

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.1375/2007**

% **Date of decision : 01.07.2008**

Ms.Chitra Sharma Petitioner
Through: Mr.Ajit Kumar Sinha, Advocate.

Versus

Airline Allied Services Ltd Respondent
Through: Mr.Milanka Chaudhary, Advocate.

CORAM :-
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

1. The petitioner has challenged downgrading of her post/status from Check Cabin Crew to cabin crew on her transfer from Mumbai to New Delhi and the unethical practice of appointing the Cabin Crew on contract basis though the post of Senior Cabin Crew is of permanent nature.

2. The relevant facts for appreciating the controversies are that the petitioner was appointed as a Senior Cabin Crew for a period of three years from 7th November, 1996 to 6th November, 1999. The appointment of the petitioner was contractual and petitioner was initially employed at New Delhi. The appointment letter of the petitioner categorically stipulated that the agreement may be extended or renewed by mutual written agreement between the petitioner and the respondent. The petitioner asserted that respondent is a company whose affairs are entirely controlled by Ministry of Civil Aviation, Government of India and it is an instrumentality of the 'State' under Article 12 of the Constitution of India. The agreement between the petitioner and the respondent has been extended from time to time and is now upto 30th September, 2009.

3. After her appointment the petitioner subsequently completed the period of probation and continued working during the extended period as Senior Cabin Crew. While serving as Senior Cabin Crew petitioner after due selection was given the post/status of Check Cabin Crew. After becoming a Check Cabin Crew the petitioner worked at New Delhi and thereafter she was transferred to Mumbai. When the petitioner was transferred to Mumbai she continued to hold Check Cabin Crew post/status and she was not appointed to the post of Check Cabin Crew at Mumbai pursuant to fresh selection.

4. While working as Check Cabin Crew at Mumbai, the petitioner sought transfer to Delhi due to serious heart ailment of her mother. Pursuant to transfer sought by petitioner by communication dated 24th August, 2005, the respondent agreed for transfer of petitioner from Mumbai to New Delhi on 30th September, 2005 on temporary basis for six months and petitioner was transferred with a stipulation that she would be entitled for one SOD passage for self from Mumbai to Delhi. On her transfer from Mumbai to New Delhi the petitioner was relieved from Mumbai on 4th October, 2005 for a period of six months and petitioner was advised to join at Delhi on 5th October, 2005. While transferring the petitioner from Mumbai to New Delhi it was also categorically stipulated that she will not be entitled for transfer benefits. The petitioner joined in October, 2005 at Delhi and continued working on the post of Check Cabin Crew and she was paid executive flying allowance of Rs.40/- per hour and checkship qualification allowance till March, 2006

5. The petitioner received a letter dated 24th March, 2006 on 28th March, 2006 intimating her that she has been transferred from Mumbai to New Delhi on compassionate grounds and therefore, she will not hold Check Cabin Crew status/post at Delhi. Therefore she has not been paid executive flying allowance of Rs.40/- per hour and checkship

qualification allowance from April, 2006 which is apparent from the salary slips produced by the petitioner from March, 2006.

6. Though the petitioner was transferred for six months by letter dated 3rd October, 2005 her transfer was made permanent on compassionate ground by order dated 6th March, 2006 pursuant to which letter dated 24th March, 2006 was sent to the petitioner intimating her that she will not hold Check Cabin Crew status/post at Delhi. At the time she was transferred in October, 2005 on compassionate ground, it was not disclosed to the petitioner that on transfer she will not be entitled for post/status of Check Cabin Crew nor the petitioner had consented to the transfer on compassionate ground subject to condition that on transfer she will not be given Check Cabin Crew post/status at New Delhi.

7. The petitioner protested against denial of check Cabin Crew status/post to her on transfer from Mumbai to New Delhi on the ground that Check Cabin Crew status/post is given on the criterion of experience, knowledge, quality and talent of an individual which are assessed on the basis of a written and oral examination and on the transfer the same could not be withdrawn. The petitioner it seems was intimated that according to rules the petitioner is not entitled for Check Cabin Crew status/post and, therefore, petitioner by letter dated 5th

April, 2006 demanded the copy of the rules and gave a notice for the supply of the same to her. The petitioner also addressed another letter dated 16th April, 2006 protesting against denial of check Cabin Crew status/post on transfer for which she was selected earlier and according to her on transfer the same could not be withdrawn from her. It was asserted by the petitioner that the transfer must be made on an equivalent post. It was also contended by the petitioner that the post of Sr. Cabin Crew and Check Cabin Crew are not equivalent considering the status and nature and responsibilities of the two posts/status.

