IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos. 6975 of 2010
MP.No.2 of 2010

S.Jagannatha Rao ... Petitioner

Vs.

1. Air India Limited,
Rep. by its Chairman and Managing Director,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001.

2. General Manager - Finance,
Air India Limited,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001.

3. Chief Manager - Finance,
Finance Department, Air - India,
Air India Limited,
Meenambakkam, Chennai - 600 027.

... Respondents

(Cause Title amended as per order dated 09.09.2019 in W.P.No.6975/2010 and memo dated 09.09.2019)

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records of the respondents culminating in the impugned communication of the 3rd respondent dated 16.11.2000 bearing Ref:SRFD/CMF/PR/278 arising out of impugned letter dated 15.09.2009 of the 2nd respondent bearing Ref.No.Fin/Rules/46B/772, quash the same and direct the respondents to give suitable appointment to the petitioner in engineering department or any other equivalent post wherein the drawings and grade of the petitioner as Flight Engineer are protected as per Memorandum of Settlement dated 01.03.2000, 24.01.2002, 31.08.2006, 20.02.2007 and 23.03.2007.

For Petitioner : Mr.K.Ganesan

For Respondents : Mr.K.Srinivasamurthy

O R D E R

The respondent have filed a memo on 09.09.2019, for change of cause title on the ground that National Aviation Company of India Ltd, now changed to Air India Limited. The memo is taken on record. Registry is directed to make necessary amendment in the cause title.

The petitioner was working as a Flight Engineer in Air India Limited. The petitioner had joined as a Trainee in the Engineering Department in 1977. After successful completion of training, he became a Technical Officer in 1979 and Flight Engineer on 03.11.1982. He had a license for A300-B2/B4 aircraft. In A300-B2/B4 aircraft, the cockpit had 3 crew members, Commander/Captain, First Officer and Flight Engineer.

2. The Air India Limited took a decision to phase out A300-B2/B4 aircraft from its fleet. The Flight Engineers who had a license only for flying such aircraft had to be rehabilitated. A meeting was held for the purpose of rehabilitating such Flight Engineer. A memorandum of settlement dated 31.08.2006 was entered into between the Management of Indian Airline Limited and the Indian Flight Engineers' Association. Clause 2 of the memorandum of settlement deals with the temporary medical fitness and it reads as under:-

> "2. Temporary Medical Unfitness:-
>
> 2A. In the event of f Flight Engineer/Sr.Flight Engineer being declared temporarily medically unfit he will be eligible for a monthly on account payment which will be computed at one percent of the maximum compensation applicable. The monthly on account payment will be payable after the date he last eercised the privilege of his license. The payment of this amount shall be for a period not exceeding 24 months in aggregated in the entire period of service. The Flight Engineer/Sr.Flight Engineer will be required to simultaneously avail at leave due to him from the day he is declared TMU unless he is roistered for simulator duties/assignment in Flight Safety/Operations Department.
>
> 2B. In case of Flight Engineers/Sr, Flight Engineers is inrvolved in accident while 01n duty he would be entitled to temporary disablement benefits as per the existing compensation rules However, if during tins period of temporary disablement he ;s declared Temporarily Medically Unfit by CME/DGCA approved medical board and such TMU is directly attributable to the injury arising out of the accident, the Fliglit

Engineer/Sr. flight Engineer from the date he is so declared TMU by the CME/DGCA approved medical board writ have the option to either claim compensation as provided for under the existing compensation rule or TMU compensation as indicated at para 2A above during the period he is TMU. However, in this even the TMU compensation will not be adjusted from the compensation payable when a Flight Engineers /St. Flight Engineers is declared Permanently Medically Unfit.

2C. Flight Engineers/Sr, Flight Engineers who avoid undergoing medical examination are not eligible for the monthly payment on account of loss of license.

2D. All other terms and conditions regarding loss of licence, temporary medical unfitness will remain unchanged except as mentioned in 2A."

