

REPORTABLE

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

+ **LETTERS PATENT APPEAL No. 1139/2004**

Date of decision: March 20, 2009

AIR INDIA LIMITED Appellant
Through, Mr. Parag P. Tripathi, ASG with Mr.
Varun Sikri & Ms. M.V. Kini, Advocates.

versus

SHRI RAKESH BEDI AND ANOTHER Respondents
Through Mr. Arun kathpalia, Advocate.

AND

LETTERS PATENT APPEAL No. 953/2004

SHRI RAKESH BEDI Appellant
Through Mr. Arun kathpalia, Advocate.

Versus

AIR INDIA LIMITED AND ANOTHER ... Respondents
Through, Mr. Parag P. Tripathi, ASG with Mr.
Varun Sikri & Ms. M.V. Kini, Advocates for
respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE AJIT PRAKASH SHAH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J:

1. These cross appeals under Clause X of the Letters Patent Act are directed against judgment dated 18th August, 2004 passed by the

learned single Judge in Writ Petition (Civil) No. 2217/1999 filed by Mr. Rakesh Bedi against Air India Limited. Mr. Rakesh Bedi was appointed on 19th November, 1976 and worked with Air India Limited till by order dated 12th May, 1998 he was dismissed from service with "Full Retirement Benefits". The dismissal order was passed after the Enquiry Committee had held that the charges against Mr. Rakesh Bedi that he was a habitual absentee and was guilty of willful insubordination stand proved. In the writ petition W.P.(C) No. 2217/1999 filed by Mr. Rakesh Bedi the following reliefs were prayed for:-

"I. Quashing the setting aside the disciplinary proceedings and the order of punishment dated 12.5.98 passed against the Petitioner and the Respondents be directed to reinstate the Petitioner back into his services with full arrears of salary and all the consequential benefits;

II. In the alternative the Respondent should be directed to give full retirement benefits to the Petitioner including the benefits to provident fund, pensionary benefits, medical benefits and free air travel benefits, which are given to an employee retiring in the normal course on superannuation; and in case this Hon'ble Court of the opinion that the aforesaid reliefs cannot be granted, in that event;

III. The proceedings u/s 33(2)(b) of the Industrial Disputes Act before the National Industrial Tribunal initiated vide approval application no. NTB-1998 may kindly be quashed; and/or

IV. In the alternative, the Venue of approval proceedings be directed to be in Delhi instead of Mumbai;

Such other and further relief as is deemed fit, may also be awarded to the Petitioner. Costs of the Writ Petition may also be awarded to the Petitioner."

2. It is apparent that at the time of hearing of the writ petition before the single judge, Mr. Rakesh Bedi did not press for several reliefs and the claim/prayer made centered around the exact purport and meaning of the punishment of "dismissal with retirement benefits in full" and whether this would include medical benefits and free air passage facility. The learned single Judge in the impugned judgment has held that Mr. Rakesh Bedi is entitled to benefits under the medical scheme of Air India Limited, subject to payment of requisite contribution, inter alia, holding that the health care is an integral part of right to life. Learned single Judge has, however, held that Mr. Rakesh Bedi is not entitled to free air passage as the same cannot be claimed as a matter of right and is in nature of a perquisite.

3. Learned counsel before us also confined their arguments to the right of Mr. Rakesh Bedi to avail free air passage facility and medical benefits in view of the Order dated 12th May, 1998 awarding punishment of dismissal with retirement benefits in full.

4. At the very outset, we may notice that Mr. Rakesh Bedi had an option to file an appeal against the Order dated 12th May, 1998 awarding him the aforesaid punishment but he did not avail of the said right. Order dated 12th May, 1998 also mentions that Mr. Rakesh

Bedi did not submit any response to the letter dated 29th January, 1998 written to him, why in view of the report of the Enquiry Committee, punishment of dismissal with retirement benefits in full should not be awarded to him. Air India Limited by their earlier letter dated 31st March, 1998 had advised Mr. Rakesh Bedi that if punishment as aforesaid was awarded to him he would be eligible to payments which were due to him at the time of cessation of service but not benefits like air passage and medical facilities. Mr. Rakesh Bedi was, therefore, aware of stand of Air India Limited that he would not be entitled to benefit of free air passage and medical facilities on punishment of dismissal with full retirement benefits being awarded to him. The question, however, remains what is meant by the expression 'Full Retirement Benefits' and whether the Air India Limited is justified in their stand that Mr. Rakesh Bedi is not entitled to medical benefits and free air passages.

