

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) No.2511/2012

%

May 24, 2013

ADITYA BERI

.....Petitioner

Through: Ms. Jyoti Singh, Senior Advocate with
Mr. Gourav Mahajan, Advocate.

VERSUS

AIR INDIA AND ORS.

..... Respondents

Through: Mr. Lalit Bhasin, Advocate with Ms.
Ratna Dhingra, Advocate, Ms. Bhavna
Dhami, Advocate and Ms. Sneha
Balakrishnan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition filed by Mr. Aditya Beri impugns the letter dated 23.4.2012 of the respondent No.1/Air India/employer whereby the services of the petitioner were terminated by a non-stigmatic order during the probation period. Petitioner was working on probation for a period of one year in terms of the appointment letter dated 14/20.9.2011 and period of probation was of one year from 4.8.2011.

2. Before me, on behalf of petitioner, the following arguments are addressed:-

(i) If the termination of services of a probationer is on the foundation of enquiry proceedings, then, in such a case the probationary officer cannot be terminated without following the principles of natural justice. Reliance is placed in support of this argument upon the judgment of the Supreme Court in the case of *V.P. Ahuja Vs. State of Punjab and Other* (2000) 3 SCC 239. Paras 7 to 9 of the said judgment are relied upon.

(ii) It is argued that the petitioner's services have been terminated by a stigmatic order because the counter-affidavit which is filed in this Court on behalf of respondents shows that the order in fact becomes stigmatic because reference is made to enquiry conducted of the alleged irregular appointment of the petitioner.

(iii) Petitioner as a Pilot is not a workman under the Industrial Disputes Act, 1947 and therefore impugned order is not sustainable because the standing order provision 17(i)(b) of the respondent No.1 which is relied upon in the impugned letter dated 23.4.2012 applies only to a workman.

3. On behalf of respondents, it is argued that services of a probationary officer can always be terminated by a non-stigmatic order and since the petitioner's services as a probationary officer have been terminated by a non-stigmatic order dated 23.4.2012, no challenge can be laid to such an order.

It is also argued that principles of natural justice are not required to be followed
W.P.C No.2511 /2012

for removal of a probationary officer.

4. The following is the appointment letter of the petitioner in the present case:-

“From: Operations Department
Santa Cruz

Date:14/20.09.2011

To: Capt Aditya Beri
Staff No.28613
Santa Cruz

Ref. No.4-15/1415

We are pleased to appoint you as Co-Pilot (First Officer) on your successful completion of training and released to operate on your own on the right hand side, on the following terms and conditions with effect from 04.08.2011:-

1. On your appointment as a Co-Pilot, you will receive the following monthly emoluments in the revised pay scale of:-

Rs.15200-275-16300-350-17000-400-19000

Basic Pay : Rs. 15,200/-

C.C.A. : As applicable

H.R.A. : As applicable

Uniform Maint. Allowance : Rs.3,400/-

Education Allowance : Rs.350/-

Pilot Allowance : Rs.900/-

Flying Licence Allowance : Rs.23,000/-

RVSM Qualification Allowance : Rs.20,000/-

D.A. : As applicable

2. You will be on probation for a period of one year in the grade of Co-Pilot from the date of appointment i.e. 04.08.2011.

3. During probation, your services may be terminated at any time without assigning any reasons thereof by giving 30 days notice in writing or payment in lieu of such notice. On satisfactory completion of probationary period, mentioned in para 2 above, you will be confirmed as a Co-Pilot in the said grade.

4. You will also be eligible for flying/other allowances, if any, as applicable.

5. The Company will make contribution to the Life Insurance Corporation of India towards the Air-India Pilots' Superannuation scheme in accordance with the existing scheme.

6. On confirmation, you shall become member of Air-India Employees' Provident Fund.

7. The Company undertakes to insure you against risk of death or personal injury by accident on a worldwide 24 hours basis, will be applicable as per the terms and conditions stipulated in the Wage Agreement/Rules/Order/Regulations, which are in vogue from time to time.

8. Compensation in case of death of a Pilot or Permanent Disability leading to his/her becoming Permanently Medically Unfit (PMU) while on duty arising out of acts of terrorism, militancy, sabotage or in war zone, will be applicable as per the terms of the Wage Agreement under which you are governed.

9. Your employment will be subject to the applicable rules and regulations of the Company and Establishment Orders and such other Standing Orders of instructions issued and amended by the Company from time to time.

10. You will be eligible for hotel accommodation, leave, medical benefits etc., as provided for Pilots in the applicable Rules and Regulations and Establishment Orders and such other Regulations and Orders that may be issued from time to time by the Company.

