

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.

INDUSTRIAL DISPUTE CASE NO. 46/2012

Date of Passing Award- 05.04.2022

Between:

Shri Sunil Kumar Tandon,
S/o Shri Baij Nath Tandon,
C/o Shri K.K Rohatgi,
174, Second Floor,
Sukhdev Vihar,
New Delhi-110025.

Workman

Versus

M/s Inter Globe Aviation Ltd.
Central Wing,
Ground Floor, Thapar House,
124- Janpath, New Delhi-110001.

Also at:-

Tower –C, Gopal Business Park,
DLF City Phase-III,
Mehrauli, Gurgaon Road,
Gurgaon 122002.

Management

Appearances:-

Ms. Mukul Sharma
(A/R)
Shri Ajit Warrier
(A/R)

For the claimant.

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Inter Globe Aviation Ltd., and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-11012/40/2010 (IR(CM-I) dated 25/01/2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Inter Globe Aviation Ltd. New Delhi in terminating the services of Shri Sunil Kumar Tandon S/o Shri Baij Nath Tandon, w.e.f 08/10/2008 is justified and fair? To what relief the concerned workman is entitled to?”

As per the claim statement the claimant is a retired Group Captain of Indian Air force and being fully trained and qualified as a Pilot he was aspirants of getting an employment as a commercial pilot. Thus, he underwent flying training in Long Beach Flying Academy Los Angeles California USA and obtained a certificate of qualification. Having passed all the tests as required by the Director of Civil Aviation (DGCA) Government of India he was granted Commercial Pilot license on 03.10.2007 which was valid upto 2012. He was cleared to fly Aircraft Cessna and P-68-6 as Captain in command. Endorsement to that effect was made in his license by the DGCA. The claimant then offered his candidature for appointment as a commercial pilot to the management company i.e. M/s Inter Globe Aviation limited. After checking his credentials and through a proper selection process he was appointed as a junior co-pilot by the said management w.e.f 28.04.2008 on permanent basis. As per the appointment agreement his salary was fixed at Rs. 1,45,550/- per month besides the variable pay and other benefits which was to be revised and enhanced in due course. In order to ensure professional proficiency the claimant had earlier submitted an application to the DGCA Government of India on 1st November 2007 requesting for approval of his training and endorsement of a co-pilot training on Airbus A320 Aircraft at Sim Corp flight training INC, Orlando Florida USA as per their approved Syllabus. His request being approved by DGCA he successfully completed the Airbus A320 type training program at Sim Corp flight training INC, Orlando Florida USA. Thus, he was issued a commercial pilot licence by the United States of America department of transportation and an endorsement to that effect was made in his licence. Thus, he was declared by the Government of USA as fit to fly Aircraft Airbus A320 as second in command (co-pilot) anywhere in the world. The workman thereafter applied to the DGCA to make necessary verification and endorsement in his licence to fly Airbus A320 Aircraft. The DGCA accordingly made an endorsement in his licence on 11.04.2008 which is valid from 03.10.2007 to 02.10.2012. The claimant was an employee of Air force having vast experience in the field of aviation and had flown over 6000hrs., in airplanes of different category as a navigator. He was the navigation instructor in the Indian Air force. In addition to that he had the experience of flying international routes and difficult terrains. Though the claimant was appointed by the management as a permanent Junior co-pilot and had all the required qualification and experience the management as per the directives of the DGCA conveyed vide operation circular no. 4 of 2007 decided to impart him a familiarization training for a duration of 45 minutes. This was intended to familiarize the claimant with the aircrafts operated by the management. He was taken up for the said familiarization training (base training) at Jaipur and the same was conducted by the Chief Trainer Pilot, Captain P.K Sinha on 13.07.2008. Though the training was only for familiarization and was to be told the difference between the prevailing A320 Airbus Aircraft and the A320 Airbus Aircraft in operation by the management the trainer Mr. Sinha without any reason converted the same to

