IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved On : 17.11.2017
Judgment pronounced On : 18.12.2017

LPA 694/2017 & C.M. No.38734-38735/2017

AIR INDIA LTD ..... Appellant

Versus

CAPT SURESH KUMAR & ANR ..... Respondents

LPA 696/2017 & C.M. No.38741-38742/2017

AIR INDIA LTD ..... Appellant

Versus

CAPT A K DEWAN & ANR ..... Respondents

Advocates who appeared in this case:

For the Appellants :Mr. Lalit Bhasin, Ms. Ratna Dwivedi Dhingra, Ms. Bhavna Dhami and Mr. Ajay Pratap Singh, Advocates

For the Respondents : Ms. Anjana Gosain, Advocate

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present appeals essentially seek quashing of the common judgment and order dated 22nd March, 2017 passed in W.P.(C) No.780/2004 titled as '*Capt. Suresh Kumar vs. Union of India & Anr.'* and W.P.(C) No.13357/2004 titled as '*Capt. A.K. Dewan vs. Indian Airlines Limited*', whereby, whilst allowing the said petitions, the appellant was directed to pay flying allowances to the respondents in addition to the grant of pay with respect to the accumulated leave period available to the credit of the latter, at the time they were declared 'Permanently Medically Unfit' (hereinafter referred to as 'PMU'). However, the subsequent order dated 04.08.2017, whereby the appellant's applications seeking clarification of the said impugned order, came to be dismissed by the learned Single Judge is not assailed.

2. The issue that arises for consideration in the present appeals falls within a very narrow compass, inasmuch as, *whether the respondents employed with the appellant are entitled to the payment of flying allowances at the time of encashment of accumulated leave upon being declared PMU and grounded as a consequence thereof.*

3. In the instant case, the respondent Nos. 1 and 2 were Executive pilots with the appellant. They were declared PMU on 03.11.2000 and 15.11.2000 respectively, and were consequently grounded.

4. The respondents superannuated on 31.05.2003 and 30.09.2002 respectively, and upon superannuation claim not to have received Leave Encashment including the flying allowances to which they were duly entitled; in accordance with the subject rules and notifications of the appellant organization.

5. In this behalf, admittedly, the erstwhile Indian Airlines Ltd. has issued two circulars dated 08.09.1972 and 28.05.1974. The adjudication of the issue requires that the same be extracted in full to understand their ambit and application. The said circulars are, therefore, extracted hereinbelow:-

> "**Circular dated 8.9.1972**
>
> Financial Controller
I.A. Hqrs.
New Delhi
>
> FA& CAO BBY/CAL
Madras & Delhi
Sr. AFC. Hqrs.
Dy. C.A.O. Hyd.
>
> Ref. No. Fin/Rules/93/2458 Sept. 8, 1972
>
> Sub: Emoluments to permanently/temporarily Medically unfit pilots
>
> A request has been raised as to what Pay & Allowances would be admissible to permanently/temporarily medically unfit Pilots during Casual Leave and Sick Leave which accrued to him during the period of his disability when their licences are not current.
>
> The clarification is given as under:
>
> 1. Permanently Disablement
> No leave should accrue to a pilot after availing of his leave due to him on the day of his permanently medically unfitness. He is entitled for full pay **and allowances** for the period of leave which he has earned during the period when his license was current and thereafter he will get Annuity as per Rules.
>
> 2. Temporary disablement

He will get basic pay and Dearness allowance during Casual & Sick Leave which will accrue to him during the period of his disablement when his licence was not current.

(R.K. Goel)
Asst. Fin. Controller (R)
f. Financial Controller"

"Circular dated 28.5.1974

From:	To:
F.C.	The Regional Director,
I.A. Hqrs.	BBY/CAL/DLH/MAA
New Delhi	Station Head, Hyd.
	Director of Training, CTE Begumpet
Ref. No. Fin/Rules/72/138	May 28, 1974

Sub: Medically unfit Executive Pilots- Payment of Flying Allowance-

According to the existing practice, an Executive Pilot, on becoming medically unfit, has to proceed on leave immediately. During the period of leave which was to his credit on the date of his becoming medically unfit the Executive Pilot concerned is **entitled to the payment of flying allowances.**

2. It has now been decided that as and when an Executive that as and when an Executive Pilot becomes medically unfit the following procedure may be followed:

a/ From the date of medical unfitness he may be paid flying allowances for the period which would be covered by all types of leave due to him on the date of his medical unfitness, even though he continued working in his existing ground job.

b/ Special Sick Leave would be taken to have lapsed and he would not be entitled to this type of leave at a future date. A confirmation to this effect should be obtained from the concerned Executive Pilot in each case.

c/ Privilege Leave standing to his credit on the date of medical unfitness will be carried forward and future accumulation will continue to be made as per the rules applicable to general employee. Similarly, casual leave and normal sick leave will be admissible as per the rules applicable to the general employees. An undertaking should obtained from such Executive Pilot that they will be entitled to Sick Leave as per general employee Services Rules.

d/ The Management has the option to decide if the Executive Pilot would be retained in the same job or provided an alternate ground job after becoming medically unfit or placed on annuity. The Management, will, in future, take a decision on this point within three months from the date of medical unfitness. In cases where a ground job is NOT offered to an Executive Pilot, he will have the option to proceed on leave in the same manner as a Line Pilot does. In such an eventuality, he may be paid the flying allowances during the period of 3 months or less when he was on ground job but it will have to be ensure that the flying allowances are NOT paid to him for a period longer than the period of leave due to him on the date of his medical unfitness.

