

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

**+LPA Nos.1050/2007, 1052/2007, 1049/2007, 1045/2007
and Cont. Case No.514/2007**

Reserved on: 6th May, 2008
%Date of Decision: 06 June, 2008

LPA No.1050/2007

ANEE PATRICIA DYOOK ...Appellant
Through: Mr. Arvind Kumar Sharma, Advocate.
Versus
INDIAN AIRLINES LTD.
...Respondent
Through: Mr. Gopal Subramaniam, ASG
with Mr. Abhishek and Ms. Suruchi Suri,
Advocates for the respondent.

LPA No.1052/2007

SHEELA JOSHI & ORS. ...Appellant
Through: Mr. Arvind Kumar Sharma, Advocate.
Versus
INDIAN AIRLINES LTD.
...Respondent
Through: Mr. Gopal Subramaniam, ASG
with Mr. Abhishek and Ms. Suruchi Suri,
Advocates for the respondent.

LPA No.1049/2007

SHIVANI MATHUR & ANR.
...Appellant
Through: Mr. Arvind Kumar Sharma, Advocate.
Versus
INDIAN AIRLINES LTD.
...Respondent
Through: Mr. Gopal Subramaniam, ASG
with Mr. Abhishek and Ms. Suruchi Suri,
Advocates for the respondent.

LPA No.1045/2007

KIRAN CHAUDHARY ...Appellant
Through: Mr. Arvind Kumar Sharma, Advocate.

Versus

INDIAN AIRLINES LTD.

...Respondent

Through: Mr. Gopal Subramaniam, ASG
with Mr. Abhishek and Ms. Suruchi Suri,
Advocates for the respondent.

AND

CONT. CASE (C)No.514/2007

SHEELA JOSHI & ORS. ...Appellant
Through: Mr. Arvind Kumar Sharma, Advocate.

Versus

INDIAN AIRLINES LTD.

...Respondent

Through: Mr. Gopal Subramaniam, ASG
with Mr. Abhishek and Ms. Suruchi Suri,
Advocates for the respondent.

CORAM :-

**THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

. These appeals arise out the judgment dated 31st May 2007 passed by the learned Single Judge dismissing the Writ Petitions.

2. The relevant facts of these cases in brief are as under:-

Facts:

2.1 The appellants are working as Air Hostesses with the respondent/Indian Airlines (hereinafter referred to as 'the Airlines'). The appellants were initially appointed as Trainee Air Hostesses. The appointment letter issued to the Air Hostesses provides that the appointee, during her tenure, would be governed by the Indian Airlines Service Rules applicable to flying crew and standing orders concerning discipline and appeals as framed and amended by the Indian Airlines from time to time. Clause 9(ii)(b) of the said appointment letter clearly provides that the services of the appellant are liable to be terminated if she does not maintain weight within the prescribed limits.

2.2 The weight requirements were prescribed by the respondent Indian Airlines initially in 1981. The chart indicates the range of weight to be maintained by the Air

Hostesses. There was no discretion in relaxation of weight from 1981 to 1987.

2.3 Vide circular dated 4th November 1987, respondent Indian Airlines provided that the revised height, weight, age chart was under preparation. The circular further provided that if the crew members' weight exceeded 10% of the outer limit prescribed, then he or she would have to be taken off flying duties and be treated on leave or leave without pay till she attained the standard weight.

2.4 On 11th May 1990, another circular was issued by Indian Airlines stating that where excess weight was over 10% of the standard weight, such Cabin Crew should be taken off duties with immediate effect and be given a letter to reduce the standard weight by a specified period.

2.5 On 4th June 1990, Memos were issued to the overweight cabin crew including the appellant in LPA No.1052/2007 pointing out that their weight was in excess of the prescribed standards.

2.6 On 25th December 1990, letters were issued to the overweight Cabin Crew including the appellant in LPA No.1052/2007 advising them for a medical check. The

appellant in LPA No.1052/2007 was found overweight by 4.5kg.

2.7 On 17th September 1991, a revised height-weight chart was issued by Indian Airlines. It further provided that 10% grace allowed in 1987 was no longer in existence.