8. The petitioner further contended that since she objected to withdrawal of her post/status of Check Cabin Crew, the respondent started harassing the petitioner by making false allegations. Some of the allegations were communicated to the petitioner by letter dated 27th March, 2006. The petitioner replied to same and explained about the decision of off loading rostered cabin crew Ms.Liu Gonmei contending that off loading her was the commander's decision and not her decision. She justified the assessment of different cabin crew. She clarified that any remarks regarding any of the cabin crew was just the assessment in the valuation on the merits of exhibited performance and proficiency on the day the checks were carried out by her in discharge of her duties.

9. The petitioner sent another communication dated 29th May, 2006 stating that though she had asked for the relevant circular/office order regarding withdrawal of her check Cabin Crew post/status on transfer from Mumbai to New Delhi, however, it was not given to her and, therefore, she asked atleast to show her the said circular/office order so that she may understand under what guidelines the check Cabin Crew post/status was withdrawn. The petitioner also contended that she is unable to understand as to how her request to see the copy of the circular/office order declining her the check Cabin Crew post/status could be refused to be shown to her. By letter dated 29th May, 2006 the petitioner again requested for the copy of company policy/rule under which the check Cabin Crew post/status has been declined to her and under which provision she could be directed to appear for the interview again for selection to the post/status of Check Cabin Crew. The petitioner, thereafter, also demanded the copy of the relevant rule/circular/notice by her letters dated 1st September, 2006 and 13th September, 2006.

10. On protracted correspondence by the petitioner regarding the circular/office order, she received a letter dated 18th September, 2006 from the Manager (Personnel) that the circular/office order relating to policy of withdrawal of Check Cabin Crew post/status on transfer on compassionate grounds can be seen by her. Consequently, the

petitioner sent a letter dated 28th September, 2006 for seeing the circular regarding withdrawal of Check Cabin Crew post/status to her. The petitioner has protested about the alleged proposed policy extract for inter regional transfers issued by Chief of Personnel Mr. Anil Kumar Verma which is as under:-

“A large number of cabin crew have been making requests for inter regional transfer due to their personal requirements as and when such requests are accepted, the individual transferred to the region is placed at the bottom of seniority of the designation held by her in her existing region.

The seniority of the cabin crew is at present being maintained region wise and the promotions are also reflected regionally as such a two cabin crew with a specific date of journey may not hold the same designation in two different regions.

It has been observed that over a period of time anomaly has arisen particularly in Delhi region in as much as that the cabin crew coming on transfer from other regions though junior to the cabin crew in terms of date of joining have been ranked higher on account of their having been promoted as senior cabin crew in the respective region due to operational requirements.

With a view to streamline the system as also to correct the above anomaly it is recommended as follows:-

As and when a cabin crew is transferred to operational requirement from one region to another she will carry her seniority and be placed at the appropriate place in terms of her date of joining in Alliance Air..

In case transfers effected on the request of cabin crew on compassionate ground, she will be placed at the appropriate place in terms of date of joining in Alliance Air.

As number of check cabin crew is determined base wise, check cabin crew transfer on compassionate grounds will not hold the check ship in the region of transfer.

Submitted for approval

ED(AO)

sd

Anil Kumar Verma
Chief of Personnel

11. The petitioner asserted that the alleged policy was only a note which was submitted for approval by Chief of Personnel and it could not be a policy decision. Relying on the said note it was contended that it only suggests that in case of transfer on compassionate ground a Senior Airhostess was to be placed at appropriate place in terms of date of joining the respondent. Though the alleged proposal also contemplated that cabin crew transferred on compassionate grounds will not hold the check-ship in the region of transfer but it did not stipulate that in order to get the status/post of Checkship again in the region of transfer, the transferred employee on compassionate ground will again have to undergo the process of selection for grant of said status/post. The petitioner also asserted that if the post/status of Checkship was granted on merits after due selection and not on the basis of period of service, it could not to be withdrawn on inter regional transfer on compassionate grounds. In the circumstances it has been contended that the petitioner cannot be denied the Check Cabin Crew post/status and withdrawal of the said post tantamount to reversion of the petitioner to a lower post/status and the action of the respondent is illegal and unjustified. Since the petitioner was initially appointed as Sr.

