

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

+ W.P (C) No. 6465/2012

% Judgment reserved on: 20.11.2012
Judgment delivered on: 26.11.2012

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

AIR INDIA (FORMLY KNOWN AS NATIONAL AVIATION
COMPANY OF INDIA LTD.(NACIL) THR. GENERAL MANAGER
CS (IN-CHARGE) Respondent

Through: Mr.Lalit Bhasin, Mrs.Ratna D.
Dhingra, Ms.Bhavna Dhami and
Ms.Sneha Balakrishnan,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

CM No. 17159/2012 (for stay) in W.P.(C) 6465/2012

1. Vide the instant application, the applicants/petitioners are seeking ad-interim stay against the Order No.IS/20/504 dated 12.09.2012 passed by the respondent.

2. The applicants/petitioners are working as Cabin Crew with the respondent Organization from last so many years and, in fact, some of the petitioners have put in 28-30 years of service and are at the verge

of retirement.

3. Memorandum of Settlement(MOS) in Form-H was entered into between the ACEU and the respondent on 21.09.1995. As per the said settlement the flight and duty time limitation and the rest period for the Cabin Crew were as follows:-

“a) *“Daily Flight Duty Time* *11 hours*
(in a period of 24 hours)

b) *Daily Flight Time* *08 hours*
(in a period of 24 hours)

c) *Monthly Flying Hours* *100 hours*

d) *Res period*

a) *Flight terminating at the Home Base station*
of the Cabin Crew:

.....*Flight terminating* *10 hours rest*
At or before 2200 hours

.....*Flight terminating* *11 hours rest*
After 2200 hours

.....*Flight terminating*
Between 0000 hours &
0600 hours *22 hours rest*

b) *Flight terminating at Station other than the Home Base*
statistics:

.....*Flight terminating*
Between 0000 hours &
0600 hours *12 hours rest”*

4. The aforesaid MOS continued till 2008. Thereafter on 01.09.2008 a further MOS was signed between the petitioners through their corporation employees union and the respondent regarding the flight duty time and flight time limitation as applicable for domestic and international operations which was as follows:-

“1 Cabin Crew deployed for operations to long haul international destinations will follow the norms laid down by Regulatory Authority for operation of international flights. However, once the full-fledged long haul international operations are scheduled by the Company, discussions on FDTL will be held with the Union. It is also agreed that Management will endeavour to provide from such long haul international flights.

2 For other operations the present network of erstwhile IA including any additional destination in the Middle East and South East Asia, the existing MOS of 1995 will apply.”

5. Mr. Arvind Kumar Sharma, learned counsel appearing on behalf of the applicants/petitioners submits that as per the MOS in Form H it was specifically agreed that the said settlement shall have effect from 01.09.2008 and will remain in force till the settlement is determined by either of the party by giving two months notice of termination in writing.

6. He further submitted that as per the said MOS as per clause 3 of the terms of Settlement all operations on the network of the respondent organization including any additional destination in the Middle East and South East Asia the MOS of 1995 will apply.

7. He further submitted that as per the said MOS in Form-H, it was specifically agreed by and between the parties that operation in the present network of the Indian Airlines including any other additional destination in the Middle-East and the South-East Asia the MOS of 1995 will apply.

8. Ld. Counsel has pointed out that MOS of 1995 clearly stipulates the destination to Middle-East and South-East Asia was 8 hours Flying Time Limit (FTL). It has a valid and statutory force in the eyes of law.

9. It is submitted that by an order dated 04.08.1997 Civil Aviation Requirements (CAR), the Director General of Civil Aviation under Section 7 regarding Flight Crew Standards issued orders regarding flight and duty time limitation and rest requirements of flight crew engaged in schedule/non-schedule air transport operations and general aviation aeroplanes operations. The same was on the basis of the standards and recommended practices for management of fatigue for flight and Cabin Crew members. It required State of the operator to establish for prospective regulations for the management of fatigue which include flight time, flight duty periods, duty periods and rest period limitations.

