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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22.09.2022

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LPA 345/2021 & CM APPL. 33480/2021

NIKHIL KUMAR JAIN

..... Appellant

Through: Mr. Akshat Bajpai, Ms. Ishanee
Sharma, Advocates

versus

AIR INDIA LIMITED

..... Respondent

Through: Ms. Shivani Sethi, Advocate

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****SATISH CHANDRA SHARMA, C.J. (ORAL)**

1. The present Letters Patent Appeal is arising out of judgment dated 19.07.2021 passed by the learned Single Judge in W.P.(C.) No. 6695/2021.
2. The learned Single Judge has dismissed the Appellant's prayer for quashing the letter dated 01.12.2020 by which the Respondent airline, Air India Ltd. had refused to issue air passages to the Appellant herein, keeping in view the Air India Employees' Passage Regulations, 2017, on account of the Appellant having demitted the office in the Respondent airline.
3. The undisputed facts of the case reveal that the Appellant before this Court is a former Indian Railway Services Officer of the 1987 batch. The Appellant served the Indian Railways till 04.07.2012 and he was selected by the Public Enterprises Selection Board (PESB) for the post of full time



Director (Personnel) in the services of Air India Limited.

4. Air India Limited is a statutory body incorporated under the Air Corporations Act, 1953 and is engaged in operating domestic and international flights. Air India has been subsequently taken over by the Tata Group.

5. The Appellant was shortlisted for the post of Director (Personnel) National Hydro Power Corporation Ltd. (NHPC). He was informed by Government of India, Ministry of Power on 15.12.2016 about his appointment as Director (Personnel) NHPC and he was finally appointed as Director (Personnel) NHPC on 01.02.2017. The Appellant demitted the office of Director (Personnel), Air India Limited and joined NHPC as Director (Personnel) on 07.02.2017.

6. The Air India Limited in its 51st Board meeting held on 12.03.2013 resolved to grant 24 free air passages to all full time Directors who had been selected through a duly notified PESB Selection process.

7. The Air India Limited pursuant to its Board resolution issued an Office Memorandum dated 30.09.2013 in the matter of grant of air passages and it was categorically mentioned that the retired board level functionaries are entitled for 24 air passages at the time of their superannuation.

8. On 16.12.2013, a clarification was issued by Air India Limited and it was stated that in respect of ACC approved full time appointee Directors who had been selected through a duly notified PESB selection process in Schedule B scale of pay would be entitled to 24 passages, both on retirement



and/ or demitting office. It was also mentioned in the aforesaid clarification that such officers would also be entitled for upgradation to highest class against tickets issued in executive class.

9. The Appellant before this Court, placing reliance upon Air India Employees' Passage Regulations dated 27.03.2017 and an Office Memorandum of the Government of India, Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises dated 01.02.2017 is claiming 24 passages.

10. The Appellant on 14.08.2017 made a representation to the Chairman and Managing Director of Air India Limited for grant of air passages and also stated that there is a clear policy in place in accordance with which passages are required to be issued. However, nothing was done in the matter and, therefore, representations were again preferred to the Chairman and Managing Director on 25.06.2020 and 15.09.2020.

11. That one Mr. Akshat Bajpai filed an application under the Right to Information Act, 2005 regarding passage entitlements granted to CVO's and CMD's who joined Air India on deputation and a reply was given to Mr. Akshat Bajpai on 14.09.2020 stating that the CVO's and CMD's who joined Air India on deputation are being extended the SOL passage facility in accordance with the terms and conditions of their deputation. It was also mentioned that the full time ACC appointed directors selected via notified PESB selection process in Schedule B scale of pay are entitled to 24 passages on retirement and/ or demitting office.



12. The Appellant's representations were rejected by the Respondent Airline by an order dated 01.12.2020 and it was brought to the notice of the Appellant that he has resigned from the post of Director so he is not entitled for grant of 24 air passages.