3. For this purpose and Executive Pilot will include the following:

a/ Director of Operation
b/ Pilot Regional Director
c/ Director of Training
d/ Operations Manager
e/ Dy. Operations Manager

4. If there are any clarification required, they may please be obtained from us.

5. Please acknowledge receipt.

(Kripal Chand)
Financial Controller"
(emphasis added)

6. A plain reading of the above extracted notifications clearly and unequivocally lead to the following inescapable conclusions:

a) That a PMU pilot is entitled not only for full pay but also allowances, for the period of leave which he has earned during the period when his licence was current; and
b) That an Executive pilot would receive flying allowances, in addition to the grant of full pay, towards leave encashment, for the period of accumulated leave, which stood to his credit, at the time of becoming medically unfit.

7. Learned counsel appearing on behalf of the appellant would submit that subsequent to being declared PMU, the respondents who were Executive pilots were grounded and were entrusted with executive duties; and owing to such loss of license on being declared PMU, compensation has already been paid to them and the same includes flying allowances as well.

8. It is further the case of the appellant that, towards Leave Encashment, an Executive pilot who does not undertake any actual flying is only entitled to fixed salary and not entitled to flying allowances, inasmuch as, flying allowances can only be calculated on the basis of actual number of hours flown. Therefore, in the present case, the respondents having continued their ground executive duties on being declared PMU, are not entitled to flying allowances which are paid on an hourly basis for performing flying duties, at the time of encashing leave which stood to their credit.

9. In this behalf, reliance would be placed on Regulation 124A issued by the appellant organization, which is extracted hereinbelow :

> "124A ** A Encashment of Leave
>
> (1) Subject to the provision of sub- regulator(2), an employee on Indian scale of pay shall be eligible to encash privilege leave in accordance with the following conditions, namely:-
>
> <u>Regulations 124A (1)</u>
>
> (a) The encashment of Privilege Leave shall be allowed at the option of the employee.
>
> (b)The maximum number of days for which leave can be encashed shall be half of the Privilege Leave lying at the credit of an employee on the date of encashment reduced by one year's entitlement to be retained at the credit of the employee.
>
> (c) encashment of Privilege Leave shall be allowed only once in a financial year:
>
> (d) For the purpose of encashment of Privilege Leave only pay as counting for provident fund contribution and additional dearness allowance shall be taken into account:
>
> (e) The rate of encashment per day shall be calculated on the basis of the emoluments specified in condition (d) and drawn by an employee in the month preceding the month in which he applies for encashment divided by thirty:
>
> (f) No encashment of Privilege leave shall be permissible to an employee during the period of his suspension from service.
>
> (g) No deduction other than income-tax shall be made from the amount payable if the encashment is for a period less than

thirty days.

(h) The amount payable towards the privilege leave allowed to be encashed shall not be reckoned as pay for any purpose including Provident Fund contribution:

(i) The period of Privilege leave permitted to be encashed shall not be reckoned for the purpose of earning Privilege league or any other kind of leave."

10. The learned Single Judge after due consideration of the submission made on behalf of the appellants inter alia observed as follows in paragraph 7 of the impugned order dated 22.03.2017:

> "7. I cannot agree with the argument urged on behalf of the respondent no. 2/employer because no doubt logically as regards a person who does not fly, it would not be possible to calculate total number of hours of flying in a month for determining the hourly of flying allowance per month, however, the language of Rule 124A with its sub para (d) has to be read with the respondent no. 2's own circulars dated 8.9.1972 and 28.5.1974 which are produced above. These circulars in clear cut terms allow payment of flying allowance even as regards the leave period of the Executive Pilot, and which circulars therefore remove doubt as regards non-payment of flying allowance during the accumulated leave period, by clearly using the language of payment of flying allowance for the leave periods which are accumulated."

11. Having heard learned counsel appearing on behalf of the parties and perused the case record, we are of the view that, a conjoint reading of the circulars dated 08.09.1972 and 28.05.1974, as well as, the said Regulation

124A requires that for the period of leave which stood to the credit of the respondents as PMU pilots, on the date of their becoming medically unfit, they are entitled *inter alia* to payment of flying allowances in addition to the grant of full pay.

12. In view of the foregoing discussion, in our considered view, flying allowances that had accrued to the respondents for the period of leave which stood to their credit on the date of their becoming medically unfit, are liable to be disbursed to them at the time of encashing such leave, according to the extant rules and Regulations of the appellant organization.

13. Therefore, the argument advanced by the appellant to the effect that the appellants as Executive pilots are not entitled to flying allowances for the leaves that stood to their credit or that all applicable allowances have been disbursed is untenable and are rejected.

14. We are, therefore, of the opinion that the present appeals warrant no interference with the order dated 22nd March, 2017, passed by the learned Single Judge of this Court.

15. However, it is made clear that this Court has not expressed any opinion on the mode of calculating and converting the number of days of accumulated leave of the respondent, in relation to the flying allowance payable thereon, but only determined the issue elaborated in the present case of executive pilots being entitled thereto, at the time of encashment of accumulated leave, upon being declared PMU. The issue struck hereinabove is decided in the affirmative and in favour of the respondents.

16. The present appeals are accordingly dismissed with no order as to costs. Pending applications also stand disposed off.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA
(JUDGE)

DECEMBER 18, 2017
dn/ns