11. Your entitlement for air passages will be as per the Air-India Employees' Passage Regulations.

12. Loss of Licence will apply to all Pilots, who are permanent employees of the Company, will be as per the Wage Agreement/order/regulations which are in vogue from time to time.

13. The company is under the process of merger into Air India Ltd. Once the said merger is effected, you shall become an employee of Air

India Ltd., on remuneration, terms and conditions of employment as may be decided by the Air India Ltd.

As a token of your acceptance of the above terms and conditions of employment, you are requested to sign the enclosed copy of this letter and return the same to us immediately.

(Capt. V. Pratap)
Jt. General Manager-Ops (Admin)”

5. A reading of the aforesaid appointment letter shows that undoubtedly petitioner was on probation for one year from 4.8.2011 and during which period his services could be terminated at any time without assigning reasons by giving a 30 days notice in writing. However para 9 of the appointment letter also states that employment will be subject to applicable rules and regulations of the company and establishment orders and such other orders or instructions issued from time to time. Undoubtedly, para 3 of the appointment letter has not been complied with because the notice of termination is not for a period of 30 days, however, even if the notice period of 30 days is not complied with that would not mean that for that reason alone automatically the terminal order has to be quashed. It has been held by the Supreme Court in the case of ***S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12*** that at best because of non-compliance of a term of giving a particular notice period, the employee will only be entitled to monetary emoluments of such period and not an order for reinstatement in services. Of course, it is a moot point as to whether para 3 of

the appointment letter has to be read harmoniously with para 9 whereby standing order only requires a seven days notice. In any case, I need not pronounce on this issue because if the petitioner feels aggrieved, he can file a suit for recovery of notice pay of one month and this issue will be examined in such proceedings.

At this stage, counsel for the respondents states that petitioner will be paid one month's salary within a period of one month from today. The same be done.

6. The crucial issue urged on behalf of the petitioner is that petitioner was terminated pursuant to enquiry proceedings and therefore petitioner's services could not be terminated without following the principles of natural justice. In order to appreciate this contention paras 2 to 9 of the judgment of the Supreme Court in the case of *V.P. Ahuja (supra)* which are relied upon by the petitioner need to be referred to, and the same read as under:-

“2. The appellant was appointed as Chief Executive in the Establishment of Punjab Co-operative Cotton Marketing and Spinning Mills Federation Limited by order dated 29th of September, 1998. One of the terms of his appointment was that he would be on probation for a period of two years which could be extended further at the discretion of the Management. It further provided that during the probation period, the Management shall have the right to terminate his services without notice. His services were terminated by order dated 2-12-1998 reading as under:

"ORDER

Sh. V.P. Ahuja, S/o Late Sh. H.N. Ahuja was appointed on probation for 2 years as Chief Executive of the Co-op. Spg, Mills Ltd., vide orders Endst. No. Spinfed/CCA/7844-45 dated 29-9-1998 and posted at Bacospin. However, he failed in the performance of his duties administratively and technically. Therefore, as per Clause-I of the said appointment order, the services of Sh. V.P. Ahuja are hereby terminated with immediate effect.

Sd/-

(Managing Director)
SPINFED”

3. This order was challenged by the appellant in the Punjab and Haryana High Court through a writ petition which was dismissed by order dated 26th of March, 1999 reading as under:

“Vide order dated 2-12-1998, Annexure-P-17 petitioner has been asked to quit, concededly during the period of probation. The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation. Insofar as, thus, order, Annexure-P-17 is concerned, we find no infirmity therein.”

4. It is this order which is challenged in this appeal.

5. The observation of the High Court that.-

“The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation.”

is surprising, to say the least. The order by which the services of the appellant were terminated has already been quoted by us above. The order, ex facie, is stigmatic as also punitive. The order is founded on the ground that the appellant had failed in the performance of his duties administratively and technically. It is for this reason that the services of the appellant were terminated. As pointed out above, the order ex facie, is stigmatic.

6. Learned Counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of

probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of the conditions set out in the Appointment Order. This plea cannot be accepted.

7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

8. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.

9. The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in *Dipti Prakash Banerjee v. Satendra Nath Bose National Center for Basic Sciences*. This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it."

7. In my opinion, the aforesaid paragraphs of *V.P. Ahuja (supra)* cannot be read to mean that for termination of services of a probationary officer by non-stigmatic orders principles of natural justice have to be followed. In the facts in the case of *V.P. Ahuja (supra)* the order was taken as stigmatic because the order specifically stated that the petitioner failed in performance of his duties administratively and technically. This was taken to be stigmatic by the Supreme Court and therefore consequently the Supreme Court observed for following the

principles of *audi alteram partem*.