a training declared him unfit for type rating. Captain P.K Sinha declared the claimant unfit for type rating at the behest of the management as commercial activity of the management at that time was going through a turmoil for the global recession. The workman was then handed over the adverse assessment documents. Since, he had already spent huge money for his training in USA thought of requesting the management to send him for correction training. The management instead of helping the workman acted with the pre mediated design and coerced the workman to write an application to the management asking to go on leave without pay and undergo further specified training at his own cost at Central Training Establishment at Hyderabad. Apprehending lest his service may be terminated he agreed for the same even though it was the sole responsibility of the management to provide correctional training to the pilot. At that time though the management was sending its other pilots to Dubai for corrective training it was not so done in case of the workman. Captain S Lumba, V.P of the management wrote a letter to the CTE Hyderabad requesting to allot two sessions of 4 hrs. each for the workman with Captain S.K Roa as instructor. At that time the management thought that the 2 sessions of corrective training would be adequate. But the times slot was not available in Hyderabad and the workman again asked the management to arrange his training in Dubai alongwith the other pilots. But the same was refused for reasons not known to the workman. Having left with no other choice than undertaking corrective training in USA by incurring additional cost he agreed to undergo the training as demanded by the management at Sim Centre Florida USA from 30.08.2008 to 11.09.2009 for simulator training. The workman did 12hrs., Simulator training against recommended 8hrs., and had to spend lots of money in that respect. The training was completed on 11.09.2008 at the Sim Centre USA and his performance on equipment examination, exterior pre flight check and proficiency check were found satisfactory and certificate to that was effect issued to him on 11.09.2008. When he came back with such certificate and obtained endorsement from DGCA on his licence, the management with some ulterior intention and to terminate his service arranged another training for him on 01.10.2008 in Dubai appointing the same captain P.K Sinha as observer whereas Captain David Paul Ash was the external examiner. Though the same was not required the workman had to undergo the training under Captain David Paul who was not the Chief Training Pilot of the management M/s Inter Globe. During that training he was illegally declared temporarily unfit and recommended for 5 more training sessions on the simulator. The management ignoring the huge amount spent by the claimant on his training and hard work done in the last 2 years being guided by the recommendation of the external examiner illegally and unjustifiably terminated the service of the workman by a letter date 08th October 2008. No show cause notice was issued to him nor the provisions of Id Act were complied before such termination. Since the date of such termination the claimant is jobless and all his efforts for reinstatement became futile. For the unfair labour practice

meted to him on account of the termination order dated 08.10.2008 he served a demand notice on 19.11.2008 demanding reinstatement with full back wages and other benefits. Having no other efficacious remedy the workman approached the conciliation officer where a conciliation proceeding was held. But, the management refused to take back the workman into service and thus the appropriate government referred the matter to this tribunal for adjudication.

The management M/s Inter Globe Aviation filed Written Statement pleading inter alia stating therein that the workman was appointed as a junior co-pilot in the management as he was having a commercial pilot licence and had completed flying training in long Beach Flying Academy Los Angeles California USA. By that licence the workman was cleared to Fly Aircraft Cessna and P-68-6 as Captain in command i.e. independently. Since the job and responsibility of a pilot requires a great Degree of skill, proficiency and competence involving safety of the passengers and public property, the pilot even after obtaining basic licence are required to undergo various levels of test and training including the proficiency test. A licence obtained by the pilot permits him to operate an aircraft commercially for remuneration. But in order to fly a specific aircraft the pilot need to pass the required test and training, before he can be finally permitted to operate the aircraft and for the same had to go through various stages of training under the instructor pilot. One such training is the familiarization training prescribed by DGCA.

