

SUPREME COURT OF INDIA

Ashutosh

Vs.

Indian Airlines Ltd.

C.A.No.2024 of 2007

(S. H. Kapadia and B. Sudershan Reddy JJ.)

18.04.2007

JUDGMENT

KAPADIA, J.

Leave granted.

The short question which arises for determination in this civil appeal is whether the appellant (employee) is entitled to seniority in the matter of promotion to the post of Deputy Chief Aircraft Engineer vis-à-vis Respondent nos. 3 to 17.

On 31.3.1992, a Settlement was reached between Indian Airlines and All India Aircraft Engineers' Association under which the then existing designations were revised as follows:

"REVISION OF SCALES OF PAY:

- i) With effect from 1.4.1989, the existing designations and the scales of pay applicable will be as under:- Existing Designation (Scale of Pay) Revised Designation (Scale of Pay) Asstt. Aircraft Engineer (Rs.2005-50-2105-60- 2825-70-2965) Asstt. Aircraft Engineer (Rs.2005-50-2105- 60-2825-70-2965) Aircraft Engineer (Rs.2285-60-2825-70- 3035-120-3395) Aircraft Engineer (Rs.2765-60-2825- 70-3035-120-3275- EB-120-3875) Sr. Aircraft Engineer (Rs.2765-60-2825-70-3035-120-3875) Aircraft Engineer (Rs.2765-60-2825- 70-3035-120-3275- EB-120-3875) Supdtg. Aircraft Engineer (Rs.2965-70-3035- 120-4115) Sr. Aircraft Engineer (Rs.2965-70-3035- 120-4115)
- (ii) With effect from 1st April, 1992 a new cadre of Dy. Chief Aircraft Engineer in the pay scale of Rs.3155-120-4235 will be created.

The strength of Dy. Chief Aircraft Engineers will be maintained at 20% of the total standard force of the cadre of Aircraft Engineers (Aircraft Engineer to Dy. Chief Aircraft Engineer)."

The revised designation was to operate from 1.4.1989.

By the said Settlement dated 31.3.1992, appellant was redesignated as Aircraft Engineer whereas respondent nos. 3 to 17 were redesignated as Sr. Aircraft Engineer w.e.f.

1.4.1989. Under the said Settlement, approval qualification had to be acquired by Sr. Aircraft Engineer (feeder post) for being promoted as Deputy Chief Aircraft Engineer. Under the Settlement, for promotion to the post of Deputy Chief Aircraft Engineer, the Sr. Aircraft Engineer had to obtain

approval of nine groups. Under the Settlement, the post of Deputy Chief Aircraft Engineer was created for the first time with effect from 1.4.1992 to be filled from the said feeder post of Sr. Aircraft Engineer. The candidate was required to acquire specified number of points before 1.4.1995. However, the Jet Shop which was established in 1992 for Delhi by Indian Airlines did not get its approval in time from DGCA (Directorate General of Civil Aviation). Therefore, the Association requested the Management to grant conditional promotion in various grades to enable employees like respondents 3 to 17 to complete their eligibility before the cut-off date. This request was made as employees like respondents 3 to 17 would have stagnated on account of above anomalies created by Settlement dated 31.3.1992. Therefore, on 23.7.1993, the Management and the Union entered into Discussions with regard to conditional promotion.

Vide Order dated 7.2.1994, respondents 3 to 17 were given conditional promotions to the post of Deputy Chief Aircraft Engineers with effect from 1.4.1992/ 1.4.1993 respectively. They were required to obtain nine approvals by 31.3.1995. As stated above, the Jet Shop set up by Indian Airlines for Delhi was approved only in February, 1995, therefore, respondents 3 to 17 could not fulfil the requisite qualification by the cut-off date. On the other hand, appellant herein completed two years service in the post of Sr. Aircraft Engineer on 31.3.1993. He acquired the requisite qualification on 15.12.1993.