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Cabin Crew on 7th November, 1996 and had been selected for Check Cabin Crew post/status on merit she could not be asked to reappear for interview again for selection to the status/post of Check Cabin Crew after holding it for almost nine years.

12. Regarding the allegations of dereliction of duty, the petitioner categorically pleaded that the decision to off load one of the rostered Cabin Crew Ms. Liu Gonmei was of the Captain G.S.Sidhu, Sr. Commander for the safe operation of the flight which was also confirmed by him to the ED (AO) of the Respondent and so on the basis of said incident of off loading no dereliction of duty can be imputed against the petitioner. Despite this the petitioner was kept 'off duty'. On the representation being made by the petitioner on 29th March, 2006, she was intimated by communication dated 30th May, 2006 that consequent to her transfer on compassionate grounds her 'Checkship' status was withdrawn and she has already been intimated about it by communication dated 24th March, 2006.

13. The petitioner also pleaded that the rules and guidelines are clear and specific that upon transfer, the employee has to be posted on the equivalent post. The petitioner further asserted that at the time of transfer no letter was issued to her indicating that she will lose her Check Cabin Crew post/status. Regarding the alleged policy it was

contended that it appears to be a mere proposal which was not approved and circulated to the employees. Though the respondent is alleging that the rank and seniority of the petitioner remains undisturbed and there is no demotion of rank or seniority, however, the respondent did not disclose the fact that an executive flying allowance of Rs. 40/- per hour is paid in addition to the regular perks to those who holds Check Cabin Crew post and a further qualification allowance of Rs.300/- is also paid. The petitioner also averred that there is nothing to show that the Check Cabin Crew in a particular region has to be 20%. It was also averred categorically that in Delhi the posts of Check Cabin Crew are more than 20% and in the circumstances, the entire plea of the respondent is misleading and the respondent has made contradictory allegations.

14. The respondent contested the pleas and contentions of the petitioner and filed a counter affidavit of its company secretary. The respondent opposed the prayer of the petitioner seeking regular appointment. The learned Counsel for the petitioner, however, at the time of arguments restricted his submissions in respect of prayer (b) in the writ petition seeking a direction to the respondent not to downgrade the Checkship status of the petitioner after her permanent transfer on compassionate grounds in March, 2006 which was awarded to her on merits in February, 1997. Regarding this plea of the petitioner it was

alleged that the writ jurisdiction of the High Court cannot be invoked to have the said status by the petitioner. It was contended that the rank and seniority of the petitioner remains undisturbed and there is no demotion of rank or seniority complained in the writ petition.

15. The respondent contended that whenever an inter regional transfer is allowed on the request of an employee on compassionate ground, and such an employee holds Checkship status in her present region, then whether she will hold Checkship status in her region of transfer would depend on the requirement in that region. An employee who is denied the Checkship status in the region of transfer cannot make a grievance out of the same as the denial of the said status is not by way of punishment but the relevant consideration for the denial is absence of requirement as well as to place such an employee at an appropriate place at par with others of the same seniority/status employed at the region of transfer. It was further contended that the strength of Check Cabin crew in the particular region is restricted to not more than 20% of the total strength of the cabin crew. Due to Inter Regional Transfer the above set proportions suffer a serious setback as the number of Cabin Crew and Check Cabin Crew are determined base wise. It was further contended that the respondent therefore, adopted a policy that the Check Cabin Crew transferred on the compassionate grounds to a new region will not hold the Checkship in the region of

transfer but whenever the vacancy will arise the transferred crew on the compassionate ground who had earlier held the checkship status in the earlier region/base will have the opportunity to compete for Check Status in the new region/base. In the circumstances, it was asserted on behalf of the respondent that the petitioner on transfer was not entitled to Checkship status and when the vacancy arose she was asked to compete and she was called for interview, however, the petitioner chose not to appear for interview and therefore, she is not entitled for the post/status of Check Cabin Crew.

