

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2017

Delivered on : 02.03.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.23430 of 2015

Capt.S.Dinakara (Employment No.608106)
Dy.General Manager,
Air India Ltd.

.. Petitioner

Vs.

- 1.Union of India Rep by its Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi-110 003.
- 2.Air India Ltd.,
Airlines House,
Gurudwara Rakabganj Road,
New Delhi Rep by its
Chairman & Managing Director.
- 3.Air India Ltd.
Airlines House,
Executive Director (OPS)
Safdarjung Airport, New Delhi-110 003.
- 4.Air India Ltd.
Airlines House, Executive Director,
Southern Region,
Meenambakkam Airport,
Chennai-600 027.

5. General Manager (OPS)
Operations Department,
AIR India Ltd.,
Meenambakkam Airport,
Chennai -600 027.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 3 and 4 in particular to initiate necessary programme with immediate effect for the petitioner to undergo and complete the balance flying training to complete his pilot in command Boeing 787 Conversion Technical Performance Refresher and PPC IR/LR training immediately and to fly as per rules and regulations prescribed under the Aircraft Act.

For Petitioner : Mr.AR.L.Sundaresan,
for Mr.R.Meenakshisundaram

For Respondents : Mr.N.Sivabharathi
Central Govt. Standing Counsel for R1

Mr.N.G.R.Prasad
and Mr.K.Srinivasamoorthy for R2 to R5

ORDER

The petitioner joined the services of Indian Airlines as Commercial Pilot (P2) on 31.10.1988 and sent to CTE Hyderabad for B737 Aircraft endorsement. The petitioner had completed the said endorsement during the year 1989 and released as First Officer in May 1990 to Chennai Southern Region, Indian Airlines and he was promoted as Captain in June 1993. The petitioner would further aver that Indian Airlines merged with Air India Limited and in the year 2005, he was promoted as Deputy General Manager

(Operations) and was confirmed in the said post during the year 2000 and he also got Check Pilots Ratings on his licence and was also qualified for (CAT -3B) FOG operations.

2. The petitioner claims that he is in the services of the then Indian Airlines, now Air India Limited, for the past 27 years as professional Pilot and had logged more than 17000 hours of hard, sincere and meritorious service and also having impeccable safety record, without any incident or accident. The petitioner also claims that he had also operated flights in emergency and contingencies in order to avoid delays and cancellation of flights and to help the travelling public at large and to help the organization to maintain schedules and thereby enable them to improve their reputation and goodwill. The petitioner would further state that in recent times, the method of rostering pilots for flying duties were unilaterally modified and the respondents 4 and 5 had targeted him and humiliated him so that he can resign from service. The petitioner has also not been restored with flying duties right from 29.08.2010 to the date of filing of the affidavit in the writ petition except with interval between April 2011 and December 2011. The petitioner also filed W.P.No.2003 of 2011 with regard to his de-roaster in respect of an accident that had happened at Cochin and an order of ad-interim

direction was passed directing the respondents to permit the petitioner to resume for licence renewal training for flying duties and the petitioner was permitted to undergo training to qualify for flying duties and accordingly the writ petition was dismissed as withdrawn on 26.08.2011.

3. The petitioner was also issued with order of suspension dated 19.03.2013 and he made a challenge to the said order by filing W.P.No.11797 of 2013 and pendency of the same, order of suspension was revoked and recording the same, this Court has closed the writ petition. The petitioner has also prayed for settlement of subsistence allowance and this Court has disposed of the said writ petition by permitting the petitioner to submit a representation and further directed the concerned respondent to consider and dispose of the same.

4. The main grievance expressed by the petitioner is that though he has been inducted for conversion training for Boeing 787 type of aircraft and completed nearly half of the training, his further schedule of training has been abruptly stopped and he was reverted to Airbus A320 aircraft with a further direction for reconversion training to fly the said aircraft.

5. Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the typed set and additional typed set of papers filed by them and also to the Operation Manual Part-D Volume-1 Sub Part –B (Boeing Fleet), more particularly drawn the attention of this Court to Point No.1.0.6 – Failure Policy (First Officer) in respect of the Flight Crew Training Programme and would submit that Clause 1.0.7 deals with Failure in Simulator Refresher/Check and would submit that as per the said Clause *“Not satisfactory performance by any trainee during the simulator refresher/check must be brought to the notice of the General Manager –OPS (Trg) / Additional General Manager Ops.(Trg) by the Trainer and necessary corrective / remedial training on the deficiencies observed shall be imparted in consultation with the General Manager –OPS (Trg) / Additional General Manager Ops.(Trg) before being subjected to repeat session and the requisite corrective training and the duration there of shall be decided depending on the performance of the training”* and would further submit that even for the sake of arguments without admitting that the performance of the petitioner in the training for conversion to fly B787 aircraft is not satisfactory or upto the mark, the only course available to the respondent/Management is that necessary corrective / remedial training on

the deficiencies observed shall be imparted in consultation with the General Manager –OPS (Trg) / Additional General Manager Ops.(Trg) and instead of doing so, he has been reverted back to fly A320 airbus with a further direction to undergo reconversion training to fly the said aircraft and adding salt to the wound, the cost of further revalidation training is to be borne by him.