8. I may state that the Supreme Court in the recent judgment in the case of ***Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava and Anr. (2007) 1 SCC 491*** has held that even if the order of termination of a probationary officer states that services of the probationary officer are not satisfactory, yet, it will not make the order as a stigmatic order. The Supreme Court in ***Muir Mills (supra)*** has also held that principles of *audi alteram partem* need not be followed before removing the services of a probationer. The relevant observations of the Supreme Court are in paras 44 and 45 and which read as under:-

“44. Also in the case of *Registrar, High Court of Gujarat and Anr. v. C.G. Sharma* it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.

45. This Court's decision in the case of *P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences* can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in *State of Madhya Pradesh v. Virendera Kumar Chourasiya* also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of *audi alteram partem* are not applicable.”

9. So far as the argument urged on behalf of the petitioner that petitioner has been removed pursuant to enquiry proceedings and which is so stated in paragraph 7 of the counter-affidavit, the argument is misconceived

because in the present case there were no enquiry proceedings against the petitioner as enquiry proceedings were in fact against the father of the petitioner who was an OSD to the CMD of respondent No.1 and who is said to have manipulated the selection process alongwith two other officials which resulted in employment of the petitioner with respondent No.1. Therefore, there were no enquiry proceedings against the petitioner but enquiry proceedings were against the father of the petitioner and two other officials. Relevant facts in this regard are stated in paras 7, 8, 9(a) to 9(d) of the counter affidavit filed on behalf of respondents dated 30.5.2012, and the same read as under:-

“7. Without Prejudice to the above it is submitted that the Writ Petition has no merits and the Petitioner is not entitled to any relief as the appointment itself of Petitioner was illegal. It is submitted that services of Petitioner were terminated pursuant to finding of the Vigilance enquiry that his induction as a co-pilot in Air India Ltd. was contrary to the procedure of the Respondent Company and was as a result of manipulations done by and at behest of his father. It is submitted that in erstwhile Air India pilots are recruited as trainee pilots. For the same advertisement calling for qualified candidates is placed in established newspaper. Eligible candidates fulfilling the eligibility criteria both technical and academic are subjected to a Written Test. Thereafter the candidates who qualify written test are subjected to interview. Candidates who qualify the interview are put through Simulator Flight Proficiency Test. However, the petitioner did not go through the above detailed induction process which is followed by Air India. Petitioner had earlier twice failed to qualify in the selection procedure when he had applied directly to Air India. Copy of letter dated 26/29.12.2008 indicating the procedure followed by Air India is annexed hereto and marked as **Annexure-A.**

It is pertinent to point out that Petitioner was appointed by Air India Charters Ltd. through their own selection process.

8. It is submitted that Petitioner was a pilot and thus he held a post of trust where honesty and integrity are inbuilt requirements of functioning and therefore when it was found that his appointment was in violation of Rules and Regulations and Recruitment procedure of the Answering Respondent it was decided to terminate his services without casting any stigma on him and continuing to employ Petitioner would have been embarrassing and detrimental to the interest of the Respondent Company. Further, in any event Management of the Respondent Company would not have been able to entrust Petitioner with any duties as it lost confidence in the Petitioner in view of the concrete finding of the vigilance Enquiry that his appointment in Air India Ltd. was not as per rules and regulations of the Respondent Company.

9. Brief facts in their correct and proper perspective are as under:-

(a) In the month of June 2010, Air India Charters Ltd. had issued an advertisement for recruitment of co-pilots on contract basis for their requirement to operate B-737-800 type of aircraft. A copy of the Advertisement is annexed *hereto* and marked as **Annexure-B.**

(b) Another modified advertisement was issued on 08.07.2010 by Air India Charters Ltd. to fill up the existing vacancies in Air India Express on contract basis in various categories which included an additional category of "Other Boeing Glass Cockpit Type Rated Co-pilots". Capt. Aditya Beri, Petitioner who was type-rated on B-777 aircraft applied against the advertisement and was selected and was appointed as a trainee pilot in Air India Charters Ltd., vide letter dated 20.9.2010. A copy of the modified Advertisement is annexed *hereto* and marked as **Annexure -C.**

(c) After joining Air India Charters Ltd., on 04.10.2010, in April, 2011 Petitioner herein, Capt. Aditya Beri requested the then Chairman-cum-Managing Director (CMD), Air India Ltd. Respondent No.1 herein, to absorb him on permanent basis as a First Officer in Air India Ltd. and to position him at New Delhi. His request was acceded to by the then CMD of the Respondent Company. Accordingly, he was appointed as a co-pilot (First Officer) in Air India Ltd. with effect from 13.05.2011 with a condition that he would have to undergo all mandatory training. On successful completion of the training, he was appointed as a co-pilot (First Officer) with effect from 04.08.2011 vide letter dated 14/20.09.2011 issued on behalf of Air India Ltd. that he would be on probation for a period of

one year from the date of appointment i.e. 04.08.2011. A copy of the letter dated 14/20.09.2011 is annexed hereto and marked as **Annexure-D.**