16. The respondent also filed sur rejoinder dated 15th March, 2008 and alleged that the petitioner had been transferred to an equivalent post of senior cabin crew and the petitioner's grievance is misconceived, false and baseless. In reply to the sur rejoinder, the petitioner alleged discrimination as in case of some of the Check Cabin Crew on transfer on compassionate ground, their post/status of Check Cabin Crew was not withdrawn. The respondent, thereafter, filed another additional affidavit dated 20th May, 2008 justifying not holding the selection for the post of Check Cabin crew of Ms. P.Seth on her transfer on compassionate grounds for the reason that the said transfer took place prior to alleged policy dated 16th September, 2005 and therefore, the policy was not applicable at that time. Regarding the vacancies at New Delhi it was contended in the affidavit dated 20th May, 2008 that on

account of decline of operations, though there are 13 vacancies, however, the existing strength was sufficient to manage the operations of the flights. The respondent, however, did not disclose whether the vacancies existed at the time the petitioner was transferred to New Delhi on compassionate grounds in October, 2005 or that there were no vacancies in March, 2006 when the Check Cabin Crew post/status of the petitioner was withdrawn.

17. I have heard the learned counsel for the parties at length. This cannot be disputed that the petitioner was transferred from Mumbai to Delhi on 3rd October, 2005 and on permanent basis on compassionate grounds by order dated 6th March, 2006. The said order did not stipulate that on transfer she will lose her check Cabin Crew post/status for which she was selected after a written test and an interview. By a subsequent communication dated 24th March, 2006 it was communicated to her that as her transfer is on compassionate grounds, she will not hold the post of Check Cabin Crew in Delhi where she had been transferred. While selecting the petitioner for the post of Check Cabin Crew pursuant to the written test and the interview, it was not disclosed that the post will be lost on inter regional transfer on compassionate grounds. By another communication dated 30th May, 2006 it was communicated to the petitioner that as per the policy on transfer on compassionate grounds as and when a selection for the post

of Check Cabin Crew will be held in the region of transfer, she will be provided an opportunity to appear for personal interview to adjudge her **suitability** for the post. The relevant portion of the communication dated 30th May, 2006 addressed to the petitioner is as under:

“ This is to inform you that as per the existing policy, if a check cabin crew is transferred from one region to another on her own request on compassionate grounds, she will not hold the checkship in the region of transfer. As and when a selection for the post of Check Cabin Crew is held in the region of transfer such a candidate is provided an opportunity to appear for personal interview directly to adjudge her **suitability** for the post.

Pursuant to various representations given by the petitioner, she was again intimated by communication dated 21st September, 2006 that her **competence has to be reassessed** and therefore the petitioner was directed to appear for viva voce. The relevant portion of the communication dated 21st September, 2006 is as under:

“ In regard to the off loading of cabin crew on CD 7134 of 25th March, 2006, the decision was essentially taken by the commander of the flight Capt. G.S.Sandhu. It is, however, observed that you gave conflicting feedback to the commander about the said cabin crew. You first informed him that the cabin crew had poor knowledge about emergencies but subsequently went back to him saying that the cabin crew may be permitted to operate the flight as she has been instructed by IFS Head to take her on board. Considering all the circumstances, I have decided that the letter issued to you in this regard be rescinded. You will however adhere strictly to the laid down procedure of your department.

I find from the records that a clear cut policy was laid down in this regard by E.D (Airlines Ops.) vide his approval dated 16th September, 2005. The policy addressed

anomalies resulting from seniority fixation arising due inter regional transfer.

The following procedure would also be followed while selecting Check Cabin crew in future:

1. Whenever check status is filled up in the new region/base to the crew moving on compassionate grounds will have the opportunity to compete for the same.
2. Crew on competing will have a waiver of written test since she has already cleared the same earlier. In case no written test was cleared while getting earlier check status , crew will be entitled to waiver of written test at the discretion of ED (Airline Ops.) based on her performance and conduct.

Since you had already attained checkship in the past, I have decided the written test will be waived in your case. You may compete for the checkship by appearing in viva voce to **reassess your competence**. You will be intimated the date and venue for the viva voce separately.

