SUPREME COURT OF INDIA

Air India Ltd.

Vs.

Vishal Capoor

C.A.No.5919 of 2005

(Ruma Pal,Dr. AR.Lakshmanan and C.K. Thakker JJ.)

28.09.2005

JUDGMENT

RUMA PAL, J.

Leave granted.

These appeals arise out of a dispute over the seniority of co- pilots employed by the first appellant, Air India Ltd. The contending parties are two groups of co-pilots, namely, the respondents 1 to 6 (referred to hereafter as the 'writ petitioners") and the respondents 7 to 12. The bone of contention is whether seniority as a co-pilot is to be calculated from the day a pilot gets an Air Lines Transport Pilot Licence (ALTP) or from the day the pilot enters the service of the first appellant with only a commercial pilot's licence (CPL). The differences between an ALTP and CPL as provided in Schedule II of the Aircraft Rules 1937 are inter alia that an ALTP licence holder has at least 1500 hours of flying of which 500 hours is as a pilot-in- command. A CPL holder has to have 250 flying hours with 150 hours as a pilot-in-command. However apart from noting this, we do not propose to decide this dispute as the issue which actually arises for decision before us is much narrower. The question is whether the High Court by the order impugned in this appeal should have decided the contention itself or left it to the Industrial Tribunal to decide. The first appellant is owned by the Government of India and provides international air transport services. Its aircrafts are operated by pilots in command (PIC) and co-pilots or first officers apart from other cock-pit crew. Co pilots fly under the supervision of commanders with 500 or more hours as PIC. It is common ground that unless a pilot has an ALTP licence, he cannot qualify as a PIC. According to the appellants, the respondents 7 to 12 were entitled to seniority over the writ petitioners because they had obtained an ALTP prior to the writ petitioners. It is the appellants' case that up till 1986 only ALTP holders were eligible for appointment as co-pilots with the first appellant. CPL holders were recruited for the first time as probationary co-pilots by the first appellant only from 1986. Their probation was to continue till they obtained the ALTP licence. If they failed to get an ALTP it resulted in termination of their employment. The Indian Pilots Guild (referred to as the Guild) was a recognized union of pilots of the first appellant. On 21st July 1989, a settlement was arrived at between the Guild and the first appellant for the period 1.10.85 to 31.8.90 (referred to hereafter as the 1989 Settlement). Clause 3(d) of the settlement related to seniority and read as under:

"(d) The pilots joining the Corporation with ALTP will always have higher line seniority over the co-pilots who is already in the employment of the Corporation without ALTP Licence".

On 1st September 1990, the Guild gave a notice of termination of the 1989 settlement and raised a fresh charter of demands. In 1992 the CPL holders raised a demand before the appellants asking for seniority from the date of their joining the first appellant. The demand was rejected. They then filed a writ petition being W.P. No. 2365 of 1992 in which they challenged clause 3(d) of the 1989 settlement contending that the obtaining of an ALTP licence was wholly irrelevant for confirmation as a co-pilot. The writ petition was opposed by the first appellant as well as by the Guild. It was ultimately dismissed on 11th February 1993 on the ground that the letters of appointment of the CPL holders specifically provided for their confirmation as a co-pilot subject to obtaining ALTP licence. The Court was also of the view that it was a matter "falling in the realm of a policy decision" of the first appellant and that there was "nothing arbitrary about this clause".

On 20th January, 1995, however at a meeting of the senior officers of the first appellant, it was decided that CPL holders would be on a training period for two years. On completion of a training period, they would be placed in the grade of co-pilot on probation for a period of one year. On satisfactory completion of the probation period, they would be confirmed in the service of the first appellant with a rider that the services would be determined if they did not complete their ALTP within five years from the date of their first solo flight. CPL holders who had already obtained their ALTP and had been confirmed in service, would be confirmed retrospectively i.e. one year from their solo flight. CPL holders who had completed their first solo flight and had been released to fly as a co-pilot, would also stand confirmed only if they obtained the ALTP within five years of their solo flight. CPL holders who were on training and who had not yet done their first solo, would be confirmed only in terms of the decision taken. The seniority of all CPL holders would be batch wise and would be reckoned from the date of obtaining their ALTP. The writ petitioners were appointed as trainee pilots after 1994 and were confirmed as co-pilots in September, 1996 with effect from October 1996. Their letters of confirmation required them to obtain ALTP within a period of five years from that date failing which their contract of employment would automatically end. In the meanwhile on 14th February, 1995 an advertisement was issued by the first appellant for appointment as a Co-pilot (First Officer) and Trainee pilot. The technical qualification required for Co-Pilots inter alia was possession of an Indian ALTP with 1500 hours minimum flying experience which should include 500 hours as Pilot in command experience either on multi engine aircraft or on Turbo-jet aircraft. The Trainee Pilots were required to be in possession of inter alia an Indian CPL with an endorsement on a twin engine type aircraft.

