

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

+ **W.P.(C) No.6052/2002**

% **20th May, 2015**

CAPT. A.K. DEWAN Petitioner
Through: Mr. Rakesh Khanna, Advocate.

Versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Rohit K. Aggarwal, Advocate
with Ms. Rekha Divedi, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner who was an Executive Pilot with the respondent no.2/Indian Airlines Limited, seeks two reliefs. First relief which is sought is that the petitioner claims that he should be paid executive allowance in terms of the circular of the respondent no.2 dated 15.4.1997. Petitioner claims that this executive allowance has to be paid to him in addition to the productivity allowance which was being paid to him in terms of the extant circular of the respondent no.2 dated 10.10.1996. The second relief prayed

by the petitioner is that the petitioner be paid enhanced productivity allowance in terms of the settlement agreement dated 1.2.2001 entered into between the respondent no.2 with the Indian Commercial Pilots' Association and the productivity allowance of the petitioner be thus enhanced from a sum of Rs.28,500/-, from the date of the agreement being 1.2.2001, to Rs.42,180/- till the petitioner superannuated on 30.9.2002. It is clarified that this second relief before me is an option being now exercised by the petitioner of the either of the two options to be exercised in terms of the circular of the respondent no.2 dated 14.5.2002.

2. In order to appreciate the facts of the present case, certain background facts are required to be noted. With the respondent no.2, there were two categories of flying pilots. First category of flying pilots were those pilots who only did flying duties and were up to the rank of Deputy General Manager. The second category of flying pilots were those who reached the post of Deputy General Manager and above and who besides doing flying duties were also performing ground duties or managerial duties. In addition to the two categories of flying pilots in the respondent no.2, there was a third category of pilots who did not do flying duties because they became Permanently Medically Unfit (PMU) and who were thereafter given

ground jobs which did not involve flying duties. Thus, there were three categories of pilots with the respondent no.2; one who only did flying duties, second category of pilots who did both ground and flying duties and third category of pilots who only did ground duties on account of being PMU.

3. To a pilot who did only flying duties, executive flying allowance was paid. The pilots in the second category who did both flying and ground duties, in addition to being paid the executive flying allowance they were paid a productivity allowance on account of ground jobs being performed by them. The third category of pilots who only did ground jobs were not given executive flying allowance but were only given productivity allowance in terms of the circular dated 10.10.1996 of the respondent no.2. With respect to the third category of pilots who were doing only ground jobs and fell in the general management category such third category of pilots were also getting all the allowances (including executive allowance) which were being paid to the general managerial cadre of the respondent no.2. The general cadre performing ground duties were given executive allowance in accordance with the circular dated 15.4.1997 of the respondent no.2.

4. As a result of the situation of the third category of pilots who did not do flying duties but received productivity allowance, an anomaly

occurred. This was because such pilots who did perform flying duties for which executive flying allowance was given and productivity allowance was given only because such pilots had to do flying duties and additionally also managerial duties. However, such a pilot who used to receive productivity allowance was not entitled to receive it if he was a PMU. Putting it differently a person received productivity allowance provided he was doing flying duties and was not a PMU. This anomaly was discovered when the respondent no.2 contested the writ petition filed by one Capt. D.V. Sharma and which facts are given hereinafter.

5. One Executive Pilot Capt. D.V. Sharma who was PMU filed a writ petition against the respondent no.2 in this Court being CWP No.2665/2002 claiming executive allowance as per circular dated 15.4.1997. With Capt. D.V. Sharma, the management of the respondent no.2 arrived at a settlement by which the said Capt. D.V. Sharma got benefit of payment of executive allowance. However, before giving benefit of payment of executive allowance to Capt. D.V. Sharma, it was insisted by the management of the respondent no.2 that the benefit given to Capt. D.V.Sharma should be recorded as a benefit which will not be taken as a precedent for future i.e the case of Capt. D.V. Sharma cannot be used by any

person for claiming executive allowance on the ground that such a person who now claims executive allowance is entitled to the same although he is simultaneously receiving productivity allowance. This is explained by the respondent no.2 in its counter affidavit with reference to reasons adopted by the Board of Directors for correcting the anomaly of a pilot who as a PMU was getting both the productivity allowance as also the executive allowance, and which latter allowance was paid to the flying pilots cadre of the respondent no.2. The relevant portion of the counter affidavit in this regard reads as under:-

“iii) The Petitioner relies on the May 2, 2002 order of the Hon’ble High Court of Delhi in CWP No.2665 of 2002 entitled Capt. D.V. Sharma Vs. UOI and Ors. for claiming the executive allowances under the notification dated April 15, 1997 (para 10 of his writ petition and Annexure at page 25 of the petition). However, the annexure at page 25 of the Petitioner’s writ petition clearly shows that the settlement arrived at with Capt. D.V. Sharma “would not be treated as a precedent for other cases.” The Settlement clearly provides that the payment of Executive Allowance will not, in any way, effect the interpretation of the instructions for payment of Executive Allowance as observed by the Respondent Airlines in the past. Copy of the Settlement dated 27th April, 2002 signed between Capt. D.V. Sharma and Indian Airlines was filed before the Hon’ble Court. The Hon’ble Court passed an Order on 2nd May, 2002 which is annexed and marked as Annexure-R-1.