18. The Learned Counsel for the respondent rather submitted that Check Cabin Crew is only a status and not a post. The plea of the counsel on behalf of respondent is contrary to the documents of the respondent. In the letter dated the 30th May, 2006 it was stated by the respondent that the Check Cabin Crew is a post and that the petitioner shall be provided an opportunity for personal interview to adjudge her suitability for the said post. The respondent has referred to 'Check Cabin Crew' as post in other communications also. The post of Check Cabin Crew has different emoluments and the selection is made for the said post on the basis of a written and oral examination. Circular dated

13.12.2005 and interview call letter show that the post of Check Cabin crew is a selection post higher in status and rank for which selection is made on the basis of written test and interview. Therefore the plea of the counsel for the respondent that it is not a post but only a status is not acceptable. The learned counsel for the respondent has also not shown any rules of the respondent to show that the Check Cabin Crew is only a status and not a post and what is the difference under the rules of the respondent between 'post' and 'status'.

19. This has not been denied by the respondent that on account of withdrawal of the petitioner from the post of Check Cabin Crew, the petitioner has been paid Rs.40/- per hour less as flying allowance and another qualification allowance of Rs.300/- has also been not paid to the petitioner since April, 2006. This fact is also apparent from the pay bills of the petitioner of March, 2006 and April, 2006 which is not denied by the respondent. From the pleas and contentions raised by the respondent, it is apparent that two posts, Sr. Cabin Crew and Check Cabin Crew are not equivalent. The true criterion for equivalence is to consider their status, nature and responsibilities of the duties attached to two posts. In the notification dated 13th December, 2005 issued by Chief of IFS it is stipulated that the Check Cabin Crew is expected to be free from prejudice and strong likes and dislikes, capable of recording fair assessment and shall be known for their impartiality and they

should be capable of instilling high standards of discipline among the air crews and shall have balance attitude towards them and therefore, the eligibility for promotion to 'Check Cabin Crew' has not been solely left on service seniority. The eligibility conditions were, therefore, laid down as those having more than two years of cabin crew satisfactory service for screening process. For selection weightage is give for technical competence, work knowledge and other human factors. Whereas Senior Cabin crew is only an up-gradation on completing a minimum period of service but Check Cabin Crew is appointed after selection. Circular dated 13.12.2005 and interview call letter show that the post of Check Cabin crew is a selection post higher in status and rank for which selection is made on the basis of written test and interview. The learned counsel for the respondent is unable to substantiate the plea raised in the counter affidavit that the rank and seniority of the petitioner remains undisturbed and there is no demotion of rank and seniority. The petitioner was appointed to the post of 'Check Cabin Crew' after written test and interview. On transfer on compassionate grounds in October, 2005 it was not disclosed to her that her post of 'Check Cabin Crew' will be withdrawn. Later on in March, 2006 it was disclosed to her that her 'Check Cabin Crew' post has been withdrawn and she will have to get selected again for the said post and her suitability and competence for the said post shall be adjudged on the basis of an interview.

20. The Supreme Court while assessing the post of principal and reader though having the same pay scale in Vice Chancellor, L.N.Mithila University Vs Dayanand Jah, (1986) 3 Supp SCC 7 had held that true criterion of equivalence is the status, nature and responsibility of the duties attached to various posts. The Supreme Court in para 8 at page 10 had held as under:

“8.....The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights, such as: (i) He is the ex officio member of the Senate. (ii) He has the right to be nominated as the member of the Syndicate. (iii) As head of the institution, he has administrative control over the college Professors, Readers, Lecturers and other teaching and non-teaching staff. (iv) The Principal of a constituent college is also the ex officio member of the Academic Council of the university. (v) He has the right to act as Centre Superintendent in the university examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense. Maybe, when the affairs of a college maintained by the university are mismanaged, the Vice-Chancellor may, for administrative reasons, transfer a Professor or Reader of any department or college maintained by it to the post of the Principal of such college, but the converse may not be true. While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of Section 10(14) of the Bihar State Universities Act, 1976, as amended.”