6. It is the further submission of the learned Senior Counsel appearing for the petitioner that halting of the training imparted to the petitioner to ply B787 aircraft in the midway, without sending him back to go for corrective measures, is purely due to oblique and malafide motive and it is unfortunate to note that employee like the petitioner, who have put in more than 27 years of meritorious service as a pilot in the services of the Indian Airlines, now Air India Limited, is being treated shabbily. The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to the additional typed set of documents which contains the performance of the petitioner with regard to Boeing 787 Aircraft and would submit that most of the reports were in his favour and even for the sake of arguments, there are some deficiencies on the part of the petitioner, corrective training/remedial measures should have been imparted to him and on the contrary, he was once

again directed to go for reversion training to ply A320 aircraft with further direction to borne out the expenses and therefore, prays for interference.

7. On behalf of the respondents 2 to 5, the Assistant General Manager – Personnel has filed a counter affidavit and it is averred that imparting training and rostering Pilot for a particular flight is purely an administrative action of the respondent and the petitioner cannot compel the respondent to complete his training in Boeing 787 and imparting of training also, depends upon cancellation of the pilot to undergo training and would further aver that if the performance of the petitioner is not upto the mark in training, he cannot be compelled for repeated training. The respondents 2 to 5 would further aver in the counter affidavit that the petitioner is holding a PIC endorsement for A320 type of aircraft and he has been flying the said type of aircraft and on account of the fact that recently the respondent inducted Boeing 787 type of Aircraft, a decision has been taken to have well trained crew to operate the said type of aircraft and after identifying the pilots, decision has been taken to impart training for reconversion. It is further averred by the respondents 2 to 5 that in the year 2013, the petitioner was sent for training in Boeing 787 aircraft, which is a wide-body aircraft and he got P2 endorsement (Co-pilot) with effect from 25.11.2013 in B787 aircraft and he was due for his

Instrument Rating/Pilot Proficiency Check (IR/PPC check) in April 2014 and it is to be mandatorily undergone by the Pilot every six months/one year and accordingly, his simulator training/check was arranged at Mumbai on 20th and 21st April 2014 and he was positioned at Mumbai accordingly and the training programme requires that after successful completion of training, the petitioner was required to position himself at Delhi to do Supervised Line Flying (SLF) on flight AI-3800 on 23.04.2014 on sector Delhi-Singapore.

8. It is further stated by the respondent 2 to 5 in the counter affidavit that the petitioner's B787 simulator refresher training was carried out by Capt. Deepak Dutta, Examiner on B787 Aircraft on 20.04.2014 and since the petitioner's performance in the training was not upto the mark, the trainer was forced to discontinue the training with the remark that his case be referred to Training Division for further action and Capt. Deepak Dutta has signed the report and given to the petitioner for affixing his signature and reporting to the training session along with the report and however, till date, the petitioner did not report to the training section along with the report for taking further steps regarding his training. Very many e-mail communications were repeatedly sent to the petitioner to do so, but so far, the petitioner has not handed over the original either to the Training Department or to

Mr. Harinder Singh, Senior Assistant General Manager (Flight Despatch) Office of ED-Operations, New Delhi. The petitioner had also completed his medical examination on 14.11.2014 and being the Executive Pilot, he has to perform both flying duties and administrative work also and he did not attend the office duties after lapse of his medical validity and therefore, he was marked absent with effect from 06.08.2014 and thereafter also, he did not report to duty regularly. The respondents 2 to 5 would further aver that on 26.02.2015, the General Manager (Operations), Chennai, received an e-mail from Captain Rajeev Bajpai stating that the petitioner has not contacted the Training Department and his performance was also not satisfactory and therefore, repeated e-mail communications were sent to him to submit the original B787 training documents in order to take further action with regard to his training in B787 Aircraft and thereafter, on 02.04.2015, he submitted scanned copy of the B787 training documents to the office and it was sent to Executive Director -Operations on 08.04.2015, seeking their further instructions on this matter and once again the petitioner was advised to submit original reports to the office of the fifth respondent and till now, he failed to do so.