According to the appellant, till today respondent nos. 3 to 17 have failed to acquire approval qualification. According to the appellant, the cut-off date, namely, 1.4.1995 has since passed. Appellant states that on 1.4.1991 he as well as respondents 3 to 17 were Sr. Aircraft Engineers. Appellant states that on 7.2.1994 respondents 3 to 17 were conditionally promoted with effect from 1.4.1992/1.4.1993. Therefore, according to the appellant, he was qualified for promotion on 15.12.1993 whereas respondents 3 to 17 till date have not acquired the requisite qualification. Appellant, therefore, prayed that respondents 3 to 17 were not entitled to promotions to the post of Deputy Chief Aircraft Engineers. It is the case of the appellant that he has been ultimately promoted to the post of Deputy Chief Aircraft Engineer vide order dated August, 2000 with effect from 1.10.1999. However, he has not been given promotion as Deputy Chief Aircraft Engineer from 15.12.1993 when he acquired the qualification and, therefore, Indian Airlines had erred in showing respondents 3 to 17 as senior to the appellant herein in the post of Deputy Chief Aircraft Engineer with effect from 1.4.1992/1.4.1993.

The main argument advanced on behalf of the appellant was that seniority in a cadre under the Promotion Rules did not entitle respondents 3 to 17 for promotions to the higher post of Deputy Chief Aircraft Engineer unless the candidate acquired the Approval Qualification prescribed by such Rules.

It was submitted that eligibility under the said Rules was different from seniority. It was submitted on behalf of the appellant that under the Promotion Rules what was contemplated was "seniority amongst the qualified". It was submitted that appellant had acquired the qualification on 15.12.1993 and since respondents 3 to 17 did not acquire the requisite qualification appellant was entitled to be promoted not from 1.10.1999 but from 15.12.1993 and, consequently, appellant has been discriminated vis-à-vis respondents 3 to 17 inasmuch as the said respondents were promoted with effect from 1.4.1992/1.4.1993 herein. It was urged on behalf of the appellant that the qualification prescribed by the Recruitment and Promotion Rules cannot be overruled by Industrial Settlement dated 31.3.1992 or by Note of Discussions dated 23.7.1993. It was urged on behalf of the appellant that, in any event, Industrial Settlement dated 31.3.1992 and the Promotion Rules had to be read in tandem; that the Industrial Settlement retained the qualification prescribed by the Recruitment and

Promotion Rules; that even the Note of Discussions retained the said qualifications but it is the Management who said that as a one time exercise, weightage should be given to seniority and as a one time exercise respondents 3 to 17 should be allowed to be promoted to the posts of Deputy Chief Aircraft Engineers in terms of Order dated 7.2.1994 (Exhibit 'P-4'). It was urged that the Recruitment and Promotion Rules only referred to "seniority amongst qualified" as the criteria of promotion to the post of Deputy Chief Aircraft Engineer which could not be eliminated either by the Industrial Settlement dated 31.3.1992 or by Note of Discussions dated 23.7.1993. It was urged that the appellant herein acquired the approval qualification on 15.12.1993 but vide impugned order dated 7.2.1994 the Management gave conditional promotions to respondents 3 to 17 with effect from 1.4.1992/1.4.1993 which created discrimination which violated the appellant's fundamental right to equality under Article 14 of the Constitution.

Before dealing with the above arguments, we quote hereinbelow para 13 of the Indian Airlines Recruitment and Promotion Rules, as applicable to Aircraft Engineering Department:

"The Board shall proceed to arrange their selections in order of inter-se seniority amongst the candidates who have qualified (other than the candidates who have been marked as 'outstanding' in which case such candidates will be placed at top of the list) and shall also keep a suitable number of candidates on the panel/waiting list. Such a panel may be used for filling vacancies that may arise subsequently and will be valid for a period of two years in respect of all posts in erstwhile Grade = and 3/6 (and its equivalent and one year in other cases, from the date of the approval of such panel by the competent authority whereafter the procedure as outlined above may be followed afresh; provided however, i) the Managing Director in his sole discretion and being satisfied on the relevant considerations, may extend the validity of such panels in other than erstwhile Grade = and 3/6 for a further period of six months at one time subject to a maximum of one year in respect of any panel.

ii) In preparing the panel the Board shall pay attention to the circulars and instructions issued by Government of India from time to time in matter of safeguarding adequate representation to members of Scheduled Castes/ Scheduled Tribes etc." (emphasis supplied) We also quote hereinbelow the relevant recital from the Industrial Settlement dated 31.3.1992;

"WHEREAS after signing the MOU with the Indian Airlines hereinafter called 'Management' on 26.2.1989 on their Charter of Demands for the wage period 1.10.1985 to 31.8.1990 (copy enclosed and marked as Annexure 'A'), the All India Aircraft Engineers' Association, hereinafter called 'Association' asked for payment of additional qualification pay, creation of new pay scales and certain other allowances to the Aircraft Engineers.

