

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

+ **WRIT PETITION (CIVIL) 5508 OF 2008**

Reserved on : 22<sup>nd</sup> July, 2009  
Date of Decision: 24<sup>th</sup> July, 2009

ABHISHEK ANTIL

..... Petitioner

Through: Mr. Harpreet Singh and  
Mr. Daljeet Singh, Advs.

versus

NATIONAL AVIATION COMPANY OF INDIA LTD.

..... Respondent

Through: Mr. Lalit Bhasin, Ms. Ratna  
Dhingra and Ms. Shreeya  
Sharma, Advs.

% **CORAM:**  
**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

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

## **J U D G M E N T**

***SIDDHARTH MRIDUL, J.***

**1.** The Petitioner, by means of the present writ petition, seeks to challenge letter dated 1<sup>st</sup> September, 2007 (impugned letter) issued by the National Aviation Company of India (erstwhile Air India Ltd.), the Respondent herein, whereby the Petitioner has been found unfit in his medical examination held by the Respondent in Mumbai.

**2.** The brief facts leading to the present petition are that:

- a. During the month of August, 2006 the Respondent invited

applications for the position of Cadet Pilot from Indian Nationals. The last date for receipt of applications was stated to be the 10<sup>th</sup> October, 2006.

- b. The Respondent had made it clear in the invitation to apply that the selected candidates would have to undergo medical examination by the Company Medical Officer of the Respondent so as to meet the Respondent's medical standards and also the Class-I Medical by CME-IAM of the Indian Air Force (IAF).
- c. The Petitioner applied to the Respondent and was asked to take a written examination on 14<sup>th</sup> January, 2007 and complete various other formalities for the writing of the said examination.
- d. The Petitioner successfully qualified in the written examination and was asked to report for an interview. Thereafter, the Respondent vide their electronic mail dated 3<sup>rd</sup> April, 2007 required the Petitioner to report for his medical evaluation on 13<sup>th</sup> April, 2007 at 9.30 a.m. in the Respondent's office at Mumbai.
- e. As scheduled the Petitioner was subjected to medical evaluation by Doctors of the Respondent-Company. On the 28<sup>th</sup> July, 2007 the Petitioner wrote to the Senior Manager (Administration), Operations seeking information about the results and informing the Respondent that the Petitioner had successfully cleared the medical evaluation

and other tests conducted by the IAF authorities in the month of March, 2007 and that he had been selected for the Technical Branch as a Permanent Commissioned Officer.

- f. Subsequently, vide the impugned letter dated 1<sup>st</sup> September, 2007 the Petitioner was informed that he had been found unfit in the medical evaluation by the Respondent-Company. The Petitioner is aggrieved by the said impugned letter dated 1<sup>st</sup> September, 2007.

3. On behalf of the Petitioner, learned counsel, Mr. Harpreet Singh strenuously urges that the Petitioner had successfully cleared the Class-II and Class-I medical assessment conducted by the Directorate General of Civil Aviation (DGCA) on 1<sup>st</sup> August, 2007 and 13<sup>th</sup> February, 2008 respectively. Counsel contends that holding of a Class-I license is a *sine qua non* for becoming a Air Line Pilot as is evident from the electronic mail sent by the Respondent-Company to one of the candidates namely Sh. Randeep Singh Bedi. Counsel for the Petitioner further urges that reports of tests undergone by him at Dr. Lal Path Labs Pvt. Ltd. and Hindu Rao Hospital, Delhi on 12<sup>th</sup> January, 2008 and 3<sup>rd</sup> March, 2009 respectively, clearly show that the Petitioner does not suffer from hypothyroidism as stated on behalf of the Respondent-Company. Learned counsel for the Petitioner urges that the Petitioner is medically fit to be appointed to the position of Cadet Pilot in the Respondent-Company and therefore seeks a direction to the Respondent to re-evaluate and re-examine him

medically.

4. Per contra, Mr. Lalit Bhasin, counsel appearing on behalf of the Respondent-Company urges that the medical standards of the Respondent-Company are more stringent than the conditions required by the IAF and the DGCA and that the rules and regulations of the Company qua pre-medical standards do not permit medical re-examination. Counsel further urges that the Petitioner has not challenged the rules and regulations of the Respondent-Company and there have been no allegations of *malafides* attributed to the Company or its officials by the Petitioner and as such, the present petition is without merit.