21. Petitioner was appointed to the post of Sr. Cabin Crew. In 1997 after becoming eligible for selection, she participated in the process of selection and after a written test and interview she was selected to the said post. The nature of duties of the post of Check Cabin Crew are different from the nature of duties of Sr. Cabin Crew. Merely because some of the duties of the Sr. Cabin Crew and Check Cabin Crew may overlap, does not lead to inference that the nature of duties of the two posts are the same. A Sr. Cabin Crew is not entitled for appointment to the post of 'Check Cabin Crew' merely on account of his/her seniority. The emoluments paid to the Check Cabin Crew are different and higher than that of Sr. Cabin Crew which fact has not been controverted by the respondent. The learned counsel for the respondent has not shown anything to substantiate that despite more allowance being paid to the 'Check Cabin Crew', under the rules the two posts are the same. In the circumstances, the plea of the respondent that on transfer the rank of the petitioner has remained undisturbed cannot be accepted. The post of Check Cabin Crew is different from that of Sr. Cabin Crew in status, nature and responsibilities and withdrawal of the petitioner from the said post amounts to reversion of the petitioner. The petitioner cannot be removed from a post merely on the basis of alleged policy which is also alleged to be a proposal allegedly approved by one of the Executive Director of the respondent.

22. The learned counsel for the respondent also submitted that if a Check Cabin Crew is transferred on compassionate grounds his/her suitability is to be reassessed as there are variations in the requirement and parameters of the responsibilities of different region. This plea has not been taken by the respondent in their counter affidavit, sur rejoinder and additional affidavit. If a Check Cabin Crew is transferred from one region to another by the respondent on account of administrative exigencies his/her post of 'Check Cabin Crew' is not withdrawn nor his/her suitability is reassessed despite alleged variation in the requirement and parameters of different regions. Then on what grounds and under which rules the suitability and competence of Check Cabin Crew on transfer on compassionate grounds is to be reassessed? Why a Check Cabin Crew who is transferred at his/her request on the compassionate ground should lose his/her post of Check Cabin Crew or she/he will become unsuitable and incompetent and has to demonstrate and prove his/her suitability and competence again and those who are transferred by the respondent on account of other administrative reasons remain fit for the post of 'Check Cabin Crew', has not been explained by the respondent.

23. The respondent has not given any other instance when the Check Cabin Crew post/status was withdrawn on transfer of such a Check Cabin Crew on compassionate grounds. The respondent has been

unable to give any justifiable reason for withdrawal of post of Check Cabin Crew on transfer on compassionate grounds. An order of transfer cannot deprive anyone of the existing rights. It is well settled that where executive order results in civil consequences, prior thereof, the principles of natural justice are required to be complied with. An executive power in absence of any statutory rules cannot be exercised which would result in civil or penal consequences. If order of transfer, substantially affect the status of an employee, the same would be violative of conditions of service and thus will not be sustainable and transfer must be made to an equivalent post. This is not the case of the respondent that there was no post of Check Cabin Crew available at New Delhi and the petitioner had agreed to give up the post of Check Cabin Crew at New Delhi on her transfer on compassionate ground. Consequently on the basis of alleged proposal of the Chief of Personnel which was allegedly approved by the ED (AO), an employee of respondent cannot be deprived of her post, unless the employee herself agrees to go to a different or lower post on account of transfer on compassionate ground.

24. The respondent has also tried to justify the withdrawal of the post of 'Check Cabin Crew' from the petitioner obliquely in various correspondence exchanged between them on the ground of dereliction of duty by the petitioner. If the post of the petitioner of Check Cabin Crew

had to be withdrawn on the ground of alleged dereliction of duty, petitioner was entitled for a proper enquiry and a reasonable opportunity of being heard. From the explanation given, it is apparent the decision to off load another rostered cabin crew was of the Commander of the Air Craft Capt. G.S.Siddhu which is apparent from his communication dated 29th March, 2006 addressed to The Executive Director (AO). The difference in opinion between the Sr. Commander Capt. G.S.Sidhu and Ms. Simrath Chopra cannot be imputed only on the basis of feedback given by the petitioner in discharge of her duties and cannot be termed, dereliction of duty by the petitioner. The withdrawal of 'Check Cabin Crew' post from the petitioner cannot be justified on this ground nor it can be sustained in the facts and circumstances nor the learned counsel for the respondent has justified it on this ground.