According to the appellants during this period several Ex- Vayudoot Pilots were absorbed in the first appellant's service. ALTP holders with 500 hours as pilots in command were given seniority above co-pilots with CPL who were confirmed as co-pilots. However they were placed below the officers holding ALTP who were already serving in the first appellant. The rest which included pilots with ALTP but without adequate command experience were placed below the first appellant's trainee pilots holding only CPLs. There is some dispute as to what actually transpired with regard to the absorption of the Vayudoot pilots in 1995 in the service of the first appellant which is unnecessary to be decided in view of what we have finally directed. However it is admitted that the dispute of fixation of line seniority of Co-pilots based on the holding of ALTP or CPL persisted. The matter was referred to a Committee by the second appellant. The Committee gave its opinion in writing on 16th January, 1996 that the policy which was prevailing was "adequate and correct" in respect of Pilots joining the first appellant with ALTP. The policy for fixing of seniority of pilots joining with CPL was also found to be "adequate." The Committee finalised the seniority list which was then forwarded to the Director of Operations and it was said that the basis for the seniority list which set

out the reasoning of the Committee should be explained to the new entrants before they joined so that no representation could be made later.

Pursuant to the advertisement for co-pilots issued by the first appellant, respondents Nos. 7 to 12 and eight others who are all ex-Indian Air Force or Navy Pilots and holders of ALTP licences with 500 flying hours as pilots in command as advertised, applied for appointments as co-pilots. The 14 pilots (who will be hereafter referred to as 'Adhikari group') entered service as co-pilots in the first appellant in November, 1996. Their letters of appointment contained a clause that they would be subsequently informed as to their seniority.

The Adhikari group filed a writ petition being W.P.(L) No. 1615 of 1997 seeking to enforce Clause 3(d) of the 1989 settlement. The writ petition was dismissed on 16th October, 1997. The Court held that the 1989 settlement had already been terminated and was "non- existing". It was noted that negotiations were in progress between the Guild and the first appellant and that if the petitioner pilots would be aggrieved by any settlement which may be arrived they could raise a dispute before the Conciliation Officer. The High Court also said that in case of failure of conciliation, the dispute could be referred to the National Industrial Tribunal. It was recorded that there was a pending reference before the Tribunal and that it was "always open to the petitioners to join in the said reference and raise their demands". The writ petition was therefore dismissed on the ground that there was an efficacious alternate remedy. The Adhikari group sought to impugn the order of the High Court dated 16th October, 1997 before this Court by way of a special leave petition. While the special leave petition was pending, on 3rd January, 1998, a settlement was arrived at between the Guild and the first appellant (referred to as the "1998 settlement"). Several demands relating to the conditions of service of pilots were decided by the settlement. As far as seniority of the pilots were concerned, the settlement noted earlier discussions held in 1995 and the following terms were recorded:

7. Seniority of Pilots.

a) xxx xxx xxx xxx

b) xxx xxx xxx xxx

c) Based on these discussions, the seniority of trainee Pilots/Co-Pilots has been determined as an one time exercise as indicated in the Seniority List contained in Annexure-D and this will not be cited as a precedent in future.

d) Clause 3(d) of Schedule 2 of Memorandum of Settlement dated July 21st 1989 stands deleted. Henceforth Line Seniority of Co-pilots joining the company will be based on the date of entry of the pilot in the grade of a first officer.

Annexure D referred to in Clause 7(C)was a seniority list which placed the writ petitioners at serial Nos. 173 to 178 and the Adhikari group against serial Nos. 205 to 218.

The Adhikari group withdrew their special leave petitions challenging the order dated 16th October, 1997, stating that "since the petition before the High Court was premature, they wish to withdraw the present special leave petition so that they may take appropriate steps later". They then filed a writ petition being W.P. 2930 of 1999 before the Bombay High Court challenging Clause 7(C)of the

1998 settlement. The writ petition was dismissed on 14th November, 2000. Since the reasons for such dismissal was to a large extent, the basis of the order impugned in these appeals, the reasoning is noted in some detail.

