

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

*Judgment Reserved on March 13, 2014*  
*Judgment Delivered on March 19, 2014*

+ **W.P.(C) 21899/2005**

CAPT. M.P. PREMI (RETD.) ..... Petitioner

Represented by: Mr. Shailender S.Dahiya,  
Advocate

versus

M/S. INDIA INTERNATIONAL AIRWAYS LTD. .... Respondent

Represented by: Mr. Jaideep Bedi, Advocate with  
Mr. Dipender Kumar, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J.**

1. In the writ petition, the challenge has been made by the petitioner to the award dated August 11, 2005 passed by the Central Government Industrial Tribunal-cum-Labour Court (Industrial Tribunal, in short) in I.D. No. 37/2001 to the extent, the Industrial Tribunal has concluded that the retirement age of the petitioner was 58 years, as provided in Service Rules and further held that the petitioner was entitled to get wages of ₹ 44,702/- per month, instead of ₹ 1,24,200/-, and granted the benefit of arrears for four months only, instead of approximately six months if the petitioner had continued in service but for his termination.

2. The facts as culled out from the award are that the petitioner, who retired from Air Force was appointed as a Helicopter Pilot vide office order dated November 23, 1994. The terms and conditions as given in

the letter dated March 30, 1995 stipulated that pursuant to the successful training and skill test, he would be absorbed as Senior Commandant (Helicopter) and his pay scale shall be as under:

|                            |                       |
|----------------------------|-----------------------|
| a) Basic Salary            | Rs. 4800/- per mensem |
| b) House Rent Allowance    | Rs. 2400/- per mensem |
| c) Conveyance              | Rs. 5000/- per mensem |
| d) Qualification Allowance | Rs. 1500/- per mensem |

3. In Para 10 of the terms of appointment, it is stated that his services will be governed by the Service Rules of the company as may be in force from time to time so far as they are not at variance with the terms therein contained. It may be also necessary to point out that Clause 9 of the terms of appointment stipulated that the services of the petitioner would be terminated by the company by giving one month's notice in writing or one month's salary in lieu thereof or the salary for the unexpired period of notice, as the case may be. Liberty was given to the petitioner to resign from the services of the company by giving one month's notice in writing. On 05<sup>th</sup> October, 1999, the respondent issued an order terminating the services of the petitioner by invoking Clause 9 of his appointment letter dated March 30, 1995. The respondent annexed therewith a cheque for a sum of ₹ 15, 823/- as one month's notice pay. Industrial Dispute was raised by the petitioner which was referred by the appropriate Government for the adjudication of the Industrial Tribunal on the following reference:

*“Whether the action of the management of M/s. India International Airways Limited at Delhi in terminating the services of Capt. M.P.Premi, Executive Pilot w.e.f. 05.10.1999 is just, fair and*

*legal? If not, to what relief the workman concerned is entitled to? ”.*

4. Suffice to state that vide letter dated January 09, 1996, the services of the petitioner were confirmed as Senior Commandant (Helicopter) and his salary was increased.

5. The case set up by the petitioner, apart from the facts as stated above, vide letter dated April 12, 1996, the respondent has advised the petitioner of his higher entitlements pertaining to reimbursement of expenses of conveyance, telephone and upkeep of uniform and kit. The salary of the petitioner was again enhanced to ₹ 23, 795/- per month based on the performance with effect from August 13, 1997. It was his case that he performed his duties to the entire satisfaction of the respondent and because of which, the respondent, from time to time, rewarded him appreciation and raised his salary. He would further submit that in spite of increase in flying efforts during the year 1998-1999, no raise in salary was given to him, but the respondent promised to compensate him suitably during salary review to be undertaken in April, 1999. It was his case that after many sittings and deliberations during the period April to August, 1999, the respondent, on August 16, 1999 decided in principle to fix a minimum salary of ₹ 65,000/- per month for him in addition to other flying related allowances w.e.f. April 01, 1999. The total of which was to be ₹ 1,24,200/-. He would also state that during the deliberations, it was conveyed to him that the respondent was in a process of taking a decision on modalities of effecting the revised salary and that a letter to that effect shall be released in due course. The petitioner would also refer to his Fax dated August 26, 1999, whereby he had asked the respondent to cover all time accident, loss of licence and

medi-claim insurance cover, which was not yet done as agreed and in view of this, he was unable to carry outstation daily inspection. Vide letter dated August 26, 1999, the insurance cover with respect to loss of licence was raised to ₹ 15 lakhs, all time accident insurance to ₹ 25 lakhs and medi-claim to ₹ 3 lakhs for each family member from August 27, 1999. It was his case that an amount of ₹ 1.50 lakhs was released to him against ad-hoc arrears payment pending issuance of revised salary letter. The petitioner would also submit that because of his persistent efforts for increase in salary, the respondent with mala fide intention, terminated his services on October 05, 1999.

