

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

Date of decision: 1st October, 2012

+ **LPA No.656/2012**

% **CAPTAIN G.S. BINDRA** **....Appellant**
Through: Appellant in person.

Versus

AIR INDIA LTD. **..... Respondent**
Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE INDERMEET KAUR

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 24th July, 2012 of the learned Single Judge dismissing W.P.(C) No.4625/1997 preferred by the appellant. The appellant has filed this appeal and appeared before us in person. Finding that before the learned Single Judge, the appellant had been provided legal assistance by appointing an *Amicus Curie* for him, we enquired from the appellant whether he required legal assistance in the appeal. The appellant, being a well qualified person, able to freely communicate and express himself denied the same stating that none can explain his case better than he himself. In the circumstances, we heard the appellant and have also requisitioned the writ record and perused the same.

2. The appellant filed the writ petition pleading:-

- (i). that he was employed as a Pilot in the Indian Air Force and had an unblemished record of over 25 years of distinguished

service with over 5700 hours of accident free flying experience and was working in the rank of Wing Commander at the time of relinquishing service from the Indian Air Force;

- (ii). that M/s Vayudoot Ltd., a Government of India undertaking was formed for the purpose of providing air services as a Feeder Airline to the smaller stations by smaller aircraft; it was in need of pilots and had approached Indian Air Force for the same;
- (iii). that the appellant was in January/March, 1987 appointed in M/s Vayudoot Ltd. for Dornier Aircraft; he was 'assured' that he shall be posted at Delhi after a short stint at Calcutta; that he accepted the same since his family was at Delhi;
- (iv). that however contrary to assurance he was put on duty for flying F-27 (Fokker) aircraft and was also not transferred to Delhi;
- (v). that he was harassed and victimized, not given his seniority; not given the requisite flying duty;
- (vi). that though he was appointed on one year's probation but was not confirmed for nearly three years;
- (vii). that he was denied benefits being given to others who had also come from Indian Air force;
- (viii). that his juniors were promoted and given managerial responsibilities even though they did not possess the requisite qualifications;

- (ix). that owing to non-allocation of minimum requisite flying hours, he was in danger of losing his flying licence;
- (x). that towards the end of 1991, M/s Continental Airlines Ltd. made a request to M/s Vayudoot Ltd. to allow some pilots of M/s Vayudoot Ltd. to fly for M/s Continental Airlines Ltd.; that he applied for permission to fly for M/s Continental Airlines Ltd. so that he could log in the minimum number of flying hours and renew his licence; that M/s Vayudoot Ltd. vide their letter dated 11th / 12th November, 1991 allowed him to undertake flying for M/s Continental Airlines Ltd.; that he accordingly undertook flying for M/s Continental Airlines Ltd.;
- (xi). that M/s Vayudoot Ltd. however vide letter dated 2nd January, 1992 alleged that he was flying for M/s Continental Airlines Ltd. without permission and in contravention of the Service Rules of M/s Vayudoot Ltd.;
- (xii). that in the circumstances, he reported back to M/s Vayudoot Ltd. but was not given flying duty;
- (xiii). that he was on 14th September, 1992 served a charge sheet for having undertaken employment with M/s Continental Airlines Ltd. without permission and for insubordination;
- (xiv). that vide letter dated 31st December, 1992 he submitted his resignation from M/s Vayudoot Ltd.;
- (xv). that M/s Vayudoot Ltd. however vide letter dated 8th / 9th February, 1993 rejected the resignation;

- (xvi). that he was served with an additional charge sheet dated 16th March, 1993 for other acts of misconduct and inquiry initiated;
- (xvii).that though he participated in the inquiry but no further steps were taken therein after the year 1992/1993;

3. With the aforesaid pleas, in the writ petition filed in October 1997, the appellant urged that he had a fundamental right to have the inquiry conducted within a reasonable period of time; that M/s Vayudoot Ltd., in the year 1994 had merged with Indian Airlines (which was impleaded as respondent in the writ petition) and employees of M/s Vayudoot Ltd. had become the employees of Indian Airlines and thus it was Indian Airlines which was liable to allow him to join duty with all consequential benefits. The reliefs claimed in the writ petition were as under:-

- “a). issue a writ order or direction in the nature of certiorari and quash the order of suspension of the petitioner.
- b). issue a writ order or direction in the nature of certiorari and quash the enquiry proceedings initiated against the petitioner.
- c). issue a writ order or direction in the nature of mandamus and direct the respondent to allow the petitioner to perform his duties and undertake flying of aircraft.
- d). issue a writ order or direction in the nature of mandamus and direct the respondent to pay all wages dues and allowances including all arrears to the petitioner forthwith.
- e). pass such other and further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case may also be passed.”