In its order dated 14th November, 2000 the High Court noted that the 1998 settlement was binding upon all workmen in view of the express provisions of Section 18(3) of the Industrial Disputes Act, 1947. The court also noted the submission of the Adhikari group that the 1998 settlement could be challenged on the ground that the same was unjust, unfair, not bona fide, and had been arrived at on account of fraud, misrepresentation, concealment of facts or as a result of corruption and other inducements. The court said that such a challenge could be the subject matter of yet another industrial dispute but could not be the subject matter of challenge before the High Court in its writ jurisdiction. The preliminary objection raised by the first appellant and the Guild that the issue had already been determined in WP(L) No. 1615 of 1997 in respect of which the special leave petition had been withdrawn, was rejected because it was held that "the petitioners may be justified in contending that a fresh cause of action had arisen". The Court then held:

"The petitioners may challenge Clause 7(C) of the settlement , if so advised, and if they are entitled to do so, by raising an industrial dispute. The question as to whether the settlement is just, fair and bonafide or that it is vitiated by fraud, misrepresentation or concealment of facts in the first instance, must be examined by the Industrial Tribunal on a reference being made to it by the State Government. Of course, the award of the Tribunal may be challenged in a proceeding under Article 227 of the Constitution of India on the grounds permissible in law".

However, the court refused to set aside clause 7(C)of the 1998 Settlement in exercise of its jurisdiction under Article 226 of the Constitution since:-

"it is not as if the settlement is so blatantly arbitrary, unreasonable or irrational that the same should be quashed by this Court without any thing more".

Having come to the conclusion that the court would not interfere with the settlement in exercise of its writ jurisdiction, the Court also recorded that it was not inclined to examine the other submissions made on behalf of the Adhikari group because "those question may have to be raised in an industrial dispute which may be referred for adjudication by the Tribunal".

It was also observed that since the Adhikari group had been told in their letters of appointment that the question of their seniority would be decided later, they had not acquired any vested right of seniority. The Court said that:

"Having regard to the submissions urged before us, we feel that these are matters which may require deeper consideration, and it cannot be said that the settlement, on the face of it, is so arbitrary and unreasonable that it should be quashed forthwith by this Court in exercise of its writ jurisdiction".

A doubt was also expressed as to the claim of the Adhikari group in the following language:-

"The settlement is in the nature of a package deal, and it is doubtful whether the petitioners can claim the benefits under the settlement including monetary benefits, and at the same time, challenge only a particular clause of the settlement".

Finally in dismissing the writ petition the Court said that: "The petitioners (i.e. the Adhikari group) must seek their remedy under the provisions of the Industrial Disputes Act instead of invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India".

The Adhikari group challenged the order of the High Court in a special leave petition which however was withdrawn on 19th March, 2001. The order of this Court records:

"Learned counsel for the petitioners states that the petitioner would be advised to approach the Industrial Court in accordance with the judgment of the High Court and seeks to withdraw the petition. We record the statement of the learned counsel and dismiss the special leave petition as withdrawn".

The Adhikari group then filed a complaint before the National Industrial Tribunal (referred to hereafter as "the Tribunal") in the pending reference being Reference No. NTB -1 of 1990 under Section 33-A of the Industrial Disputes Act, 1947. (referred to as the 1947 Act) The complaint was opposed both by the first appellant as well as the Guild on the ground that the dispute relating to the seniority of co-pilots was not connected with the dispute pending before the Tribunal and therefore the complaint under Section 33-A of the 1947 Act was not maintainable. The Adhikari group were advised to withdraw their complaint under Section 33-A from the Tribunal, which they did.

On 6th October, 2003 they raised a dispute relating to the fixation of their seniority under the 1998 settlement under Section 12 of the 1947 Act before the Conciliation Officer. The Conciliation Officer recommended to the management of the first appellant that considering the historical background of the question relating to seniority, and since the Adhikari group had joined on 25th November, 1996 prior to the 1998 settlement coming into operation, they should be granted seniority as claimed by them. In the meanwhile on 8th December, 2000 the period of five years for CPL Pilots to obtain their ALTP licence was extended for a period of a further six months. The period of six months was again extended on 27th June, 2002 upto seven years. The requirement for an ALTP licence for Co-Pilots was ultimately totally removed by 1st - 2nd August, 2002 when a decision was taken by the first appellant that "in order to give a fair and reasonable chance to all co-pilots" the requirement to obtain an ALTP licence within five years should be removed altogether for all co-pilots. All that was required was that a co-pilot should be in possession of an ALTP licence by the time he/she comes up for command training as per line seniority. The Adhikari group made a representation to the management of the first appellant on the basis of the recommendation of the Conciliation Officer. The General Manager (Human Resource Development) supported the representation by his letter dated 20th April, 2004. The Chairman and Managing Director of the first appellant (who is the second appellant) appointed a four member Committee to go into the issue. The Committee submitted a lengthy report on 4th June 2004 in which they submitted that the Adhikari group who had been appointed in November, 1996 should be placed as far as the line seniority was concerned only below those ALTP Holders who had already attained command or those who were undergoing command training.

