

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

LCA. NO.40/2018

Date of Passing Order- 25th March, 2022.

Between:

Ms. Sheelu Mathew,
W/o Shri Thomas Mathew.
R/o- 39, Uday Park, Khel Gaon Marg,
New Delhi-110049.

Workman

Versus

Air India Ltd.
Airlines House- 113,
Gurudwara Rakabganj Road,
New Delhi-110001.

Management

ORDER

This is an application filed by the claimant u/s 33C(2) of the ID Act praying that the Tribunal be pleased to compute the money due to her and direct the management to pay the same with interest at the rate 18% per annum from the date it becomes due and till the payment is made.

The contention of the claimant is that she had joined in the management Air India Limited as a Trainee Airhostess on 09.01.1978 and appropriate appointment letter was issued. After 3 months training she started the cabin crew duties in the flight. Her service was confirmed in the month of June 1979. In the year 1988 while on duty in the flight she suffered an accident leading to an injury on her back as a big size bag fell on her from the overhead bin. After prolonged treatment she could not recover and declared medically unfit w.e.f 21.12.1990 for the flying duties of the respondent company. By that time she had already put on the service of the respondent for 12 years and 8 months. As per the policy of the company a member of the cabin crew when found medically unfit by the companies medical officer for flying duties, he or she may be provided suitable ground jobs in the company until he attains the age of superannuation. In alternate the cabin crew if has put in atleast 5 years of service and declared medically unfit he may opt for payment of annuity at the prescribed rate from the date he is declared medically unfit and till he attains the age of 45 years or till the date of her death or till he is pronounced medically fit again, whichever is earlier. As the annuity the person is entitled to get 70% of his last drawn basic pay which would be payable during the normal time when salary is paid. The claimant opted for the annuity and after several correspondences

the annuity agreement was signed between the claimant and the management on 29.01.2007. As per the said agreement the applicant was held entitled to receive a sum of Rupees 3180/- as the 70% of his last drawn basic pay and Rs.100 as DA from 21.12.1990 when she was declared medically unfit for the flying duties. This amount of annuity was payable to the claimant till the age of 45 years ending on 9.9.2001 which means the annuity agreement was signed 6 years after she attained the age of 45. In addition to this the claimant was also entitled to the gratuity and provident fund dues. Before 29.01.2007 though several correspondences were made by the claimant with the management company requesting settlement of her dues no action was taken. The applicant had made a personal visit to the office of the respondent in Bombay on 29.03.2007 when she was assured that her request pursuant to signing of the agreement would be processed at the earliest and she would be paid her dues soon. On 17.03.2009 the Assistant Manager cabin crew administration wrote a letter to the GM HR intimating that the claimant has already refunded all the properties of the management and her US "D" crew visa has already expired and no disciplinary action is pending against her and thus, her annuity should be paid. Even then no payment was made and the claimant was compelled to send a legal notice to the respondent on 27.06.2017 claiming payment of annuity, Provident Fund and Gratuity alongwith interest at the rate of 18% per annum. Though the notice was duly served, the management did not respond and finding no other way the present petition has been filed by the claimant wherein prayer has been made that the management be directed to pay annuity at the rate of Rs. 3280/- per month from 21.12.1990 to 09.09.2001 as per the annuity agreement dated 29.01.2007. The claimant has calculated that towards the Principal amount of annuity Rs. 4,21,882/- and Rs. 16,87,869/- towards the interest on the said amount at the rate of 18% per annum be paid by the respondent to her and a direction to that effect be issued. Thus, the claimant has claimed Rs. 21,09,751/- recoverable from the respondent company.

