

(2021) 10 DEL CK 0185

In the Delhi High Court

Case No : Civil Writ Petition No. 6137 Of 2018, Civil Miscellaneous Application No. 23779, 41436 Of 2018, 32135, 33912 Of 2020, 8843 Of 2021

Sarthak Khandelwal And Ors

APPELLANT

Vs

Air India Limited And Ors

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2021) 10 DEL CK 0185

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Ashutosh Lohia, K. Paari Vendhan, Raghunatha Sethupathy B., Malar Vendhan, Pariksha, Aditya Mewara, Sanjiv Sen, Suruchi Suri Varun Singh Thapa, Srilina Roy, Vivek Kohli, Bharti Chawla, Malvika Jain, Sanjoy Ghose, Urvi Mohan

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM. No. 32135/2020 (for delay)

This is an application filed by the applicants / petitioners seeking condonation of 48 days delay in filing reply to the affidavit filed by respondent Nos. 1 to 5. For the reasons stated in the application same is allowed and the delay is condoned.

The reply is taken on record.

Application stands disposed of.

W.P.(C) 6137/2018

1. The present petition has been filed by the petitioners with the following prayers:

"It is therefore, in the facts and circumstances of the case, the petitioners most

respectfully prayed that this Hon'ble Court may be pleased to:

(A) That the respondents be directed to issue Command training Letters for their Command Training and their original seniority be not disturbed.

(B) That the respondents be directed not to issue Command Training letter and conduct training in terms of letter dated 19.06.2017 of persons who are much junior to the petitioners as the same is discriminatory and the petitioners are entitled for the same.

(C) That the circular dated 13.07.2017 be quashed.

(D) That the letter dated 19.06.2017 be quashed to the extent which confers seniority to other persons who are junior to the petitioners.

(E) Such further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The instant petition arises from a dispute which finds its origin in the circulars of respondent Nos.1 to 5, i.e., Air India dated August 27, 2015, June 19, 2017 and July 13, 2017, concerning its Wide-body (Aircraft) Pilots. It was from the circular dated June 19, 2017, through which a "New Career Progression Policy" ('policy', for short) was brought into place, replacing the Wage Agreement which governed the Pilots including the petitioners herein. This circular has been given effect from June 1, 2017. This circular was followed by another circular dated July 13, 2017, which extended the deadline for grant of newly introduced E-5 Grade, i.e., Captain's Grade to a date of June 30, 2017 without effecting the seniority. The petitioners contend that the earlier subsisting seniority list is now sought to be replaced by a new seniority list even for the command upgrade even though the regulations of the Directorate General for Civil Aviation ('DGCA', for short) as well as the policies, wage agreements, and operations manual of the respondent Nos.1-5 ('Respondent No. 1', for short) provided for a different set of eligibility requirements, different from that required for obtaining the Captain's Grade. The petitioners have contended that they became eligible for the Captain's Grade and consequently for command upgrade in September 2017 when they cleared Air-Line Transport Pilot papers ('ALTP papers' for short). They have contended in the petition that a command upgrade was offered to their juniors for the first time in June, 2018 on the basis of ante-dated, retrospective circulars which the petitioners allege are illegal and in-actionable.

3. Mr. Ashutosh Lohia, learned counsel appearing for the petitioners stated, that as per the Career Progression, a candidate starts flight training in a flight school. He begins with his first license which is the Student Pilot License ('SPL', for short). After the candidate has gained adequate flight experience which is recorded as flight hours and on passing the written examination and accompanying flight tests, the candidate qualifies for the Private Pilot License ('PPL', short), which enables an individual to fly privately. In order to work as a commercial airline pilot for a commercial airline such as the respondent No.1,

i.e., Air India, a Pilot needs to upgrade to a Commercial Pilots' License ('CPL', for short), which requires further flight training / flight hours and is accompanied by further written examinations and flight tests. He stated, the assessment for eligibility and issuance of the aforesaid licenses are within the purview of the DGCA, the Indian Regulator for Civil Aviation, and governed by the Aircraft Rules, 1937 and the Civil Aviation Requirements ('CAR', for short) made thereunder.

4. Mr. Lohia submitted that in order to join respondent No.1 Air India, a Pilot must have a CPL as a pre-requisite and additionally qualify Air India's specific examination scheme after which a newly recruited pilot would start his / her employment from the post of a Trainee Pilot working towards 'Type Rating' which is a specific kind of Aircraft Training corresponding to certain types of aircrafts such as Boeing-737, Boeing-777, Airbus-320, etc. This specialized training includes theoretical instructions and practical training such as flight experience on aircraft simulator and on actual aircrafts. Once a candidate has successfully completed the training programme, the 'Type' of aircraft is endorsed by the DGCA on the CPL of the Trainee Pilot who would then be licensed to fly that 'Type' of Aircraft. After which the Pilot is then 'RELEASED' by the airline to operate as Co-Pilot / First-Officer who in a multi-crew environment assists the Commander / Pilot-in-Command ('PIC' for short) in conducting routine commercial operations for the airlines. The First-Officer is entitled to only one promotion, i.e., of a Commander, which requires a higher and more intensive training. He stated, the DGCA has set up the minimum qualification for a Commander as (i) attainment of a minimum age of 25 years.; (ii) possession of a valid Air-Line Transport Pilot License ('ALTP License', for short). This license too is issued by the DGCA.

5. According to him, the pre-requisite for acquiring an ALTP is that an individual must be a First-Officer holding a valid CPL. An individual in order to obtain the ALTP License must first obtain ALTP papers which consist of written examination(s) and viva. These written and oral examinations are conducted four times in a year. The ALTP License is not issued immediately to the successful candidate who has obtained the ALTP papers unless they have also earned the requisite 1500 flight hours, which must accrue not more than three years after passing the ALTP papers. Later the validity of the ALTP papers was increased to five years in order to allow more pilots to gain the requisite 1500 flight hours. The ALTP License is only issued after a candidate has deposited the requisite fees and is able to prove the 1500 hours of flight experience along with the proof of passing the ALTP papers. Mr. Lohia stated that the process of the ALTP papers lasts for around 3-4 months.