Despite the recommendation of the Committee, acting on the basis of Annexure 'D' to the 1998 settlement read with the instructions dated 1st-2nd August, 2003, letters for command training were issued to the writ petitioners on 14th September, 2004 by the third appellant viz the General Manager, Operations. (Administration). However the second appellant, namely the Chairman of Air India, acting on the basis of the Committee's Report, passed an order on 23/28th September, 2004 approving the recommendations of the Committee. According to him, the seniority of the Adhikari

group had been decided "improperly". In the circumstances, the letters issued to the writ petitioners for command training on 14th September, 2004 were cancelled by the third appellant on 30th September, 2004, who then issued letters of command training on 1st October, 2004, to the respondents 7 to 12. In the circumstances, a writ petition (W.P. No. 3108 of 2004) was filed on 5th October, 2004 by the writ petitioners which was allowed by the High Court on 10th March, 2005 by the order impugned in these appeals.

In allowing the writ petition, the High Court accepted the submissions of the writ petitioners. It rejected preliminary objections raised by the respondents 7-12 and the appellants that the grievance of the writ petitioners as to the alleged non- implementation of the 1998 Settlement should be decided appropriately under the Industrial Disputes Act 1947 and not under Article 226, particularly, since there were disputed questions of fact. It was found that there was no factual controversy which justified the Court in rejecting the writ petition on the ground of an alternative remedy. In the impugned order large passages of the earlier decision in W.P. No.2930 of 1999 were quoted extensively after which the learned judges came to the conclusion that the judgment finally decided the issues between the parties and had not left them open for adjudication all over again. The earlier decision had reached finality and could not be reopened. It was held that the respondents 7 to 12 were also barred from raising their grievances by the withdrawal of the complaint under Section 33A of the 1947 Act. The High Court also held that the seniority list appended to the 1998 Settlement had been acted upon and implemented. It was held that the respondents 7 to 12 had the liberty to avail all legal remedies and having abandoned them, it was not open to them to urge that the settlement which was in force and implemented from 1998 was vitiated by fraud and collusion. It held that the Court would not examine allegations of fraud at the instance of the respondents 7 to 12 as that would, in the High Courts' opinion, amount to entertaining "a totally distinct grievance based upon independent cause of action". Finally, the High Court found that the appellants had not been able to justify their action of withdrawing the letters issued to the writ petitioners as to their command training. As such, the letters cancelling the earlier letters directing the writ petitioners to go for command training were quashed. The appellants have contended that the seniority of the Adhikari group was correctly fixed on the basis of the Conciliation Officer's recommendation and the Committee's Report. The 1998 settlement expressly stated that it would operate prospectively. In any event Clause 16 of the 1998 settlement provided for filing of the settlement before the National Industrial Tribunal in the pending reference and for obtaining of a consent award. This had not been done. It was submitted by the appellants that the issue of seniority should be left to the Industrial Tribunal to decide. Till that was done, it was suggested that as an interim measure, the Adhikari group should be permitted to continue as commanders but that line seniority according to Annexure D to the 1998 settlement could continue subject to the condition that the writ petitioners and others placed higher than the Adhikari group in that list would not claim any compensation for the shortfall under Clause 4(a)(i) and (f)(iv) of the 1998 settlement.