2.8 On 16th October 1991, a circular was issued by Indian Airlines to the effect that all overweight and underweight personnel must come within the prescribed limit by 31st December 1991.

2.9 On 6th June 1996, another circular was issued by Indian Airlines to the effect that overweight Cabin Crew shall be taken off flying duties and treated as on leave or leave without pay. The circular further provided for additional grace limit of 10 kg. This was followed by circulars dated 12th August 1998, 13th November 1998, 20th May 1999, 9/10 August 1999, 3rd January 2000 and 31st October 2000 by which the limits of relaxation of overweight were provided.

2.10 On 4th May 2006, a circular was issued by Indian Airlines withdrawing the 3 kg grace weight limit w.e.f. 15th January 2006 and grounding of the overweight crew members without pay. This was followed by circulars

dated 17th May 2006 and 5th June 2006. The withdrawal of weight of 3 kg grace limit was finally enforced from 1st July 2006.

The Challenge:

3. The appellants challenged only the circular dated 4th May 2006 by filing Writ Petitions. The appellants further prayed that they may be allowed to do flying by implementing 10% grace of the upper limit weight as allowed by circular dated 4th June 1990. The appellants also prayed for salary during the period they were grounded without pay due to excess weight.

Judgment of the learned Single Judge:

4. These writ petitions came before a learned Single Judge of this Court and by a common judgment dated 31.5.2007, the learned Single Judge has dismissed all these petitions.

- 4.1 After stating the necessary facts, which we have already delineated above, the learned Single Judge noted that it was known to the appellants herein that they were to maintain body weight standards as laid down by the Airlines from time to time, which was made a condition of their appointment which they accepted. Thus, this condition was fructified into a consensual contract

between the parties. The Airlines did soft peddling by giving relaxations to these prescribed weight standards from time to time and ultimately withdrew these concessions by the impugned order. Merely because the appellants were enjoying those concessions earlier, which were withdrawn, would not give them any legal right to challenge the withdrawal of these concessions.

4.2 The learned Single Judge also held that the appointment letter categorically provided that if the crew members did not maintain the weight within the prescribed limits, their services were liable to be terminated. They were bound by this condition contained in the said appointment letter.

4.3 The contention of the appellants herein that Regulation No.12 of the Airlines Flying Crew Service Regulations only provided that the cabin crew should be medically fit and as the appellant were medically fit, they could not be grounded or deprived of their salary merely on account of being overweight, was brushed aside in view of the aforesaid condition in the appointment letter relating to the maintenance of weight within the prescribed limits. The learned Single Judge held that clause in the appointment letter was in addition to and not in

derogation to Regulation No.12, which did not wash away the terms and conditions found in the letter of appointment.

4.4 The learned Single Judge cold shouldered another argument of the appellants herein, namely, Air Corporation Act, 1953 was repealed by the Air Corporation (Transfer of Undertaking and Repeal) Act, 1994 and by virtue of Section 8 of the Repealing Act, the employees of the Corporation as on the appointed day were to continue to enjoy the same remuneration, terms and conditions and same obligations as they enjoyed before coming into force of the repeal of the Air Corporation Act and thus, they would continue to enjoy grace of 10% of the weight over and above the standard weight as laid down. The learned Single Judge, while repelling this argument, observed thus:-

“I need not go into the question whether the Air Corporation Transfer of Undertaking and Repeal Act took away the powers of the Airlines to issue Circulars because the argument proceeds on the basis that Circulars issued prior thereto alone would hold the ground. If that be so it is not understood how it is the Circular of November 1987 which will apply and not the revised chart which was issued in 1991. In any case the petitioners

were quiet so long as the grace of over weight upto 10 kgs was allowed and even till date do not find fault with those circulars which were issued after the repeal Act but now when no grace at all is being given and it has been completely withdrawn they are questioning the authority of the Airlines to issue the Circulars. What does this mean? It means that so long as it suited the petitioners the Airlines had the authority to issue the Circulars and when the weight chart is being strictly followed they are finding fault with it.”