When the claimant approached the management for employment as a fully trained and qualified co-pilot on A320 Airbus his claim was supported with a temporary FAA Type rating certificate accepted by DGCA for grant of type rating on his licence. On the basis of the same he was appointed as a junior co-pilot with the management on 28th April 2008 on the terms and conditions stipulated in the Pilot Appointment Agreement. The appointment was subject to fulfillment of the basic eligibility condition and capabilities DGCA is the regulatory body in the field of Aviation and issues guidelines by way of circulars to ensure safety and security in the Aviation sector. As per the Operation circular No. 4/2007 issued by DGCA it is mandatory for the pilot appointed to pass a familiarization training on the type of the Aircraft for which endorsement is obtained. In accordance to the said guideline the claimant underwent Aircraft familiarization base training for 45 minutes at the Aircraft base training on A320 Airbus at Jaipur on 13th July 2008 under the supervision of the trainer captain PK Sinha. He was then the Chief Pilot-Trainer of the management. After the training the claimant was found unfit and unable to fly the aircraft to the minimum standard as laid down by DGCA. Since he failed in the training held on 13th July 2008 the management as a good gesture called the claimant for counseling where he pleaded with the Vice President of Flight Operation to afford him an opportunity to undergo on corrective training. The request was acceded and the Vice President wrote a letter to the training institute at Hyderabad as the

claimant agreed to undergo corrective training by availing leave without pay. That arrangement since did not work out the claimant availed leave without pay and underwent the required corrective training at Sim Centre Miami USA from 30th August 2008 to 11th September 2008. The said training was conducted on Simulator only and the claimant obtained a certificate of successful completion of the training. But the training record showed majority of the heads in the training as recorded unsatisfactory. After that training the candidate was required to take an assessment proficiency check to enable him to go for the further steps towards flying Airbus. But the claimant refused to take the proficiency assessment check in USA. On his return on 1st October 2008 in order to further accommodate him the management once again gave him an opportunity to submit him for the pilot proficiency check as he had not undergone the same in Miami USA. The test was arranged with an independent assessor from the Aircraft manufacturer M/s Airbus industries and the training was carried out in the training Centre at Dubai by an independent external examiner captain David Paul Ash. Captain P.K Sinha on behalf of the management was the observer. But this time too the claimant could not qualify in the proficiency test and his failure in the same rendered his flying licence invalid under Rule 41A of the Aircraft Rules 1937. The management was thus, left with no other option than terminating his service invoking the provision of clause 15(v) of the Pilot Employment Agreement. The claimant has filed an appeal challenging the decision of the management which is now pending before the DGCA. The management has pleaded that it is not a case of retrenchment but dismissal on account of non performance/under performance of the claimant.

The claimant filed replication reiterating the stand taken in the claim petition. On this rival pleadings the tribunal by order dated 25.04.2013 directed that the adjudication shall be made in terms of the reference and claimant was called to adduce evidence. During the proceeding the claimant examined himself as WW1 and proved several documents marked in the series of PW1/1 to PW1/21. These documents include the appointment letter, pilot appointment agreement, the operation manual of the management the pilot licence of the claimant, the certificates of training obtained by him from Sim Centre USA and the report of the familiarization training and proficiency training declaring him unfit by the respondent. In addition to that the claimant has filed the documents showing his work experience prior to joining the respondent establishment and calculation of the salary which he could have earned during his service with the respondent.

On the contrary the respondent has examined 2 of its officers as MW1 and MW2. Like the claimant several documents have been exhibited by the management which are the operation manual of the respondent company and the circulars issued by the regulatory authority i.e. DGCA.