The Adhikari group have separately challenged the impugned order. They have adopted the arguments of the appellants. They also said that the settled practice of the first appellant was that all co-pilots or First Officers had to have ALTPs. CPL recruits were recruited as trainee pilots only because of pressure from senior officers of the first appellant whose children had obtained CPLs. Nevertheless the ALTP always had higher line seniority over the co- pilots already in the first appellant's employment who did not have ALTP. Therefore seniority was not on the date of entry into the category of first officer/co-pilots but on the date of obtaining ALTP. Clause 3(d) of the 1989 settlement provided this and although the settlement was terminated in 1990 by the Guild, it continued to remain in force till the new settlement came into effect. This was the law and in fact

was given effect to by the first appellant in their record note of 1995, in the appointment letters issued to the writ petitioners, when the Vayudoot pilots were absorbed, in the 1995 advertisement, and in various directions and letters of the first appellant. The High Court also upheld this by its order dated 11.2.1993 dismissing the CPL holders' writ petition in which affidavits had been filed by the first appellant and the Guild justifying the higher line seniority of the ALTP holders. Therefore at the time when the Adhikari group were appointed as co-pilots, the prevailing principle was Clause 3(d) of the 1989 settlement and the 1998 settlement could not affect their seniority retrospectively. They say that Annexure D, which was significantly a one time settlement, was the outcome of nepotism by senior officers of the first appellant and the guild whose children or close relatives in the employment of the first appellant and holding CPL licences would benefit thereunder. Even the 1998 settlement was not abided by in that the condition for obtaining the ALTP in five years was done away with. The action of the appellants was arbitrary, malafide and unjust and violative of Article 14. It was further contended that the 1998 settlement should not therefore be given effect to. In any event the Adhikari group had the right to raise an industrial dispute. The High Court had granted the Adhikari group such right. Their complaint under Section 33-A of the 1947 Act was an interim application and its withdrawal did not prejudice their right to raise a dispute before the Conciliation Officer under Section 12 of that Act. Furthermore, it was argued that the pending reference related to a dispute between Indian Airlines and its employees and did not relate to any dispute between Air India and its workmen as held by the Tribunal in its final award. It is submitted that this Court should hold that the 1998 settlement cannot take away the Adhikari group's rights of seniority but if the disputes were to be decided under the 1947 Act, this Court should itself refer the dispute to the Tribunal. In the meantime they were willing to abide by the interim arrangement suggested by the appellants.

The writ petitioners have said that the issue relating to seniority of ALTP holders was barred by res judicata since the 1989 settlement had been found to be "non-existing" in WP (L) No 1615 of 1997. The High Court in its subsequent decision dated 14.11.2000 had also decided the challenges raised against the 1998 settlement on merits. Additionally, the Adhikari group had abandoned their claim before the Tribunal. As far as the first appellant was concerned, it had supported the 1998 settlement in all the proceedings and could not be permitted to take a different stand. The fact that the 1998 settlement provided for filing of the award before the Tribunal and the obtaining of a consent award, was irrelevant since Clause 16 did not make the operation of the settlement conditional upon the obtaining of a consent award. Besides the result would be the re-opening of all the terms and conditions taken as settled and acted upon by the appellants and the Adhikari group which had additionally received benefits thereunder. It was stated that the 1998 settlement was a valid statutory settlement under Section 18(3) of the 1947 Act. According to the writ petitioners existing Air India pilots as on November 1996 had already been validly confirmed as co-pilots even though they were CPL holders before the Adhikari Group were recruited. It was submitted that there were no malafides attached to the 1998 settlement and that the Adhikari group did not get any assurance that they would supersede those already in service. They claim that it is accepted service jurisprudence that generally seniority of batch recruits is based on the date of entry into service. According to them the 1989 settlement had not been applied to the Vayudoot recruits and was not in force when the Adhikari group was recruited. It is contended that the reference to a one time settlement in Annexure D dealt with the place of Vayudoot pilots and not to the seniority of the writ petitioners. They say that the ALTP licence was irrelevant to the fixation of seniority although it was relevant for the purposes of promotion. It was also contended that the Adhikari group could not challenge the seniority list in Annexure 'D' thereto co-laterally in proceedings filed by the writ petitioners. It was finally submitted that this Court should not refer the dispute between the parties to the

Industrial Tribunal for adjudication especially at the instance of the respondents 7 to 12 on a writ petition filed by the writ petitioners. Even if they were permitted to do so in a separate proceeding, till there was a fresh adjudication, the 1998 settlement would have to operate.