13. The Appellant being aggrieved by the communication dated 01.12.2020 came up before this Court by filing Writ Petition No. 6695/2021 and the learned Single Judge has dismissed the Writ Petition vide order dated 19.07.2021. The order passed by the learned Single Judge is reproduced as under:

The matter is being heard through Video-Conferencing.

" 1. This petition has been filed by the petitioner with the following prayers:-

"In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon''ble Court under the inherent powers under Article 226 may be pleased to:

i. Issue a writ, direction or order in the nature of mandamus or any other writ, direction or order to set aside impugned letter dated 01.12.2020 and thereby direct the Respondent for the issuance of the post demit passages in accordance with the conditions stipulated under Air India Employees' Passage Regulations, 2017;

ii. Issue a writ, direction or order directing the Respondent to initiate inquiry against the officers who harassed the Petitioner and denied the him his rightful passage dues;

iii. Pass any other or further consequential order(s) as this Hon''ble Court deems fit and



proper in the facts and circumstances of the aforesaid case in favor of the Petitioner and against the Respondent.”

2. *In substance, the instant petition has been filed by the petitioner seeking quashing of the letter dated December 01, 2020 by which the request of the petitioner to the Air India for grant of Staff on Leave Passage Facility was rejected on the ground that he has resigned from the services of the Company before completing his tenure.*

3. *It is the submission of the learned counsel for the petitioner that the petitioner had joined the respondent-Air India as Director (Personnel) on July 05, 2012. On February 06, 2017, the petitioner tendered his resignation from Air India, which was accepted and he was relieved from his duties in Air India. Pursuant thereto, he joined NHPC Ltd. as Director (Personnel).*

4. *The learned counsel for the petitioner has relied upon Annexure-5, which is Air India Employees' Passage Regulations, more specifically Regulation 3.2, which is under heading 'entitlement for retired employees', which contemplate as under:-*

“Retired employees and Board level functionaries who have retired / demitted office in Air India shall be entitled for passage facilities as applicable to their grade at the time of superannuation.”

5. *According to the learned counsel for the petitioner, under the above regulation, the petitioner is entitled to 24 passages on the Air India flight in any part of the world. According to him, the word 'demitted' referred to in Regulation 3.2 would also include an employee / Board level functionary demitting the office on resignation.*

6. *I am not in agreement with such a plea of the learned counsel for the petitioner for the simple reason, the heading of*



Regulation 3.2 states 'Entitlement for Retired Employee'. That apart, even the provision, as referred to above, refers to „retired employees” and „Board level functionaries” who have retired / demitted office in Air India and it also states, the passage facilities shall be as applicable to their grade at the time of 'superannuation'.

7. The aforesaid Regulation leave no manner of doubt that it is only applicable to those employees / Board level functionaries, who have retired on attaining the age of superannuation. It is a conceded fact that the petitioner has resigned from the services of Air India.

8. On a specific query, whether the petitioner has given any conditional notice of resignation seeking the benefit of 24 passage facility to him, no justifiable answer is forthcoming. In any case, the petitioner having tendered his resignation, which has been accepted, suggest, the petitioner intended to leave Air India forgoing all the benefits, which an employee, on superannuation would have been entitled to.

9. I do not see any merit in the petition. The same is dismissed. No costs.”

14. Learned counsel for the Appellant has vehemently argued before this Court that the Respondent Air India Limited has wrongfully and arbitrarily denied benefit of 24 passages to the Appellant despite their being a clear policy existing on the subject.

15. It has been contended that the entitlement of passages to the employees of the Air India Limited are, in fact, emoluments arising out of statutory rules and as per Rule 3.2 of Passage Regulations, full time ACC appointed Directors selected via notified PESB selection process shall, on demitting the office, be entitled for 24 passages.



16. The Appellant further contended that he did not resign from the office of Director (Personnel), Air India Limited, as stated in the impugned letter dated 01.12.2020 but was, in fact, transferred to the post of Director (Personnel) NHPC limited and it was a technical resignation.