9. The respondents 2 to 5 would further state that the petitioner submitted a letter on 20.04.2015, requesting for the programme of B787 training so as to enable him to receive the training and it was forwarded to the Executive Director (Operations) and to all other concerned, for which a reply was received on 05.05.2015 through e-mail from Captain A.K.Govil, Executive Director (Operations), wherein it has been stated among other things that the said official was requested to plan further training to the petitioner as deemed necessary on topmost priority. The fifth respondent, vide communication dated 07.05.2015, called upon the petitioner to explain the reasons for non-submission of original B787 training documents and it was followed by e-mail communication dated 14.05.2015 to the Executive Director (Operations), which read among other things that a suggestion was made to place him at Mumbai to continue with the counselling and suitable corrective training as originally envisaged before commencement of SLF and he will also have to undergo the appropriate syllabus for absence from flying. The fifth respondent also sent an e-mail dated 20.05.2015 to the Executive Director (Operations) and all other concerned stating that the petitioner's B787 training may be arranged and appropriate administrative action may also be initiated concurrently.

10. The Executive Director (Operations) has sent an e-mail dated 03.07.2015 to the Executive Director (Training) to plan for A320 revalidation training for the petitioner with immediate effect as his progress on B787 training was not upto the mark and the petitioner was also informed of the same through e-mail and he was programmed for A-320 extended refresher course at Delhi from 20.07.2015 to 24.07.2015 along with Flight Operations Inspector of DGCA, which was also informed to the petitioner on 14.07.2015 by e-mail. However, the petitioner reported sick at 12.15 hours on 19.07.2015 and hence he did not go to Delhi to attend A320 revalidation training programme and he reported fit on 21.07.2015 and on 29.07.2015, the petitioner was advised to inform the office as to when he would like to attend A320 extended refresher program so that Central Training Establishment, Hyderabad (CTE) could be advised to plan for the same, but the petitioner did not reply to the said email.

11. Insofar as repeated representation/communication sent by the petitioner that he should be sent for B787 training, the Executive Director has sent a reply on 22.03.2016 wherein it has been stated among other things that to keep up the continuity of flying below standard performance on B787

type of aircraft, he has been programmed for A320 Refresher Course with effect from 20.07.2015, for which he reported Sick and once again he was advised to make himself available for A-320 revalidation training, as he has reported duty since 20.04.2015.

12. The respondents 2 to 5 also took a specific stand that as per the DGCA regulations, he has to take revalidation training for A320 and inspite of repeated advice, the petitioner has not undergone training of A-320 type of aircraft which is mandatory and in the light of the above cited facts, it is not possible for them to impart training in the B787 aircraft and the petitioner also exhibited indifferent attitude in not attending the timely refreshing training of A320 type of aircraft for which he was not available for flying duty and also not discharging his administrative duties. It is further averred by the respondents 2 to 5 that the petitioner is basically an A320 type of aircraft pilot and on account of the deliberate failure on the part of the petitioner in not undergoing the mandatory refresher training, he made himself unfit to fly aircraft and therefore, the question of paying full salary/flying allowance does not arise at all and also denied the allegation of malafide and oblique motive.

13. The petitioner has filed a rejoinder to the counter affidavit denying the allegations and would aver that after 27 years of service and 17,000 flying hours, he is selected and programmed to fly Boeing 787, a high end aircraft and he cannot directed to fly A320 aircraft while on training in B787 aircraft. The petitioner also took a stand that the training report should be sent by the trainer only and despite the fact that he has completed 80% of training without fault, for the reasons best known to the management, his training has been abruptly stopped and he is always ready and willing to undergo training in B787 aircraft and prays for appropriate direction to the concerned authority to dispose of the grievances petition.

14. The respondents 2 to 5 had filed their additional reply and reiterated their stand that conversion to B787 is not a matter of right and does not affect the promotion or seniority and denied the fact that the petitioner had undergone 80% of the training and infact, he had undergone only 20% of training. The respondents 2 to 5 would further aver that technology in B787 and A320 aircraft are totally different and even if a pilot does one booking on B787 aircraft and is reverted to A320 aircraft, he has to do the entire revalidation training for A320 aircraft and the same is the case of vice versa

and simply because the petitioner is flying A320 aircraft for several years, it does not mean that he can fly B787. It is also the stand of the respondents 2 to 5 in the additional reply that since the performance of the petitioner has been found to be unsatisfactory, he has to again undergo the entire B787 training from the beginning, which consists of Ground Classes, Simulator Training, Training on the aircraft (SLF), Route Check Flights etc., and further training involve huge cost to the respondents and for the reasons best known to him, despite receipt of very many communications to submit the original training documents, had sent only scanned copy of B787 training documents, that too after repeated reminders and therefore, prays for dismissal of this writ petition.