In our opinion the High Court erred in rejecting the preliminary objection of the respondents 7 to 12 viz. that the writ petitioners should have been left to pursue their grievance relating to the breach of Clause 7 (C) of the 1998 settlement before the appropriate forum under the Industrial Disputes Act, 1947. There was a serious factual controversy as was noted by the High Court itself in paragraph 22 of its judgment. It had been contended by the Adhikari group that the 1998 Settlement was vitiated by fraud and malafides on the part of the office bearers of the Guild and some Officers of the first appellant. The claim of the Adhikari group which has been reiterated before us is that senior officers of the Guild and the first appellant fraudulently agreed to clause 7(C) of the 1998 settlement so that their sons and daughters who were CPL holders were given undue benefit in deviation from the established requirements and practice of the first appellant. Such allegations if proved would be sufficient to set aside the 1998 Settlement in so far as it affected seniority of the Adhikari group. There is a long line of authority in support of this proposition (See for example Herbertsons Ltd. V. The Workmen of Herbertsons Ltd. & Anr. (1976) 4 SCC 736, 742; KCP Ltd. V. Presiding Officer (1996) 10 SCC 446 and National Engineering Industries Ltd. Vs. State of Rajasthan (2000) 1 SCC 371,393). This was also the finding of the High Court in W.P.No.2930 of 1999. Sufficient particulars in support of these allegations had been given. The Conciliation Officer, the Committee set up by the Chairman of Air India, and the Chairman himself had founded that an injustice had been done to the Adhikari group. The opinions expressed have not been held by the High Court to be without substance. Indeed the High Court did not consider any of this because it was held, incorrectly as we have held later in our opinion, that the issues raised had been concluded by the earlier decision of coordinate Benches in W.P.(L) No.1615 of 1997 and WP (c) No. 2930 of 1999.

A disputed question of fact will normally arise when a petitioner puts forward a case on facts which are controverted by the respondents. This is naturally so, as it cannot be expected that the petitioner will of his, her or its own say that the facts forming the basis of the claim are disputed. Although it may happen that the Court on a scrutiny of the nature of the claim made in the petition may come to a conclusion that the factual issues raised are ex facie controversial and decline, in limine, to exercise jurisdiction under Art. 226, nevertheless the controversy usually surfaces after the respondents have had an opportunity of giving their version of the matter. That was what happened in the present case. The writ petitioners rested their case on clause 7(C)read with Annexure D to the 1998 settlement. The respondents pleaded that the settlement was vitiated by fraud. Obviously, the burden of proving this would be on the respondents. No court or tribunal has tested the allegations made by the Adhikari group on merits till today. The High Court shut out the allegations altogether for two reasons. The first reason was that it would amount to entertaining a separate cause of action. The conclusion was erroneous as it was based on a confusion between onus of proof and cause of action. In ABL International Ltd. Vs. Export Credit Guarantee Corpn. of India & Ors. (2004) 3 SCC 553, the dispute was limited to an interpretation of the terms of a contract of insurance and an export contract. Counsel for the respondent contended that for a correct interpretation of the clauses of the contracts there was need for oral evidence being led without which a proper interpretation of the clauses was not possible, and therefore, it was a fit case in which the appellants should be directed to approach the civil court to establish their claim. This Court construed the clauses of the contracts and said that there was no room for a second or other construction. It was noted (and as we would like to emphasise) that there was no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, this Court was of the opinion that

the facts of the case did not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner. In other words, merely because the respondents want to dispute a construction to be placed on a clause of a contract, it would not become a disputed question of fact. On the other hand, if there are allegations of fraud, misrepresentation etc. it may be a disputed question of fact and the High Court should not go into the same but allow the parties to approach the alternative forum legally available. The second reason given by the High Court (which has also been the writ petitioners' submission before us) was that all the issues raised by the respondents 7 to 12 had been finally decided by the earlier decisions dated 16th October, 1997 in WP (C)No.1645 of 1997 and 14th November, 2000 in W.P. No.2930 of 1999. Doubtless the High Court in its order dated 16th October 1997 had opined that the 1989 settlement was "non-existing". The observation was manifestly erroneous in view of this Court's expressed in Life Insurance Corporation of India Vs. D.J. Bahadur & Ors.(1981) 1 SCC 315 to the following effect:-

"Once the earlier contract is extinguished and fresh conditions of service are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place". (pg348)

Although the view expressed in W.P (L)No.1615 of 1997 is erroneous, nevertheless, the question whether the 1989 settlement can found an enforceable right in the respondents 7 to 12 is concluded against them. But the decision would not debar the raising of a dispute that the 1998 settlement was vitiated by fraud, corruption as the settlement was entered into after those proceedings were concluded before the High Court. Furthermore, although the decision precludes the Adhikari group from claiming a right under the 1989 settlement, they can certainly rely upon it as evidencing a continuation of an established practice and requirement. It would also be open to the Adhikari group to rely on all other factors in support of their claim for seniority over the CPL holders.