5. The expression 'Full Retirement Benefits' is not defined and has to be given a normal connotation is understood in common parlance. Under Clause 20(j) of standing orders, a disciplinary authority is competent to award punishment of dismissal with or without retirement benefits in part or in full. Clause 20(j) reads:-

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

- a) x x x x
- b) x x x x
- c) x x x x
- d) x x x x
- e) x x x x

- f) x x x x
- g) x x x x
- h) x x x x
- i) x x x x
- j) Dismissal with or without retirement benefits
in part or in full."

6. Thus, while passing an order of dismissal the disciplinary authority can deny full retirement benefits or pass an order granting retirement benefits in part or in full. The relevant clause, therefore, envisages three different types of punishments. (1) Dismissal simplicitor with an order withholding the entire retirement benefits, (2) Dismissal with retirement benefits in part and (3) Dismissal with full retirement benefits.

7. Thus, when an employee is dismissed from service with full retirement benefits, it means that he/she will be entitled to all retirement benefits as are available or payable to a retired employee. For payment and entitlement to retirement benefits there is no difference between him and an employee who has retired. Though punishment of dismissal is awarded, Mr. Rakesh Bedi is treated and regarded as retired vide order dated 12th May, 1998. However, this does not mean that the employer employee relationship did not cease or was not terminated from the date of the order of dismissal with full retirement benefits. The employer and employee relationship came to an end on 12th May, 1998. Mr. Rakesh Bedi ceased to be in service from the date of the said order. Thus, for the purpose of computing retirement benefits, years of service upto the date of dismissal order will be taken into consideration. The date of dismissal is treated as the date of retirement or superannuation. Retirement benefits will be

calculated as if the employee had retired on the date when dismissal order was passed. The dismissed employee with full retirement benefits is not entitled to benefit of or addition of future years of service, which he may have performed but for his termination by way of dismissal. The retirement benefits will have to be calculated on the basis of years of service rendered prior to the order of dismissal with full retirement benefits but without benefit of and excluding future service, which the employee may have rendered but for the order of termination/dismissal.

8. Keeping the said interpretation in mind, we proceed to examine the relevant regulations and entitlement of a retired employee to claim free air passage and medical benefits. The document relied upon and produced before the learned single Judge was a catalogue detailing therein facilities available to retired employees on Indian Scales of Pay. The note on the opening page of the catalogue states that though every care was taken to ensure that the contents of the catalogue were strictly in accordance with the instructions but for the purpose of interpretation the original office note/letters/staff notices would form the basis. Parties have filed before us the original Air India Employees' Passage Regulations and Mr. Rakesh Bedi along with his affidavit dated 10th May, 2006 has filed before us the Medical Benefits Schemes of Air India Limited, 2000.

9. Air India Limited has two medical benefit schemes. The first scheme, i.e. Employees Medical Benefits Scheme, is admissible to all full time employees employed and posted in India except employees covered under the Employees State Insurance

Scheme. The second scheme is also available to all full time employees on the Indian Scales of Pay, who have been confirmed in service but is a contributory scheme and is called Contributory Medical Benefits Scheme (hereinafter referred to as CMBS, for short).

10. The Medical Scheme of Air India Limited is equally applicable to retired employees. The relevant clauses of the said Scheme read as under:-

"2.10 TREATMENT FOR RETIRED EMPLOYEES:

The Company, in principle, is committed to provide medical services also to the retired employees at par with active employees. The scheme is, however, applicable to retired employees on Indian scales of pay in India and no reimbursement is allowed if the treatment is taken outside India.

Eligibility:

The scheme is applicable to all those who are considered to be 'retired' from the services of the Company on Indian scales of pay.

- i) On or after attaining the age of superannuation.
- ii) Upon an employee being declared medically unfit for carrying out his/her duties.
- iii) Upon the licence/endorsement of a member of flight crew being cancelled or withdrawn."