2. AND WHEREAS the Management could not accept the demand of the Association.

3. AND WHEREAS this dispute was referred by the Central Government vide items Nos. (i) and (ii) as contained in the schedule to the Order No. L.11011/3/89-IR(Misc.) dated 7th December, 1990 for adjudication by the NIT presided over by Justice Shri S.N. Khatri.

4. AND WHEREAS parties, during the pendency of the proceedings before the NIT, have held bilateral negotiations without prejudice to their rights and contentions in respect of relativity and parity of wage structure with corresponding categories of employees of Air India and as a result of such negotiations, have arrived at this Settlement, as a consequence of which Terms of Reference No. (i) and (ii) of the dispute pending before the NIT stand settled between the parties without prejudice to the rights and contentions of both the parties in regard to the term of Reference No. (v)

before the NIT which would remain operative with regard to the matter of relativity/ parity vis-à-vis Aircraft Engineers of Air India."

the relevant term of Settlement;

"2. The Qualification/ Productivity Scheme for Aircraft Engineers is contained in Appendix 'B'. With the introduction of the revised Qualification Pay from 1st April, 1989, the existing Qualification Pay and Certification Allowance shall stand withdrawn from 1.4.1989 and 1.8.1989 respectively."

the relevant clauses of Appendix 'A';

"2(d) Sr. Aircraft Engineer (scale of pay of Rs.

2965-70-3035-120-4115) with two years service in the scale and on acquiring prescribed licence/ approval qualifications for the post of Dy. Chief Aircraft Engineer (as per Annexure 1, 2 &

3 to Appendix 'B') will be eligible for appointment to the post of Dy. Chief Aircraft Engineer in the scale of pay of Rs. 3155-120-4235. The appointment to the cadre of Dy. Chief Aircraft Engineer, will, however, be subject to availability of vacancies as per the Standard Force and Recruitment and Promotion Rules.

Xxx 3(iii) The existing Sr. Aircraft Engineers appointed in the pay scale of Rs. 2765- 60-2825-70-3035-120-3875 prior to 1.4.1989 would be re-designated as Aircraft Engineer in the pay scale of Rs.

2765-60-2825-70-3035-120-3275-EB- 120-3875 w.e.f. 1.4.1989. These Engineers will be eligible for consideration for the post of Sr. Aircraft Engineers in the pay scale of Rs. 2965- 70-3035-120-4115 w.e.f. 1.4.1991 onwards subject, however, to possession of prescribed licence/ approval qualifications and confirmation.

4. All appointments to the cadre of Aircraft Engineer, Sr. Aircraft Engineer and Dy.

Chief Aircraft Engineer will be subject to Recruitment and Promotion Rules. The processing of such appointments for Sr.

Aircraft Engineer and Dy. Chief Aircraft Engineers will be done with reference to the DGCA examination session. The appointments to the cadre of Sr. Aircraft Engineer will, however, take place from the month following the month in which the prescribed qualification/ experience have been acquired by the Aircraft Engineer. The appointment from Sr.

Aircraft Engineer to Dy. Chief Aircraft Engineer will be subject to availability of vacancies as per the Standard Force and Recruitment and Promotion Rules."

and, the relevant clause of Appendix 'B':

"A. Qualifications requirement for appointment Designation Qualifications Aircraft Engineer (entry into pay scale) 'C' licence on one jet engine of IA fleet.

Confirmation Subject to obtaining approvals of any two groups of Enclosure 1.

Crossing EB Stage 'C' licence on one jet engine of IA fleet and approvals of any three groups of enclosure 1.

Sr. Aircraft Engineer 'C' licence on one jet Engine of IA fleet and approvals of any six groups of Enclosure 1.

Dy. Chief A/c Engineer 'C' licence on one jet Engine of IA fleet and approvals of any nine groups of Enclosure 1."

We also quote hereinbelow the relevant excerpt of Note of Discussions dated 23.7.1993:

"After detailed deliberation, the following decisions were arrived at:- i) That Engineers who have not been given opportunity for training on jet aircraft and Shop/ Major Maintenance approvals, as on 1.4.1993, will be given conditional promotions.

ii) Turbo prop aircraft licences held by engineers will be considered for promotion only as a one time exercise till 1.4.93 and such engineers will be given conditional promotion.

iii) Wherever all group approvals in Engine Overhaul shops as per the new agreement dated 31st March, 1992 have not become operative, the Engine Overhaul Trade Engineers will be promoted on conditional basis subject to the following:- (a) They must obtain 'C' licence on jet aircraft of IA fleet for which training has already been imparted to them within three consecutive DGCA chances effective 1.4.1993.