At the outset of the argument on behalf of the claimant it was submitted by his Ld. A/R that the claimant though successfully completed the Aircraft Airbus A320 type training programme at Sim Corp Flight Training INC Florida USA and granted commercial pilot licence by the Federal Aviation Administration Government of United State of America basing upon his skill the management mischievously subjected him to another proficiency check in Dubai making Captain P.K Sinha as observer. Said P K Sinha was the first examiner who had declared him unfit though he himself was unfit to be the instructor having crossed the age of 60 as per the guideline of DGCA. He also argued that as per the guidelines of DGCA the workman was required to undergo familiarization training for a duration of 45mins Captain P.K Sinha intentionally converted the same to a proficiency training and marked him unfit. All these were done under the direction of the management who was looking forward for downsizing its employees no. for the global recession. The Ld. A/R further submitted that the workman has in the meantime and during the pendency of this proceeding has crossed the age of superannuation and his claim for reinstatement has become infructuous. For the injustice done by the management atleast an award should be passed for full back wages deeming as if he was in service till the date of superannuation . He also argued that for passing the award the tribunal should consider the unfair and unjustified practice meted out to him and the amount of money and time he lost during the process.

In his counter argument the Ld. A/R for the management submitted that the job of the workman demanded high grade of efficiency since the same involves safety of passengers crew members and public property. The management while employing the pilots has to take care to ensure all kind of safety. Though, the claimant was holding the commercial pilot licencing, found unfit for flying as a junior co-pilot after the proficiency test undertaken. Thus, by invoking clause 15 of the pilot appointment agreement his service was rightly terminated and no illegality has been committed. He also submitted that this is not a case of retrenchment but termination as per the termination clause of the pilot appointment agreement and the claimant is not entitled to the benefits he has asked for.

The admitted facts are that the workman was appointed as a junior co-pilot in the management on 28.04.2008. At that time he was holding a commercial pilot licence in which there was an endorsement dated 11.04.2008 authorizing him to act as co-pilot in Airbus A320. It is also admitted that prior to that he had obtained the permission of the DGCA to undergo the co-pilot endorsement training on Airbus A320 at Sim Corp Flight Training Institute in USA. As per the employment agreement the pilot is required to be capable of carrying out the duties of a pilot at all times. As

envisaged in operation circular no.4/2007 issued by the DGCA the pilot after his employment by any aviation operator has to undergo a familiarization training for a duration of 45 mins. The workman underwent that training under the trainer pilot of the management who declared him unfit by his report dated 13.07.2008 marked as PW1/14. It is also not disputed that thereafter the claimant went to Sim Corp Flight Training Institute in USA where from he obtained a certificate of satisfactory proficiency check. The said certificate was obtained on 11th September 2008. Even then he was asked to undergo another proficiency check training in Dubai where he was again found unfit followed by the order of termination of service.

The workman has broadly challenged the action of the management on the ground that his service was illegally terminated despite the facts that he was holding a commercial pilot licence having prior flight experience. The familiarization test conducted by the management on 13.07.2008 was illegally turned into an assessment training by captain P K Sinha who found him unfit for type rating. Though, the workman took steps for enhancement of his skill and again at his own cost went to USA and underwent another training in the simulator for Airbus A320 and came back with the certificate of proficiency the same was not accepted and he was subjected to another training in Dubai where he was illegally adjudged as not proficient. Though, he had spent a lots of money the management forced him to write the letter dated 17.07.2008 seeking leave without pay for undergoing the training at Sim Centre USA. The stand of the management inter alia is that the workman is bound by the terms of the pilot employment agreement which authorizes the management to terminate the service of the pilot for deficiency in performance. Thus, no illegality was committed. The other stand of the management is that when the trainer of the respondent and the independent examiner in Dubai found the workman unfit and the workman claimant accepted the same without any objection he is estopped from advancing this claim of illegality meted to him.

Besides the oral evidence several documents have been filed by both the parties. The Pilot Employment Agreement filed by the claimant has been proved as PW1/8. Under clause 14 of the said agreement co-pilot means a pilot holding a DGCA issued CPL whose duty is to assist or relive the commander. This means the co-pilot carries heavy responsibilities and at the time of need can function as the commander of the flight. Under the clause 15(v) it has been contemplated that if the pilot is duly investigated and found guilty of incompetence or negligence in performance of his duty his service can be terminated without the obligation of any notice period. Thus, the management has argued that the service of the claimant was terminated invoking this clause and no illegality was ever committed.