(d) The Vigilance Department of Answering Respondent received a complaint from the Central Vigilance Commission on 17.06.2011 pertaining to the misuse of office by Capt. N.K.Beri the then Officer on Special Duty (OSD) to the CMD Air India Ltd. for altering requirements for recruitment of type-rated pilots in Air India Express to enable his son, Capt. Aditya Beri, petitioner herein to get entry into Air India Charters and thereafter secure a backdoor entry in Air India Ltd. In the Vigilance investigation, it was found that the induction of Capt. Aditya Beri, Petitioner herein was not in accordance with the laid down procedures of the Air India Ltd. It was also found that the advertisement for Type Rated co-pilots for Air India Express was modified and tailor made to favour Petitioner. This was evident from the fact that Air India Express has a fleet of only B-737-800 aircrafts, whereas Respondent No.1 has a type rating of B-777 aircraft. It was also found that Capt N.K. Beri father of Petitioner misused his position to get Petitioner absorbed in the Respondent Company. Further, the training of Petitioner had commenced without any formal agreement between Air India Charters Ltd. and the Air India Ltd. regarding deputing of Petitioner to Air India Ltd. It was also found that Petitioner had not complied with various formalities at the time of his appointment with Air India charters Ltd. such as submission of indemnity bond and 10 post dated cheques of Rs.16 lacs each as security deposit towards cost of training. Accordingly, the Chief Vigilance Officer (CVO) recommended for termination of services of Petitioner who was on probation with the Respondent Company and forfeiting the security deposit which was subsequently deposited by Petitioner. A copy of the letter dated 09.02.2012 of the Chief Vigilance Officer to CMD is annexed hereto and marked as **Annexure-E.**”

10. The judgments of the Supreme Court which draw distinction between motive and foundation with respect to termination of services of the probationary officer pertain to those facts and enquiry reports pertaining to the probationary officer. It is in such cases that Supreme Court has drawn a

distinction between motive and foundation and held that where a report or internal enquiry of a department forms the foundation of termination of a probationary officer, then, in such cases principles of *audi alteram partem* have to be followed. As already stated above, there were no enquiry proceedings or any report or any fact finding proceedings against the petitioner. Therefore, the judgments of the Supreme Court drawing distinction between motive and foundation of facts for terminating the services of the probationary officer cannot apply in the facts of the present case.

11. The final argument which is urged on behalf of the petitioner is that the impugned order refers to the standing order 17(i)(b) of the respondent no.1 which only applies to a workman and petitioner-Pilot is not a workman. Of course, learned senior counsel for the petitioner is justified in arguing that the issue is still open as to whether a Pilot is or is not a workman because there is no direct judgment of the Supreme Court on this aspect, however, in my opinion at best the same will make reference to clause 17(i)(b) of the standing order as inapplicable only argueando simply because there is no judgment of the Supreme Court which states that Pilots are not workmen. In fact, there are various judgments of this Court including the judgment passed way back on 10.2.1977 which states that a Pilot is a workman under the Industrial Disputes Act, 1947. This judgment is in the case of ***Mathur Aviation Vs. Lt. Governor***,
W.P.C No.2511 /2012 ***Page 13 of 14***

Delhi and Ors. reported as **1977 LLJ 255**. In any case, this aspect need not be detained any further because reference to a wrong provision for terminating the services cannot result in setting aside of the termination order once otherwise powers to terminate exist. In the present case, powers to terminate the probationary officer such as the petitioner is provided in his appointment letter dated 14/20.9.2011. Merely stating a wrong provision or a wrong number of paragraph of an appointment letter cannot result in automatic quashing of the impugned termination order because powers of termination of a probationary officer always exists with an employer because the entire concept of probation is that the employer has to find the employee suitable and competent for the job as per his services in the probation period. It again needs reiteration that the impugned order of termination dated 23.4.2012 is not a stigmatic order. Further, counsel for the respondent No.1 states that the respondent No.1 has not encashed and will not encash the cheques of Rs.16 lacs as stated in the letter dated 23.4.2012 as a forfeiture of the security deposit.

12. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

MAY 24, 2013

Ne

W.P.C No.2511 /2012

VALMIKI J. MEHTA, J.

Page 14 of 14