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

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Date of Decision: 03rd August, 2022

A-1

+ W.P.(C) 5632/2020

CAPTAIN ADIL SHAH

..... Petitioner

Through: Mr. Shanker Raju and Mr. Nilansh Gaur, Advocates.

versus

AIR INDIA LIMITED

..... Respondent

Through: Mr. Aditya Sharma, Advocate with Ms. Meenakshi Kashyap, Senior Officer of Air India present in person.

A-2

+ W.P.(C) 5648/2020

CAPT K SAI SASHANKA

..... Petitioner

Through: Mr. Naman Jain, Advocate.

versus

AIR INDIA LTD

..... Respondent

Through: Mr. Aditya Sharma, Advocate with Ms. Meenakshi Kashyap, Senior Officer of Air India present in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 24936/2022 in W.P.(C) 5632/2020

CM APPL. 32061/2022 in W.P.(C) 5648/2020

1. Present applications have been preferred on behalf of Petitioners seeking clarification of common judgement dated 01.06.2021, to the effect that the direction to pay backwages to the Petitioners would include 'Flying Allowance' which forms an integral part of a Pilot's salary/wages.



2. It is the contention of the Petitioners that *vide* judgment dated 01.06.2021, this Court had directed reinstatement of the Petitioners with back wages in accordance with Circular dated 15.07.2020, issued by the Ministry of Civil Aviation and/or any other Guidelines of the DGCA and the said Ministry. The judgment was upheld by the Division Bench on 17.12.2021, in LPA No. 248/2021 and subsequent thereto, Petitioners have been reinstated in service with back wages disbursed over a period of time. However, Respondent has refused to disburse the Flying Allowance which is due and payable to the Petitioners, despite repeated requests in that behalf. As per the relevant Circular, it is the obligation of the Respondent to pay to a Pilot a guaranteed number of hours' worth Flying Allowance and can only be refused if the Pilot is offered duty and he refuses to perform the same.

3. It is, therefore, submitted that a clarification be given to the judgment dated 01.06.2021 that Flying Allowance is an integral part of salary/wages and Respondent be directed to pay to the Petitioners the Flying Allowance.

4. Mr. Aditya Sharma, learned counsel appearing on behalf of Air India, on instructions, opposes the applications and submits that since the Petitioners were not in service and thus not available for flying, they are not entitled to Flying Allowance. In this regard, reference is made to a Circular dated 23.07.2021 issued by Ministry of Civil Aviation, Government of India, appended as Annexure R-3 to the replies of the present applications, more particularly to para 2.1(i) thereof, which is extracted hereunder for ready reference:

“ 2.1 Allowances on which MoCA has taken a policy decision to continue:



(i) Flying Allowance be paid on actual flying hours in a month. However, all Pilots available for flying may be paid fixed 20 hrs of flying allowance or actuals whichever is higher. In particular cases, if pilots are not available for flying duty due to reasons attributable to him/her, 20 hrs of minimum flying allowance will not be payable.”

5. I have heard learned counsels appearing on behalf of the parties.

6. I have examined para 2.1(i) of the Circular dated 23.07.2021, which provides that Flying Allowance is to be paid on actual flying hours in a month. However, all Pilots available for flying may be paid fixed 20 hours of Flying Allowance or actuals whichever is higher. It further provides that in particular cases, if a Pilot is not available for flying due to reasons attributable to him/her, 20 hours of minimum Flying Allowance will not be payable. Reading of the Circular shows that if a Pilot is available for flying, a minimum 20 hours of Flying Allowance or actuals, whichever is higher, is payable and the same can only be denied for reasons which are attributable to the Pilot.

7. In the present cases, as rightly pointed out by learned counsels for the Petitioners, this Court *vide* judgment dated 01.06.2021, had quashed the impugned orders and had directed reinstatement of the Petitioners with continuity of service and had further directed that the intervening period from the date of passing the impugned order till reinstatement should not be treated as break in service for any purpose. Petitioners were also held entitled to back wages commencing from the date of expiry of their respective notice periods of six months and up to the date of reinstatement. Once the Court has granted reinstatement with continuity of service and back wages, it is not open to the Respondent to argue that Petitioners were



not available for flying and that their not being in service was attributable to them. In the light of the directions passed in the judgment, Petitioners are to be treated in service for the entire period for which they were out of service on account of the actions of the Respondent, which were held to be illegal and the impugned orders were quashed.

8. In view of the aforesaid, Petitioners are held entitled to payment of Flying Allowance in accordance with Circular dated 23.07.2021 and as paid to their counterparts who were in service and the same shall be disbursed to the Petitioners within a period of ten weeks from today.

9. Applications are allowed and disposed of.

AUGUST 03, 2022/sn

JYOTI SINGH, J

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