$~A-9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 28.08.2020**

\+ W.P. (C) 5766/2020

CAPT. ATUL CHANDRA ..... Petitioner

Through Mr. Saurabh Chauhan, Mr. Hemant B. Kumar and Mr. Varun Jain, Advocates

versus

AIR INDIA LIMITED & ORS. ..... Respondents

Through Mr. Ravi Prakash, Mr. Ankit Jain, Mr. Aman Malik, Ms. Bani Dikshit, Mr. Prashant Rana, Mr. Kaushal Kait and Ms. Neetica Sharma, Advs. for R-1 to 3 / Air India Ltd.

Ms. Anjana Gosain, CGSC with Ms.Aakanksha Kaul, Ms. Himanshi and Ms. Shalini Nair, and Mr. Manek Singh, Advocates for R-4 & 5 with Dr. Anand Pandey, DGCA

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>JYOTI SINGH, J. (ORAL)</u>

Hearing has been conducted through Video Conferencing.

C.M. 20830/2020 (Exemption)

Allowed subject to all just exceptions.

Application stands disposed of.

W.P. (C) 5766/2020 and C.M. 20829/2020

1. Petitioner herein was appointed as a pilot with Air India on 01.09.1990 and was later designated to a Senior Post of Joint General Manager (Operations) with effect from 01.10.2012. Petitioner, according to his case, was sent on deputation to DGCA on 02.05.2011 initially for a period of two years which was extended on 22.03.2013 for another year. The deputation was extended further upto 14.03.2014 and on 12.02.2015, Petitioner was appointed by DGCA, on merits, through public selection to the post of Dy. Chief Flight Operations Inspector (Dy. CFOI) for an initial period of three years. According to the Petitioner, since working conditions in the DGCA were not matching his profile, he resigned from DGCA on 09.05.2016 and re-joined Air India on 11.05.2016, as he continued to have lien with it.

2. Pursuant to a Circular dated 30.12.2016 issued by the DGCA, Petitioner applied again and being successful was appointed to the post of CFOI on 02.02.2017, after due process of selection. Petitioner avers that his appointment in DGCA was an appointment to a Civil Post in the Government and he continued till 30.06.2020. Details of his employment with Air India / DGCA have been given in a tabular form in the writ petition from the year 1990 to 30.06.2020.

3. Present petition is triggered on account of a chargesheet issued by the Respondent / Air India on 24.06.2020. Several reliefs have been claimed in the present petition, which are as under :-

> *"a) Issue an appropriate writ, order or direction for a declaration that the Petitioner's employment with the Respondent No. I-Airline had come to an end on 01.02.2017 and thereafter until cessation of his employment with DGCA on 30.06.2020 the Petitioner is governed by the provisions of Central Civil Services (Conduct) Rules, 1964 and Central Civil Services (Classification, Control and Appeal) Rules, 1965, as applicable to the Respondent No.4-DGCA;*
>
> *b) Issue an appropriate writ, order or direction to the Respondents declaring that the service rules of Respondent No. I-Airline, i.e. Air India Employee's Service Regulations are not applicable to the Petitioner after 02.02.2017 & initiate any disciplinary proceedings against the Petitioner;*
>
> *c) Pending hearing and final disposal of this Petition, the Petitioner prays for the following ad-interim/interim reliefs:*
>
> > *(i) Stay the Charge-sheet dated 24.06.2020, issued by the Respondent No. I-Airline to the Petitioner being illegal and without jurisdiction;*
> >
> > *(ii) to release to the Petitioner the entire dues as would have been received by the Petitioner on date, with proper accounting statements including his provident fund, gratuity and other dues, along with interest thereon@ 10% p.a. from the date payable till final payment;*
> >
> > *(iii) to release the Petitioner's service certificates including no accident no incident reports and other statutory clearances that may be required*

by the Petitioner for all purposes including income tax returns.

d) Issue an appropriate writ, order or direction to the Respondent Nos.1-3 for ad-interim ex-parte orders in terms of prayers (a) to (d) above."