6. Mr. Lohia stated that Air India in its Operations Manual which is a DGCA certified legal document has expanded on the qualification of command training. He stated that the petitioners are all former Pilots employed by Air India, now termed as 'Wide-Body Pilots' of the 'Boeing Fleet' and accordingly their qualifications for command training were governed by the Operations Manual of

Air India for Boeing Pilots, wherein the First-Officer was required to have the following qualifications;

- i. a valid ALTP License,
- ii. minimum five years which was later reduced to three years and two months by the internal memo,
- iii. 2750 hours of flight experience on Company

As per Mr. Lohia, even after having the abovementioned qualifications, the First-Officer must also wait for his / her actual turn as per line-seniority. Even when the turn comes, the First-Officer must still be in possession of the abovementioned qualifications in order to proceed for command training or else forfeit his / her seniority to the next eligible First-Officer. Mr. Lohia argued that all the petitioners were in possession of the said qualifications much earlier and it is his contention that the petitioners' immediate junior was sent for command training after bypassing them.

7. Mr. Lohia stated that Air India is a merged entity of the former Indian Airlines and Air India. Since the merger in 2007, there were a lot of complications regarding the same whereinafter a committee chaired by Hon'ble Mr. Justice Dharmadhikari (Retd.) was formed ('the Committee' for short) to provide for a systematic merger by a proposing a common service and a common promotion criterion thus protecting the seniority of the erstwhile employees. One such proposal was the introduction of a Captain's Grade as a middle point between the ranks of the First-Officer and Commander. These Grades were then equated with that of the other Public Sector Undertakings wherein the 'E' Grade System was brought. According to Mr. Lohia, these Grades had been paired with the existing grades as follows:

E-4 : First Officer

E-5 : Captain

E-6 : Commander

This in-between Grade of Captain, i.e., E-5 is unique to Air India and other Airlines may or may not have it. Some of the Airlines call this in-between Grade as 'Senior First-Officer'. Mr. Lohia stated that the DGCA which is the regulatory authority has not established any rules for this in-between Grade which is peculiar to Air India.

8. It is the case of the petitioners that the proposed Grade at E-5 along with its eligibility was accepted by Air India. A Circular dated August 27, 2015, was issued which according to Mr. Lohia was never notified or publicised. This Circular referred to an earlier communication, i.e., the note sheet dated May 25, 2015, regarding placement of Co-Pilots / First Officers of Wide-Body in Captain's Grade. The petitioners belong to this category included in the Circular, wherein a new criterion for passing ALTP papers by a certain cut-off date was defined. This

Circular ostensibly sought to provide for an extension of six months, i.e., up to January 31, 2016, for passing the ALTP papers. One of the main contentions of Mr. Lohia is that the cut-off date, except, in the Circular has not been mentioned anywhere and the same does not mention anything about the acquisition of an ALTP License, but simply refers to the passing of ALTP papers, which is only a step towards getting the ALTP License. As per Mr. Lohia, since the ALTP papers had a limited validity, the Pilots could sit for the ALTP examination only when they would start approaching the 1500 hours flight experience benchmark.

9. The seniority of the petitioners was based on the date of joining, post-merger and the recommendations of the committee was that since their joining was pre-2012, they were placed in list-B governed by the erstwhile Air India Rules. Mr. Lohia stated that the rules of seniority were changed by a notification, for passing the ALTP papers by a certain cut-off.

10. Mr. Lohia stated that the petitioners' batchmates who had been selected for fleets such as the Boeing-737 would have already completed or might have neared completion of the 1500 hour benchmark around the year 2016 after which they appeared for the ALTP papers in order to receive the ALTP License. Mr. Lohia's contention is that the petitioners reached the 1500 hour benchmark only around September 2016 onwards after which they started to appear for the ALTP papers, since they had the pre-requisite flight experience for it. Others who got their ALTP License prior to the petitioners were on Boeing-737 or other fleets where they were accruing around 800-1000 hours of flight experience in a year. Whereas the petitioners were gaining around 300-350 hours or fewer in a year as the long-haul flights have multiple sets of Pilots because of which the flying hours get divided and there are also longer layovers of 2-3 days (out-station) and 5-6 days (base-station). It is for this reason, Pilots such as the petitioners could only accrue 30-35 hours per month, adding up to 300-350 hours a year, taking into account the one month of leave and training. Mr. Lohia has stated that the petitioners' juniors have superseded them which is unfair since the flying hours in long-haul flights differ from the other fleets which provide shorter but more frequent flying opportunities.

11. Mr. Lohia argues that the Circular of August 27, 2015, which was not notified or made public at all, even to the parties who are directly affected by it, has resulted in grave prejudice to the petitioners. It is his case that, had the petitioners been informed of the upcoming new criterion, inclusive of the cut-off date for passing the ALTP papers, the petitioners would have started making efforts to clear the said papers before the first cut-off date of January 31, 2016. He stated that this information was selectively confirmed to certain Pilots who appeared and cleared the ALTP papers prior to the cut-off date and it is these Pilots whose seniority remained unaffected. However, those Pilots who were not notified including the petitioners, who cleared the ALTP papers after June 30, 2016, which is the final cut-off date, were then placed in a new Common Seniority List, wherein they have lost almost 156 places and the petitioners'

chance for getting a command upgrade has been pushed back by almost three years.

12. Mr. Lohia contests the multiple extensions to the cut-off date granted, which are as follows:

a. First extension: Some date prior to the Circular of August 27, 2015 which was never notified.

b. Second extension: Up to January 31, 2016, by the Circular of August 27, 2015, which was also not notified.

c. Third extension: up to June 1, 2017, vide Career Progression Circular dated June 19, 2017, which had been notified.

d. Last extension: Up to June 30, 2017, by Internal Circular dated July 13, 2017, which had also been duly notified.

He argued that, had Air India notified and publicised this change in policy well in advance there would have been no cause of action for the petitioners to file this petition.