4. M/s Indian Airlines, in their counter affidavit to the writ petition pleaded:-

- A. that the petition was highly belated and suffered from laches, having been filed after about five years of the alleged cause of action;
- B. that the appellant had left the Indian Air Force and joined M/s Vayudoot Ltd. of his own accord;
- C. that the aircraft fleet of M/s Vayudoot Ltd. comprised of Dornier, Avro and Fokker aircrafts only and the appellant did not have licence for flying any of these and was required to undergo training and obtain co-pilot endorsement;
- D. that the appellant got his co-pilot endorsement on 11th August, 1988;
- E. that the arrangement for command training of M/s Vayudoot Ltd. in Calcutta for flying Fokker aircraft was under arrangement with Indian Airlines Ltd.; that there were other pilots senior to the appellant who were in the waiting for their command training and as a result the appellant could be given command training as per his turn only;
- F. that the appellant failed in the very first route check and was thus himself to be blamed for the delays;
- G. that the appellant however started making numerous complaints using arrogant and bad language directly to the

Chairman-cum-Managing Director of M/s Vayudoot Ltd. and bypassing the Regional Manager, Calcutta, where he was posted;

- H. that assurances which the appellant claimed to have been given were never given and the allegations with respect thereto are contrary to the letter of the appointment of the appellant;
- I. the allegations of victimization and harassment are denied; no juniors of the appellant were promoted;
- J. that the appellant thereafter also had failed to qualify the Commander's assessment;
- K. that the appellant was never denied flying and the flying hours were equally distributed amongst all the pilots and the appellant got his share of flying;
- L. that the request of the appellant for transfer to Delhi was, when the circumstances so permitted and on compassionate ground, acceded to on 19th August, 1991;
- M. however most of the flights of M/s Vayudoot Ltd. originating in Delhi were that of Dornier of which the appellant did not possess the licence;
- N. that the request of the appellant for joining M/s Continental Airlines Ltd. was allowed as a special case but with the condition that the appellant shall within 90 days resign from his post in M/s Vayudoot Ltd. and subject to the appellant submitting specific request for his release from M/s Vayudoot

Ltd. for joining M/s Continental Airlines Ltd.;

- O. that the appellant however without obtaining specific release from M/s Vayudoot Ltd. started flying for M/s Continental Airlines Ltd. and to which the appellant was not entitled;
- P. that the appellant took objection to the continuation of Inquiry Officer initially appointed and for which reason Inquiry Officer had to be changed but to whom also the appellant took objection;
- Q. that thereafter the appellant started absenting himself and took employment with a private air taxi operator – he was flying with M/s East-West Airlines on the strength of the boarding cards issued to him by the said airlines;
- R. that the appellant made no effort to contact M/s Vayudoot Ltd. for nearly five years after taking up employment with M/s East-West Airlines and submitting his resignation – he has thus unilaterally repudiated his contract of employment with erstwhile M/s Vayudoot Ltd.;
- S. that the writ petition was filed after five years, to take unlawful advantage of his own actions;
- T. that all the employees of M/s Vayudoot Ltd. were not absorbed by Indian Airlines; only those employees having satisfactory service for three years were absorbed; while some pilots were absorbed by Indian Airlines others by Air India;
- U. since the appellant had unilaterally repudiated and abandoned

his employment, his name was not considered when absorption process took place and the appellant had ceased to have any lien on his job with M/s Vayudoot Ltd.

5. The appellant filed a rejoinder, needless to state controverting the reply. It was however admitted that he was flying with M/s East-West Airlines; the same was however attributed to earning a living for himself. No cogent explanation however was given for the delay in filing the petition in as much as though the appellant admitted the inquiry proceedings till March, 1993 only, the writ petition as aforesaid was filed in October, 1997.

6. The learned Single Judge has dismissed the writ petition holding:-

- I. that upon the appellant joining M/s East-West Airlines, the master servant relation between the appellant and M/s Vayudoot Ltd. ceased and the withdrawal by the appellant on 8th September, 1997 (i.e. just before the filing of the writ petition) of his resignation was of no avail;
- II. that there was no justification by the appellant for the period between his resignation on 31st December, 1992 and withdrawal thereof on 8th September, 1997;
- III. that the employees of erstwhile M/s Vayudoot Ltd. were absorbed in Indian Airlines in 1994-95 and no grievance with respect thereto also was made by the appellant;
- IV. that the appellant cannot take advantage of his own act of omission or commission and his contract of employment stood automatically terminated when he took employment with

another Airlines.