17. It has been further contended that a technical resignation is a one where a Government servant applies through a proper channel for a post in the same or other Department and upon being selected, he is required to resign from the previous post for administrative reasons. Further, under such a resignation, the benefit of past services, if otherwise admissible under the Rules, is not at all forfeited.

18. It has been vehemently argued before this Court that the Appellant, in fact, has not waived of his rights in respect of past service benefits and he was merely transferred from one Government organization to another consequent to his selection and, therefore, he is certainly entitled for 24 passages.

19. The Appellant further contended that the Ministry of Civil Aviation's letter dated 03.02.2017 and the relieving letter issued by Air India Limited clearly mentioned that the Appellant was relieved subsequent to his appointment as Director, NHPC and the same was a technical resignation. Therefore, once it was a technical resignation, he is entitled for 24 Air Passages.

20. The Appellant further contended that keeping in view the Office Memorandum issued by the Government of India, Ministry of Heavy



Industries dated 01.02.2017, the Appellant is entitled to the benefits granted by Air India Limited even though he has submitted a technical resignation. It was further contended that the Appellant was entitled to the benefit of post-retirement passages in accordance with the terms stipulated in Clause 3 of the Passage Regulations. The Appellant submitted that the words retired/demit office shows that both cases are one which call for the benefits in accordance with the Passage Regulations.

21. Learned Counsel has further contended that the words demit means resignation and the Appellant has not waived his rights in respect of 24 passages.

22. It has been further contended that the Ministry of Civil Aviation had relieved the Appellant so that he may join NHPC Ltd., and it was never a case of resignation from Air India Limited. It has been vehemently argued that the learned Single Judge failed to appreciate the difference between resignation and technical resignation while interpreting the relevant provisions of the Passage Regulations and the Office Memorandums issued on the subject.

23. It has been further contended that the Hon'ble Supreme Court in the case of *Frick India Ltd. v. Union of India*, AIR 1990 SC 689 had held that the heading prefixed to the section or entries cannot control the plain words of the provision or even referred to for the purpose of construing the provisions, which are clear and unambiguous.

24. Reliance has been further placed upon a judgment delivered in the



case of ***Raichurmathan Prabhakar v. Rawatmal Dugar***, (2004) 4 SCC 766 and it has been contended that in the aforesaid case it was held that in case there was a conflict between plain reading of the provision and the heading of the title, the heading would not control the meaning which is clearly discernible from the language of the provision thereunder. It has been contended before this Court that the word 'retired' is used in addition to the word 'demitting the office' which suggests that the resignation or leaving office before superannuation entitles the Appellant for the same benefit as the officer retiring upon superannuation.

25. It was submitted that this Court, in the case of ***Airlines Retired Officers Welfare Association & Ors v. Air India Ltd.***, W.P.(C.) No. 7634/2013 has already, to a great extent adjudicated the very same issue pertaining to grant of passages along with medical facility and thereby directed for availing the same. It was submitted that the judgment of the learned Single Judge is contrary to Article 39(d) of the Constitution and the word 'demit' in its common English sense means resignation from office.

26. On the other hand, learned counsel for the Respondent submitted before this Court that a bare perusal of the Passage Regulations makes it clear that no such benefit of passages is conferred upon Board level functionaries who have resigned from the service of Air India Limited prior to retirement or superannuation. Heavy reliance has been placed upon Regulation 7(xii) of the Passage Regulations.

27. Regulation 7(xii) of Passage Regulations, *inter alia* state that employees who have resigned from the services of the Air India are not



entitled to air passage facilities. Therefore, air passage facilities are not contemplated for employees, including board level functionaries who have demitted or resigned from the services of Air India, either prior to retirement/ superannuation or prior to completion of their tenure. It was further submitted that the Appellant's interpretation of Clause 3.2 of the Passage Regulations is erroneous and that the word 'retired' as well as 'demitted' is qualified by the term 'at the time of superannuation'. Thus, it was submitted before this Court that there is no ambiguity in the scope of the meaning of the said regulation. The aforesaid Regulation leaves no manner of doubt that it is only applicable to those Board level functionaries who have retired/ demitted on attaining the age of superannuation, and not otherwise. It was further contended that the Passage Regulations never contemplated entitlement to passage facilities upon resignation. Had the passage Regulations contemplated entitlement to passage facilities upon resignation, the term 'at the time of superannuation/ resignation' would have been used instead of 'at the time of superannuation'.