15. Mr.N.G.R.Prasad, learned Standing Counsel appearing for the respondents would contend that the matter in issue pertains to imparting training in a technologically advanced aircraft, namely B787 and though the petitioner claims that he has put in 17000 flying hours in A320 type of Aircraft, his performance as a trainee found to be much wanted and inspite of sending very many communications to submit original documents of his training, for the reasons best known to him, he has failed to do so and only after repeated reminders only, sent the scanned copies of the training

documents in respect of B787 aircraft. The learned Standing Counsel appearing for the respondents would further submit that admittedly, the petitioner is flying A320 aircraft for quite some time and in the light of DGCA regulations, he has to undergo revalidation training on A320 aircraft and since he has contributed to his own misery on account of his non-cooperative attitude, he has to borne out the cost of training. The learned Standing Counsel appearing for the respondents would further contend that imparting refresher training to fly a particular type of aircraft is purely technical in nature and in the absence of arbitrariness, this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, may not issue any positive direction and also for the reason that the petitioner is certainly responsible for the stoppage of the aircraft passenger training and also owes duty to the passengers, who are travelling in the aircraft, to reach the destination safely and in the light of non-cooperative attitude exhibited by the petitioner, prayer sought for by the petitioner cannot be granted and prays for dismissal of this writ petition.

16. This Court paid its best attention and anxious consideration to the rival submissions and also perused the entire materials placed before it. This Court has also directed the learned Senior Counsel appearing for the

petitioner to produce the printout of the Operations Manual Part –D, Volume I and it has also been produced.

17. It is not in serious dispute that the petitioner is a senior and experienced pilot and also holding administrative post of Deputy General Manager (Operations) and in the light of the introduction of new aircraft namely Boeing 787, popularly known as “Dreamliner”, he was directed to take Conversion Technical Performance Refresher and PPC IR/LR training to fly the said aircraft as per rules and regulations. The Command Conversion Full Transition Course was also imparted to the petitioner. The typed set of papers filed on behalf of the respondents would disclose the following facts.

17.1. The Training Captain Deepak Dutta submitted The Flight Report for Commander Under Supervision, Supervised Line Flying (SLF) dated 29.12.2013 opining/assessing that (i) the petitioner who was the pilot under training must prepare route better [“could not prepare as had no access jeppliens etc”], (ii) Knowledge Buttittens needs improvement specially safety related like procedures to divert during icing etc., and (iii) Needs to study the SOP (Standard Operating Procedure). The very same Training Captain has submitted another report dated 30.12.2013 opining/assessing that “Refer

previous sheets remarks in which the pilot knowledge was found inadequate/unsatisfactory in certain areas. Pilot cited lack of technical material from ops. department which has been recorded. Hence no discussion on technical. Matter has been referred to DM Operations”.

17.2. The petitioner underwent Simulator Refresher on 20.04.2014 and was examined by Captain Deepak Dutta and he opined in his remarks saying that “Captain was PNF in the session; No call for rotate with engine failed at VI.PF rotated on his own at V2+20; Unable to set up VOR 32 on FMC. Exercise given after T/o with no Non-Normals. Requires further training on FMS procedures and session terminated after 2 hours; Referred to training division for further action.” The Captain Deepak Dutta sent an e-mail communication dated 31.12.2013 informing Mr.Amitabhsingh that the performance of the petitioner has been found unsatisfactory on AI 143/142 Delhi CDG Delhi and also informed him that report in that regard has been handed over to the petitioner on oversight instead of giving to the training division and regretted the same.

17.3. The Supervised Line Flying relating to the petitioner on Sector Delhi/LHR/Delhi was prepared by Captain A.Almeida, Additional GM

Operations, CS In-charge dated 29.01.2014 and sent to SPS Suri and copy marked to three other persons, wherein certain shortcomings are highlighted and it is relevant to extract the same:

“(1) During the pre-flight, he did not know how to ACCEPT the speed sent to the FMC from the EFB.

(2) During the checklist (item trim set), he did not know what ‘zero’ meant, he said it was flaps.

(3) During taxi, he had to be prompted for the take off briefing. While taxiing out ‘HF data link’ message, he did not know how to erase the message which is a very basic action done even during simulator session.

(4) Route preparation was very poor and was not aware of mandatory frequency of Kabul ATC. He was busy inserting winds when he should have been following ATC procedures. Inadequate knowledge of the flight plan and when queried about the emergency descent procedures, he said he would descend to 10000’ when terrain was pointed out, then engine out height was quoted as safety height again when corrected, he then said engine out height was the speed to be maintained.