10. The applicants/petitioners are aggrieved of the office order dated 12.09.2012 wherein on the basis of instructions/directions received from the office of the Minister of Civil Aviation, the respondents have arbitrarily and without the authority of law, contrary to rules and regulations have changed the flight and duty time limitation which

were governing from the last so many years framed under the Air Craft Rules, 1937 along with the Memorandum of Settlement dated 01.10.2008.

11. Ld. Counsel for the petitioner submitted that the CAR of 1997 read with the MOS dated 01.10.2008 which is binding force between the parties and are mandatory in nature and having statutory force in so far as the flight flying duty are in relation to Middle-East and South-East Asia which are for 8 hours FTL and by the impugned order the respondent authority is implementing the FTL as 11 hours which is contrary to both the CAR 1997 and MOS of 01.10.2008. It is submitted that it has virtually overruled the bilateral agreement/MOS dated 01.10.2008 in Form-H read with MOS dated 21.09.1995 read with notification on CAR dated 04.08.1997 issued by the Director General of Civil Aviation.

12. For the sake of convenience, the impugned order dated 12.09.2012 is reproduced as under:-

“AIR INDIA

IS/20/504

12th September, 2012

OFFICE ORDER (FDTL & FTL) – CABIN CREW

In light of the directions received from the Office of the Hon'ble Minister of Civil Aviation, the FDTL & FTL applicable in case of Cabin Crew/ Attendants shall be as per the latest relevant DGCA requirements with immediate effect, for all cabin crew/ attendants on all aircraft types.

The above is for necessary compliance with immediate effect. This supersedes all earlier instructions issued on the subject.

*Sd/-(Mrs. Harpreet A De. Singh)
General manager- CS (In-charge)”*

13. Counsel for the petitioner has drawn the attention of this Court to the reply to the instant application wherein it is stated that the petitioners are not entitled to the relief prayed for in the present application as much as the respondent Airlines is going through a grave financial crisis and is being bailed out by the Government and is able to pay the salaries of its employees only from the aids taken from the Government. As such the employees have to work as per the established industry practices to enable the respondent Airlines to pull through from its present position. It is, therefore, submitted that the rationalization of the cabin crew has been done to reduce expenditure on crew accommodation at both domestic as well as international stations, however, it does not affect the safety aspects of flight operations as the respondent Airlines is duly following the guidelines laid down by the Regulatory Authority.

14. It is further stated that in any event, change in FDTL and FTL are also necessary, in view of the change in the Airlines itself and its fleet. It is submitted that erstwhile Indian Airlines and erstwhile Air India vide order dated 22nd August, 2007 passed by the Ministry of Corporate Affairs, were amalgamated into the National Aviation Company of India Limited (NACIL) now known as Air India Ltd. with

effect from 24.11.2010. Pursuant to the amalgamation, the respondent Airlines has been trying to slowly integrate the employees of erstwhile Indian Airlines and Air India which has also become necessary in view of the introduction of the new fleet in the Company.

15. Further it is submitted that although the modalities for the same are still to be worked out, however, it is required that the employees of the respondent Airlines should also be open to changes in their way of functioning which may include a little variation in their work hours. Although the FDTL and FTL as prescribed under the CAR of 1997 may be slightly different from the FDTL and FTL as agreed to under the MOS of 2008, however, the variations are permissible as they are not inconsistent with DGCA regulations issued from time to time.