13. Mr. Lohia pointed to the fact that all the Circulars are ante-dated and provide for cut-off dates which have already expired, on the date of the circular. He stated that such actions itself are enough to show malafide intention on the part of Air India. The petitioners were only aware of the two ante-dated Circulars which were duly notified, i.e., (i) the Career Progression Circular dated June 19, 2017, notifying the cut-off date of June 1, 2017, and; (ii) Internal Circular dated July 13, 2017, which had extended the previous cut-off date from June 1, 2017, to June 30, 2017. He argued that through the Circular dated June 19, 2017, the petitioners had received the first Circular of August 27, 2015 for the first time. He stated the petitioners stood no chance to qualify, as both the circulars had retrospective effect. He stated that the respondents have falsely stated that the Circular dated August 27, 2015, was uploaded on the ARMS crew portal and was taken down as six years had elapsed since then, whereas the ARMS crew portal is one of the official modes of service for Air India which to this date has circulars dating back to 2014 but not August 27, 2015, and the only circular regarding the present controversy uploaded is that of June 19, 2017.

14. Mr. Lohia sought fixation of responsibility with regard to this controversy. He has also stated that since the petitioners and other similarly placed Co-Pilots / First-Officers were only informed of this new final cut-off date of June 30, 2017, at a later point of time they must be justifiably allowed sufficient time period beginning from June 30, 2017, to clear the ALTP papers without affecting their original line-seniority and other Co-Pilots / First-Officers of Air India who did not clear the ALTP papers even after the extended notice period may be considered under the new seniority rule as defined in the Career Progression Policy dated June 19, 2017. Mr. Lohia seeks the prayer as made in the petition.

15. Mr. Sanjiv Sen, learned Sr. Counsel along with Mr. Varun Singh Thapa appeared for respondent No.1 and have at the very outset contended that the present writ petition is not maintainable and the jurisdiction under Article 226 cannot be invoked as at the heart of this writ petition lies a service dispute and as such writ jurisdiction cannot be invoked for enforcing personal contracts. In this regard, reliance has been placed on the Judgment of *Girish G. & Anr. v. State of Kerala*, 2020 SCC Online Ker 1903. Mr. Sen has also argued that there is an alternate efficacious remedy available to the petitioners, which has not been availed, i.e., the petitioners belonging to the category of workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 have failed to approach the appropriate forum. The alternate efficacious remedy ought to be availed first, before approaching this Court.

16. Mr. Sen has also argued that the alleged dispute of the petitioners falls under the purview of the policy-making powers which solely belong to Air India and this Court ought not to interfere with the internal policy of respondent No.1. With regard to the reliefs sought by the petitioners wherein they seek quashing of the Career Progression Policy dated June 19, 2007, and Circular dated July 13, 2017, the same cannot be sustained in the light of the fact that the formulation of policies governing the terms and conditions of the employees of respondent No.1 is a pure managerial function including implementation of policy and the employees do not have a say in the same.

17. Mr. Sen has also alleged that the petitioners have not approached this Court with clean hands, i.e., though the petitioners have not been granted the command training at this stage, but are still receiving the benefits of notional command under the Career Progression Policy dated June 19, 2017, since January 1, 2018, whereby they are entitled to equal monetary emoluments / allowance (s) to that of a Captain's grade; which goes to show that as far as the monetary benefits / allowance (s) are concerned, there is no disparity between the petitioners and other Co-Pilots / First Officers, who have attained the Captain's Grade. In this regard, he has relied on the Career Progression Policy i.e. Circular dated June 19, 2017, which deals with aspect of notional command. He stated that since the petitioners have been availing the benefits of the aforesaid policy even before filing of the present petition, they cannot be allowed to challenge the same to the effect that it has impacted their seniority. In this regard, Mr. Sen has relied on the judgment of the Supreme Court in the case of *Arunima Baruah v. Union of India and Ors.* (2007) 6 SCC 120.

18. Mr. Sen submitted that respondent No.1, Airlines is already facing, huge financial losses which have been worsened due to the COVID-19 Pandemic and if this Court were to exercise its jurisdiction under Article 226 relating to subject matters which are purely within the managerial ambit of the respondent No.1, the same would result in an unwarranted situation where other Pilots / employees of the Airlines would be severely impacted and the expenses incurred by respondent No.1 would be further inflated and also the flight / training

schedules and commercial operations of the respondent No.1 would come to a grinding halt.

19. Mr. Sen stated the petitioners joined the services of the erstwhile Air India as Trainee Pilots between January 01, 2007, to December 31, 2010, who have completed five years from the date of joining as Trainee Pilots in terms of the Operation Manual designed for Boeing Fleet were eligible for promotion to the post of Captain's Grade. As per the Wage Agreement implemented in the year 2006, the same petitioners working as First-Officers are now referred to as Wide-Body Co-Pilots. According to Mr. Sen, the reliance placed on the Wage Agreement by the petitioners to assert that they have to be considered for command training / upgrade to the post of Captain / Commander as and when they are in possession of ALTP license, is misplaced as there was no stipulated period / time-frame within which the ALTP examination was to be cleared. An internal Circular bearing number HPD01/0-1201 dated August 27, 2015, issued by respondent No.2 informed that the Co-Pilots of the Wide-Body Aircraft would be considered for placement to Captain's Grade only on completion of three years and two months of service and passing of the ALTP papers up to January 31, 2016. The said letter had been forwarded by respondent No.2 to respondent No.3 in order to enable it to inform the affected Pilots of Wide-Body Aircraft about the said decision.

20. In response to the RTI application dated November 23, 2017, filed by the petitioners, wherein information was sought from respondent No.3 enquiring about the mode through which the aforesaid Circular dated August 27, 2015, was served upon the affected Pilots including the petitioners; the respondents informed the petitioners vide e-mail dated December 04, 2017, that the said application was forwarded to the Central Nodal Officer, HQ Airlines. Thereafter various follow-up e-mails were sent by the petitioners regarding the status of the said application. On December 22, 2017, the respondents informed the petitioners that the said complaint was forwarded to the CPIO & GM (HQs.), being the concerned department since the application pertains to respondent No.1's operations department. On receipt of a non-satisfactory reply, the petitioners filed an RTI appeal on January 18, 2018, before the First Appellate Authority.