(5) To obtain any action, on his part, he would press a number of keys not knowing functions of the keys, which shows poor knowledge of the aircraft system.

This reflects that inadequate training/preparation may have led to the above and further, SLF flights would be infructuous.

In view of the above, Capt. Dinakaran's case is to be forwarded to the Training Department for remedial action before he recommences his SLF training".

17.4. In the meantime repeated communications were also sent to the petitioner to send scanned copy of his training documents in respect of B787 aircraft and vide communication dated 13.10.2014, the General Manager (Operations) – fifth respondent herein had informed him that he has not undergone the medical and thus, have lapsed the licence and requested the petitioner to indicate as to when he would be in a position to undergo the same so that arrangements can be made accordingly and the petitioner has successfully completed the medical test on 14.11.2014.

17.5. Captain Rajeev Bajpai has sent an e-mail dated 26.02.2015 with regard to the petitioners B787 aircraft training to the fifth respondent stating that the petitioner has informed the roster section that he has submitted all his original training reports to the Executive Director (Operations), Headquarters (Mr.Harinder Singh), Sr.AGM(F/D) and he has not contacted the Training Department and further indicated that his performance was also not satisfactory.

17.6. Mr.Gopal Nambiar, Fleet Captain, vide e-mail communication dated 06.05.2015 addressed to Captain Rajeev Bajpai, has informed him that the petitioner underwent B787 Simulator Refresher with Captain Deepak Dutta on 20.04.2014 and however, he did not complete the training and was assessed as ***“Not Satisfactory”***; ***He however, did not sign on the report and later claim that he has submitted the same to this office; When it was clarified the same has never been submitted to the office, Captain Dinakar now has submitted the reports and the same has been attached for perusal”***. A request was also made to plan further training in r/o. Captain Dinakar as deemed necessary.

17.7. The fifth respondent, in his communication dated 08.04.2015, addressed to the petitioner stating among other things that he has now only submitted the scanned copy of the reports mentioned in his letter dated 02.04.2015 and also indicated that he is yet to submit B787 documents in original to the office as advised, vide their letter dated 27th /30th March 2015 and that it was the first communication received by him on the subject is not true in toto and the petitioner was further informed that the scanned copies of B787 training documents submitted by him had been forwarded to the concerned authorities for further action on the matter.

17.8. The fifth respondent has sent further communication dated 07.05.2015 stating that inordinate delay on his part in not submitting the aforesaid training documents in original, has resulted in avoidable delay in planning the further training and that the petitioner was called upon to explain the reason for not submitting the original B787 training documents in time as per procedure in vogue and his explanation must reach the office within three working days from the date of receipt of the communication.

17.9. The fifth respondent has sent one more e-mail communication dated 27.05.2015 to the petitioner stating among other things that despite many communications sent, the petitioner did not respond either through phone or through e-mail and therefore, the office was totally unaware of his whereabouts and also indicated that the petitioner has chosen to submit the copies of the training only on 02.04.2015 and his Simulator Refresher Form carried out on 20.04.2014 by Capt. Deepak Dutta still remains unsigned by him and as such, his training records remain incomplete and as a consequence, the place of future training programme cannot be decided. The fifth respondent informed the petitioner that his long disappearance and remaining incommunicado without any explanation had forced certain administrative actions such as marking absent from duty and therefore,

appropriate authorities had decided to stop his passages and his claim that he has not done anything wrong against the organisation would be decided during the enquiry/investigation that would be conducted and his request to drop any action/contemplated action would be considered at that time, depending on the merits.

17.10. The fifth respondent sent an e-mail to plantrgcte@gmail.com dated 03.07.2015 regarding the petitioner seeking advise for revalidation training program on A320 in respect of the petitioner so that they can inform the petitioner and position him at CTE accordingly. Captain A.K.Govil also sent an e-mail dated 07.03.2015 to Captain Kathpaha stating that the progress of the petitioner in B787 was not upto the mark and keeping in view the above, the petitioner to be subjected to revalidation on A320 aircraft with immediate effect. Accordingly, the fifth respondent sent an e-mail communication dated 14.07.2015 to the petitioner informing him that as per the e-mail from Executive Director (Operations) dated 03.07.2015, he has to be taken up for A320 Extended Refresher at Headquarters, New Delhi from 20.07.2015 to 24.07.2015 and necessary SOD arrangements are being made accordingly through Pilot Roster.

17.11. The petitioner, in response to the said communication, reported sick on 19.07.2015 and once again e-mail communication was sent by Captain S.Arulmani dated 29.07.2015 stating that the petitioner subsequently reported fit on 21.07.2015 but they have not heard from him and advised him as to when he is going to attend A320 extended refresher. The petitioner, in the interregnum, has also visited the office of the fifth respondent for the purpose of submitting letters/grievance and the fifth respondent in the e-mail addressed to the Assistant General Manager stated that the petitioner is marked absent when he visits the office for submitting letters etc., and also clarified that the petitioner is to be marked present when he visits office for submitting letters/grievances.