28. Learned counsel for the Respondent has further contended that the entitlement of passages was for providing benefits to those employees who had dedicated their service to the Respondent and retired/ demitted the office at the time of superannuation.

29. It was further contended before this Court that if the interpretation of the Appellant was accepted, it would lead to creation of a third class of employees, who, despite of resignation from service would be accorded the benefit of passage facility which otherwise was only granted to employees



who have superannuated. Such an interpretation would be discriminatory and would create an anomaly wherein board level functionaries could avail benefits of the passage facility by joining the Respondent for a brief period and then resigning to avail better opportunities.

30. Learned counsel for the Respondent, in response to the contention of the Appellant that the learned Single Judge failed to appreciate the content of the said Regulation, submitted that the learned Single Judge has rightly delivered the judgment considering both the heading and the content of the Regulation 3.2. It was submitted that there is no conflict between the heading and the content of the Regulation. It was further stated before this Court that the doctrine of *Noscitur a Sociis* should be employed while interpreting Regulation 3.2 of the Passage Regulations, thereby ascertaining ambiguous words.

31. The Respondent further submitted that the 79th Board Meeting of the Respondent held on 30.06.2017 had issued clarifications regarding passage facilities in respect of the Appellant/ cases like the Appellant. The Board held that the word 'demit' used in the Passage Regulations meant demitting office on completion of tenure. However, in the present case, the Appellant had demitted office prior to completion of the entirety of 5 years of his tenure. It has been vehemently argued before this Court that the Appellant is already entitled to travel by rail as he is an ex Indian Railway Services Officer and by granting the benefit of 24 air passages would mean to grant of dual benefits for the same service rendered by him. It has been contended before this Court that the Air India Limited has rightly issued the impugned



letter and the learned Single Judge has rightly dismissed the writ petition.

32. Learned counsel for the Respondent, in response to the allegation that the learned Single Judge failed to appreciate the difference between resignation and technical resignation, submitted that even if the Appellant's resignation was a technical, he is still not entitled to the benefits of 24 passages. The circular of DOP&T dated 17.08.2016 relied upon by the Appellant states that the benefits of past service may be given upon technical resignation, if otherwise admissible under the rules. In the present case, the Passage Regulations do not permit for grant of passage facility to the Directors in case they are demitting office before attaining the age of superannuation. A prayer has been made for dismissal of the LPA.

33. This Court has carefully gone through the impugned order passed by the Air India Corporation and the judgment delivered by the learned Single Judge. On a careful reading of the order passed by the learned Single Judge, it is crystal clear that the order of the learned Single Judge does not suffer from any erroneous interpretation. This Court is in agreement with the reasoning and interpretation rendered by the learned Single Judge in the impugned order. On a careful perusal of the order passed by the learned Single Judge, it cannot be stated that the Regulation 3.2 of the Passage Regulations shall be applicable to employees/ Board level functionaries who have resigned/ demitted office. The said Regulation is only applicable to those functionaries who have superannuated.

34. The case of *Airlines Retired Office Welfare Association* (supra) relied upon by the Appellant does not help the Appellant in any manner as it



was rendered in a different factual scenario. It was with regard to enforcement of the terms and service conditions which retired employees of the Respondent herein were entitled at the time of superannuation. In the aforesaid case, the Petitioner's therein were granted benefits that they were entitled to at the time of retiring from Air India. On a careful reading of the Passage Regulations of the Respondent Air India Limited, it is revealed that only those employees who have superannuated/ retired from the airline would be entitled to free passages.