By the decision in W.P. No.2930 of 1999, however, the High Court had not held that one clause in the Settlement cannot be challenged in isolation. A doubt had merely been expressed but no firm conclusion had been arrived. Nor had the Court decided the merits of the Adhikari group's grievance at all. What the High Court had in fact decided was that the issues of fraud etc. raised could not be decided in exercise of the Court's jurisdiction under Article 226. It expressly left the issues to be decided on a deeper consideration by the Industrial Tribunal. This is abundantly clear from the passages from the judgment dated 14th November, 2000 quoted by us.

Another error in the decision impugned before us was the refusal to allow the respondents 7 to 12 to raise their claim regarding their seniority because they had withdrawn their complaint under Section 33A of the Industrial Disputes Act 1947. It is nobody's case that the complaint of the Adhikari group under Section 33A was legally maintainable in Reference No. NTB 1 of 1990. In fact both the first appellant and the Guild had opposed the complaint on this ground. Section 33A allows a complaint to be filed in a pending reference where an employer contravenes the provisions of Section 33 of the 1947 Act during the pendency of proceedings pursuant to a reference under Section 10(1) of the 1947 Act. The relevant portion in Section 33(1)(a) prohibits an employer from altering, to the prejudice of the "workmen concerned in such dispute", the conditions of service applicable to them immediately before the commencement of the proceeding. There was no pending proceeding relating to any dispute between Air India and its workmen in which the Adhikari group could have filed a complaint under Section 33A. The dispute which was pending before the Tribunal

in Reference No. NTB-1 of 1990 did not relate to a dispute between the first appellant and its workmen. It related to a dispute between Indian Airlines and its workmen basically on the question whether the latter were entitled to the same terms and conditions of service as the employees of the first appellant. The award which has since been made on the reference by the Tribunal also records:

"This reference cannot cover any industrial dispute between Air India and its workmen as the order of the Central Govt. is confined to dispute between (Indian) Airlines and its workmen".

In these circumstances the withdrawal of the complaint under Section 33A did not debar the Adhikari group from raising a fresh industrial dispute. That is what the Adhikari group has sought to do. It approached the Conciliation Officer. The claim is said to have been investigated by the Conciliation Officer, whose duty is to try and affect a fair and amicable settlement of disputes, under Section 12(2) of the 1947 Act. A recommendation was made by the Conciliation Officer to the first appellant. Since the recommendation for conciliation has been accepted by the management of the first appellant, there was no question of the Conciliation Officer reporting a failure of settlement under Section 12(4) to enable the appropriate Government to make a reference to an Industrial Tribunal under Section 12(5). Whether by this process, clause 7(C)and Annexure D to the 1998 settlement could be altered is again a question requiring resolution by the appropriate forum under the 1947 Act. When the High Court in the impugned judgment concluded that Annexure D to the 1998 Settlement had been acted upon and implemented, it did not discuss any fact in support of this conclusion. Besides, the High Court's decision that there was "no dispute that the writ petitioners are senior in the list and seniority over and above respondents 4 to 9" was in the circumstances narrated, factually wrong. But assuming the conclusion was correct, nevertheless, having regard to the decisions of this Court earlier noted, it is still open for the Adhikari group to challenge the 1998 Settlement on the ground of lack of bonafides, arbitrariness, fraud etc. Such a challenge to the 1998 Settlement cannot ofcourse be decided in a writ proceeding as has been already held by the High Court W.P.2930 of 1999.

According to the appellants and the Adhikari group, the 1998 Settlement cannot in any event be termed to be a final settlement under Section 18(3) of the Industrial Disputes Act, 1947 because of Clause (16) to the 1998 Settlement which provided:-

16. Both the parties agree that this settlement will be filed before the Hon'ble National Industrial Tribunal, in the pending reference No.NTB-1 of 1990 and Consent Award will be obtained accordingly."