17.12. The Executive Director -Southern Region, Air India Limited, Chennai, in his communication dated 13.01.2016, addressed to the petitioner with regard to charge sheet and subsequent enquiry conducted, imposed him with punishment of reduction of pay by two increments on cumulative basis with effect from 01.12.2015. The delinquency pointed out was that the petitioner has failed to report for flight due to which alternate arrangements had to be made, which has resulted in delay of 50 minutes to the flight and further he was charged for leaving the station without express permission

from the competent authority. The very same official, vide communication dated 11.03.2016, advised the petitioner to make himself available for A320 revalidation training, as he has not been reporting for duties till 20.04.2014.

18. It is the stand of the petitioner that as per Operations Manual Part-D, Volume I, Sub Part -B (Boeing Fleet) referred to above, pilot under training will not be used on previous type once he/she has started Full Flight Simulator Training on the aircraft on which he/she is being converted and once the Aeroplane/FFS (Full Flight Simulator) training phase of an operator's conversion course has been commenced, a flight crew member does not undertake flying duties on another type or class until the course is completed (except if authorized to fly more than one type of aeroplane) or terminated. It is also the stand of the petitioner that he is a type rated and licensed to fly Boeing 787 only and not A320 and admittedly, the petitioner was Pilot Not Flying (PNF) training booking of PPC. It is also the claim of the petitioner that he has so far completed 55 hours out of 100 hours required for PI endorsement in progress and thereafter, route checks are yet to commence, since 45 hours SLF is pending from 26.01.2014.

19. In sum and substance, it is the stand of the petitioner that guidelines in the form of Operation Manual Part-D, Volume 1, referred to above have not been complied with in letter and spirit and since he completed major portion of Common Conversion Full Transition course on B787 aircraft, in all fairness, he should be allowed to continue the training for the purpose of getting familiarization and to fly the said type of aircraft.

20. It is the primordial submission of the learned Senior Counsel appearing for the petitioner by drawing the attention of this Court to the additional typed set of papers filed on behalf of the petitioner that even for the sake of arguments, the training assessment in respect of the petitioner is not satisfactory, he should be imparted with corrective training and necessary corrective/remedial training on the deficiencies observed shall be imparted in consultation with the General Manager -Operations (Trg.)/Additional General Manager- Operations (Training) before being subject to repeat session. The learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to Clause 1.2.2.1 – Pilot Proficiency Check (PPC) of the Operation Manual and would submit that in case “the Pilot fails a second time, he/she will, after appropriate counseling and corrective training,

undergo a repeat PPC/IR under observation of General Manager Ops.(Trg.) and he/she, on successful completion of this PPC/IR, will only be scheduled on routes after obtaining clearance from the General Manager Operations(Trg.)/Executive Director (Trg.)”. Insofar as failure of Simulator Refresher Check is concerned, the learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to Clause 1.0.7- Failure in Simulator Refresher/Check and would submit that non satisfactory performance by any trainee during the refresher/check, must be brought to the notice of the Manager Operations (Trg.)/Additional General Manager Operations (Trg.) by the Trainer and necessary corrective/remedial training on the deficiencies observed shall be imparted in consultation with the General Manager Operations (Trg.)/Additional General Manager Operations (Trg.) before being subject to repeat session and the requisite corrective training and the duration thereof shall be decided depending on the performance of the training. As per Clause 1.0.8 – Administrative Policy – Training Review Committee has been constituted consisting of General Manager Operations (Trg.), NB/WD, Deputy/Joint General Manager Operations (Trg.) based on CTE/OTD and Fleet Captain and one Examiner on that Fleet. The functions of the said Committee are to review repeated failure cases for giving additional training/change of Instructor, reversion to

earlier type of aircraft because of repeated failures, termination of service, is left to the functions of the operations department.