4.5 At the end of the judgment, while emphasizing the need to maintain certain standards of height and weight in so far as the flying crew is concerned, as their job profile demanded it, the following pertinent observations are made:-

“Lastly it is not without rationale that the flying Crew has been subjected to certain standards of height and weight. Their job profile demands it. The aircrafts fly at a very high altitude. Quite often emergency situations arise because of air turbulence or on account of aircraft developing snag. The Cabin Crew including the Air Hostess are expected to handle the situation deftly, with alacrity and presence of mind . All this will be possible only if the Cabin Crew possesses the highest order of physical and mental fitness. And let us not forget that in this era of cut throat competition no Airlines can afford to remain lax in any department whatsoever, be it the personality of its crew members, their physical fitness in all respects or the air worthiness of the

air craft or in relation to other facilities such as catering etc. If keeping in view this kind of job performance the Air Hostesses are asked to battle their bulge, control their girth and keep at desired level the affluence of their body weight as per the norms, it is not understood how it is in any way unfair, unreasonable and insulting to their womanhood. It is not the Air Hostesses alone which are put to these rigours. The other Members of the flying crew are also required to maintain a particular weight standard. If by preservice the snails could reach the ark, why can't these worthy ladies stand on and turn the scale."

5. Implication of undisputed matrix: Applicants bound by contractual terms:-

Most of the arguments pressed before us, legal as well as factual, remain the same. Before we note these submissions and deal with them, it would be necessary to make the ground clear of admitted factual and legal aspects inasmuch as, the arguments of the appellants will have to be tested in the light of such undisputed position, which is this:

- 5.1 All these appellants, who are Air Hostesses, were initially offered appointment as Trainee Air Hostesses. Their appointment letters, which contain certain terms and conditions, are almost identically worded. Clauses 8 and 9 thereof are to the following effect:-

“8. While undergoing Trainee in the Indian Airlines and the appointment as Air-Hostesses, you will be governed by the Indian Airlines Service Regulations applicable to the Flying Crew and Standing Orders concerning discipline and appeals as framed/amended by Indian Airlines from time to time.

9. During the training period and on appointment as Air Hostesses, your services are liable to be terminated under the following circumstances.

I) in the event of your getting married before the specified period.

(II) If you (a) fail to maintain vision without Glasses

(b) do not maintain weight within the prescribed limits.

c) develop air sickness.”

5 It is not in dispute that these terms and conditions were accepted by the appellants, as in token of their acceptance they appended their signatures on the appointment letters given to them. Para (b) of clause 9 very categorically states that in the event the appointee does not maintain weight within the prescribed limits, her services would be liable to be terminated. At that time, a weight chart, which was issued in the year 1981, was operative. It provided for the minimum and maximum weight. An Air Hostess was, thus, required to maintain the weight within those limits. It could neither be below minimum weight or above

maximum weight prescribed. This weight charge has been revised from time to time. The learned Single Judge is, therefore, right in holding that right from the date of their appointment, the appellants knew that there was a requirement for maintaining body weight standards as laid down by the Airlines. This was one of the conditions of appointment, which was accepted by the appellants without any demur and/or protest. These appellants knew very well that their services could even be terminated if they fail to maintain weight within the prescribed limits. The appellants are, thus, bound by this contractual condition, which was accepted by both the parties.

- 5.3 The events also reveal that what happened over a period of time was to only give relaxation/concession to the Air Hostesses by not enforcing the said term with all its rigour. It so happened that on November 4, 1987 the Airlines issued a circular stating therein that the revised height and weight chart was under preparation by the Chief Medical Officer and that pending finalization of the same, cabin crew should be subjected to weight chart twice a year. In the process, some indulgence was given as the said circular also provided that those who were found exceeding the laid down standards up to 10% would

be given a letter to reduce their weight to standard weight within the specified period. This circular issued forewarning as well, viz., if after the expiry of that period the cabin crew failed to come to the standard body weight, he or she would be taken off flying duty and would be treated on leave or leave without pay, if no leave was due, till he or she attained the standard weight.