Admittedly, the 1998 Settlement was not filed as envisaged nor was a consent award obtained although this point was not raised in WP 2930 of 1999. But the issue has been concluded against the respondents 7 to 12 by the order dated 14th November 2000 in W.P. No. 2930 of 1999 which said that the 1998 settlement was a settlement under Section 18(3) of the 1947 Act. Nevertheless a fresh industrial dispute within the meaning of the phrase in Section 2(k) of the 1947 Act has arisen at least between the CPL Holders and the Adhikari group as to whether the 1998 Settlement despite being under Section 18(3), was invalidated because of the alleged circumstances under which it was arrived at. Additionally, the Adhikari group may at least contend that the subsequent modifications to Clause 7(C)of the 1998 settlement modifying and ultimately doing away with the requirement of an ALTP was not valid and did not form part of the settlement under Section 18(3). All these disputes are appropriately adjudicatable by an Industrial Tribunal under the 1947 Act.

The High Court's decision allowing the writ petition was based on reasons which we cannot sustain.

Consequently its conclusion that the issue of seniority between the respondents 7 to 12 and the writ petitioners was concluded was also erroneous. Therefore, the question whether the letters issued by the respondent No. 3 cancelling the letters for command training issued to the writ petitioners could have been validly issued is, along with other issues raised between the parties, still at large and will ultimately have to be decided by a competent Industrial Forum as had been rightly held by the earlier decision of the High Court in W.P. No.2930 of 1999.

At present, we have two alternatives open to us. We may set aside the impugned decision of the High Court and allow the appeal by dismissing the writ petition leaving the parties to have their disputes thrashed out before the Industrial Forum. This would entail raising a dispute and an order for reference being passed under Section 10(1) of the `1947 Act by the appropriate Government. We may on the other hand formulate the dispute ourselves directing the parties to move the appropriate Government for an order of reference. It is the latter course which has been urged by the appellants and the respondents 7 to 12 relying on a decision of this Court in Hindustan Steel Works Construction Ltd. & Anr. Vs. Hindustan Steel Works Construction Ltd. Employees Union JT 2005 (7) SC 273.

We see no reason to take a different view from the opinion expressed in that case particularly having regard to the need to avoid industrial unrest in connection with the national Airlines. Apart from the fact that the Adhikari group have been agitating their grievance since 1997, the issue of inter-se seniority among the pilots needs to be resolved expeditiously since that would in turn involve issues of command of passenger flights and ofcourse, possible demands of shortfall. But before so directing there is yet another question that needs to be addressed viz. what would be the interim arrangement pending adjudication of the disputes by the Industrial Tribunal.

When the special leave petitions were filed by the appellants and the respondents 7 to 12 before this Court we had recorded on 25th April, 2004 that "pilots, as well as co-pilots have been sent in the command training" (sic). The intention was to record that pilots of the Adhikari group and the writ petitioners had been sent for command training. In fact the High Court while quashing the letters of cancellation noted that six pilots of the Adhikari group(respondents 7 to 12) had already been sent for command training and that they need not be recalled. However it was clarified that this direction did not alter their position in the line seniority list. During the pendency of these proceedings six more pilots of the Adhikari group as well as the writ petitioners have been sent for command training and have presumably completed it by the date of this judgment. The remaining two pilots of the Adhikari group, according to the Adhikari Group, have also been cleared for command training in the meanwhile and have started preliminary training earlier this month. We are of the view that the Adhikari group should be permitted to complete their command training. We have already noted that the appellants and the Adhikari group are agreeable that in the meanwhile clause 7(C)and Annexure D to the 1998 settlement would continue to operate but that the writ petitioners should not claim the shortfall under the 1998 Settlement. It seems an eminently fair suggestion except that any amount due on account of shortfall arising out of this arrangement must be deposited by the appellants in the Industrial Court which will keep the same in fixed deposit with any nationalized bank subject to any award, interim or final, that may be passed by the Tribunal.

We, therefore, set aside the decision of the High Court and allow the appeals. It is directed that the appropriate Government shall refer the following questions for adjudication by the appropriate Tribunal:

1. Whether the 1998 settlement or any portion thereof is liable to be set aside on the grounds of fraud, undue influence etc. as alleged by the Adhikari group?

2. Whether the requirement of the ALTP licence was necessary for co-pilots?

3. Whether the Adhikari group was entitled to seniority over the CPL Holders in the line seniority list?

4. What is the legal effect of the Conciliation Officer's recommendation of the Adhikari groups case and Air India's acceptance thereof?

5. To what relief are the parties entitled?

Any of the parties to these appeals viz. the Adhikari group or the writ petitioners and their colleagues or Air India may move the appropriate Government for the order of reference with a copy of our judgment. Till the disputes are adjudicated by the Tribunal, the interim arrangement as decided in an earlier part of this judgment shall operate. The costs of these appeals will follow the cause in the reference proceedings.