21. According to Mr. Sen in order to be eligible for command training, petitioners have relied upon the eligibility criteria as prescribed under Part-D of the Operations Manual for the Boeing Fleet which provides for a requirement of a valid ALTP License, completion of a minimum period of 5 years from the date of joining as Trainee Pilots and minimum experience of flying the aircraft for 2750 hours. He submitted that on account of the merger of erstwhile Air India (Wide-Body Aircraft) and Indian Airlines Ltd. (Narrow-Body Aircraft) a harmonised Career Progression Policy was introduced by respondent No.1, i.e., vide circular dated June 19, 2017 (w.e.f June 01, 2017) which replaced the earlier Wage Agreement of 2006. As per the said policy, the eligibility criteria prescribed for

First-Officers for upgradation to the post of Captain / Commander, passing the ALTP papers and completion of three years and two months from the date of first Officer's release check.

22. Despite the extensions of the date granted for qualifying ALTP papers up to June 30, 2017, the petitioners appeared for the said examinations only in July 2017. The results of which were declared on July 31, 2017, and September 30, 2017. The petitioners have alleged that despite clearing the mandatory ALTP papers and fulfilling the criteria laid down for the post of Captain's / Commander's Grade, no command training letters were issued to them and that they were superseded inasmuch as the same were issued to the Pilots who are much junior to them. After which various representations dated June 14, 2016, July 9, 2017, November 6, 2017 and December 14, 2017, were made by the petitioners to respondent No. 1, wherein they had aired their grievance with regard to non-issuance of command training letters to them and stated that the harmonised Career Progression Policy dated June 19, 2017, is in conflict with the Common Wage Agreement implemented in the year 2006. Mr. Sen stated that a writ petition No. being W.P.(C) 1008/2018 was preferred by the petitioners before this Court which was been disposed of vide order dated February 05, 2018 with a direction, to consider the grievance of the petitioners. Pursuant to which the representation dated November 06, 2017, of the petitioners, was considered by respondent No.2 and vide letter dated April 17, 2018, it was explained that the implementation of the new harmonised Career Progression Policy dated June 19, 2017, was a managerial act and the employees do not have any role in the policy making and it was further informed to the petitioners that their grievance could not be examined as the petitioners had failed to provide the names of Pilots who were allegedly junior to them who were issued the command training letters by the respondents. Mr. Sen argued that it is only after the said representation was decided, the present petition had been filed seeking quashing of Circular dated July 13, 2017, and harmonised Career Progression Policy dated June 19, 2017.

23. Mr. Sen argued that the relief sought by the petitioners regarding issuance of command training letters cannot be entertained at this stage as there are certain Co-Pilots / First-Officers senior to the petitioners who at present are either waiting for their command training or are currently under the stages of such training. Mr. Sen stated that the petitioners' names appear at serial numbers 203, 205, 207, 208 and 211 of the seniority list for Co-Pilots / First-Officers of Wide-Body Aircraft and that they are anyway scheduled to undergo command training w.e.f March 01, 2021 on A-320 Aircraft. The said petitioners would undergo training only after the Co-Pilots whose names appear in the seniority list above the petitioners have completed their respective command training and the respondent No.1 is under no obligation to send the petitioners for training out of turn, as the same would jeopardise the rights of Pilots who are senior to them.

24. Mr. Sen responded to the argument of the petitioners by stating that in so far as the grievance of other respondents, currently at serial numbers 128 to 133 of

the seniority list are concerned with regard to being sent on command training on A-320 Aircraft (Narrow-Body) instead of B-787 / 777 Aircraft (Wide-Body) in view of operational requirements; he stated, the said Co-Pilots / respondents have already received 2/3rd of their command training on A-320 Aircraft. The expenses which have been borne by respondent No.1 is to the tune of Rs. 20 Lacs per Pilot. Even if it were to be assumed that the grievance of the petitioners is genuine, the same cannot be entertained at all because that would entail huge expenditure on each and every Pilot and lead to loss of resources of the respondent No.1 Airline.

25. Mr. Sen argued that it is the petitioners who have failed to clear the ALTP papers within the stipulated time period despite having been granted several opportunities to clear the same. As a consequence of which the petitioners have lost their seniority and could not be considered for command training for the post of Captain / Commander. According to him, despite stipulating the cut-off date for clearance of the ALTP papers as January 31, 2016, vide Circular dated August 27, 2015, which was then later extended to June 30, 2017, vide Circular dated July 13, 2017, the petitioners have admittedly cleared their examination on September 30, 2017, which is beyond the aforesaid cut-off dates. As a result of which the petitioners lost their seniority to the Co-Pilots / First-Officers who had cleared their ALTP papers within the stipulated period and bypassed the petitioners in the seniority list and were considered for command training as per the operational requirement of the Airlines. Consequently, due to the loss of their seniority, the petitioners were downgraded in the seniority list and they find themselves currently at serial numbers 203, 205, 207, 208 and 211.

26. Mr. Sen rebuts the contention that the petitioners were never served with the Circular dated August 27, 2015, which is why they failed to clear the said examination within the stipulated time period as untenable. He stated that on the basis of the report dated January 31, 2012, of the Committee where the rule of three years and two months was proposed, the Circular dated August 27, 2015, was issued by the Executive Director (Personnel and IR), Air India, whereby the said rule was implemented and a cut-off date for clearance of the ALTP papers was stipulated as January 31, 2016. The said Circular was issued to the Office of the Executive Director (Operations), Air India enabling the respondent Airline to convey the said decision to all the affected Pilots. Additionally, the said Memorandum was also uploaded on the crew portal maintained by Air India, which is accessible to all the Pilots. Mr. Sen has stated that the Circular being an internal circular was duly circulated to the concerned department which had brought it to the notice of all its employees to whom the said Circular applies.

27. Mr. Sen stated that the petitioners even in their representations dated July 9, 2017, November 6, 2017, and December 14, 2017, have admitted of being apprised of the decision of the Management regarding the implementation of the aforesaid three years and two months rule within which the ALTP examinations had to be cleared from the Indian Pilots Guild ('IPG' for short). In the said

representations the petitioners admit of being apprised of the grace period of six months given for clearing the ALTP papers in the event the same are not cleared within the initial time period. He stated that the only inference which can be drawn from the aforesaid is that the petitioners were well aware of the implementation of the new rule for the purpose of command training to the post of Captain / Commander and this shows that the alleged grievance that they had never been served with the Circular dated August 27, 2015, is misconceived.