16. The petitioners have demonstrated the duty roster as under:-

“2. 941/940

DEL 1745D BHA 1915A	=	4 hrs
BHA 2015D AUH 2225A	=	1hrs 15 mints
AUH 0005D DEL0515A	=	3hrs 40 mints

TOTAL FLYING = 8hrs 55mints/24hrs. “VIOLATION by 55 mints”

Company transport reports at 15:15 PM	Crew reports at Movement 16:15 PM	Flight ends at 05:15 + 00:15 mins.	Total time crew involved 14:15 (FDTL) + 1 hr transport = 15:15 hrs.	Permissible limit 11 hrs., Exceeding 4:15 hrs
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”

17. Counsel for the petitioner submits that on perusal of the aforesaid table it appears that the flight from Delhi to Behrin take 4 hours and Behrin to Aubu Dhabi 1 hours 15 minutes and Aubu Dhabi to Delhi 3 hours 40 minutes. Therefore, the total flying time would be 8 hours 55 minutes in 24 hours which is in violation of 55 minutes. Suppose the company transport reports at 15:15 PM and the crew reports at movement at 16:15 PM and flight ends at 05:15+00:15 minutes. Therefore, the total time crew involved is 14:15 (FDTL) + 1 hour =15:15 hours which is exceeding 4.15 hours against the permissible limit of 11 hours. But same is the position in other flights also. Therefore, the crew has no proper resting time which is required for their health and safety of the passengers.

18. On the other hand, Mr. Lalit Bhasin, Id. Counsel appearing on behalf of the respondents has submitted that Memorandum of 1995 read with CAR 1997 are applicable on the petitioners. As per the CAR, daily flight duty time 11 hours/24 hours and daily flight time are 8 hours/24 hours. The monthly flying hours limit is 100 hours and he fairly conceded that CAR 1997 is applicable. As per the Civil Aviation Requirement (CAR) 1997 it is provided as under:-

“1.2 In order to enhance safety of operations and in exercise of powers conferred under rule 133A of the Aircraft Rules 1937 the following Flight Duty Time and Flight Time Limitations (FDTL) for Cabin Attendants are issued for information, guidance, and compliance by all concerned.

XXX

XXX

XXX

XXX

3.1 FLIGHT DUTY TIME

Flight duty time is the total time commencing from the time of reporting at the airport for the purpose of operating a flight and ending with the termination of a flight or a series of flights (Chocks on plus 15 minutes).

3.2 FLIGHT TIME

The total time from the moment the aircraft first taxies out under its own power for the purposes of take off to the moment it comes to rest at the end of a flight.

xxx

xxx

xxx

xxx

4.1 FLIGHT TIME LIMITATIONS

4.1.1. The maximum number of hours any domestic air carrier can schedule its cabin attendant members to do flight shall be as follows:

- i) 30 hrs in any period of 7 consecutive days
- ii) 125 hrs in any period of 30 consecutive days
- iii) 1000 hrs in any period of 365 consecutive days

4.1.2 No air carrier operating domestic routes and routes to neighbouring countries may schedule a cabin attendant member for more than 8 hrs of flight time during any 24 consecutive hours without a rest period of 16 hrs or more and under the following conditions:

- i) Where flight time is less than 8 hrs a prorata rest period of twice the flight time shall be provided, but the rest period in no case shall be less than 8 hrs.
- ii) No domestic air carrier may assign any cabin attendant to do any duty with the air carrier during any required rest period.

XXX

XXX

XXX

XXX

4.2 FLIGHT DUTY TIME LIMITATION

- 4.2.1 No cabin attendant shall be required to exceed 11 hrs Flight Duty time during any consecutive 24 hrs. If any carrier schedules a cabin attendant to do Flight Duty Time more than 11 hrs during 24 consecutive hours, the rest period at the end of the flight duty shall be extended by twice the period in excess of 11 hrs.

5. INTERNATIONAL CARRIER

- 5.1 No air carrier may schedule a cabin attendant to perform duty in an aeroplane for more than 11 hrs of flight time during any 24 consecutive hours without a rest period. Before a cabin attendant is detailed for a flight, his/her rest period since the last flight shall not be less than 22 hrs at base;

- 5.1.2 If an air carrier schedules a cabin attendant to do flight time of more than 11 hrs during any 24 consecutive hours, the rest period at the end of this flight duty at base shall be extended prorata by twice the amount of time by which the flight time was extended.