6. The claim of the petitioner before the Industrial Tribunal was; (1) ₹ 3,83,280/-, against salary payable at revised rate from April 08, 1999 to September 08, 1999; (2) he is entitled to serve upto the age of 60 years; (3) the deduction of Rs. 2 lakhs salary for the period October 02, 1999 to March 2000 is bad.

7. The respondent, on the other hand, contended that the petitioner was last working as a Executive Pilot, drawing a salary of ₹ 15823/- per month and was not a workman. The termination was effected in terms of the appointment letter and was a discharged simpliciter. It was its case that several complaints were received by the respondent-organisation with respect to the petitioner's conduct qua them. In other words, the respondent justified the action taken against the petitioner.

8. The Industrial Tribunal in the impugned award concluded as under:

*“It was submitted from the side of the management that as per clause 9 of the letter of appointment dated 30.03.1995 exhibit MW1/1 after confirmation in service the management could terminate his service by giving*

*one month's notice in writing or one months salary in lieu thereof. The workman has been paid one month's salary. A cheque of Rs.15,423/- has been tendered to the claimant and the claimant has admitted in his cross examination that he has encashed the cheque and he did not send any protest letter so the action of the management amounted to discharge simplicitor of the claimant as per the terms of his appointment keeping in view his status as Executive Pilot. This action of discharge simplicitor of the employee by payment of one month's salary is also permissible under section 30 of the Delhi Shops and Establishment Act, 1954 applicable to the respondent.*

*It was submitted from the side of the workman that clause 9 of the appointment letter is against public policy and violative of Article 14 and directive principles contained in Article 39(a) and 41. There was inequality of the bargaining power of the party so clause 9 in the contract of employment is void under section 23 of the contract act as opposed to public policy besides being ultravires Article 14. The contract was unfair and unreasonable and an unfair and unreasonable clause in a contract entered into between parties who are not equal in bargaining power should not be enforced but it must be struck down so clause 9 of the appointment letter is void-ab-initio and the management cannot take shelter of clause 9 of the appointment letter. It is obnoxious and oppressive to public conscience. It is against public good and if such a clause is given effect to it would be harmful and injurious to public interest.*

*It was further submitted by the management that termination of services is non stigmatic order of discharge simplicitor. Even if the order is non stigmatic the management cannot pass it as it is unconscionable bargain and it is irreconcilable with what is right or reasonable so even albeit the termination of service is non-stigmatic, Clause 9 of the appointment letter is against public policy and public good and public interest so it is void in view of section 23 of the contract*

*act. Since clause 9 of the appointment letter is against public policy, the service of the workman cannot be terminated having recourse to clause 9 of the appointment letter. Such clause in the appointment letter has been held to be unreasonable and against public consciousness in AIR 1986 SC 1571 so the termination of the service of the workman in view of clause 9 of the appointment letter is not justified.*

*It was submitted from the side of the management that the workman has committed several misconduct and the same has been mentioned in the written statement. He indulged in pressure politics and pressurized the management to concede to his illegal demands as there was no competent Pilot to fly that helicopter. The management should have permitted to lead evidence even though no charge sheet has been issued to the workman in view of 1992 (II) LLJ Page 777 and service can be terminated in view of 2002 LLJ Vol.I Page 186 as the management has lost confidence in the workman. My attention was drawn to 2001 FIR Vol.98 Page 710, the Hon'ble Supreme Court has held that there is no fetter on the powers of the Labour Court or Tribunal requiring or directing the parties to lead additional evidence including production of document at any stage of the proceedings before they are concluded if on the facts and circumstances of the case it is deemed just and necessary in the interest of justice. The case is pending since 2001 as per the provisions of the ID Act it should be decided within one year at the maximum so it is not in the interest of justice that the workman should be further harassed by permitting the management to lead evidence. The management has been given permission to lead evidence and the management has examined his witness. It is not expedient in the interest of justice that the management should be permitted to prove the charges as there was no existence of any charge at the time of termination of the service and no notice regarding misconduct of the workman has been given to him. So the allegations of the management shall be deemed to be after thought and no one should be*