7. The appellant, in the memorandum of appeal, besides impugning the judgment of the learned Single Judge, has also claimed the following reliefs:-

- “2. Issue order or direction and direct the Respondent to immediately release and pay the complete EMPLOYEES PROVIDENT FUND under account no.33222 in the name of Appellant Capt. G.S. Bindra with interest up to date.
3. Issue order or direction and direct the Respondent to immediately release and pay TA/DA for training at CTE Hyderabad. (Of around Rs.13,500/- then in 1987) Authorized as per Annexure A-30 on 21/01/93 in today value of money by way of interest.
4. Issue order or direction and direct the Respondent to authorize, approve and pay the Transfer claims; Transportation and other claims for the same reasons as given in Annexure A-21.
5. Issue order or direction and direct the Respondent to convey to the Minister of Civil Aviation and Defence and Air Head Quarters with copy to Appellant that the benefits as per Ministry of Defence letter No.IC 49110/AG/PS2(b)5805/D(AC) dated 23rd August, 1988 as a Service Officer appointed to a post in a Public Sector enterprise on immediate absorption basis were not provided to the Appellant and request them to take this factor and normalize the reduced pension of the Appellant retrospectively.
6. Issue order or direction and quash the orders for Suspension and Enquiry proceeding initiated against the Appellant. The Appellant should be retired respectfully from the service of Respondent

with full benefits.

7. Issue order or direction and direct the Respondent to pay all wages and allowance from 1st December, 1992 to the date of superannuation.
8. Issue any other order or direction as this Hon'ble Court deem fit and proper in the light of facts and circumstances of this case in favour of the Appellant."

8. We have considered the matter, including the written arguments dated 5th January, 2012 submitted by the appellant and found on the writ file.

9. Though the appellant has devoted considerable part of the writ petition and the appeal to the harassment and victimization allegedly meted out to him but what is significant is that no grievance with respect thereto was at the relevant time made by the appellant. The reliefs claimed in the writ petition also, were of quashing of the order of his suspension and of the inquiry proceedings which had been initiated against him and resultantly of his reinstatement with all consequential benefits. The reliance, on the allegations of harassment and victimization could thus only be in the context of determining whether the inquiry initiated against the appellant was *mala fide*. However what blocks the consideration of the aforesaid aspect is the time lag. The inquiry proceedings as aforesaid were initiated in 1992 and were last held till March, 1993. The appellant also does not aver any inquiry proceedings thereafter, till the filing of the writ petition in October, 1997. It is also not the plea of the appellant that he made any representation in this regard. The reason therefor is obvious. The appellant had taken up employment elsewhere in the interregnum and was thus not raising any grievance of the inquiry proceedings having been discontinued.

10. In the aforesaid state of affairs, we do not find any reason to interfere with the reasoning and logic of the judgment of the learned Single Judge. The conduct of the appellant of, in the year 1993 itself having taken up employment with M/s East-West Airlines and of maintaining a quietus qua M/s Vayudoot Ltd. with whom he was earlier employed, has been correctly treated by the learned Single Judge as of abandonment of employment with M/s Vayudoot Ltd. Though undoubtedly M/s Vayudoot Ltd. ought to have completed the inquiry proceedings initiated against the appellant but in the light of M/s Vayudoot Ltd. itself, in or about the year 1993-94, having been wound up and the appellant also having ceased any contact, the inquiry proceedings having remained inconclusive, is understandable.

11. Be that as it may, the factum of the appellant, inspite of his resignation having not been accepted by M/s Vayudoot Ltd., joining employment elsewhere clearly amounts to abandonment of employment with M/s Vayudoot Ltd. Not only so, no grievance of non-absorption with Indian Airlines or with Air India was made. Rather, Air India was substituted in place of Indian Airlines in the writ proceedings, upon merger of the two.

12. It was admitted before the learned Single Judge that the appellant owing to his age, is now not entitled to relief of reinstatement. The question thus was only of back wages. The said question also however did not/does not arise owing to the appellant having admittedly been employed in the interregnum with M/s East-West Airlines.

13. However as noticed above, the appellant has claimed other reliefs also in this appeal and which were not claimed before the learned Single Judge. Some of these reliefs sought are against parties other than before this Court. The appellant in this appeal cannot travel beyond the scope of writ petition. There is no material before us also from which it can be gathered whether the relief with respect to Employees Provident Fund, TA/DA can be given against the respondent. There is nothing to show that Indian Airlines is responsible for payment of the liabilities even if any of erstwhile M/s Vayudoot Ltd.

14. Accordingly while not finding any merit in this appeal and dismissing the same, we grant liberty to the appellant to, in accordance with law, seek the reliefs claimed in this appeal and which were not made in the writ petition, from the concerned authorities/bodies

No costs.

RAJIV SAHAI ENDLAW, J

INDERMEET KAUR, J

OCTOBER 1, 2012

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