Now it is to be seen from the oral and documentary evidence if the claimant proved himself to be competent but became a victim of the management declaring him unfit with some ulterior motive. The oral and documentary evidence adduced by the parties prove beyond doubt that the claimant was working as a pilot in the Indian Airforce for a long period and had the experience of flying as a navigator for more than 6000hrs. Before joining the management he had undergone the training in the flying institute in California USA and obtained a commercial pilot licence from the FAA(USA). He then obtained an endorsement in his licence from DGCA as a copilot for Airbus A320. The DGCA had issued the circular no. 4 of 2007 marked as PW1/11 wherein it was directed that for the rapid growth of Airtraffic in India and induction of large no. of Aircraft, with a view to standardize and rationalize the transition training syllabus of all operators it is required that a minimum requirement of training should be imparted. This will include a familiarization training for a minimum duration of 45 mins. on the type of Aircraft for which endorsement is obtained. Pilots with previous jet experience are not required to do this training. Captain P K Sinha being the Chief Trainer Pilot of the respondent company by a letter marked as PW1/10 recommended for the claimants line Training requirement indicating there in the types of training he has to undergo as he was appointed as co-pilot only with a type rating and no previous commercial transport flying experience. Accordingly he was taken for the familiarization training to the respondents training base at Jaipur. Said Captain Sinha took up the training as the instructor alongwith a safety Pilot and found the claimant unfit for the type rating by report dated 13.07.2008. As per this report marked as PW1/14 five types of tests were taken and in respect of all he was found unsatisfactory. The claimant has challenged this report on the ground that Captain Sinha unauthorizedly converted the familiarization training to test training. But this argument of the claimant doesn't sound convincing since this operation circular no. 4 of 2007 issued by DGCA clearly indicates the types of training to be imparted to the newly inducted pilots according to which P K Sinha took the test and familiarization training is one among the same. Exhibit. PW1/9 is the operation manual of the respondent approved by the DGCA. According to this manual the instrument rating in the license of a pilot would be valid for a period not exceeding 2 months from the date of satisfactory completion of instrument rating check. Under clause 1.1.2.3.5.2 if a pilot fails to achieve the required proficiency standard he will be provided corrective training. The training captain who assesses a pilot below the required proficiency will clearly indicate in the check report the area of deficiency and his recommendation of the corrective training and the pilot under check will sign on the report. From the report of captain Sinha marked as Exh. PW1/15 there is clear indication of the deficiencies. The management thus, recommended the workman for corrective training at Hyderabad but at his own cost. Since, no slot was available at Hyderabad the claimant volunteered to undergo the training at

Sim center in USA. The document filed nowhere reveals that the claimant had ever raised objection to the finding of captain S.K Sinha the trainer pilot.

The other document filed by the claimant is the certificate issued by Sim Center US. Basing on this report the claimant has pleaded that he successfully completed the training at Sim Center and obtained a satisfactory report but the management did not accept the same and send him for a proficiency check in Dubai appointing CP. P.K Sinha as observer who intentionally managed to certify him as unfit for type rating. This stand of the workman was counter argued by the management on the ground that the student training record of Sim Center on various segments found the performance of the claimant an unsatisfactory. He was subjected to exterior preflight airplane trainee which he accomplished. Then he was recommended for equipment examination and proficiency check. At the bottom of the record it has been mentioned that equipment examination and exterior preflight check was satisfactory. But no comment was given on the proficiency check for which the management decided to send him for the proficiency check in Dubai by an independent examiner. The report of the said independent examiner has been marked as Exh. PW1/19., where the performance of the claimant was assessed by the independent examiner Captain David Ash. In that training Cap. P.K Sinha had no role to play. The claimant again found not proficient and could not complete the training curriculum and accepted the report by putting his signature on the same. Thus, the management has taken stand that no illegality has been committed in terminating the service of the claimant.