28. It is the case of the Air India so contended by Mr. Sen that the petitioners' reliance on the Common Wage Agreement to claim seniority and command upgrade to the post of Captain / Commander is also misplaced since the formulation and implementation of the harmonised Career Progression Policy dated June 19, 2017 (w.e.f June 1, 2017) for the merged entity, i.e., Air India, the Wage Agreement implemented in the year 2006 stands superseded. The said superseded Wage Agreement was applicable to the Co-Pilots of erstwhile Air India only, however, post-merger the said harmonised Career Progression Policy was introduced for respondent No.1. Even otherwise, the superseded Wage Agreement does not inure to the benefit of the petitioners inasmuch as it clearly states that any Pilot bypassed for command training due to non-possession of ALTP License cannot have any claim on his original seniority upon obtaining the ALTP License. In this regard, Mr. Sen has relied upon the Command Training clause. He seeks the dismissal of the writ petition.

29. Ms. Srilina Roy, learned Counsel for respondent Nos. 6 to 9 stated that the said respondents are Pilots who though junior to petitioner No. 5 were senior to the other petitioners whose prayer for restoration of their original seniority is non-maintainable. She is in agreement with the arguments of Mr. Sen that though the petitioners were erstwhile employees of Air India and their Career Progression was governed by the Wage Agreement, but Clause (c) of the said Wage Agreement stated that a Co-Pilot / First-Officer not in possession of an ALTP License at the time for consideration of command training will be bypassed and command training would be offered as per line seniority only to Pilots possessing an ALTP License. She stated that the Pilots bypassed for command training due to non-possession of ALTP License cannot have any claim to their original seniority. She stated on behalf of respondent Nos. 6 to 9 that on November 18, 2014, the IPG urged all the First-Officers / Co-Pilots to clear the ALTP papers with utmost urgency. This fact has also been admitted by the petitioners in their representations to respondent No.1 dated December 14, 2017, July 9, 2017, and November 6, 2017.

30. Ms. Roy has given the details of the respondents regarding their obtaining the ALTP License and command training letter; (i) respondent No. 7 acting upon the letter dated November 18, 2014, obtained his ALTP on August 24, 2015, and his command training letter was issued on November 21, 2016; (ii) respondent No. 8 also obtained his ALTP License on October 28, 2015, and his command training letter was issued on November 21, 2016; (iii) respondent No. 9 obtained

his ALTP License on February 13, 2012, and his command training letter was issued on September 9, 2014. She stated that vide Establishment Order dated July 16, 2015 respondent Nos. 5 and 6 were upgraded to the Grade of E-5. Thereafter vide Establishment Order dated January 27, 2016 respondent Nos. 7 & 8 were also upgraded to the E-5 Grade. She argued that despite being aware that batchmates of petitioner No.5 were being upgraded to the E-5 Grade, no efforts were made by petitioner No.5 to obtain his ALTP License.

31. She stated that in the year 2015 the Executive Director (Personnel) of respondent No.2 issued Circular dated August 27, 2015, wherein a grace period of 6 months as a one-time measure was provided to the Co-Pilots of Wide-Body Aircraft who would be completing three years and two months of service for passing the ALTP papers and it was amply clarified that such an extension was only available till January 31, 2016. Thereafter on June 19, 2017, vide letter no. HOP/06-4381A/585 a new Career Progression Circular being Policy/Ops/001/3 providing harmonisation of seniority lists of Pilots engaged from different streams was effectuated. The new Career Progression Circular in Clause 10 clearly stipulates that in all cases where notional command is given to a Pilot, all efforts will be made to give him / her priority for command training even if it were to mean overlooking the 1:1 ratio as well, as it did not lead to more Pilots getting notional command.

32. Accordingly, in continuation of its earlier Circular dated August 27, 2015, another Circular dated July 13, 2017, was issued by the General Manager (Personnel), i.e., respondent No. 4, wherein the date for non-affecting the seniority of Co-Pilots of Wide-Body Aircraft was extended from January 31, 2016, to June 30, 2017. She stated that it is the case of the respondent Nos. 6 to 9 that all the Pilots were duly notified of the Circular dated August 27, 2015, which the petitioners have also admitted in their representations dated December 14, 2017, July 9, 2017 and November 6, 2017. The petitioners have also admitted, that the office of the Executive Director (Ops.) had explained the new rule of passing the ALTP papers within the timeframe of three years and two months. It is also her case that the ALTP examination takes place every three months and has no upper limit for the number of attempts that an individual can take. According to her, the petitioners have attempted the ALTP papers only in the month of July 2017, which is clearly after the expiry of the extended timeline of June 30, 2017, and the result thereof was declared on July 31, 2017 and September 30, 2017 for written and oral examinations respectively.

33. Ms. Roy concluded her arguments by stating that merely being senior is not an entitlement for restoration of original seniority in higher posts when the petitioners have been wilfully negligent, for which the respondent Nos. 6 to 9 cannot be penalised. She stated the petitioners who are only five in number have delayed in obtaining their ALTP License whereas the impleaded respondents being 150 in number, already had the information about the said requirement and cleared the ALTP papers within the given timeframe.

34. Mr. Vivek Kohli, learned Sr. Counsel with Ms. Bharti Chawla appeared on behalf of Pilots of erstwhile Air India being respondent Nos. 57, 62, 64, 65, 67, 68, 69, 70, 72, 73, 76, 79, 128, 132 & 149, submitted that the grading system for Pilots comprises of three Grades, i.e., (i) E4 - First Officer without ALTP; (ii) E5 - First-Officers with ALTP (Captain Grade); (iii) E6 - Commander. He agreed with Mr. Sen's submission inasmuch as a Pilot who joins the Company as a First-Officer gets the E-4 Grade and upon passing the ALTP papers within the cut-off date and on informing the company gets promoted to the Grade of E-5. After taking his turn for command training and on completing the same, he gets the E-6 Grade after which he becomes a Commander.