Notice being served the respondent Air India appeared and filed its reply. While admitting that the claimant was serving as an Airhostess in the company from 09.01.1978 to 21.12.1990 the management has also admitted that the claimant suffered an injury while on duty and declared medically unfit for flying duty on 21.12.1990. The management has also admitted that as per the company policy, the medically unfit cabin crew has the option of changing the job for ground duty or to opt for the annuity. The claimant opted and entered into the annuity agreement on 29.01.2007. Explaining the delay in execution of the annuity agreement which was done 17 years after the claimant was declared unfit, the management has stated that the delay occurred due to the non cooperation of the claimant. In a letter dated 23.05.1991 the personal officer called upon the claimant for signing the annuity agreement. But she did not turn up and several communications were made between the inflight service department and the claimant in this regard. On 03.06.1992 the claimant was apprised that as per the current policy the annuity cannot be paid upto the age of 58 years. Later on

16.09.1993 a letter communication was made by the personal department of the respondent informing the claimant that the benefit of annuity can be extended upto 50 years of age. Even then the claimant did not turn up. On 10.08.2005 the Deputy General Manager IFSD issued another letter informing the claimant that she can exercise the option of accepting the ground job or receive the annuity. Though the letter was received by the claimant she sought some time to travel from Delhi to Bombay which was allowed. Even thereafter the claimant did not turn up to receive the annuity. The management has further stated that in the mean time the Provident Fund dues and the Gratuity of the claimant has been settled and they are ready and willing to pay the annuity amount as calculated without interest since, the delay in payment is wholly attributable to the claimant. But no document evidencing in action by the claimant causing delay in signing the agreement or releasing the amount has been placed on record by the management.

When the proceeding was pending steps were taken for settlement and during this process the management paid Rs. 1,34,591.34/- towards the full and final settlement of the PF dues. Similarly the management also paid Rs. 41,345, towards gratuity and Rs. 4,00,000/- towards the part of the annuity. The claimant has acknowledged receipt of the same.

Now it is to be adjudicated if the delay in signing the annuity agreement after 17 years is attributable to the claimant or to the respondent and if the claimant is entitled to any amount of interest on the same for the delay.

On behalf of the claimant several documents have been filed including the annuity agreement and calculation sheet of the same. In addition to this the claimant has also filed the copy of the letter correspondence between her and the senior manager cabin crew division, inflight service department wherein she by refereeing to a telephonic conversation intimated that she has not yet received her gratuity and Pf dues. Another letter dated 17th March 2009 written by the Assistant Manager Cabin crew administration to the AGM Personal has been filed wherein it was intimated that the claimant has returned all the properties of Air India and no disciplinary or vigilance action is pending against her. Even then the Air India did not release her annuity dues. Not a single piece of paper has been filed by the management to prove that the delay in payment occurred due to the non cooperation or fault of the claimant. It is surprising to note that the management has admitted about the legal notice received from the claimant but explained that no action on the same could be taken.

Even if it is believed that the delay in signing of the annuity agreement is attributable to the claimant, it is not understood as to why soon thereafter the amount was not credited to the account of the claimant when the management had the information that the claimant has already returned all the properties of the management and no disciplinary or vigilance proceeding was pending against her. From the circumstances it is evidently

clear that the claimant though signed the annuity agreement on 29.01.2007 the management failed to disburse the annuity amount until 400000/- towards the same was paid to her on 25th July 2019 i.e. during the pendency of this proceeding. Thus, it is held that the delay in release of the legitimate dues of the claimant is wholly attributable to the negligence on the part of the management. Hence, it is felt proper to direct the management to pay the balance of the Principal amount of the annuity to the claimant alongwith interest @ 9% per annum on the entire Principal amount of annuity from the date of execution of the annuity agreement till the final payment is made. Hence, ordered.

ORDER

The prayer of the claimant made in the petition is allowed. The management is directed to pay the balance of the Principal amount of the annuity to the claimant alongwith interest @ 9% per annum on the entire Principal amount of annuity from the date of execution of the annuity agreement i.e 29.01.2007 till the final payment is made. Consign the record as per rules.

The order is accordingly passed.

Presiding Officer
Central Government Industrial Tribunal
cum Labour Court No. II, Delhi.

Date: 25th March, 2022.