XXX

XXX

XXX

XXX

- 5.2.2 The flight duty time, however, may be extended by a maximum of 4 hrs in case of technical snags, adverse weather or any other unforeseen circumstances to avoid inconvenience to passengers. However, whenever the flight duty time gets extended, the rest period at base shall be prorata increased by twice the amount of extended period of flight duty time, provided that no cabin attendant shall be asked to extend flight duty time more than 8 hrs. in a period of any consecutive 30 days.

6. GENERAL

6.3 Flight and duty time limitations can be extended with the specific approval of the DGCA in extraordinary circumstances in accordance with the conditions which the Director General may specify.”

19. Ld. Counsel submits, by the impugned order the Minister has communicated only Flight Duty Time Limitations (FDTL) and Flight Time Limitations(FTL) applicable in the case of cabin crew/attendants as per the latest relevant Director General Civil Aviation (DGCA) requirements with immediate effect. Therefore, there is no illegality in the said directions and as far as the petitioners are concerned they will be dealt with by the CAR 1997 as mentioned above.

20. Learned counsel further submitted that by the aforesaid arrangement the total hours have not exceeded much as per their own chart given at page 131 of the paper book. In 365 days only against the limit of 1000 hours only exceeded in some cases 17 to 23 hours, whereas in some cases 4 to 14 hours, i.e., in 365 days.

21. He submitted that this much of increase is under the powers as per CAR 1997 that whenever the flight duty times can be extended, the rest period at best shall be pro rate increase by twice the amount exceeding the period of flight duty times provided that no cabin crew attendants shall be asked to extend the flight duty times more than 8 hours in a period of any consecutive 30 days.

22. He further submitted that no cabin attendants shall be required to

exceed 11 hours Flight Duty Time during any consecutive 24 hours. If any carrier schedules a cabin attendant to do Flight Duty Time more than 11 hours during 24 consecutive hours, the rest period at the end of the flight duty shall be extended by twice the period in excess of 11 hours. Therefore, he submits there is no threat to the safety of the passengers and there is no fatigue to the cabin crew.

23. The respondents in reply to the instant application has taken the preliminary objection that the DGCA being the regulatory authority and it is only the State authority which can state whether any safety issues are involved and whether the FDTL and FTL being followed by the respondent airlines is in violation of applicable DGCA CAR. If any arrangement as has been which may be entered between the respondent and the representative union, the petitioners have the efficacious alternative remedy available to them either by raising a dispute or under section 36(A) of the Industrial Disputes Act read with Section 29 of the said Act.

24. It is further submitted that although the respondent Airline had entered into the MOS of 2008 after the date of the merger of the two erstwhile companies, however, at that time the merger it was still at a nascent stage.

25. He further submitted that although the FDTL and FTL as prescribed under the CAR of 1997 may appear to be slightly different from the FDTL and FTL as agreed to under the MOS of 2008, however, variations are permissible which are not inconsistent with

DGCA regulations issued from time to time. DGCA regulations have to be read into the settlements. The FDTL and FTL are flexible and variable in nature as these depend on the type of aircraft in operation, routes and destination. It is also imperative to note that there is been no drastic variations in FDTL and FTL as provided in the settlement.

26. The applicants/petitioners are aggrieved of the office order dated 12.09.2012 whereby the office of the Minister of Civil Aviation issued directions that the FDTL and FTL applicable in case of Cabin Crew/Attendants shall be as per the latest relevant DGCA Requirements with immediate effect.

27. The case of the petitioners is that CAR 1997 is the latest and that should be read with MOS dated 21.09.1995 and MOS dated 01.10.2008. If instructions issued vide impugned order dated 12.09.2012 will be applied, then it violates the aforesaid MOS of 1995 and 2008.

28. The stand of the respondent is that the respondent Airlines is going through a grave financial crisis and is being bailed out by the Government and is able to pay the salaries of its employees only from the aids taken from the Government. The employees have to work as per the established industry practices to enable the respondent Airlines to pull through from its present position. Moreover, the rationalization of the Cabin Crew has been done to reduce expenditure on crew accommodation at both domestic as well as international stations, however, it does not affect the safety aspects of flight operations as the

respondent Airlines is duly following the guidelines laid down by the Regulatory Authority.