*permitted to prove the allegation which was not ground of termination of the service of the workman. The law cited by the management for adducing additional evidence to substantiate the charges is not applicable in the facts and circumstances of the present case.*

*It was further submitted by the management that in the service rules superannuation is 58 years and it is the discretion of the management to extend the service period beyond that. Since the relation of the workman and employer was embittered and strangled the management can certainly not have extended the service of the workman beyond 58 years, the normal tenure of the service as per the rules. The management drew my attention to 1987 LLN (1) Page 230, 1987 FLR Vol-70. From perusal of the law cited above it becomes quite obvious that the discretion vested in the management cannot be exercised by any Court or Tribunal. Extension of service is granted taking into consideration satisfactory discharge of duties. The management was of the view that the workman was not discharging his duties to the satisfaction of the management so had he been in service the period of his tenure could not have been extended beyond 58 years. The discretion which is vested in the management cannot be exercised by any Court of law or Tribunal. It is the management who is the final authority to extend the service of the workman beyond 58 years. It was submitted from the side of the workman that had he been in service his tenure would have been extended to 60 years and beyond 60 years. The management terminated the services of the workman as he was not found amenable to discipline. So it cannot be expected from the management by any stretch of imagination that his service would have been extended beyond 58 years of age. The law cited by the management is squarely applicable in the present facts and circumstances of the case. So his service tenure can be of 58 years as provided in the service rules. The law cited by the workman applicant is not applicable in the facts and circumstances of the present case.*

*It was further submitted that it was the duty of the workman to show that he was not gainfully employed. The initial burden is on him thereafter he places material in that regard the employer can bring on record material to rebut the claim. The workman has not filed any document to show that he was not in gainful employment. The workman cannot be compelled to file evidence regarding negative aspect of his employment. He cannot file any certification of non employment. He has admitted that he flew the helicopter of ONGC for two months. The age of his superannuation is 6<sup>th</sup> March 2000 and his services been not illegally and arbitrarily terminated so he could not have discharged his duties for more than six months after termination of his services. He is entitled to get back wages of six months only. It is his admission that he was gainfully employed in the establishment of ONGC so he was out of employment only for four months. It was submitted from the side of the management that his fixed salary was Rs.15,823/- and he could not be paid more than that in lieu of back wages. He has encashed a cheque of Rs.15,823/-. Since the termination of services of the workman is arbitrary and illegal so he shall be deemed to be in continuous employment of the management and he is not entitled to get only fixed salary but he is entitled to get flying allowances and other allowances except T.A. He was out of service so he is not entitled to get TA. He is entitled to get other allowances as well as the termination is nonest. A chart has been submitted by the workman applicant which indicates that his monthly average wages are Rs.44,702/- inclusive of salary, flying allowance, productivity, telephone etc. minus uniform and TA. Since his work was operational and he was out of employment for four months he is entitled to get wages of Rs.44,702/- per month. Had he been in service he should have got that amount for four months. The workman applicant cannot be reinstated as he has crossed his age of superannuation but he is entitled to get back wages @Rs.44,702/- for four months only minus Rs.15,823/- already received.*

*The reference is replied thus:*

*The action of the management of M/s. India International Airways Limited at Delhi in terminating the services of Capt. M.P.Premi, Executive Pilot w.e.f. 05.10.1999 is neither just nor fair and nor legal. The workman applicant is entitled to get four months wages @Rs.44,702/- minus Rs.15,823/- and the management is directed to make payment of the wages for four months @Rs.44,702/- minus Rs.15,823/- within one month from the date of publication of the award. In case of default the workman applicant will be entitled to get 6% interest over the entire amount i.e. four months wages at the rate of Rs.44,702/- per month minus Rs.15,823/- already received”.*

9. It was the contention of the learned counsel for the petitioner that the Industrial Tribunal has held, the age of superannuation of the petitioner as 58 years. According to him, no term of superannuation has been defined in the appointment letter. He would submit, since a Pilot can fly aircrafts as per the DGCA regulations at the relevant point of time till 60 years, the age of retirement also coincides with the said regulations. In other words, it was his contention, even though there was no retirement age specified in terms of appointment, it should be construed in terms of the DGCA regulations to be as 60 years. Learned counsel further states that the Service Rules, on which the reliance was placed by the respondent, which shows the retirement age as of 58 years, is not the one which has been shown to the petitioner and for which, he has put his acknowledgment having read the same on May 01, 1999. He would further submit that the very fact that the Identity Card issued to the petitioner till December 31, 2001 would show that his retirement was above 58 years which he had attained much before that date on March

06, 2000. He would have attained 60 years only on March 06, 2002 and should have continued till then. According to him, if the superannuation was to be before December 31, 2001, the Identity Card would not have been issued till that date. He would also rely upon the RTI reply received from Bureau of Civil Aviation on an application filed by him under the RTI Act, wherein the Bureau of Civil Aviation has stated that; (1) BCAS does not increase the validity of Airport Entry Pass beyond the period recommended by sponsoring organisation; (2) beyond the date of superannuation, it does not issue AEP; purpose is that entry to airports as an employee is not allowed after the superannuation of the concerned person.