- 5.4 It appears that those who were found to be excess of weight over and above the 10% grace, were advised to reduce their weight from time to time but no orders grounding them were issued.
- 5.5 Likewise, on June 6, 1996, a circular was issued stating that the cabin crew who were to be grounded due to overweight by more than 10 kgs. were to be treated on leave up to the time they reduce their weight up to the specified limits. This 10 kgs. limit was progressively brought down from time to time and ultimately withdrawn. It was reduced to 7 kgs. vide circular dated 13/17th November, 1998, further decreased to 5 kgs. vide circular dated May 20, 1998, and then curtailed to 4 kgs. vide circular dated 3rd January 2000, thereafter slenderized to 3 kgs. vide circular dated October 31, 2000 and finally by

impugned circular dated May 4, 2006, this concession withered away completely.

- 5.6 What is achieved by the circular dated May 2006 after all? All that is done is to withdraw the indulgences given by earlier circulars from time to time. With the withdrawal of these dispensations and concessions, the status quo as on the date when the appointment letters were issued, containing terms like the spirit behind clause 9, have sought to be restored.
- 5.7 Once the matter is scanned on the aforesaid touchstone, namely, it was a consensual contractual condition between the parties that Air Hostesses are required to maintain weight within the prescribed limits, insistence on the part of the Airlines that the cabin crew should keep their weights within those limits is nothing but enforcing this contractual condition. Therefore, it cannot be said that such a move on the part of the Airlines is contrary to law.
- 5.8 We are also of the opinion that merely because earlier some concessions were given by not adhering to the body weight chart in *stricto sensu*, it would not mean that Airlines cannot now be allowed to withdraw those indulgences. It is trite law that with such concession no legal right accrues in favour of the other party. In the

absence of any legal right, the authority giving concession has right to withdraw them. At the cost of repetition we point out that by withdrawing these concessions, the Airlines is only making the cabin crew adhere to the contractual conditions and the Airlines has every right to do so.

5.9 Thus, after examining the matter on the basis of the contract between the parties as contained in the appointment letter, we do not find anything wrong in the circular dated May 4, 2006. The learned Single Judge rightly pointed out that neither the terms of appointment letters nor the weight chart, which is prescribed by the Airlines from time to time, right from 1981 at least have been challenged by the appellants and there no reason to even consider the said challenge at this distant time.

The circular does not offend Articles 14 & 16 of the Constitution

6 Notwithstanding the above position as per the law of contract, since the Airlines is a statutory authority and is, thus, State and/or instrumentality of the State under Article 12 of the Constitution of India, such terms and conditions in the employment are to meet the constitutional requirement as well. Therefore, if it is

shown that this term is contrary to Articles 14, 16 or 19, the Court can still strike out the same.

6 We do not find that such a condition is discriminatory, arbitrary and therefore, violative of Articles 14 and 16 of the Constitution. There is a proper justification and rationale in prescribing the condition that cabin crew is to maintain weight within the prescribed limits. As pointed out above, the prescription of the appellants in this behalf does not only talk of maximum limit but also stipulates minimum body weight. A perusal of the chart laying down the minimum and maximum weight further demonstrates that the requirement of minimum and maximum weight is prescribed keeping in view the age and height of the Air Hostesses. There is a difference of 10 to 12 kgs. between the minimum and maximum weight commensurating with varying heights and ages. It is not in dispute that these limits are fixed by the Chief Medical Officer of the Airlines. He may have done so in consultation with other experts.

7 For cabin crew, who has to undertake air travel, the very nature of job justifies such standards of height and weight. It is rightly pointed out by the learned Single Judge that the aircrafts fly at a very high altitude. Quite often emergency arise because of air turbulence or on account