iv) The Respondent entered into this compromise by taking a policy decision. This policy decision was taken by the Board of Directors of the Respondent No.2 on March 27, 2002. The policy decision was based on an examination of the issue of allowances

being granted to PMU or Grounded Executive Pilots. An examination was necessitated when it was found that payment of fixed productivity allowance to Grounded or PMU Executive Pilots based on the settlement with the Indian Commercial Pilots Association on January 26, 1996 was a deviation since the grounded executive pilots were partially drawing salary and allowances as applicable to the general category officers while at the same time enjoying the benefits of payment of fixed productivity allowances available to flying executive pilots. Hence the Board of Directors on March 27, 2002 took a policy decision as follows:

“I) Executive Pilots who are declared PMU henceforth will be entitled to the following:-

a) An Executive Pilot on being declared PMU would be rehabilitated as an Executive in the same cadre. He would also be further entitled to career progression in the same cadre.

b) A fresh appointment order should be issued clearly specifying that he would be covered under the Service Regulation as applicable to general category of employees.

c) He would be entitled for Productivity Linked Incentive and Executive Allowance and other payments only as applicable to general category of executives.”

6. The facts of the case, so far as the petitioner is concerned, are that the petitioner became PMU on 15.11.2000. On the petitioner becoming PMU and being only given ground jobs, he was put in the managerial cadre by the respondent no.2 and he got all the benefits of the managerial cadre. Petitioner also in addition continued to receive the productivity allowance in terms of the circular dated 10.10.1996. Before petitioner became PMU on

15.11.2000, a circular was issued by the respondent no.2 dated 15.4.1997 giving executive allowance to various ground managerial personnel of the respondent no.2. It is this circular dated 15.4.1997, which is the genesis of the dispute with respect to claim of the petitioner for payment of executive allowance. This circular dated 15.4.1997 being relevant is reproduced as under:-

“	Indian Airlines Limited
From	To
Dy. General Manager (Fin.)	Regional Director
IAL: Hqrs.	IAL: East/West/Northern/South
New Delhi	Dir. (Trg.): IAL:
	Hyderabad
Reference	Date
No.Fin/Rules80/09	15 th April, 1997

SUB: Executive Allowance

It has been decided that the Executive coming from the streams of IAOA/ARO&FOOA/AGIA will be paid an Executive Allowance w.e.f 1.8.1995 at the following rates:

Sr. Manager/Ch. Manager	-	Rs.3000/- per month
Dy. General Manager	-	Rs.6000/- per month
General Manager	-	Rs.7,000/- per month
Director	-	Rs.8,000/- per month
Dy. Managing Director & above	-	Rs.10,000/- per month

This allowance will be added in the salary for the month of April 1997 onwards.

The payment of this allowance will be subject to deduction of Income Tax at source.

Kindly acknowledge receipt.

Sd/- (Illegible)
(A.K. SAXENA)
GENERAL MANAGER (FIN.)

CC: Director (IT) IAL: It is requested that the above allowance be incorporated in the salary for the month of April 1997 onwards.

CC: Dy. MD (R)/Dy. (MD(C) :IAL: HQrs.
CC: EA to MD:IAL: HQrs.
CC: Director (Pers.)/Director (Audit): IAL: HQrs.
CC: General Manager (Fin.): IAL: East/West/North/South/HQrs./SHOD
Dy. Gen. Mgr. (Fin.): Hyderabad.
CC: GM (IR) IAC HQrs.-

True copy

Sd/- (Illegible)”

7. Petitioner claims that in addition to the productivity allowance which is payable to a pilot such as the petitioner who becomes PMU in accordance with the circular dated 10.10.1996, petitioner is covered under the circular dated 15.4.1997 for getting executive allowance. It is this issue which has to be examined by the Court that whether petitioner can claim the benefit of the circular dated 15.4.1997 for payment of executive allowance. Putting it in another words, is the petitioner covered under the category of persons envisaged in the circular dated 15.4.1997.

8. The second line of the circular dated 15.4.1997, and as conceded before me by the counsel for both the parties, refers to the Associations of persons who are not pilots and who never were pilots with the respondent no.2. The Associations which are mentioned in the second line of this circular dated 15.4.1997 are only of non-pilots personnel i.e officers who are Airline Officers, Radio Officers, Flight Operation Officers and Airlines Ground Instructors.

