

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.991 of 2017
and
C.M.P.No.13824 of 2017

Capt.S.Dinakara ... Appellant/Petitioner

-vs-

- 1.The Union of India, rep.by its Secretary
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi-110 003.
- 2.Air India Limited,
Airlines House,
Gurudwara Rakabganj Road,
New Delhi-110 001,
rep.by its Chairman and Managing Director
- 3.Air India Limited,
Airlines House,
Executive Director (OPS),
Safdarjung Airport, New Delhi-110 003.
- 4.Air India Limited,
Airlines House, Executive Director,
Southern Region,
Meenambakkam Airport,
Chennai-600 027.
- 5.The General Manager (OPS),
Operation Department,
Air India Limited,
Meenambakkam Airport,
Chennai-600 027.

... Respondents/Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.No.23430 of 2015
dated 02.03.2017.

Prayer in W.P.No.23430/2015 : Writ petition filed under Article 226 of 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 Appellant :: Mr.AR.L.Sundaresan,
Sr.Counsel for
Mr.R.Meenakshi Sundaram

For Respondents:: Mr.J.Madhana Gopal Rao for R1
Mr.K.Srinivasamoorthy for
Mr.N.G.R.Prasad for R2 to R4

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

This writ appeal has been filed against the order passed by this Court in W.P.No.23430 of 2011 dated 02.03.2017.

2.The case of the appellant would run thus:

(i)The appellant joined the services of Indian Airlines as Commercial Pilot (P2) on 31.10.1988 and sent to CTE Hyderabad for B737 Aircraft endorsement. The appellant 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. 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.

(ii)It is stated by the appellant 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 impeachable safety record, without any incident or accident. The appellant 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 appellant further states 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 appellant 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 appellant also filed W.P.No.2003 of 2011 with regard to his de-roaster in respect of an accident that had happened at Cochin, in which an order of ad-interim direction was passed directing the respondents to permit him to resume for licence renewal training for flying duties and accordingly he was permitted to undergo training to qualify for flying duties and the said writ petition was dismissed as withdrawn on 26.08.2011.

(ii) The main grievance expressed by the appellant 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.

3. With the above background, the appellant filed the writ petition in W.P.No.23430 of 2011 praying for a direction to the respondents 3 and 4 to initiate necessary programme for the appellant 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 the rules and regulations prescribed under the Aircraft Act.

4. Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the appellant relying upon Point No.1.0.6 - Failure Policy (First Officer) in respect of the Flight Crew Training Programme, submitted before the writ Court that even if the performance of the appellant 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.

5.A counter affidavit was filed on behalf of the respondents 2 to 5 before the writ Court, in which it is stated that the appellant's B787 simulator refresher training was carried out by Capt. Deepak Dutta, Examiner on B787 Aircraft on 20.04.2014 and since the appellant 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 appellant for affixing his signature and reporting to the training session along with the report and however, the appellant did not report to the training section along with the report for taking further steps regarding his training. The appellant 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. Being the Executive Pilot, he has to perform both flying duties and administrative work also but 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.

6. Considering the arguments advanced on either side, the learned single Judge dismissed the writ petition by order dated 02.03.2017. Challenging the order passed in the writ petition, the present appeal has been filed.

7. The learned senior counsel for the appellant has argued the matter in the similar lines as argued before the learned single Judge in the writ petition. Apart from that, he submitted that a sum of Rs.77,000/- has been deducted from the salary of the appellant every month towards the training given to him and hence sought for a direction to the respondents not to deduct the said sum from his salary, as the cost of training has to be borne only by the employer.

8. The learned counsel for the respondents 2 to 4 has submitted that the appellant had not cooperated in the training given to him. He submitted that the appellant has to undergo sufficient training, since it was found that the appellant's performance was not upto the mark in the B787 simulator refresher training carried out by Capt. Deepak Dutta, Examiner on 20.04.2014. Hence, the trainer was forced to discontinue the training with the remark that his case be referred to Training Division for further action. The appellant had not reported to the training section along with the report for taking further steps regarding his training. Many communications have been sent

to the appellant to submit his original reports to the office of the fifth respondent, but he did not do so. He also submitted that the appellant 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. He further submitted that only scanned copies of reports were submitted instead of original ones. He further submitted that the appellant did not cooperate for A320 refresher training programme 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 the respondents cannot be blamed.

9. Heard the learned counsel on either side and perused the materials available on record.

10. It appears that the appellant's performance was not upto the mark in the B787 simulator refresher training carried out by Capt. Deepak Dutta, Examiner on 20.04.2014 and hence the trainer was forced to discontinue the training with the remark that his case be referred to Training Division for further action. The appellant had not reported to the training section along with the report for taking further steps regarding his training.

11. As per the submission made by the learned counsel for the respondent-Air India, the appellant has to undergo sufficient training in A320 aircraft. As per his submission, the appellant was not declared successful in flying the B787 aircraft. According to the learned senior counsel appearing for the appellant, 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 authorities, but 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. Further, the cost of further revalidation training has been unduly charged on him. In this connection, without going to the technicalities, we would only say that the appellant has to undergo sufficient training. If the decision of expert bodies are based on the proper data (evidence) and if the same 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. It is not a case of mala fides. Sufficient training is very much important to the pilots, as it involves the lives of the third parties. The appellant claims that he is in the services of 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 impeachable safety record. But it is learnt that the said period of 17000 hours pertains to flying A320 flights.

12. Now it has been brought to our notice that only about 3 to 4 numbers of B787 flights are available. Further, it is seen that after a very long time, the appellant came to work and he is now operating A320 flights, as required by Air India. As per the stand taken by Air India, since the trainer has observed that the appellant is not upto the mark for flying B787 flights, he has to undergo further training. It is also submitted that even in A320 flights, the appellant has to undergo further training in view of advancements taking place day by day. We cannot simply brush aside the submissions made by the learned counsel appearing for Air India. Safety is the most important aspect. In view of the above stated circumstances, recording the submission made by the learned counsel for the respondent-Air India, we are of the opinion that the appellant has to undergo further training as observed by the trainer and if he is found to be suitable for flying B787 flights, after obtaining the necessary certificate, it is for the Airlines to allow him to fly B787 flights, in accordance with the rules and regulations of Air India.

13. With the above observation, the writ appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS X)

//True copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of India,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi-110 003.

2.The Chairman and Managing Director,
Air India Limited,
Airlines House,
Gurudwara Rakabganj Road,
New Delhi-110 001.

3.The Executive Director (OPS),
Air India Limited,
Airlines House,
Safdarjung Airport, New Delhi-110 003.

4.The Executive Director,
Air India Limited,
Airlines House,
Southern Region,
Meenambakkam Airport,
Chennai-600 027.

5.The General Manager (OPS),
Operation Department,
Air India Limited, Meenambakkam Airport,
Chennai-600 027.

+1cc to Mr.N.G.R.Prasad, Advocate SR.No.45081

+2cc to Mr.R.Meenakshi Sundaram, Advocate, S.R.No. 45247
(04/09/2018)

W.A.No.991 of 2017
and
C.M.P.No.13824 of 2017

SSV(CO)
GN(31/07/2018)

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