of aircraft developing snag. Air Hostesses, at that time, are required to lend proper advice and help to the passengers as well. In those delicate and anxious moments, life of each and every passenger may be at stake and the entire cabin crew, including Air Hostesses are the trustees of the lives of these passengers and it is their bounden duty to save those lives. In addition to mental fitness, it is the physical fitness, required to deal with such emergency situations, which becomes a necessary concomitant to perform duties efficiently and effectively. It is a pre-requisite. It is inherent in the exigency of service. Therefore, the thrust is safety of the passengers. Air crew has to be athletic to deal with emergency. And for that he/she has to be in good shape. That is the reason that not only maximum limit but minimum weight limits are also prescribed. It is acceptance of the hard fact that neither anorexic nor overweight people are acceptable for such jobs. It is, thus, clear that even those Air Hostesses who want to starve themselves on a hopeless diet to get too slim a figure are also not encouraged. What is needed is a healthy body – neither abnormally thin nor abysmally fat. As per doctor's prescription for physical fitness – thin

is out and healthy bodies in. Grace created by ultra-thin look is dying a slow death.

6.3 While on the one hand, there has been much debate about skinny bodies vis-à-vis healthy bodies, on the other hand when there is a discussion about overweight people, there is no scope for any debate. It is universally accepted that overweight people have tendency to suffer from many diseases. Common among them are diabetes, hypertension, heart disease, arthritis, high blood cholesterol, emotional sleep apnea etc. Medical and psychological research also suggests that it may lead to emotional/psychological illness. Last mentioned illness may assume some significance in the context of Air Hostesses. Statistics reveal that overweight persons face constant challenges to their emotions which include remarks from strangers, discrimination at work, lower self-esteem and poor body image. All this may lead to anxiety and depression. Therefore, a particular cabin crew/Air Hostess, who is much overweight, is at risk when he/she would perform duties along with his/her other colleagues who are physically fit. Peer pressure can take his/her toll, psychologically.

6.4 Requirement of physical fitness may vary from job to job. For example, there cannot be any compromise on this in the cases of military personnel, para-military officials and police officials. Likewise, there are certain attributes which are pre-requisites for Air Hostesses. One cannot shy away from the reality that by the very nature of their jobs, while selecting these Air Hostesses, their overall physical personality is one of the primary considerations. Call of the job is: Pleasing appearance with sharp mind. Airline industry is not about glamour. But at the same time presence of mind, communication abilities as well as agreeable personality are needed to perform this job with proficiency. After all, air hostesses are brand ambassadors as well

6.5 In this backdrop and with so many private Airlines now operating, which has resulted in severe competition, the respondent Airlines has to, per force, meet this challenge. One of the steps, apart from many other required was to ensure that air crew enjoys necessary physical fitness with which overall personality would automatically improve. The rationale behind such a condition for maintaining the weight standards within the prescribed limit is, thus,

manifest. Prescribing of such a condition, therefore, cannot be treated as irrational, arbitrary or discriminatory.

Arguments of Appellants and their answers:

7. After having cleared these basic parameters, we now deal with some of the legal submission of the appellants, purely technical in nature.
- 7 It was argued that circular dated 4th May, 2006 issued by the DGM (IFS) under the advice of Executive Director (IFS), IAL, Headquarters, was without any authority of law. However, we find that on 8.9.1998, an instrument of delegation of financial and administrative powers was issued by which Director (IFS) was included in the list of Headquarters Departmental Heads and the Dy. General Manager (IFS)/Senior Manager (IFS) as Regional Departmental Head. The respondents have been able to give satisfactory explanation in this behalf. Indian Airlines was governed by the provisions of the Air Corporations Act, 1953 till 1.3.1994. Section 45 of the 1953 Act enabled the Corporation to frame Regulations in respect of terms and conditions of service of officers and other employees of the Corporation. Section 40 of the said Act enabled the Corporations to delegate powers. The 1953 Act was

repealed by the provisions of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994. The said Repeal Act came into force w.e.f. 1.3.1994. Section 8(1) of the Repeal Act saved remuneration, terms and conditions and obligations in respect of persons who were appointed prior to 1.3.1994. Paras 2.1, 3.1, 3.5.1 and 3.5.4 of the Instrument of delegation of powers dated 14.2.1994 provide for delegation to Regional Departmental Heads etc. That apart, it is stated at the cost of repetition that by impugned circular only the position contained in the terms and conditions of appointment is sought to be enforced and therefore, we find no force in the argument that such a circular is without any authority.