9. No doubt, counsel for the petitioner is *prima facie* correct in arguing that Associations of the personnel even if they are referred to should not have a bearing on the interpretation of the contents of the circular dated 15.4.1997, however when we look the matter incisively one cannot ignore that the persons who are forming part of the Associations are the only personnel with respect to whom that the executive allowance was held to be payable in terms of the circular of the respondent no.2 dated 15.4.1997. As already stated above, personnel forming the Associations referred to in second line of the circular dated 15.4.1997 were persons who did not fall in the category of pilots or the flying cadre of the respondent no.2, and therefore in my opinion it is futile for the petitioner to contend that the petitioner can seek benefit of the circular dated 15.4.1997 to claim benefits of executive allowance although petitioner is not an officer, who is an Airline Officer or Radio Officer etc i.e the non-pilots ground personnel.

10(i) The next question is that can petitioner claim executive allowance only because one Capt. D.V. Sharma, an Executive Pilot who was also declared PMU in the year 1995, in terms of a court case referred to above, was given benefit of payment of executive allowance in terms of the

circular dated 15.4.1997 from the year 1995 (when Capt. D.V. Sharma became PMU) till the date when compromise was entered into in the court.

(ii) In my opinion, once a settlement is arrived at with a person with the specific noting that such settlement will not be treated as a precedent, such a settlement will necessarily fall under Section 23 of the Evidence Act, 1872. Section 23 of the Evidence Act, 1872 provides that once a document is specifically referred to as not being referable in a court case, such a document for future cannot be referred to as evidence in a court case. The expression 'without prejudice' is normally used in correspondence between parties pursuant to Section 23 of the Evidence Act, 1872 so that such correspondence does not become evidence in a court case and the same cannot be used in a court case. Once the management finding an anomaly, and in order to correct an anomaly that a PMU pilot should not get both the productivity allowance and the executive allowance, only as a matter of compromise to finish a court case, pays an amount of executive allowance to Capt. D.V. Sharma but with the specific caveat that it will not be treated as a precedent, the petitioner in view of Section 23 of the Evidence Act, 1872 cannot claim benefit of the compromise entered into between the respondent no.2 and Capt. D.V. Sharma. Also, Article 14 of the

Constitution of India is a positive concept and the petitioner cannot claim equality of treatment with an illegality caused by an earlier wrong application of the circulars dated 10.10.1996 and 15.4.1997. Therefore, the second argument of the petitioner for claiming executive allowance by placing reliance upon the compromise in the case of Capt. D.V. Sharma is misconceived and rejected.

11. That takes us to the argument urged on behalf of the petitioner that the petitioner in terms of the decision of the respondent no.2 with Indian Commercial Pilots' Association on 1.2.2001 should be paid productivity allowance not at the old rate of Rs.28,500/- but at the enhanced rate of Rs.42,180/- as stated in the agreement dated 1.2.2001.

12(i) Learned counsel for the petitioner placed reliance upon para 6.2 of the agreement dated 1.2.2001 to argue that the productivity allowance is calculated as per years of service in command and since petitioner has put in a specific number of years as service in command while flying as a pilot for respondent no.2, petitioner should get benefit of the agreement dated 1.2.2001.

(ii) In my opinion, the argument urged on behalf of the petitioner by placing reliance upon the agreement dated 1.2.2001 including para 6.2 has to be rejected for the reason that the agreement dated 1.2.2001 is between the respondent no.2 and an Association of commercial pilots i.e the agreement was intended for application to those pilots who were commercial pilots i.e those pilots who were doing flying duties as also managerial duties and agreement was not with those pilots who were PMUs. It is with respect to only such commercial pilots who are doing flying duties and were also doing ground duties that to such persons the productivity allowance was fixed in terms of the agreement dated 1.2.2001. Petitioner being a PMU and hence not a commercial pilot undertaking flying duties, petitioner would therefore be not a pilot who would be a member of the Indian Commercial Pilots' Association and only with whom the respondent no.2 can be said to have entered into the agreement dated 1.2.2001. Therefore, petitioner is not justified in claiming that petitioner should get productivity allowance not at Rs.28,500/- but at Rs.42,180/- as claimed by him.

13. Learned counsel for the petitioner finally argues that petitioner should be given the benefit of the agreement dated 1.2.2001 by arguing that a junior of the petitioner one Capt. A.K. Munjal has been given benefit of

this agreement of productivity allowance at an enhanced rate, and hence petitioner also should be granted this enhanced productivity allowance. However, I find that the facts of the case of the petitioner are not similar to the case of Capt. A.K. Munjal because respondent no.2 in its counter affidavit has clearly stated that Capt. A.K. Munjal became PMU on 20.11.2002 i.e after the date of signing the settlement dated 1.2.2001 and therefore once a person becomes a PMU after the agreement dated 1.2.2001 meaning thereby a person was a flying pilot on 1.2.2001, such a person could rightly claim productivity allowance in terms of the agreement dated 1.2.2001 because such a person Capt. A.K. Munjal became PMU only subsequently on 20.11.2002.

14. In view of the above, there is no merit in the petition and the same is therefore dismissed. No costs.

MAY 20, 2015
Ne

VALMIKI J. MEHTA, J.