35. Mr. Kohli also agreed with the arguments advanced by Mr. Sen that the respondent No.1 had provided a deadline for clearing the ALTP papers and that these Pilots were only to be considered for placement to the Captain's Grade on completion of three years and two months of service. The Memorandum also provided for eventualities which would not affect the seniority of the Pilots. The earlier deadline for clearing the exam before January 31, 2016, was extended to June 30, 2017. The seniority of Pilots who cleared the ALTP papers before the end of June 2017 remained unaffected and the same formed the E-5 Grade list. However, those who cleared the ALTP papers after the extended deadline were subsequently added to the bottom of the E-5 Grade list. The seniority of the Pilots who cleared the examination after June 30, 2017, was asserted in accordance with the date on which the Pilot informed respondent No.1 about the successful result of the ALTP papers. These Pilots then entered the E-5 Grade and the seniority therein is in the sequence, of them having cleared the papers and informing respondent No.1.

36. Mr. Kohli stated that the respondents / Pilots have followed due process. They first accessed the various circulars which were available on the online crew portal. The respondents / Pilots cleared the ALTP papers before the pre-determined deadline and achieved the E-5 Grade. The seniority of these respondents / Pilots thus remained unaffected in the new list, which came out on December 31, 2017.

37. Mr. Kohli has also argued that the petitioners were well aware of the Circular dated August 27, 2015, which has provided for a cut-off date for clearing the ALTP papers, which he stated has also been admitted by the petitioners in their own petition. The acknowledgement of the said memo is also seen in their representations. Among them is one such representation dated June 14, 2016, which is more than one year before the cut-off date, i.e., June 30, 2017. The petitioners being aware of the cut-off never cleared the examination before the deadline. Resultantly they were placed after other Pilots in terms of the seniority list issued in December 2017. It is only these five petitioners who have taken a stand that they did not receive information regarding the internal note. According to him, the petitioners want to march over the 150-200 Pilots who had duly cleared the ALTP papers before June 30, 2017, and given seniority. The

petitioners also want to be placed above other Pilots in order to acquire command training prior to them which would clearly be contrary to the seniority list.

38. Mr. Kohli points to the fact that most of these Pilots have finished their training and have been serving as Commanders for many years now, the prayers as made cannot be granted. The other Pilots including some of the petitioners are in line to start their command training soon. He stated that the current dispute arises out of the policy of the respondent No.1 and no adverse orders can be passed against it.

39. Mr. Sanjoy Ghose, learned Sr. Counsel with Ms. Urvi Mohan appeared for the Indian Commercial Pilots Association ('ICPA', for short) who has been impleaded as respondent vide order dated April 05, 2021. Mr. Ghose has made similar pleas as made by Mr. Sen and Mr. Kohli and to an extent by Mr. Lohia concerning the regime for granting ALTP License and the position which existed prior to the date of merger of the erstwhile Air India and Indian Airlines. He stated that on various occasions, ICPA has demanded that the cut-off date of Career Progression Policy must be taken as April 01, 2007, which was the date of merger which was also adopted by the Committee. Despite demand by the ICPA for a common seniority list, the same was turned down by the Committee. Mr. Ghose submitted that the Career Progression Policy dated June 19, 2017 was a demand of both the ICPA and the IPG and a Committee was constituted vide order dated January 27, 2016 to look into the matter. This, Mr. Ghose stated to point out the fact that the Management, Pilots as well as the Workmen from both sides were well represented, including the present petitioners through the IPG and they were informed about the salient features of Career Progression Policy as well as increased grace period of three years and two months; the petitioners were fully aware of the discussions taking place and had also made their submissions. The seniority of Pilots who had joined between April 1, 2007 and January 1, 2012 were left to be managed by Air India. He stated that the period of three years and two months from date of release was kept in order to motivate Pilots to learn flying techniques. It was envisaged that respondent No.1 would benefit through the additional filter whereby only capable Pilots would proceed to the command list. This provision regarding three years and two months amongst others of the Career Progression Policy was incorporated in the Operations Manual as well.

40. Mr. Ghose argued that if the present petition is allowed, it would affectively mean that the Policy read with the Circular dated July 13, 2017 which is now being followed by respondent No.1 would be rendered otiose. This Policy has been introduced in the merged entity, i.e., respondent No.1 on the recommendation of the Committee. He stated that most of the petitioners have joined the services of Air India only after the date of merger. He stated that four of the petitioners took about 8-10 years to clear the ALTP papers. It has been mentioned in the impleadment application of ICPA and so contended by Mr. Ghose that the extra grace period given (over and above three years two

months) was also given to all in List-B (erstwhile Air India First-Officers) which was not extended to First-Officers of List-A (erstwhile Indian Airlines Pilots) and List-C (Fixed Term Contract Pilots).

41. He stated if this petition is allowed, it would in effect shall amount to granting a short-cut to the petitioners and other Pilots who have already availed the benefit of the grace period as well as the reservation of about 108 slots as per the Career Progression Policy at the cost of member Pilots of ICPA (List-A and List-C). The same would allow the petitioners to get a direct access to the command seat of a Wide-Body Aircraft, detrimental to the interest of Pilots in List-A.

42. Mr. Ghose has relied on the order dated May 28, 2014 in Indian Commercial Pilots Association v. Air India Ltd. And Ors. W.P.(C) 295/2012 of a Coordinate Bench of this Court and order of the Supreme Court in Indian Commercial Pilots Association v. Air India Ltd. and Ors., SLP (C) 13046/2012 dated May 02, 2012 to state that an equal number of Pilots were allowed to be trained on B-787 Wide-Body Aircraft after examining the aspect of equal treatment of Pilots of Indian Airlines and erstwhile Air India.

43. Mr. Lohia in his rejoinder submissions has argued that the Wage Agreement was valid and subsisting till June 19, 2017, which was at the relevant time applicable to the Pilots of erstwhile Air India. He stated that the respondent Nos. 6 to 9 have themselves forged / fabricated an e-mail by removing the date stamp of the e-mail which included the information that it was from respondent No.1 to the petitioners. He stated that a comparison of this e-mail with the original makes the forgery amply clear.

44. He has submitted the determination of seniority in a tabular format to show the prejudice caused to the petitioners:

No.

Petitioners' Name

Petitioner's position in the Original List

Petitioner's position in the New List

Juniors' Name

Junior's position in the Original List

Junior's position in the New List

Junior started Command Trg.

1.

Capt. Sarthak Khandelwal

235

203

Capt. Allister Henriques

236

58

July 2018

2.