- 7 It was next contended that grounding of Air Hostess/cabin crew on the ground of overweight is without any authority or provision of law inasmuch as, service Regulations do not provide grounding of Air Hostess. However, as we have already pointed out above, the contractual term gives much wider power to the respondent, namely, even to terminate the services of those cabin crew who do not meet the prescribed weight limits. Though as per the said clause even the services can be terminated, but instead of taking this extreme step the Airline only wants that such

Air Hostesses who do not maintain the weight within the prescribed limits should bring their weight within the range of minimum and maximum weight laid down by the Airlines. Therefore, notwithstanding the rigour of clause 9, the Airlines does not want extreme step to be taken but wants to give a chance to such Air Hostesses to gain some weight if it is below the minimum weight (though no such case is pointed out) and reduce the weight if their weight exceeds the maximum limit prescribed. The *raison d'être* and rationale for providing this course of action rather than terminating the services is justified. The extreme action is not required inasmuch as, it is not impossible to bring the weight within the prescribed limits by necessary physical exercises and following proper diet regime. Therefore, the 'disability' because of the overweight etc. would be of temporary nature and not permanent and thus, the air crew is grounded during the period of such "disability" alone. If the respondents have such a wide power and could take an extreme action of termination of services of the overweight Air Hostess, we do not understand as to why the appellants should feel aggrieved by such an order which merely results in grounding of Air

Hostesses temporarily for the period for which they are not within the prescribed weight limits.

- 7.3 For the same reason we do not find any force in the submission of the learned counsel for the appellant that as per Regulation 12, the only condition is that a person should be medically fit and once all these appellants are found fit, they cannot be grounded. We have already negated this argument above while agreeing with the reasoning of the learned Single Judge on this account as perfectly justified. Once we find that there is nothing wrong in the action of the Airlines to ground such an Air Hostess, she naturally would not be entitled to the salary during that period on the principle of 'No work No pay'.
- 7.4 We also do not subscribe to the submission of the learned counsel for the appellants that grounding of Air Hostess on being overweight by merely 500 gm. is mala fide and illegal. The argument taken in isolation may appear to be attractive, but what is to be seen is that it is not a particular/fixed weight which an Air Hostess/cabin crew is bound to maintain. There is a range of weight prescribed, i.e., minimum and maximum within which the Air Hostess is supposed to remain. It spans over 10-12 kgs.. Once lower or upper limit is crossed, then it is no ground to

challenge that a particular Air Hostess was found overweight by only 500 gm. If this relaxation is given, it would be difficult to draw a line.

The Closing Chapters:

- 8 To sum up, we summarise our discussion and findings as under:
 - 8.1 The nature of work of the Air Hostesses is strenuous in nature and the weight check is relevant in relation to their physical fitness. As aircrafts fly at a very high altitude, highest order of physical fitness is necessary to handle emergency situations. As such, there is no arbitrariness or unreasonableness in the weight limits fixed by Indian Airlines in their height-weight chart dated 17th September 1991. It is not even the case of the appellants that the weight limits are unrealistic or unreasonable.
 - 8.2 The appointment letter of the appellants clearly provide the maintenance of weight within prescribed parameters by the Air Hostesses and even empowers the Indian Airlines to terminate their services on account of non-maintenance of weight within the prescribed parameters. The appellants have not challenged the termination clause of the appointment letter.

8.3 Indian Airlines prescribed the weight parameters from time to time. The weight parameters were initially prescribed in 1981 and revised in 1991. The same were enforced regularly vide circulars dated 4th November 1987, 11th May 1990, 4th June 1990, 25th December 1990, 17th September 1991, 16th October 1991, 6th June 1996, 12th August 1998, 13th November 1998, 20th May 1999, 9-10th August 1999, 3rd January 2000, 31st October 2000, 22nd November 2000, 4th May 2006, 17th May 2006 and 5th June 2006.