10. The second contention of the learned counsel for the petitioner is that the Tribunal has erred in concluding the pay of the petitioner as ₹ 44,702/-. According to the learned counsel for the petitioner, the respondent has agreed to pay him a total sum of ₹ 1,24,200/- as salary w.e.f. April 01, 1999. In support of his contention, he would state that the insurance cover for loss of licence and for aviation accident has been increased to ₹ 15 lakhs and ₹ 25 lakhs. According to him, the increase in the insurance cover would suggest that the value of the petitioner, in terms of his pay package, has gone up. According to him, the petitioner was paid an amount of ₹ 1.50 lakhs in total. Out of the said amount, ₹ 1 lakh was paid by cheque and balance ₹ 50,000/- by cash. He would state that in the past also, the flying allowances were always paid in cash. He would state that this amount of ₹ 1.50 lakhs was against the arrears and have been shown such in the records of the respondent including the vouchers signed by the petitioner. Unfortunately, despite an application for production of record, the respondent had not produced any record.

The Industrial Tribunal should have taken an adverse inference for non-production of those records and should have allowed the claim of the petitioner for salary of ₹ 1,24,200/-. The third and the final contention of the learned counsel for the petitioner was that the Industrial Tribunal has not granted the petitioner the salary for two months on the premise that the petitioner was gainfully employed in ONGC. According to him, there is nothing on record nor the respondent could able to prove that the petitioner was gainfully employed. Learned counsel for the petitioner has drawn my attention to para 21 of the claim petition, wherein, he made a categorical statement that he is unemployed after his illegal termination from his services.

11. On the other hand, learned counsel appearing for the respondent would contend that the retirement age was 58 years only. He has shown me the rules, on the covering note of which, the petitioner has put his signatures after reading it. According to the learned counsel for the respondent, the petitioner, having put his signatures after reading the rules, which rules describes the age of retirement as 58 years, is precluded from contending that the age of retirement is 60 years. He would further state that the stand of the petitioner that the rules annexed therewith are fabricated and not the one which he has read, is an after-thought. According to him, it is for the first time, such a plea has been advanced by the petitioner in these proceedings. He also referred to the cross examination of the petitioner, where the petitioner has stated *“it is correct that the covering letter that I have signed at Point A on Ex.WW-1/M-1 letter dated 24.04.1998 in token of having seen the service rules of the company”*. Insofar as the aspect of salary, the learned counsel for the respondent even dispute the conclusion arrived at by the Industrial

Tribunal that the salary of the petitioner was Rs. 44702/-. According to him, this conclusion was arrived at by the Industrial Tribunal based on the chart filed by the petitioner before the Industrial Tribunal and the Industrial Tribunal has accepted the chart. He concedes to the fact that such a conclusion has not been challenged by the respondent herein. He would also refer to the cross examination of the petitioner wherein, the petitioner has stated *"I do not have any letter from the management given during the period 1999-2000 giving assurance to revise my salary."* Based on such deposition of the petitioner, the learned counsel for the respondent states that there is no order of the respondent whereby the respondent decided to increase the salary of the petitioner. On the third issue, the learned counsel for the respondent would contend that it has come in the cross examination of the petitioner that he was flying the helicopter of M/s. ONGC for two months. It is for this reason, the Industrial Tribunal has rightly not granted wages to the petitioner for the two months after his termination. He would rely on the judgment of this Court in the case decided by the Division Bench in *LPA No. 637/2013, Ved Kumar Vs. Institution of Electronics and Tele-Communication Engineers and Ors.* wherein this Court has culled out the scope of judicial review by the writ Court. According to him, this Court, keeping in view the parameters therein, should not interfere with the order of the Industrial Tribunal.

