

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2020

Delivered on : 08.09.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.A.No.199 of 2020

and

CMP.No.3072 of 2020

S.Jagannatha RaoAppellant/Writ 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/Respondents

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent against the order of His Lordship Mr.Justice Subramonium Prasad, dated 09.09.2019 made in W.P.No.6975 of 2010, dismissing the writ petition.

WP NO.6975 of 2010 prayer in

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 Appellant : Mr.K.Ashok Kumar

For Respondents : Mr.K.Srinivasamurthy

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The Appellant was appointed in the Indian Airlines as Aircraft Engineer (Maintenance) on 16.05.1979. Thereafter, on 03.11.1982, he was appointed as Flight Engineer under the direct recruitment quota and posted at the Southern Region. The Appellant possessed a licence for the A300-B2/B4 aircraft, which required a three member cockpit crew comprising a commander/captain, first officer and flight engineer. A meeting was held on 29.04.1998 in connection with the proposed phasing-out of the A300-B2/B4 aircraft from its fleet and the consequential necessity to rehabilitate flight engineers because the aircraft that was proposed to replace the A300-B2/B4 aircraft would not require a flight engineer as part of the cockpit crew. It was decided that in the event of redundancy, the flight engineers would be rehabilitated in other jobs either as pilots or in desk jobs in other departments.

2. Thereafter, several memoranda of settlement were executed by and between the Indian Flight Engineers Association and the Indian Airlines Limited. While it is not necessary to refer to all of them, they are discussed to the extent necessary for purposes of this judgment. The Memorandum of Settlement dated 01.03.2000 dealt with and provided for payment of compensation to flight engineers who are temporarily medically unfit (TMU). The Memorandum of Settlement dated 24.01.2002 stipulated that flight engineers who are provided with alternative employment would be eligible for protection of their basic pay within the scale of pay that they are appointed in and that if they opt for a job, other than in the cadre of pilot, they would be considered for posts in the cadre opted for by them. Another Memorandum of Settlement was entered into between the management of Indian Airlines Limited and the Indian Flight Engineers' Association on 31.08.2006. Clause 2A of the Memorandum of Settlement provided for the payment of compensation to flight engineers and senior flight engineers who are declared to be TMU. The said compensation was payable after the date when the Flight Engineer concerned last exercised the privilege of his licence.

3. Meanwhile, Indian Airlines underwent multiple transformations, including re-branding as Indian, restructuring as the National Aviation Company of India Limited before eventually merging with Air India Limited. The A300-B2/B4 aircraft were completely phased out from the fleet of Air India Limited on 31.03.2008. Around this time, the Appellant became ill and underwent surgery on 11.04.2008. Therefore, he was provided TMU and a sum of Rs.5,05,355/- was paid to him on this account between April 2008 and March 2009. On 12.03.2009, he was informed that he was found suitable for appointment as Deputy General Manager (Material Management) and that he would continue to draw his current basic salary. By reply dated 16.04.2009, the Appellant accepted the appointment under protest on the ground that the offer of appointment is not in accordance with the rehabilitation scheme that was approved on 29.04.2008. Thereafter, by a communication dated 15.09.2009 from the General Manager (Finance) to the Executive Director of the respondents, it was informed that an opinion had been obtained from the Respondents' lawyers to the effect that, after the A-300 aircraft were completely phased out by end-March 2008, flights engineers do not incur loss of earnings when they are medically unfit. The compensation cases were, therefore, directed to be dealt with by bearing in mind the above. Shortly thereafter, by letter dated 16.11.2009, the Appellant was called upon to repay the TMU compensation of Rs.5,05,355/-. In these facts and circumstances, he filed the writ petition to quash the communication dated 16.11.2009 and to direct the Respondents to provide a suitable appointment to him in the Engineering Department or in any other equivalent post wherein the drawings and grade of the Appellant/Petitioner as flight engineer are protected. The said writ petition was dismissed by order dated 09.09.2019, which is impugned herein.

4. We heard Mr.K.Ashok Kumar, the learned counsel for the Appellant, and Mr.K.Srinivasamurthy, the learned counsel for the Respondents.

