its inherent nature, the grant of flight passage is in the nature of a perquisite. It would not fall within the ambit of retiral benefits as understood in law and discussed earlier. An employee who has misconducted himself cannot claim grant of perquisites, as a matter of right post retirement, in the absence of any statutory or enforceable or legal right for this perquisite, it is held that the petitioner is not entitled to the grant of air passage which is even otherwise at the discretion of respondents.

16. In view of the foregoing discussion, the writ petition is partly allowed. The respondents are directed to provide medical benefits as a post retiral benefit as the dismissal of the petitioner was with full retiral benefits. Needless to mention that the petitioner would also be liable to make contribution if required and made by other employees for obtaining this retiral benefit. Petitioner's claim for grant of free passage is rejected.

The writ petition is partly allowed in the above terms.