5. Counsel lastly submits that Mr. Randeep Singh Bedi, on whose case the Petitioner relies, had not undergone the Class-I assessment, and that all that Respondent-Company intended to convey vide their communication was that Class-I certificate of the DGCA was *sine qua non* for becoming a Pilot and not for obtaining employment with the Respondent-Company.

6. Learned counsel for the Petitioner relied upon the decision of a Division Bench of the Punjab and Haryana High Court in ***Azad Singh vs. Union of India***; 2006 INDLAW PNH 5882. In that case the Division Bench of the Punjab and Haryana High Court dealt with the appointment of a Constable who had been found medically unfit because he was statedly suffering from eye flu at the time of the medical examination. Relying on the Hand Book of the medical examination and on the fact that the petitioner had in the interregnum

been engaged as a Constable with the Indo-Tibetan Border Police, after successfully clearing the requirements of medical fitness, the Division Bench directed the competent authority to depute the petitioner for further medical examination in accordance with law.

7. In the present case, it is seen that the Petitioner is on the verge of embarking on a career. Also, the Petitioner has successfully qualified in the written examination and interview conducted by the Respondent-Company, for the said post. Further, the Petitioner has successfully cleared the medical evaluation and other tests conducted by the Indian Air Force authorities in the month of March 2007, prior to his rejection on medical grounds by the Respondent-Company, and had been selected for the Technical Branch as a Permanent Commissioned Officer. Resultantly, in order to clear the confusion on account of the result of the medical examination being declared after a period of about four months, the Petitioner had expressed his willingness to appear for a medical re-examination. There was, unfortunately, no response from the Respondent.

8. It is also observed that, in the meantime the Petitioner underwent the Class-II Medical Fitness Examination conducted by the DGCA on 1<sup>st</sup> August, 2007 and was found medically fit. Thereafter, on the 5<sup>th</sup> March, 2008, the Petitioner was also accorded by the DGCA with a Class-I Medical Assessment Certificate, required for a Commercial Pilot License. Further, the Petitioner also underwent a test for hypothyroidism in January 2008, at a renowned path lab i.e. Dr. Lal Path Labs Private Limited. The report of the said thyroid

function test ruled out the possibility of hypothyroidism qua the Petitioner. Furthermore, the Petitioner underwent the same medical analysis from a Government hospital namely, Hindu Rao Hospital on 3<sup>rd</sup> March, 2009 and again from Dr. Lal Path Labs Private Limited in February 2009. The results of the said medical analysis ruled out any possibility of hypothyroidism.

**9.** On the other hand, on behalf of the Respondent, the results of the said tests were dismissed on the plea that medication can suppress the results and prevent hypothyroidism from being detected during tests. Also, the Respondent has attempted to explain the reports of the Indian Air Force and certificates of medical fitness issued by the DGCA, by stating that their standards are far more stringent. I do not agree with this explanation for the reason that both the Indian Air Force and the DGCA carry out medical tests for according clearance to pilots and commercial pilots respectively and, therefore, they could not be said to conduct medical tests in a less stringent manner.

**10.** Further, the Respondent opposes the medical re-examination of the Petitioner on the ground that their rules and regulations do not permit it. This argument is specious for the reason that the Respondent has been unable to show that the rules and regulations forbid a re-examination or that there is an absolute bar to a re-examination under the said rules and regulations. Even otherwise it is noticed that the “Hand Book on Medical Assessment of Civil Flight Crew in India” of the DGCA, the apex body, specifically provides an

appeal procedure in cases where an Aircrew has been declared medically unfit.

**11.** In the facts and circumstances of the matter, I am of the opinion that denial of re-examination would result in injustice to the Petitioner. On the other hand no harm or prejudice is likely to be caused to the Respondent, if the Petitioner was examined medically once again, since, if the Petitioner fails the medical re-examination, he would obviously not be selected for the post. On a query at the bar it has been stated by counsel for the Petitioner that the training program has not yet begun for the cadets chosen by the Respondent.

**12.** In the result, the Respondent-Company is directed to send the Petitioner for a further medical examination by the Doctors of the Respondent-Company, at the cost of the Petitioner, as undertaken by him. If the Petitioner is found medically fit, he shall be considered for selection for the necessary training by the Respondent. The impugned letter dated the 1<sup>st</sup> of September, 2007 is hereby quashed.

**13.** The writ petition is allowed in the above terms. No costs.

**July 24, 2009**  
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**SIDDHARTH MRIDUL, J.**