29. In addition to that, change in FDTL and FTL was necessary in view of the change in the Airlines itself and its fleet. The erstwhile Indian Airlines and erstwhile Air India have been amalgamated into the National Aviation Company of India Limited (NACIL), now known as Air India Ltd., vide order dated 22.08.2007 with effect from 24.11.2010. Pursuant to the amalgamation, the respondent Airlines has been trying to slowly integrate the employees of erstwhile Indian Airlines and Air India which has also become necessary in view of the introduction of the new fleet in the Company.

30. As submitted, although, modalities for the same are still to be worked out, however, it is required that the employees of the respondent Airlines should also be open to changes in their way of functioning which may include a little variation in their work hours. It is admitted that the FDTL and FTL, as prescribed under the CAR of 1997, may be slightly different from the FDTL and FTL as agreed to under the MOS of 2008, however, the variations are permissible as they are not inconsistent with DGCA regulations issued from time to time.

31. As admitted by the respondent that Civil Aviation Requirements, 1997 is applicable and whatever the changes have been made, the same are permissible under the aforesaid CAR.

32. In clause 4.1.1 (iii), the maximum number of hours in any domestic air carrier would be 1000 hrs in any period of 365 consecutive days. In clause 4.1.2 (i), where flight time is less than 8 hrs a prorata rest period of twice the flight time shall be provided, but the rest period in no case shall be less than 8 hrs. It is further provided in clause 4.1.2 (ii) that no domestic air carrier may assign any cabin attendant to do any duty with the air carrier during any required rest period.

33. However, under clause 4.2.1, no cabin attendant shall be required to exceed 11 hrs Flight Duty Time during any consecutive 24 hrs. If any carrier schedules a cabin attendant to do Flight Duty Time more than 11 hrs during 24 consecutive hours, the rest period at the end of the flight duty shall be extended by twice the period in excess of 11 hrs.

34. As international carrier is concerned, as provided in clause 5.1, no air carrier may schedule a cabin attendant to perform duty in an aeroplane for more than 11 hrs of flight time during any 24 consecutive hours without a rest period and if a cabin attendant is scheduled to do flight duty for more than 11 hrs during any 24 consecutive hours, the rest period at the end of flight duty shall be extended by twice the period by which the flight time was extended.

35. It is also provided in clause 5.2.2 that the flight duty time may be extended by a maximum of 4 hrs in case of technical snags, adverse weather or any other unforeseen circumstances to avoid inconvenience

to passengers. However, whenever the flight duty time gets extended, the rest period at base shall be prorated increased by twice the amount of extended period of flight duty time.

36. On perusal of chart, which is at page 131 of the paper book, it is emerged that the total hours have not been extended much in 365 days against the limit of 1000 hours.

37. In view of the above discussions, I am of the considered opinion that the respondents have power to increase the hours as per CAR 1997 with the condition that the rest period at base shall be prorated increased by twice the amount of extended period of flight duty time. If the rest is given to the Cabin Crew, then neither the health of the Cabin Crew nor the safety of the passengers will affect.

38. Moreover, since the respondent Airlines is going through the crucial financial crisis, then in such a situation, it becomes the duty of each and every person, who is part and parcel of the institution to work as per the established industry practices to enable the respondent Airlines to pull through from its present position. The present modalities are not final as the same are still to be worked out, therefore, it is required that the petitioners should also be open to changes in their way of functioning which may include a little variation in their work hours. This may be a temporary phase, but ultimately, as admitted by the respondents, they will strictly go by with CAR of 1997 which is the recent one.

39. In view of the above, this Court is not inclined to stay the operation of the impugned order dated 12.09.2012. Consequently, the application is disposed of.

40. Dasti.

SURESH KAIT, J

NOVEMBER 26, 2012

RS/sb