12. Having considered the submissions made on behalf of the parties, insofar as the issue of the Industrial Tribunal concluding the age of superannuation being 58 years is concerned, I find that the rules so relied upon by the respondent stipulates the retirement age as 58 years. From the covering note, which is Ex.WW1/M1, it is noted that the signatures

were put by every employee after reading the same. The contention that the rules which have been annexed along with the note and which the petitioner has read it, are not the same which have been annexed now in these proceedings. The same is a disputed issue. I also note that the petitioner, during admission-denial of documents has only admitted the initial put by him on the note. In any case, I find that after putting his signatures on 01.05.1999, at no point of time, did the petitioner sought a copy of the rules for his own record. It is also stipulated in the terms of appointment that the petitioner shall be bound by the rules of the company as may be in force from time to time if they are not at variance with the terms as contained in the said letter. The letter is silent on the age of retirement. The respondent was within its right to issue fresh rules or amend the existing rules, specifying the age of retirement. The submission of the learned counsel for the petitioner that the Identity Card issued to him had shown validity period till December 31, 2001, coupled with the letter written by Bureau of Civil Aviation, cannot be said to be conclusive, moreso, in terms of the rules as relied upon by the respondent and having read by the petitioner.

13. Insofar as the issue of the Industrial Tribunal concluding the salary of the petitioner being ₹ 44,702/- and not ₹ 1,24,200/- is concerned, suffice would it be state that there is no written order by the respondent-company enhancing the pay of the petitioner. The respondent, in their reply, had taken the following stand:

*“The correct position is that it was the claimant who demanded an exorbitant minimum salary of Rs.65,000/- per month and the respondent did not at any stage agreed to pay the same as alleged by the*

*claimant. In fact he had brought Capt. P.P.S.Sangha a colleague, in one of the meeting to press for his demand under the assumption that the election in Gujrant was round the corner and the management would accept his unjustified and unreasonable demand, but the management refused to accept the unreasonable demand of the claimant. In these circumstances, Capt. P.P.S.Sangha chose to resign but the claimant decided to continue probably because there was no job offer for him, like in the case of Capt.Sangha. No alleged assurance was made by the respondent regarding the issuance of a letter towards his revised emoluments”.*

14. With regard to the submission of the learned counsel for the petitioner in support of increase in salary that the insurance cover having been increased would show that his salary was also increased, the respondent had taken the following stand:

*“The correct position is that the respondent provides to all its pilots insurance cover for the Loss of Licence (LOL) for Rs.7 lacs and further cover for Aviation Accident (AA) for Rs.7 lacs. In the month of August, 1999, just before leaving for Ahmedabad to conduct election flying, the claimant unreasonably demanded that Loss of Licence (LOL) and Aviation Accident (AA) cover be increased to Rs.15 lacs and to Rs.25 lacs respectively. He also demanded that all his family members be insured under Mediclaim*

*Scheme for Rs.3 lacs each. This was over and above the group Medical Insurance already provided to his 3 family members. This was yet another unreasonable and unacceptable demand raised at that time when substantive business of the management was lined up”.*

15. In any case, rise in insurance cover would not be a material fact to conclude that the salary has been agreed to be increased. Moreso, there is no corresponding order effecting such an increase. This submission of the petitioner need to be rejected, and I do not find any infirmity in such a conclusion of the Industrial Tribunal.

16. Insofar as the denial of wages for two months on the assumption that the petitioner was flying the helicopter of the ONGC is concerned, I note, the petitioner, in his cross examination, had only narrated a fact that he was flying the helicopter of the ONGC. In the absence of any suggestion to the extent that while flying the helicopter of the ONGC, he was gainfully employed, it cannot be inferred that the petitioner, while flying the ONGC's helicopter, was being paid the remuneration as well. Rather, I find that a categorical averment in para 21 of the claim petition is made wherein the petitioner had stated that he is unemployed from the date of his illegal termination. Meaningfully read, he was not gainfully employed. Thus, the petitioner would be entitled to the wages @ ₹ 44,702/- for those two months as well subject to adjustment of ₹ 15,823/-. In total, he would be entitled to wages for a period of six months including the four months as awarded by the Industrial Tribunal. It is made clear, if the petitioner has not been paid the amount awarded by the Industrial Tribunal, till date, the petitioner would be entitled to the

interest as granted on the four months' salary by the Industrial Tribunal.

17. Insofar as the judgment relied upon by the learned counsel for the respondent, which narrates the position of law with regard to the scope of judicial review by the High Court in Writ of Certiorari is concerned, the same is noted.

18. The writ petition filed by the petitioner is partly allowed in terms of the above.

19. No costs.

**(V.KAMESWAR RAO)**  
**JUDGE**

**MARCH 19, 2014**

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