Capt. Govindra

S. Hunjan

234

207

Capt. Allister Henriques

236

58

July 2018

3.

Capt. Irshad Dhafrani

307

208

Capt. Jayant Singh

310

101

March 2019

4.

Capt. Virender Pal Singh

319

211

Capt. Inder Singh Sangha

320

107

July 2019

5.

Capt. Pranao Ramteke

179

205

Capt. Aftab Dhingra

182

19

February 2018

Petitioner

Date of Passing ALTP

Date of License

Junior Started Command Training

No.1

31-Jul-2017

08-Mar-2018

July 2018

No.2

06-Sep-2017

12-Mar-2018

July 2018

No.3

06-Sep-2017

13-Dec-2017

March 2019

No.4

06-Sep-2017

19-Jan-2018

June 2019

No.5

06-Sep-2017

10-Nov-2017

Nov 2017

No.

Petitioners' Name

Attempt of ALTP Exam

Dt. of Result of ALTP Exam

Dt. of Issue of ALTP

License

Pilot Junior to Petitioner

Serial No.

Junior

started Command Trg.

1.

Capt. Sarthak Khandelwal

July 2017

31-Jul-2017

08-Mar-2018

Capt. Allister Henriques

58

July 2018

2.

Capt.

Govindra S. Hunjan

July 2017

06-Sep-2017

12-Mar-2018

Capt. Allister Henriques

58

July 2018

3.

Capt. Irshad Dhafrani

July 2017

06-Sep-2017

13-Dec-2017

Capt. Jayant Singh

101

March 2019

4.

Capt. Virender Pal

Singh

July 2017

06-Sep-2017

19-Jan-2018

Capt. Inder Singh Sangha

107

July 2019

5.

Capt. Pranao Ramteke

July 2017

06-Sep-2017

10-Nov-2017

Capt. Aftab Dhingra

19

February 2018

45. Mr. Lohia has argued that the new list created by the respondents in the Captain's Grade, based on back dated career progression dated July 19, 2017, cannot be equated with the original list which was for command upgrade from First Officers based on Wage Agreement. Even the Career Progression Policy dated June 19, 2017 protects the petitioners' seniority as the petitioners were recruited before January 01, 2012.

46. Mr. Lohia has prayed that the petitioners' seniority be reinstated and they be paid arrears and back wages to compensate for their loss of Command-time and

remuneration and that the petitioners be returned to their original fleet, i.e., Boeing where all junior Co-Pilots have been trained and have gained command. He also prays that the petitioners be directed to begin with their command training on Wide-Body (Boeing) Fleet with immediate effect.

47. Having heard the learned counsel for the parties, perused the record and the written submissions filed by them, the issue which arises for consideration in this petition is whether the decision of the respondent No.1 for affecting the placement / seniority of co-pilots / First Officers of Wide-Body Aircraft in Captain's Grade, as they have not passed ALTP papers, before the cut-off date(s) had the effect, on their promotion as Commander, is justified.

48. Though, Mr. Sen had taken an objection that the remedy for the petitioners is to approach the Labour Court under the provisions of ID Act as Pilots being workmen, I am not impressed by the submission made by Mr. Sen for the simple reason that the remedy of writ jurisdiction is not barred, rather it is an efficacious remedy.

49. Having noted the grievance of the petitioners, who are five in number, their challenge is primarily to a circular initially issued by the respondent on August 27, 2015. The relevant part of it reads as under:

"xxxx xxxx xxxx In this regard, we would like to inform you that the matter was put up to CMD for his consideration. It has however, been approved as a ONE TIME exercise that the Co-Pilots of Wide Body will be considered for placement to Captain's grade ONLY on completion of 03 years and 2 months' of service and on passing ATPL Papers and their date of placement to Captain's grade will also be effective as per recommendations of JDC / IARC, their seniority will however, not be affected in case they do not pass ATPL papers within 3 years and 2 months and the same will be maintained as per their erstwhile seniority as Co-Pilot.

The above dispensation of non-affecting of seniority for a period of 6 months shall however, be applicable to those Co-Pilots of Wide Body who would be completing 3 years and 2 months of service and passing ATPL Papers up to 31st January, 2016.

The seniority of Co-Pilots who would be completing 3 years and 2 months of service and / or will be passing ATPL papers after 31.01.2016, will be fixed as per recommendations of JDC / IARC, as being done in case of Captain's grade of Narrow Body.

xxxx xxxx xxxx" (emphasis supplied)

50. After the above circular was issued, respondent No.1 Air India had issued two more circulars dated June 19, 2017 and July 13, 2017. The former being the Career Progression Policy for pilots, the relevant Clauses being 8 to 11 are reproduced as under:

"xxxx xxxx xxxx

8. Company may induct P2 based on specific fleet requirement and the option of shifting from right to left may also be exercised subject to laid down regulatory rules.

9. If a junior pilot is taken for commanding overlooking the senior pilot the affected pilot will be eligible for Notional Command as per letter No. HDDO2/Policy-HR(Ops)/217 dated 17.11.2016.

10. In all cases where Notional Command is given to pilot all efforts will be made to give him / her priority for command training even by overlooking the 1:1 ratio as long as it does not lead to more pilots getting notional command.

11. So far, a First Officer is eligible for promotion to Captain's grade subject to:

? Clearing of all ALTP papers

? Completion of 3 years and 2 months from the date of First Officer Check.

Further a Co-pilot is eligible for PIC upgrade subject to having obtained Captain's grade as above and in possession of 2750 hours total flying experience.

In view of the reduction in flying experience criteria to 2250 hrs. for PIC upgrade, the criteria for Captain's grade is proposed to be changed to:

? Clearing of all ALTP papers

? Completion of 2 years and 6 months from the date of First Officer Release check, so that the Airline is not restricted from offering PIC upgrade to the Co-pilot who is eligible for Command.

xxxx xxxx xxxx"

51. Similarly, vide circular dated July 13, 2017, respondent No.1 had extended the grace period from January 31, 2016 to June 30, 2017 for not affecting the seniority of the First Officers to clear the ALTP papers. The basic ground on which the petitioners have sought the prayers as noted above is that the Circular dated August 27, 2015 though required to be communicated, was not communicated to the individual Pilots / petitioners. The plea of Mr. Lohia was, had the respondent No.1 communicated the same to the petitioners, they would have cleared the ALTP papers before the cut-off date of January 31, 2016. That apart, it was the submission of Mr. Lohia that Circular issued on July 13, 2017 fixing the date as June 30, 2017 for clearing the said papers could not have been achieved as the Circular dated July 13, 2017 had a retrospective effect.