21. Insofar as directing the petitioner to go for conversion training in A320 aircraft is concerned, the learned Senior Counsel appearing for the petitioner has drawn the attention of this Court to Clause 1.1. - Conversion Training and would submit that as per Clause 1.1. A(8), once the aeroplane/FFS (full flight simulator) training phase of an operator's conversion course has been commenced, a flight crew member does not undertake flying duties on another type of class until the course is completed (except if authorized to fly more than one type of aeroplane) or terminated. The learned Senior Counsel appearing for the petitioner has further drawn the attention of this Court to Route Check Form signed by the Check Pilot/Instructor/Examiner Mr.R.Brenner dated 15.12.2013 and 16.12.2013 and would submit that the instructor had recorded satisfactory performance on the part of the petitioner and even assuming without admitting some deficiencies have been noted, as per the above said manual, necessary corrective/remedial training on the deficiencies pointed out should have been imparted to the petitioner in consultation with the General Manager Operations (Trg.) and the said course have not been adopted and with oblique

and malafide motive, conversion training session/course in respect of the petitioner to fly B787 aircraft has been abruptly terminated with a further direction to undergo Conversion Training on A320 aircraft and also with a further direction to the petitioner to meet out such expenses for training by himself and even as per the above said guidelines, he cannot be asked to undergo such a training and prays for interference.

22. In the light of the submissions made by the learned Senior Counsel appearing for the petitioner, on the various contents of the Operations Manual Part-D, Volume I, Sub Part-B (Boeing Fleet) prepared by the Executive Director -Training, which has also been produced before this Court at his instance, this Court has gone through the contents of the same and it is relevant to refer some of the Clauses.

23. Clause 1.0.5. deals with Failure Policy (Command) and Clause 1.0.6 which deals with Failure Policy (First Officer) would indicate among other things that the pilot under training will not be utilized on previous type once he/she has started Full Flight Simulator Training on the aircraft on which he/she is being converted. Insofar as First Office is concerned, necessary corrective/remedial training on the deficiencies observed shall be

imparted in consultation with the General Manager Operations (Trg.) / Additional General Manager Operations (Trg.) before being subject to repeat session and the requisite corrective training and the duration thereof shall be decided depending on the performance of the training. As per Clause 1.0.8- Administrative Policy, it is open to the Training Review Committee to review of repeated failure cases for giving additional training/change of instructor and termination of training in respect of *ab initio* pilots in case of failure in the examinations (ground/simulator) more than 3 attempts or not adhering to the stipulations as laid down in the Service Agreement/Surety Bond and Counseling of trainees who have repeated failures and analysis of the root cause and measures to improve the training curriculum/modifications required to be considered. Insofar as the stand of the petitioner that he cannot be directed to undergo reconversion course in respect of A320 type of aircraft, the Training Review Committee is also having power to order reversion to earlier type of aircraft because of repeated failures, termination of service etc.

24. A perusal of the counter affidavit and additional reply to the rejoinder filed by the petitioner would indicate that on number of occasions, the performance of the petitioner in the training was not upto the mark and

remarks were also made that his case be referred to the Training Department for further action. The petitioner did not submit the reports in original to the training section and inspite of repeated e-mail communications sent, he has failed to do so for the reasons best known to him and submitted only scanned copies of the same and that too belatedly.

25. The Executive Director (Operations), in his e-mail communication dated 06.05.2015, addressed to Captain Rajeev Bajpai, informed him that the petitioner underwent B787 Simulator Refresher with Captain Deepak Dutta on 20.04.2014 and however, he did not complete the training and was assessed as 'Not Satisfactory' and he did not sign on the report and later claimed that he has submitted the same to the office and also indicated that the said official requested to plan for further training to the petitioner on topmost priority. The fifth respondent, in his communication dated 20.05.2015 to the Executive Director Operation and all concerned stating that the petitioner's B787 training may be arranged and appropriate administrative action may also be initiated concurrently and based on this, the Executive Director (Operations) has sent an e-mail dated 03.07.2015 to the Executive Director (Training) to plan for A320 revalidation training for the petitioner with immediate effect, as his progress on A787 training was not upto the mark.

26. It is the stand of the respondents 2 to 5 that the petitioner did not cooperate for A320 refresher training program and also exhibited indifferent attitude in not attending the timely refreshing training of A320 type of aircraft, for which he was not available for flying duty and also not discharging his administrative duties as a Deputy General Manager and because of his deliberate failure in not attending training, he made himself unfit to ply aircraft and as such they cannot be blamed.

27. It is to be pointed out at this juncture that while commanding/piloting aircraft, the Command Pilot as well as the First Officer are not only in-charge of safety of the aircraft, but also passengers travelling in the said aircraft and taking into account of the said important factor, the Operations Manual have been prepared by Air India in an exhaustive manner. This Court has perused the entire Volume I, Part D of the said manual and the contents of the same are highly technical in nature and the training as well as Conversion Training enumerated is in tune with the policy decision of the safety of the aircraft in general and safety of the passengers in particular.