(b) They must obtain desired group approvals as per the clause (i), (ii) and (iii) shall have to obtain qualifications within three consecutive DGCA chances after getting training with effect from 1.4.1993, failing which they will be reverted to their substantive pay scales.

iv) The engineers who are promoted on conditional basis as per clause (i), (ii) and (iii) shall have to obtain qualifications within three consecutive DGCA chances after getting training with effect from 1.4.1993, failing which they will be reverted to their substantive pay scales.

All other terms and conditions of the agreement dated 31st March, 1992 will remain unchanged." (emphasis supplied) For the following reasons, we do not find any merit in this civil appeal. Firstly, under the Recruitment and Promotion Rules, seniority amongst the candidates who qualified was the criteria for promotion. However, the said Rules did not prescribe such qualifications. They were left to the joint wisdom of the Management and the Association. The approval qualifications were prescribed under Settlement dated 31.3.1992. These approval qualifications were prescribed under clause 2(d) of Appendix 'A', quoted hereinabove.

Appendix 'B' to the Settlement indicated that the candidate for promotion to the post of Deputy Chief Aircraft Engineer had to obtain approvals of nine groups and a licence on one Jet Engine of the Indian Airlines fleet. In the present case, the recitals in the Industrial Settlement quoted hereinabove show that during the pendency of proceedings before the National Industrial Tribunal with regard to the parity of wage structure, bilateral negotiations took place and the Settlement herein came to be filed before the Industrial Tribunal. Therefore, the eligibility criteria for appointment to various pay scales was laid down in the above quoted para 2(d) of Appendix 'A'. This eligibility criteria for acquiring the approval qualification was not a part of the Recruitment and Promotion Rules. It was a part of the Industrial Settlement filed before the Industrial Tribunal pending the main dispute on the wage structure.

After entering into the Settlement, while implementing, some difficulties were detected, therefore, a decision was taken by the Management in consultation with the Association on 9.6.1993 (Annexure P-2) as a part of Settlement to have 20% out of 49 posts to be earmarked for Sr. Engineers. This was the decision taken as the Sr. Engineers were facing stagnation.

Therefore, one has to read the impugned Order dated 7.2.1994 by which conditional promotions were given to respondents 3 to 17 with effect from 1.4.1993/ 1.4.1994 in the light of the policy decision dated 9.6.1993 and Note of Discussions dated 23.7.1993. In the circumstances, it cannot be said that the impugned order dated 7.2.1994, based on policy decision dated 9.6.1993 read with Note of Discussions dated 23.7.1993, violated Recruitment and Promotion Rules.

Secondly, there is a concurrent finding of fact recorded by the courts below that respondents 3 to 17 had acquired the approval qualifications prior to 25.11.1993 but the communication of the approval by DGCA occurred only on 20.11.1994 and that was the reason why an asterisk mark was inserted against the names of the said respondents in the order dated 7.2.1994. This has been disputed by the appellant. According to the appellant, the Jet Shop set up in Delhi in 1992 by Indian Airlines stood approved by DGCA only in 1995 and, therefore, the management was wrong in stating that respondents 3 to 17 had acquired the approval qualifications by 25.11.1993. Be that as it may, even assuming for the sake of argument that respondents 3 to 17 had failed to acquire approval qualifications till 1995, no fault could lie at the doorstep of respondents 3 to 17. These respondents could not avail of the opportunity of obtaining the approval qualifications as DGCA had not granted approval to the Jet Shop till 1995. Further, as stated hereinabove, the said respondents were senior to the appellant. Further, as stated hereinabove, there were anomalies in the matter of approval qualifications which were eliminated by joint discussions between the Union and the Management, as indicated by Note of Discussions dated 23.7.1993. Moreover, as stated above, the main anomaly was that while granting approval, DGCA did not go by seniority and, consequently, approvals were given earlier in point of time to engineers who were junior to the respondents which created an anomaly. For the above reasons, there is no need to discuss various judgments cited on behalf of the appellants since we have come to the conclusion that there was no violation of Recruitment and Promotion Rules. The approval qualifications formed part of the Industrial Settlement filed before the Tribunal which was subsequently modified by the policy decision dated 9.6.1993 read with Note of Discussions dated 23.7.1993 between the Management and the Association.

For the aforesaid reasons, there is no merit in this civil appeal and the same is dismissed with no order as to costs.