11. Clause 2.10 of the above scheme stipulates that medical services will be provided to a retired employee at par with active employees, but this will be applicable to employees on Indian Scales of Pay in India and no reimbursement will be allowed if treatment is taken outside India. Thus, retired employees are to be given benefit at par

with serving or active employees. The eligibility clause quoted above uses the expression "all those who are considered to be retired from services of the company on Indian Scales of Pay". The aforesaid words are of wide and broad amplitude. The expression used "considered to be retired" will include employees, who have not retired in normal course but even those who are under the deeming provisions considered or treated as retired employees.

12. Keeping in mind the purpose behind the Clause and the objective of the scheme to treat retired employees at par with active employees, we feel that an employee, who has been dismissed with full retirement benefits should be considered as retired from the service of the company-Air India Limited. The expression "considered to be retired" is more elastic and shows the legislative intent not only to include employees who have retired in normal course but also employees who are considered to be retired from service of Air India Limited other than in normal course. Clause (i) no doubt refers to attainment of age of superannuation but this to our mind does not affect the expression "considered to be retired" used in the main and the first part of the clause. Further, age of superannuation is not specified nor does the said Clause refer to age of superannuation in any other regulation. Age of superannuation can mean any age, including the normal age of retirement or any age when the retirement order is passed. In the present case, the disciplinary

authority has passed an order of dismissal with full retirement benefits. As interpreted above, this means that the services of the petitioner stand terminated as if the petitioner has retired on the date of the dismissal. The order of dismissal, therefore, means an order retiring Mr. Rakesh Bedi from the date of the said order. The said date is a date of superannuation of Mr. Rakesh Bedi from the service of Air India Limited. As no specific age of superannuation has been mentioned, therefore it is not possible to accept the contention that only employees who retire at particular age i.e. on attaining age of 55, 58 or 60 years are eligible under the scheme.

13. The eligibility requirement under CMBC Scheme is as under:-

“Retired Employees:

The benefits under the Scheme will also be available to all those who retire from the services of the Company on Indian Scales of Pay, under the following circumstances:

- i) Upon an employee being medically unfit for carrying out his/her duties;
- ii) Upon the licence/endorsement of a member of flight crew being cancelled or withdrawn;
- iii) Retirement on attaining superannuation age as decided by the Company.”

14. The eligibility scheme refers to three conditions in alternative, which have been specified. The third condition stipulates that the employee should have retired on attaining superannuation age as decided by the company, i.e., Air India Limited. The superannuation age need not be as per the rules and regulations, but as may be

decided by Air India Limited. In the present case, Mr. Rakesh Bedi has been dismissed with full retirement benefits as per the decision taken by the disciplinary authority on behalf of Air India Limited. This means that Mr. Rakesh Bedi is treated as retired on the date when his dismissal order was passed. In other words, Air India Limited had decided to superannuate or retire Mr. Rakesh Bedi on 12th May, 1998. The third stipulation is therefore satisfied in the present case.

15. We are conscious of the fact that we have given liberal interpretation to the two eligibility clauses and possibly the two clauses could have been interpreted as per the stand taken by Air India Limited. However, we feel the said clauses should be given a liberal interpretation in view of the object and purpose behind the beneficial clause, i.e., to provide medical aid to employees who have retired. The Air India Limited themselves have granted full retirement benefits to Mr. Rakesh Bedi and, therefore, we have favoured the liberal interpretation. While doing so, we have also kept in mind that right to health care is an integral part of Right to Life under Article 21 of the Constitution, though any scheme for health care be hedged and circumscribed by conditions. (see ***Confederation of Ex-Servicemen Assns. Vs. Union of India*** reported in (2006) 8 SCC 399). If without doing violence to the language, two interpretations are possible, the interpretation which furthers

the policy and object of the enactment and is more beneficial is to be preferred.(see ***Workmen Vs. Firestone Tyre & Rubber Co. of India Ltd.,*** reported in (1973) 1 SCC 813 and ***Shyam Sunder Vs. Ram Kumar*** reported in (2001) 8 SCC 24).