5. Mr.K.Ashok Kumar submitted that the scheme of rehabilitation protected not only the basic pay but the total emoluments of the Appellant as Flight Engineer/Senior Flight Engineer, including TMU compensation. Pursuant thereto, the sum of Rs.5,05,355 was paid to the Appellant. He pointed out that the demand for the immediate refund of this amount was triggered by the communication dated 15.09.2009 from the General Manager (Finance) to the Executive Director based on the lawyer's opinion. On that basis, the Respondents issued the communication dated 16.11.2009 stating that the sum of Rs.5,05,355/- which was paid to the Appellant as TMU compensation for the period April 2008 to March 2009 should be refunded immediately. He contended

that the Appellant was re-deployed as Deputy General Manager (Material Management) only by about April 2009 and was entitled to TMU compensation as long as he continued to be a flight engineer. In these facts and circumstances, the Appellant was constrained to file the writ petition to challenge the said communication dated 16.11.2009 and the earlier communication dated 15.09.2009.

6. While the writ petition was pending, the Appellant retired from service on 31.05.2013. Thereafter, by the impugned order in the writ petition, the Writ Court erroneously concluded that the Appellant was not entitled to TMU compensation during the period, April 2008 to March 2009. According to the learned counsel, the said conclusion is unsustainable especially after the Court acknowledged and recorded the fact that the Appellant was provided an alternative employment only by communication dated 12.03.2009. He further submitted that the payment of a sum of Rs.5,05,355/- as TMU compensation was not induced by any misrepresentation on the part of the Appellant. Therefore, the impugned communication directing the Appellant to refund the TMU compensation is liable to be quashed.

7. On the contrary, Mr.K.Srinivasamurthy submitted that the TMU compensation was intended for flight engineers who were unable to make use of the privilege of their licence while they were TMU. As regards the Appellant, he would have been eligible for TMU compensation if he were medically unfit during the period when the A300 aircraft were in use by the Respondents. In other words, as a Flight Engineer/Senior Flight Engineer with a licence to operate the A-300 aircraft, he would have incurred a loss of income on account of not being in a position to be a part of the cockpit crew during such period. However, once the A300 aircraft were completely phased out by 31.03.2008, the Appellant was not in a position to use his licence and be a part of cockpit crew from 01.04.2008 onwards. Therefore, no loss of income was caused to him. Consequently, TMU compensation was not payable to him for the period subsequent to 31.03.2008 but a sum of Rs.5,05,355/- was erroneously paid to the Appellant during the period April 2008 to March 2009. Therefore, he was called upon to refund this sum. With regard to the redeployment, he pointed out that the memoranda of settlement only protects the basic pay. Accordingly, the rehabilitation of the Appellant as Deputy General Manager [Material Management] by order dated 12.03.2009 was fully in conformity with the memoranda of settlement. For this purpose, he referred to the said order and pointed out that it protects the then basic pay of the Appellant. Hence, he submitted that the impugned order of the Writ Court does not warrant interference.

8. We considered the submissions of the learned counsel for the respective parties.

9. The first issue to be examined is whether the redeployment of the Appellant was in accordance with the memoranda of settlement. In this connection, Clause 1 of the Memorandum of Settlement dated 24.01.2002 is relevant and the said clause is as under:

"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."

When the rehabilitation order dated 12.03.2009 is considered in the context of the above Memorandum of Settlement, it is clear that the Appellant was offered the current basic pay. Therefore, it cannot be said that the rehabilitation order dated 12.03.2009 is in violation of terms of settlement between the management of the erstwhile Indian Airlines Limited and the employees thereof.

10. This leads to the second issue, namely, whether the sum of Rs.5,05,355, which was paid as TMU compensation to the Appellant, is liable to be refunded. On this issue, the Memorandum of Settlement dated 31.08.2006 is relevant and Clauses 2 and 5B, which deal with this issue, are as under:

" 2 Temporary Medical Unfitness

2A. In the event of a Flight Engineer/Sr. Flight Engineer being declared temporarily medically unfit, he will be eligible for a monthly on account payment which will now be computed at one per cent of the maximum compensation applicable. This monthly on account payment will be payable after the date he last exercised the privilege of his licence. The payment of this amount shall be for a period not exceeding 24 months in aggregate in the entire period of service. The Flight Engineer/Sr. Flight/Engineer will be required to simultaneously avail all leave due to him from the day he is declared TMU unless he is rostered for Simulator duties/assignment in Flight Safety/Operations Department." (emphasis added).