3. A reading of Clause 2 would show that it was available only for such of the Flight Engineers who were declared temporarily unfit. Thereafter another memorandum of settlement was entered into between the Flight Engineers Association on 24.01.2002, who had been demanding for a scheme of rehabilitation for the Flight Engineers on the ground of phasing out of A300-B2/B4 aircraft. The Board of Indian Airlines approved the rehabilitation scheme. Clause 1, Clause 7 and Clause 16 of the memorandum of settlement are being reproduced:-

"Clause 1: Flight Engineers provided with alternate employment will be eligible for protection of their basic pay only within the scale of pay they are appointed to. The difference in basic pay shall be paid as Personal Pay which will qualify for PF contribution, calculation of VDA and HRA as applicable from time to time.

Clause 7: Flight Engineers irrespective of their existing scales of pay will obtain Solo Flight Release Certificate within 25 hours. In case of their failure to do so, the cost of training will be recovered from them and the training will stand terminated.

Clause 16:Flight Engineers who fail to qualify at any stage during their training as pilots will be entitled to all assistance to renew their Flight Engineer's license including Medical and will be utilized as Flight Engineer on A-300 aircraft till it is phased out from the fleet of Indian Airlines."

4. On account of certain differences regarding temporary medical unfitness and revision of loss of license amounts etc., one more memorandum of settlement was entered into on 31.08.2006. Clause 2(A), Clause 2(B) and Clause 5(D) are reproduced:-

"2A. In the event of f Flight Engineer/Sr. Flight Engineer being declared temporarily medically unfit he will be eligible for a monthly on account payment which will be computed at one percent of the maximum compensation applicable. The monthly on account payment will be payable after the date he last exercised the privilege of his license. The payment of this amount shall be for a period not exceeding 24 months in aggregated in the entire period of service. The Flight Engineer/Sr.Flight Engineer will be required to simultaneously avail at leave due to him from the day he is declared TMU unless he is roistered for simulator duties/assignment in Flight Safety/Operations Department.

2B. In case of Flight Engineers/Sr, Flight Engineers is involved in accident while 01n duty he would be entitled to temporary disablement benefits as per the existing compensation rules However, if during tins period of temporary disablement he ;s declared Temporarily Medically Unfit by CME/DGCA approved medical board and such TMU is directly attributable to the injury arising out of the accident, the Fliglit Engineer/Sr. flight Engineer from the date he is so declared TMU by the CME/DGCA approved medical board writ have the option to either claim compensation as provided for under the existing compensation rule or TMU compensation as indicated at para 2A above during the period he is TMU. However, in this even the TMU compensation will not be adjusted from the compensation payable when a Flight Engineers /St. Flight Engineers is declared Permanently Medically Unfit.

5B. The quantum of Loss of License insurance amount benefits to Temporarily Medically Unfit Engineers and Annuity will be applicable to those declared TMU/PMJ on or after 01.09.2004 and shall remain in force till 31.08.2010 and thereafter till the settlement is terminated by either party by giving a minimum of two months notice of termination in writing.”

5. The A300-B2/B4 aircraft was completely phased out on 31.03.2008. The petitioner fell ill and underwent a surgery on 11.04.2008. He was given a temporary unfit allowance and he underwent a bypass surgery. He was given a sum of Rs. 5,05,355/- as temporary unfit allowance between April 2008 to March 2009.

6. Since the petitioner was having a license only for A300-B2/B4 aircraft, he had an option either to become a Pilot or take voluntary retirement or to get rehabilitation to some other posts. The petitioner was opted to take a third option and he was found suitable for the appointment to the post in Material Management Department. Accordingly, a letter dated 12.03.2009

was issued by the Board stating the terms and conditions of the rehabilitation in the Material Management Department. The petitioner appointed as Deputy General Manager at Chennai on 16.04.2009.

6. The respondents are therefore claiming that the petitioner has been unduly given the temporary unfit allowance and are claiming the return of the same. The petitioner is challenging that he has been wrongly placed as Deputy General Manager which he has accepted under protection and also that he was entitled to temporary unfit allowance as per the memorandum of settlement. The order appointing him as a Deputy General Manager and the order asking the petitioner to refund the temporary unfit allowance are challenged in the instant writ petition.

7. Heard the counsel for the parties.

8. The petitioner states that admittedly he was appointed as Flight Engineer. He was working in A300 Aircraft. since A300 were being phased out, there were regular settlement talks between management and Flight Engineers Association and various memorandum of settlement were entered into. It was decided to rehabilitate the Flight Engineers who were operating the A300 aircraft. According to the learned counsel for the petitioner, till the petitioner was a Flight Engineer he is entitled to all the benefits has mentioned in the memorandum of settlement and the memorandum of settlement more specifically, one who entered into on 31.08.2006, specifically states that all terms and conditions regarding the loss of license, temporary unfit allowance will remain unchanged, except as mentioned in Rule 2A (quoted supra).