25. The respondent next contended that on inter-regional transfer, transfer to the post of 'Check Cabin Crew' depends on the requirement in that region. It was also contended that an employee who is denied the 'Check Cabin Crew' post in the region of transfer cannot make a grievance out of the same, as it is not by way of punishment but the relevant consideration for denial, is absence of requirement as well as to place such an employee at an appropriate place at par with others of the same seniority/status employed at the region of transfer. The plea

of the respondent is that the strength of Check Cabin Crew is not more than 20% of the total strength of the Cabin Crew. The respondent, therefore, meant that when the petitioner was transferred on compassionate ground to New Delhi in October, 2005 there was no post of 'Check Cabin Crew' available at the New Delhi region and, therefore, she could not be appointed to the said post on her transfer. However, in October, 2005 the post of Check Cabin Crew was not denied to the petitioner as she has been paid emoluments of post of 'Check Cabin Crew' up till March, 2006. In March, 2006 the post of Check Cabin Crew was withdrawn from the petitioner and it is rather contended that she will have to compete again to demonstrate her suitability for the post which is to be reassessed. The respondent is unable to show as to how a Check Cabin Crew will become unsuitable and incompetent on transfer on compassionate ground and will remain suitable after an inter-regional transfer for administrative exigencies. If the strength of Check Cabin Crew was not to be more than 20% or appointment to the post of 'Check Cabin Crew' could not be made in October, 2005 or March, 2006 the respondent ought not to have transferred the petitioner or should have taken her consent to appoint on another post subsequent to her transfer. In order to justify that there were no post of 'Check Cabin Crew' in the transferred region, the respondent ought to have given the details of how many total number of Cabin Crew were in the New Delhi region and how many 'Check Cabin Crew' were there and

that no post of 'Check Cabin Crew' was available at New Delhi. The respondent did not disclose these relevant facts in the first instance. Rather an attempt was made to conceal this information. It was only after the petitioner categorically contended in rejoinder dated 16th April, 2008 that the total strength of Cabin Crew was 84 on 27th December, 2004 and, therefore, even according to the allegations of the respondent there could be 16 posts of Check Cabin Crew out of which only 4 posts of Check Cabin Crew in Delhi were filled and 12 posts were lying vacant, when the respondent took a different stand contending that because of decline in the operations of the respondent, the existing strength of Check Cabin Crew already available at Delhi region at that time was sufficient enough to manage the operation of flights. This plea was not taken by the respondent. At the time of transfer of the petitioner, it was not disclosed to her that there is no work for the post of 'Check Cabin Crew' in the region of transfer and so it will be withdrawn from her and she cannot be appointed to the said post. The plea of the respondent is that as per alleged policy, an employee will lose her post on which he/she was appointed after proper selection. Apparently the respondent has taken different stands solely with a view to deny the post of 'Check Cabin Crew' to the petitioner on her transfer from Mumbai region to New Delhi. The respondent has not given any facts in respect of alleged decline in operations of the respondent and any decision taken by the respondent to appoint less number of 'Check

Cabin Crew' on this ground. Therefore in the present facts and circumstances, the respondent cannot be permitted to deny the post of 'Check Cabin Crew' to the petitioner on the ground that the vacancies were not available at New Delhi when the petitioner was transferred in October, 2005 and thereafter in March, 2006 on account of alleged decline of operations of the respondent.

26. Therefore, for the foregoing reasons the action of the respondent to withdraw the post of Check Cabin Crew from the petitioner on her transfer on compassionate grounds and appointing her to the post of Senior Cabin Crew cannot be sustained on any of the grounds as has been raised by the respondent nor on the basis of alleged policy it can be held that the petitioner could be denied the post of Check Cabin Crew on her transfer nor the action of the respondent to reassess the competence of the petitioner and re-select her for the said post of 'Check Cabin Crew' can be sustained in the facts and circumstances.

27. Therefore, for the foregoing reasons the writ petition is allowed and the action of the respondent not to appoint the petitioner to the post of 'Check Cabin Crew' on her transfer to New Delhi region and withdrawal of the same from March, 2006 is set aside. The respondent is, therefore, directed to appoint the petitioner to the post of 'Check Cabin Crew' from the date of her transfer. In the facts and

circumstances, the petitioner shall also be entitled for continuity of her service as `Check Cabin Crew' from the date her appointment to the said post was withdrawn. The petitioner shall also be entitled to all consequential benefits. The petitioner is also awarded a cost of Rs.10,000/- against respondent in the facts and circumstances.

July 01, 2008.
'Dev'

ANIL KUMAR J.