16. In view of the above reasoning, we uphold the direction given by the learned single Judge that Mr. Rakesh Bedi will be entitled to medical benefits but for different reasons.

17. The Air India Employees’ Passage Regulations relate to grant of free air passage to both serving and retired employees. Sub-clause 3 relates to conditions for grant and shows the discretionary nature of the said grant. However, the said discretion cannot be exercised whimsically or in an arbitrary manner. It has to be exercised in a manner and as per parameters and criteria mentioned in clause 3 itself. Regulation 11A is the clause relating to free air passage to retired employees and prescribes eligibility conditions. Relevant portion of the said clause reads as under:-

“11A.(i) Employees retiring from the service of the Corporation in accordance with the provisions of Regulations 46 of the Air-India Employees’ Service Regulations, may be allowed, ordinarily by Economy Class, free/Concessional passages at the scales and for the period shown hereunder:-

Category (1)	Scale of Concession (2)	Period for which concession would be admissible. (3)
(a) Employees	One free passage	Till the death of the

retiring on reaching the age of 58 years or 55 years, as the case may be, provided they have rendered continuous service for a minimum period of 20 yrs.	every year or two free passages every alternate year and not more than two 90% rebated passages every year.	retired employee.
(b) Employee retiring on reaching the age of 58 yrs or 55 yrs, as the case may be, provided they have rendered continuous service for a minimum of 25 yrs.	Two free passages every year and not more than two 90% rebated passages every year.	Till the death of retired employee.
(c) Employees permitted by Competent Authority to retire voluntarily after completion of a continuous service of not less than 25 years.	Two free passages every year and not more than two 90% rebated passages every year.	Till the death of the retired employee.

18. A careful reading of the above Clause shows that all retired employees are not entitled to benefit under the said Regulations. Retired employees have to qualify and meet the eligibility requirements mentioned in the clauses. The requirements mentioned in the relevant clauses of regulation 11 A relate to minimum period of service and also stipulate the age of retirement which should be 58 years or 55 years. Both conditions have to be satisfied. In other words the employee should have retired on or after reaching the age of 55 years or 58 years and should have rendered either 20 years of minimum service to qualify under clause (a) or 25 years of service to qualify under clause (b). Mr. Rakesh Bedi has rendered more than 20

years of service but less than 25 years of service and, therefore, meets the second requirement of Clause (a) and does not meet the second requirement of Clause (b). However, Mr. Rakesh Bedi did not retire on reaching the age of 58 years or 55 years and, therefore, does not meet the first requirement of Clause (a) as well as Clause (b). Thus, Mr. Rakesh Bedi will not be entitled to free air passages under Clause (a) or Clause (b). Clause (c) is not applicable to him as he has not voluntarily retired after completion of service of not less than 25 years. Mr. Rakesh Bedi does not meet the eligibility requirements mentioned under Clauses (a), (b) or (c). He, therefore, does not qualify for free air passages. In these circumstances, we are not examining the argument raised by Air India Limited that under Clause 11A an employee should have retired under Regulation 46 of the Air India Employees Service Regulations and Clause 11A will not apply to employees who have been dismissed with full retirement benefits under Clause 20 of the standing orders. The said contention is left open and is not being decided in this appeal.

19. The contention of Mr. Rakesh Bedi that withholding of free air passage is envisaged as a separate punishment under clause 20(d) of the Standing Order and therefore he is entitled to free air passages cannot be accepted. Punishment by way of dismissal with or without full retirement benefits is a separate punishment under clause 20(j) and necessary consequences flow. A dismissed employee without

retirement benefits is certainly not entitled to free air passage. Punishment of dismissal is a severe and a harsh punishment and will include consequences or punishments that are less severe or harsh.

20. In view of the findings given above, we dismiss the two cross appeals but for reasons different other than those given by the learned single Judge. It is held that Mr. Rakesh Bedi will be entitled to medical benefits under the two Schemes subject to the condition that he pays the necessary contribution. However, the appellant Mr. Rakesh Bedi will not be entitled to air passage under the relevant regulation. In the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(AJIT PRAKASH SHAH)
CHIEF JUSTICE

MARCH 20, 2009
VKR