35. In case the arguments canvassed by the Appellant is accepted, it would result in an anomaly wherein some people who have served the airline for a very small period and who joined some other services on a higher post by submitting technical resignation, even though they have worked for a very little period with the Air India Limited, shall be entitled to claim passage benefits. In the present case, the Appellant has served the Air India Limited from 05.07.2012 till 06.12.2017 and he wants the benefit of 24 passages. The Appellant had undisputedly resigned and was appointed Director (Personnel) NHPC Ltd. and it was a case of joining other organization after tendering resignation and, therefore, the benefit of grant of 24 passages under the Passage Regulations is not at all available to the Appellant.

36. In the present case, the Appellant had not even completed his entire tenure, much less, served the airline till superannuation and the benefit of grant of 24 air passages is available only to those employees who retire/ demit office on crossing the date of superannuation. The present case is not



a case where the Appellant has attained the age of superannuation. Even though, it was a technical resignation, the Appellant as he had left the organization without completing the age of superannuation, the question of grant of 24 free passages to the Appellant does not arise.

37. In the considered opinion of this Court, by no stretch of imagination, the Appellant is entitled for grant of free passages as he has resigned from service. On a careful reading of the Office Memorandum of Government of India, Ministry of Finance, dated 17.08.2016 governing technical resignation, the benefit of past services otherwise admissible under the Rules are certainly available to an employee rendering technical resignation. However, in the present case, the passage Regulations do not permit grant of passage facility to the Directors who are demitting office before attaining the age of superannuation.

38. The Hon'ble Supreme Court in the case of **BSES Yamuna Power Ltd. V. Sh. Ghanshayam Chand Sharma & Anr**, Civil Appeal No. 9076/2019 has drawn a distinction and elucidated on the concepts governing resignation and retirement. The relevant paragraphs of the aforesaid judgment are reproduced as under:

“11. The Court in Shree Lal Meena II elucidated the distinction between resignation and voluntary retirement in the following terms:

“22. ... quoting RBI v Cecil Dennis Solomon (2004) 9 SCC 461] In service jurisprudence, the expressions “superannuation”, “voluntary retirement”, “compulsory retirement” and “resignation” convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee



to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering the prescribed period of qualifying service. Another fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in the case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary.”

The above observations highlighted the material distinction between the concept of resignation and voluntary retirement. The Court also observed that while pension schemes do form beneficial legislation in a delegated form, a beneficial construction cannot run contrary to the express terms of the provisions:

“26. There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations (see Asger Ibrahim Amin v LIC). We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication.”

The view in Asger Ibrahim Amin was disapproved and the court held that the provisions providing for voluntary retirement would not apply retrospectively by implication. In this view, where an employee has resigned from service, there arises no question of whether he has in fact, “voluntarily retired” or, “resigned”. The decision to resign is materially distinct from a decision to seek voluntary retirement. The decision to resign results in the legal consequences that flow from a resignation under the applicable provisions. These consequences are distinct from the consequences flowing from voluntary retirement and the two may not be



substituted for each other based on the length of an employee's tenure."

39. The aforesaid judgment draws a distinction between a resignation and voluntary retirement. The present case is not a case of retirement. The Appellant in the present case, with open eyes, has resigned from the services of Air India Limited and the benefit of 24 free passages are only available to employees who retire on the date of their superannuation and, therefore, keeping in view the aforesaid judgment, by no stretch of imagination, it can be held that the technical resignation of the appellant was, in fact, a retirement and as the Passage Regulations do not entitle a person who has left the organization prior to expiry of date of his superannuation, the question of granting relief to the Appellant in the peculiar facts and circumstances of the case does not arise. Therefore, in the light of the aforesaid, we do not find a reason to interfere with the order passed by the Respondent airline and the judgment delivered by the learned Single Judge.

40. Dismissed.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

SEPTEMBER 22, 2022

N.Khanna