9. According to the learned counsel for the petitioner, since the petitioner was appointed as Deputy General Manager only in the year 2009, he was entitled to get the benefits of temporary unfit allowance for the reason that he continued in the post of Flight Engineer and under the terms of memorandum of settlement, he was entitled to the benefit of temporary unfit allowance till he certified as a Flight Engineer. It is worthwhile to mention here that the memorandum of settlement only protects the basic pay to the Flight Engineer who took alternate enjoyment. The learned counsel for the petitioner would state that therefore he does not press for any other allowances. The only issue which arises for consideration is as to whether the respondents could demand to return a sum of Rs. 5,05,355/- which had been paid to the petitioner on part of temporary unfit allowance.

10. A perusal of the memorandum of settlements entered into between the Flight Engineers Association and Management was to protect the interest of Flight Engineers and to rehabilitate them. Options were given to the Flight Engineers either to become a Pilot or to take retirement or to take alternate employment. The petitioner chose for the third option. It is also worthwhile that the memorandum of settlement were entered in the year 2006, at the time where A300 aircraft were still being flown. A300 aircraft was completely phased out only in Mach 2008 and therefore such of Flight Engineers who were operating A300 aircrafts before they have been phased out were entitled to temporary unfit allowances mentioned in the memorandum of settlement entered into between the Association and the Management. These benefits would enure only till the A300 aircrafts were not phased out and wherein operation.

11. No doubt the petitioner was given an alternate employment only on 12.03.2009, which means that the petitioner was not flying from April 2008 to March 2009, since A300 aircraft had been completely phased out from April 2008 to March 2009. The memorandum of settlement has to be interpreted to give benefit till the aircrafts were phased out. It cannot be said that such of Flight Engineers who had flown A300 aircrafts which were phased out in March 2008 would still the benefit of temporary unfit allowance which is given only to those persons who are in that cockpit and operating aircrafts. There is nothing which shows that even after the phasing out of the aircrafts, the Flight Engineers who are not a part of the cockpit will be entitled to the benefit of special allowances on par with the such of those Flight Engineers who were part of the flying crew of the aircraft. This is further fortified by Clause 16 of the memorandum of settlement dated 24.01.2002, which reads as under:-

> “Flight Engineers who fail to qualify at any stage during their training as pilots will be entitled to all assistance to renew their Flight Engineers' license including Medical and will be utilized as Flight Engineer on A300 aircraft till it is phased out from the fleet of Indian Airlines.”

12. This Clause states that Flight Engineers who failed to qualify at any stage during their training as pilots will be entitled to all assistance to renew their Flight Engineers license including medical and will be utilized as Flight Engineer on A300 aircraft till it is phased out from the fleet of Indian Airlines. The petitioner also did not obtain license for any other aircraft other than A300. In this circumstances, the petitioner decided that he has not going to fly. The petitioner cannot be entitled to get temporary unfit allowance which as stated earlier was only given to such of those Flight

Engineers who were in the cockpit. After A300 aircraft was phased out, Flight Engineers are not part of any flying crew. After A300 was phased out, Flight Engineers cannot get benefit of temporary unfit allowance. That being the situation, the petitioner could not claim the benefit of temporary unfit allowance, since the aircraft which he was a part of had been phased out. The return of money for Corporation cannot be said to be unjustified. Accordingly, the writ petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

(* Xerox Copies Enclosed)

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Chairman and Managing Director,
Air India Limited,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001.

2. General Manager - Finance,
Air India Limited,
113, Gurudwara Rakabganj Road,
New Delhi - 110 001.

3. Chief Manager - Finance,
Finance Department, Air - India,
Air India Limited,
Meenambakkam, Chennai - 600 027.

+1 CC to Mr.K.Ashok Kumar, Advocate sr 78047
+1 CC to Mr.NGR. Prasad, Advocate sr 77848

W.P.No.6975 of 2010

NR(CO)
SP(25/11/2019)