5B. The quantum of Loss of Licence 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." (emphasis added).

11. On perusal of the aforesaid clauses, it appears that these clauses were intended to provide compensation to Flight Engineers/Senior Flight Engineers who incur losses on account of being unable to use the licence while they are temporarily medically unfit. It is for this reason that clause 2A specifies that this monthly on account payment will be made after the date the flight engineer concerned last exercised the privilege of his licence. As regards the Appellant, it is undisputed that the TMU compensation was paid to him for the period when he did not undertake cockpit duties. It is also not the contention of the Respondents that the Appellant did not meet other requirements, in this regard, such as the requisite medical examination. Clause 5B provides that such TMU compensation would be payable to those declared TMU after 31.08.2010 and until termination of the settlement but the settlement is undoubtedly intended for those who are in the role of flight engineers/senior flight engineers. Thus, the dispute centres around the fact that the A-300 aircraft had been phased-out prior to the TMU compensation period, and another dimension to the dispute is that the Appellant was grounded during this period but had not been redeployed as a ground staff.

12. The question as to whether the amount is liable to be refunded by the Appellant should be examined against this backdrop. From the documents on records, it is clear that the Appellant did not mislead the Respondents or make any misrepresentation that resulted in the wrongful payment of this amount to the Appellant. The law on refund of excess payments by an employee was considered by the Hon'ble Supreme Court in State of Punjab v. Rafiq Masih, (2015) 4 SCC 334, where it was held as follows in paragraph 18:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

Although the Hon'ble Supreme Court did not exhaustively catalogue the circumstances in which interference with an order of refund is warranted, nonetheless, illustrative categories of situations in which refund would be inequitable have been set out. For instance, the Supreme Court concluded that such refund should not be directed to be made as regards employees who are in lower cadres as also against retired employees and those on the verge of retirement. The case of the Appellant should be tested by bearing in mind the following material facts. He was a Senior Flight Engineer with a licence for the A-300 aircraft, who was subsequently rehabilitated as Deputy General Manager (Material Management) in April 2009. The TMU compensation pertained to the period when the A-300 aircraft had been completely phased out. However, it was prior to the redeployment of the Appellant and is clearly within the period specified in clause 5B of the Memorandum of Settlement dated 31.08.2006. The refund order was issued on 16.11.2009, which is about 3 1/2 years before the date of retirement. He was also called upon to make the refund approximately about 8 months after he received the last payment of TMU compensation. The Appellant has neither claimed nor established that similarly placed flight engineers/senior flight engineers were permitted to retain the TMU compensation or that he was not paid his basic salary during the TMU compensation claim period. On weighing all these factors in the balance, we conclude that it cannot be said that there is anything so unduly harsh or inequitable about the demand for refund so as to outweigh the employer's right to refund.

13. The learned single Judge analyzed the memoranda of settlement and concluded in paragraph 11 of the impugned order that the benefit of TMU compensation was intended only for flight engineers who are in a position to be part of the cockpit crew. On that basis, the learned Judge concluded that the Appellant was not entitled to this amount for the period

subsequent to 31.03.2008, and is liable to refund the same. We do not find any infirmity in the said conclusion.

14. However, we note that the Appellant retired from service on 31.05.2013. Subject to the conclusion herein with regard to refund of TMU compensation, we direct that unpaid terminal benefits of the Appellant be settled, in accordance with applicable service conditions, within 8 weeks from the date of receipt of a copy of this judgment.

15. This appeal is disposed of on the above terms. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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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 M/s.N.G.R.Prasad, Advocate Sr.No. 29364

W.A.No.199 of 2020
and
CMP.No.3072 of 2020

SPD(CO)
RMP(29/09/2020)