28. It is a settled position of law that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, shall not substitute

its own judgment to that of an expert particularly in the highly technical fields. The scope of enquiry by the Court is limited only to find out whether the technical requirements of law, in arriving at a decision, are followed or not or whether the decision is vitiated by malafides, fraud etc. If the decision of an expert bodies are based on the proper data (evidence) and if the decisions are not coloured by any extraneous considerations and if the decisions show proper application of mind, such decisions must be assumed to be reasoned orders. [*See Om Prakash Mittal v. Council of Architecture and Others, AIR 1983 Delhi 223*].

29. In *Dental Council of India v. Subharti K.K.B. Charitable Trust [(2001) 5 SCC 486]*, the Hon'ble Supreme Court of India reminded the High Courts that the Court's jurisdiction to interfere with the discretion exercised by the expert body is extremely limited.

30. In the light of the contents of the Operations Manual Part-D, Volume I, coupled with the stand of the respondents 2 to 5, this Court *prima facie* is not in a position to differ from their views as to the performance of the petitioner in respect of the transition training imparted to the petitioner on B787 aircraft. It is not as if the petitioner is left with no other remedy. It is

relevant to extract Clause 1.0.9 of Flight Crew Training Programme which deals with Appeals:

“1.0.9. APPEALS

A. An Appellate/Assessment Board consists of the following:

- 1) Exec. Director – Training
- 2) Exe. Director – Operations or his nominee

In case none of them are flying the particular type of aircraft, they may co-opt an Examiner/Instructor of that type.

B. Functions

- i) To consider Appeals against the assessment of Check Pilots/Instructors/Examiners.
- ii) To consider Appeals of failure cases.

C. All Appeals are to be referred to the Appellate/Assessment Board which would decide the course of action depending on the merits of each case.”

31. The petitioner, in the light of effective alternative remedy available, is always at liberty to file an appeal to the Appellate Authority/Assessment Board and if he is so advised, may file an appeal within a period of three weeks from the date of receipt of a copy of this order and the Appellate Authority/Assessment Board, on submission of the appeal, shall entertain the same, if the papers are otherwise in order and decide the said appeal on it's own merits and in accordance with the relevant norms/regulations within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner.

32. Insofar as the contention put forward by the petitioner as to the reversion to earlier type of training, namely A320 aircraft, in the light of Clause 1.0.8. - Administrative Policy, the Operations Department is entitled to take such a decision and the Executive Director - Operations in his e-mail dated 03.07.2015 addressed to Executive Director (Training) to plan for A320 revalidation training for the petitioner with immediate effect as his progress on B787 training was not upto the mark, as referred to in Para 21 of the counter affidavit, *prima facie* appears to be sustainable. However, it is to be noted at this juncture that in para 15 of the additional reply filed by the respondents 2 to 5 dated 08.11.2016, the cost of further revalidation training program in A320 aircraft have to be borne by the petitioner.

33. It is not in dispute that the petitioner is a Senior Pilot in the services of Air India Limited for nearly 27 years and according to him, he has logged more than 17000 hours and he is having an endorsement for B787 as well as A320 type of aircraft and prior to his induction in B787 aircraft, was mostly flying A320 type of aircraft. In the light of very many years of past service rendered by the petitioner, it is open to the respondents 2 to 5 to waive the cost of revalidation training on A320 aircraft, subject to the result

of the appeal that may be preferred by him.

34. The respondents 2 to 5 may also consider as to imparting transition training/Command Conversion Full Transition Course on B787 aircraft to the petitioner subject to the result of the appeal to be preferred by him before the Appellate Authority/Assessment Board. In the light of the effective alternative remedy available coupled with the technicalities involved, this Court is not in a position to give any positive direction in favour of the petitioner as of now.

35. **In the result, this Writ Petition is dismissed** with above observations. It is made clear that the observations/findings given herein are only for the purpose of disposal of this writ petition and the respondents 2 to 5 need not be influenced by the same in deciding the case of the petitioner on merits and in accordance with law, subject to the result of the appeal, if any, to be preferred by the petitioner before the Appellate Authority/Assessment Board. No costs.

02.03.2017

Index : Yes / No

Internet : Yes / No
jvm

To

- 1.The Secretary,
Union of India,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport, New Delhi-110 003.
- 2.The Chairman and Managing Director,
Air India Ltd.,
Airlines House,
Gurudwara Rakabganj Road,
New Delhi.
- 3.Air India Ltd.
Airlines House,
Executive Director (OPS)
Safdarjung Airport,
New Delhi-110 003.
- 4.Air India Ltd.
Airlines House,
Executive Director,
Southern Region,
Meenambakkam Airport, Chennai-600 027.
- 5.General Manager (OPS)
Operations Department, AIR India Ltd.,
Meenambakkam Airport,
Chennai -600 027.

M.SATHYANARAYANAN. J

jvm

Order
in W.P.No.23430 of 2015