8.4 The appellants have challenged only one circular dated 4th May 2006 whereby the grace weight limit of 3 kg. was withdrawn by Indian Airlines. The appellants have not challenged the previous circulars by which the weight parameters were fixed and the concessions were given and curtailed from time to time, meaning thereby that the appellants have accepted the weight parameters fixed from time to time as well as the relaxation given/curtailed from time to time. Having accepted the same continuously for more than a decade, the appellants have acquiesced and cannot now be permitted to challenge the same.

8.5 Having accepted the weight parameters fixed vide circular dated 17th September 1991, the appellants cannot claim

the legal right to relaxation. The relaxation of 10% was given by Indian Airlines purely at their discretion for a limited period which they have withdrawn in their wisdom. There is no unreasonableness or arbitrariness in the said decision. Grace and concessions are not matters of legal right. They are matter of policy and we do not find any illegality, arbitrariness or unreasonableness attached to the same.

8.6 The argument of the appellants that Indian Airlines has no power to issue the circulars in view of the repeal of Air Corporations Act, 1953 is not correct. Indian Airlines has the power to fix weight parameters and to enforce the same in terms of the appointment letter. The respondent has also placed on record the instrument of delegation of powers of the respondent which are in order. The appellants having accepted the other circulars of the respondent, cannot challenge the authority of the respondent in respect of only one circular dated 4th May 2006 by which only the relaxation has been withdrawn. Since the power to give the relaxation is not disputed, the power to withdraw the same cannot be challenged.

8.7 The appointment letter gives power of termination. The power to terminate would include the power to adopt

lesser measure, i.e., grounding the air crew during the period it is not within prescribed weight limits.

8.8 The appellants had relied upon the judgment of the Hon'ble Supreme Court in the case of **Air India vs. Nergesh Meerza & Ors. reported as 1981 (4) SCC 335**. The said judgment relates to challenge to the fixation of the age of retirement and does not deal with the issue relating to the weight limits fixed by the respondent. We have already held that such a prescription is neither arbitrary nor discriminatory.

8.9 Learned counsel for the appellants also referred to the judgment of the Apex Court in **Indian Airlines Ltd. v. Prabha D. Kanan, (2006) 11 SCC 67**. The Court in that case, *inter alia*, held that Regulation 13 of Indian Airlines (Flying Crew) Service Regulations would not be applicable to the employees appointed prior to the date of its coming into force. However, this judgment would not come to the aid of the appellants as we are of the opinion that it is the terms and conditions of the appointment letter which are binding on the appellants herein and drawing support and/or sustenance therefrom it was open to the respondents to take such a measure.

8.10 Learned counsel for the appellants also sought to draw support from another judgment of the Apex Court. The case cited by him was **Air India v. Union of India and Others, (1995) 4 SCC 734** and particularly paras 8 and 9 thereof wherein the Supreme Court held that if the subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and further that Section 8 of the Air Corporations (Transfer of Undertakings and Repeal) Act does not in express terms save Air India Employees' Service Regulations termed under Air India Corporation Act, 1953. However, in that very judgment the Supreme Court immediately defined the scope of Section 8 by adding that it protects the remuneration, terms and conditions and rights and privileges of those who were Air India's employees when the 1994 Act came into force. Thus, the appellants shall remain bound by the terms and conditions incorporated in their appointment letter.

The Conclusion:

9 In view of the above, we do not find any arbitrariness or unreasonableness in the withdrawal of the relaxation of weight parameters fixed by India Airlines for the Air Hostesses. We agree with the findings of the learned

Single Judge and dismiss the appeals but refrain from burdening the appellants with any costs.

CONT. CASE (C)No.514/2007

The respondent-Airlines had started making deductions from the salary of the appellants herein in respect of payments made during the period when these appellants were grounded and laid off. The payments were made by the orders of the learned Single Judge, subject to the outcome of the writ petitions. The writ petitions were ultimately dismissed. The appeals against the judgment of the learned Single Judge have also been dismissed by us. In view thereof, the action of the Airlines recovering the aforesaid amount is not in violation of any orders. This contempt petition is also dismissed.

(A.K. SIKRI)
JUDGE

(J.R. MIDHA)
JUDGE

June 06, 2008
aj/hp