As evident from clause 1 (a) of the employment agreement a pilot is required at all times to be capable of carrying out the duties of a pilot and bound to meet any requirement specified by the DGCA. As envisaged in the operation circular 4/2007 issued by DGCA the pilot has to undergo a familiarization test. As per the report dated 13.07.2008 his performance was found unsatisfactory and the workman of this case opted for a training in USA at his own cost which he has admitted during his cross-examination. The evidence on record reveals that the workman was so desperate for improving his performance that he volunteered to proceed to USA at his own cost availing leave without pay. The stand of the workman that he was coerced for the same is not proved. As evident from the evidence the workman was to undergo simulator training in USA for Airbus A 320 It is seen from the report marked as Exht. PW1/17 his performance in different categories was unsatisfactory and he was recommended for proficiency check. But no document has been placed on record to prove that the proficiency check was undertaken. The Ld. A/R for the workman took this tribunal through the report marked as Exht. PW1/17 and argued that when the overall assessment was satisfactory the management had no occasion of sending him for a further proficiency check in Dubai.

On record there are 2 reports available in which the workman was found unfit for type rating of Airbus A-320, both at the behest of the management. For preparation of one report Captain P.K Sinha was the pilot trainer during the training held in Jaipur and in the other he was the observer in the performance check held in Dubai by an independent examiner. The Ld. A/R for the workman strenuously argued that the Tribunal can look into the report of Sim Center to form its own opinion on the proficiency of the workman and reject the assessments made by Cap. P K Sinha and David Ash of Dubai, in the case of **Bharat Prasad Vs Union of India (2013 SCC online Del 2114)** it has been held that when 3 examiner pilots observed the petitioner as not fit to be released for flying as a co-pilot without a safety pilot, the courts are not equipped to perform and decide technical functions which are best left to the competent authorities.

Here is a case where the issue is not whether the petitioner is qualified as a pilot but the issue is whether the petitioner is qualified to operate the Aircraft as a co-pilot. The duties of a co-pilot carries heavy responsibility as he is required to relieve the pilot in command at the time of need as has been described in the pilot appointment agreement under clause 14 (g). A pilot is also required to perform all flying and supervisory duties assigned to him by the company. Even if the pilot satisfies the requirement of being a pilot it is always open for the employer to assess the capability of a pilot for independently handling as Aircraft which can only be adjudged by the examiner pilot. A person might be having the commercial pilot license, experience of flying hours but the same would not make him eligible to be released to fly as a co-pilot. Merely because the workman is otherwise qualified and has the endorsement on the license as a commercial pilot, the observation of the examiners cannot be ignored.

Except the stand taken by the claimant, there is absolutely no evidence on record that captain P.K.Sinha and Captain David Ash had the axe of malice to grind against the claimant. Moreover, the stand by the claimant with regard to the incompetency of Captain P.K.Sinha for cross 60 years of age has been disproved by MW2. In this case the claimant workman despite undergoing training twice in USA had failed to the required standard of working as the co-pilot. The certificate obtained by him from Sim Center USA nowhere reveals that he had undergone proficiency check for which the management decided to send him for that purpose to Dubai where he again failed to the required standard and found unfit for type rating by the examiner for Airbus A-320. Accordingly, his service was terminated by the management employer invoking clause 15 (v) of the pilot employment agreement on account of underperformance. The said action of the management cannot be found with fault as the respondent management as an aviation company owes responsibilities towards passengers, crew members and public property safety. The argument of the workman with regard to the expenditure incurred by him during the training cannot be considered in this proceeding since the action of the management in termination his service as

the employer is held to be proper and no back wages can be ordered. Hence, ordered.

ORDER

The claim be and the same is decided against the workman and reference is accordingly answered. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
05th April, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
05th April, 2022