4. Learned counsel for the Petitioner points out that the Petitioner continued to be an employee of DGCA and therefore the Rules of DGCA governing Disciplinary Matters, being Central Civil Services (Conduct) Rules, 1964 and Central Civil Services (Classification, Control and Appeal) Rules, 1965 shall apply to him. He submits that since he is not an employee of Air India and his umbilical cord with Air India was broken when he had joined the DGCA on 02.02.2017, Air India has no jurisdiction to issue the impugned chargesheet. Petitioner herein also seeks relief of his retiral benefits and other dues from Air India, including Service Certificates and statutory clearances, required for Income Tax Returns.

5. Mr. Ravi Prakash learned counsel for Air India, on the other hand, submits that the Petitioner continues to be on the strength of Air India. In fact this was Petitioner's own understanding as well and in this context attention of the Court is drawn to a letter dated 27.07.2018, written by the Petitioner, which has not been placed on record by the Petitioner and was shared during the course of hearing by Mr. Prakash. Learned counsel for the Petitioner does not deny that the said letter was authored by the Petitioner. Mr. Ravi Prakash submits that vide the said letter, Petitioner sought voluntary retirement from Air India, as he had completed 20 years of service and was eligible to seek voluntary

retirement. Mr. Ravi Prakash submits that request of the Petitioner for voluntary retirement was never accepted and thus the employer-employee relationship never ceased. Since the Petitioner continues to be an employee of Air India, it has the jurisdiction to issue the impugned chargesheet.

6. Ms. Gosain, who appears on advance copy, on behalf of Respondent No.4 and 5/DGCA explains the nature of appointment of the Petitioner with DGCA. She submits that pursuant to an Advertisement dated 30.12.2016, applications were invited for appointments on contract/adhoc basis. The offer of appointment of the Petitioner dated 02.02.2017 clearly indicates that the appointment was at no higher pedestal than a mere contract/adhoc employment. She submits that in the appointment letter, it is made clear that the pilots who come from Air India and are appointed as CFOI, shall have no right to claim regular employment with DGCA. She submits that the claim of the Petitioner that he is governed by CCS (CCA) Rules, is misconceived for two reasons. Firstly, that the Petitioner was never the regular employee of the DGCA and secondly, that the provision which is relied by the Petitioner, being Clause 6.1, at page 90 of the petition stands deleted by virtue of an Amendment in June 2017 and no longer exists.

7. I have heard learned counsels for the parties.

8. It is clear from the advertisement issued by the DGCA that the applications were invited for appointment purely on contract/adhoc basis. Suffice would it be to state that the Petitioner in his own letter

dated 27.07.2018 correctly understood the legal position and therefore, sought voluntary retirement from Air India. It is settled law that the cessation of service of an employee can only be as per permissible modes under the law which would be superannuation, resignation or voluntary retirement, technical resignation etc. Other than this, the employer-employee relationship ends when penalties pursuant to disciplinary proceedings are imposed such as dismissal, removal, termination, compulsory retirement, etc. It is admitted by the Petitioner that his services have not been put to an end by any of the modes mentioned above and as far as his request for voluntary retirement is concerned, the same was never accepted. Thus the Petitioner cannot claim that the employer-employee relationship with Air India has ceased to exist.

9. In my considered view, Petitioner continues to be the employee of Respondent No.1 and on this ground the challenge laid by the Petitioner to the chargesheet cannot succeed. It is however left open to the Petitioner to challenge the issuance of the Chargesheet on any other ground that may be available to him, in accordance with law.

10. It is settled law that the Court in exercise of its jurisdiction under Article 226 of the Constitution should not interdict the disciplinary proceedings and the chargesheet should not be interfered with, leave alone a few exceptions where the chargesheet may have been issued by incompetent Disciplinary Authority. I therefore see no reason to interdict the disciplinary proceedings at this stage. The petitioner will have the chance to participate in the Disciplinary Inquiry, if and when

held. Needless to state that all rules and procedures of the Inquiry will be complied with by Respondent No.1 and the Petitioner shall be given a fair chance to defend himself.

11. Liberty is, however, granted to the Petitioner to approach the Court, if he is so aggrieved by the disciplinary proceedings, at the appropriate stage.

12. Since the Petitioner cannot be treated as a retired employee at this stage and nor is this a case of technical resignation, on the same analogy as above, the other reliefs sought in the present petition also cannot be granted, at this stage.

13. Petition along with the application filed herewith is disposed of in the above terms.

14. It is made clear that the Court has not expressed or made any observation on the merits of the case or the allegations in the chargesheet.

JYOTI SINGH, J

AUGUST 28, 2020
yg