52. It is the conceded case of the petitioners that they have cleared ALTP papers in the month of September, 2017, i.e., two months after the cut-off date of June 30, 2017.

53. Though I find, respondent No.1 has not placed on record any evidence to show that circular dated August 27, 2015 was brought to the notice of each and every Pilot / petitioners, but the plea of Mr. Sen that circular was uploaded on

ARMS Portal coupled with the fact, as contended by Ms. Roy that except 5 petitioners, 150 respondents have obtained / cleared the ALTP papers within the timeframe prescribed, indicates that the Circular was notified and / or was in the knowledge of all.

54. The plea of Mr. Lohia by showing the relevant page of portal to contend that all circulars w.e.f. 2014 have been uploaded except August 27, 2015 shall not help the case of the petitioners as I find that the page of the portal only depicts the information uploaded between September 9, 2015 till October 29, 2015. It is the case of the respondent No.1 that pursuant to e-mail dated September 1, 2015, the circular was uploaded on ARMS Portal. That apart, I agree with the submission made by Mr. Sen by drawing my attention to Page 56 of the paper book to contend that even as per the Wage Agreement, as prevalent earlier, it is clear that command training will be offered as per line seniority only to pilots possessing ALTP License. Any pilot bypassed for command training due to non-possession of ALTP License cannot have any claim for his / her original seniority on obtaining ALTP License. In other words, securing the original seniority at the First Officers Level for further progression was subject to a Pilot possessing an ALTP License.

55. In the present case, the only difference being, the First Officer must possess ALTP papers (not ALTP License) coupled with three years and two months service for being given grade of E-5, i.e., Captain's Grade and not clearing ALTP papers shall have a bearing on the seniority in that grade. This is on the principle, whosoever obtains ALTP papers, subject to completing three years and two months of service shall be given E-5, Captain's Grade earlier, which would determine the seniority in that grade. That apart I find, that as per Justice Dharmadhikari Report as submitted on January 31, 2012 itself, it was proposed that three years and two months plus not clearing ALTP papers within the stipulated period, a pilot shall lose his seniority and in fact on November 18, 2014, itself the IPG has drawn the attention of all its First Officer Members to clear the ALTP papers with utmost urgency and communicate the same to the company as any First Officer who did not pass ALTP papers shall stand to lose seniority.

56. It is also a conceded position that as per the DGCA Regulations, a pilot can appear in ALTP papers for three times in a year. In other words, liberty was with the First Officers / petitioners to avail the benefit of clearing ALTP papers any time they wish but subject to their completing 1500 flying hours. The petitioners knowingly well, having not appeared in the examination and clearing the ALTP papers, surely depict that the same is their own making. If the petitioners have not cleared the ALTP papers before the cut-off date, the same shall have consequence / effect on the seniority. No submission has been made by Mr. Lohia with regard to fixing of the cut-off date of June 30, 2017 as arbitrary. In fact, vide circular dated July 13, 2017, respondent No.1 had to be given the benefit of grace period to all those First Officers who have cleared the ALTP papers between

February 1, 2016 till June 30, 2017, i.e., the pilots who have obtained the license in the last 1½ years.

57. There cannot be any dispute with regard to the power and right of the employer to frame rules including the rule of seniority and promotion in the manner suitable to its organization and the Court cannot sit as an Appellate Authority over the decision of the employer. No doubt, the effect of losing seniority is drastic as the future progression of the petitioners gets delayed, but I find that the policy dated July 19, 2017 also contemplates a situation if a junior is taken for the post of Commander, overlooking the senior pilot, the affected pilot will be eligible for notional command. I have been informed by Mr. Sen that the petitioners are getting the benefit of notional command even though persons junior to them in the original seniority list as First Officers have undergone the command training. Even the plea of Mr. Kohli is that most the respondent Pilots have undergone their training and are ready to take the mantle of PIC / Commander of the Plane, shows it is too late in the day for this Court to interfere in the impugned action. The Supreme Court in the case of Hardev Singh v. Union of India and Anr. (2011) 10 SCC 121 in paragraph 25 has stated as under:

"25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in Virender S. Hooda v. State of Haryana [(1999) 3 SCC 696] where this Court had held in para 4 of the judgment that:

"4. ... When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

58. One of the submissions of Mr. Lohia was that the petitioners reached the 1500 hour flight experience benchmark only around September 2016 as they were gaining around 300-350 hours or fewer in a year as the long-haul flights have multiple sets of Pilots because of which the flying hours get divided and there are also longer layovers of 2-3 days and 5-6 days as against other Pilots who got ALTP License / cleared papers prior to the petitioners as they were on other fleets and were accruing around 800 and 1000 hours of flight experience in a year which resulted in the juniors superseding the petitioners. I am not impressed by this submission of Mr. Lohia. In fact, the plea of Mr. Lohia is contradictory inasmuch as on one hand he stated that the petitioners could complete the 1500 hour flight experience benchmark around September 2016. But on the other hand, stated, had the Circular issued on August 27, 2015 (much before September 2016) been brought to the notice of the petitioners they could have passed the ALTP papers before the cut-off date on January 2016.

59. That apart, at no point of time, had the petitioners made any

representation(s) that because of the above stated facts, the petitioners were unable to meet the requirement of 1500 flying hours to appear in the ALTP papers. The representation dated June 14, 2016 by some of the petitioners was that they were unable to achieve the 2750 flying hours for the purpose of Command training. It is not their case in the writ petition that because of the aforesaid pattern of flying they could not complete the 1500 hours between August 27, 2015 - January 13, 2016 or even till June 30, 2017 because of which they could not appear in the ALTP papers.

60. In view of my above discussion, I do not see any merit in the petition. The petition is dismissed. No costs.

CM Nos. 23779/2018, 41436/2018, 33912/2020 & 8843/2021

Dismissed as infructuous.