

Ö\224ITEM No.IB
(For judgment)

Court No.8

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.6903/2008 @ SLP(C)No.4420/2006

K.A. ANSARI & ANR. Appellant (s)

VERSUS

INDIAN AIRLINES LTD. Respondent (s)

Date : 28/11/2008 The matter was called on for Judgment today.

For Appellant (s) Ms. Meenakshi Arora, Adv.

For Respondent (s) Mr. R.S. Suri, Adv.

Hon'ble Mr. Justice D.K. Jain pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice P. Sathasivam.
Leave granted.

The appeal is allowed in terms of the signed judgment. The parties shall bear their own costs.

(PAWAN KUMAR) (ANAND SINGH)
COURT MASTER COURT MASTER
(signed reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6903 OF 2008
(Arising out of S.L.P. (C) No. 4420 of 2006)

K.A. ANSARI & ANR. APPELLANT (S)

VERSUS

INDIAN AIRLINES LTD. RESPONDENT (S)

J U D G M E N T

D.K. JAIN, J. :

Leave granted.

2. This appeal is directed against two common orders, dated 21 st
November, 2005, passed by the High Court of Delhi at New Delhi in

L.P.A. Nos. 1135 and 1136 of 2005. By the impugned orders, the High Court has allowed the appeals, preferred by the Indian Airlines Limited, the sole respondent in this appeal, against the order passed by a learned Single Judge of the High Court in the miscellaneous application filed by the first appellant herein, seeking clarification of the final judgment rendered by the learned Single Judge on 11 th October, 2004. The Division Bench has held that after disposal of the writ petitions, miscellaneous application was not maintainable and, hence order dated 4 th March, 2005 on the said application was without jurisdiction.

3. In order to appreciate the controversy, it would be necessary to recapitulate the background facts, stated in detail by the learned Single Judge. These are as follows:

The appellants were appointed as Field Officers by the Government of India, Ministry of Agriculture, Directorate of Agricultural Aviation in the years 1978 and 1979. On 24 th July, 1987, they were transferred under the administrative control of the Ministry of Civil Aviation. M/s Vayudoot Limited (for short 'Vayudoot'), a public sector undertaking, was incorporated in the year 1981. In the year 1988, the assets of the Directorate of Agricultural Aviation were transferred to Vayudoot. As a result thereof, the services of the officers of Directorate of Civil Aviation were placed at the disposal of Vayudoot, on deputation. The deputation was on same terms and conditions including pay and allowances as were being received by the appellants under the Ministry of Civil Aviation.

4. On 8 th April, 1988, posts of the appellants were re-designated as Operation Officers. Again on 9 th May, 1989, the designation of the appellants was changed to Assistant Manager. Appellant No.1 - K.P.S. Rathore, was selected as a trainee pilot on 1 st January, 1989 and was confirmed as such with effect from 1 st November, 1990. Appellant No.2 - K.A. Ansari, was appointed as a junior pilot on 1 st July, 1990 and was confirmed as such with effect from 1 st October, 1990.
5. It appears that in the year 1993, the Government of India took a policy decision to merge Vayudoot with Indian Airlines. On 24 th May, 1994, Ministry of Civil Aviation issued an order conveying the decision of the Government that the process of absorption of the Vayudoot employees

shall commence by 31 st June, 1994 with certain relaxations/benefits to them on joining the new organisation. The benefits included protection of basic pay drawn by the employees of Vayudoot at the time of their absorption in Indian Airlines.

6. It seems that the employees of Vayudoot, who were absorbed in the Indian Airlines in a separately created 'Short Haul Operations Department', referred to as 'SHOD' by the learned Single Judge, demanded integration with the existing employees of Indian Airlines. They claimed that they had a right to be promoted to the next corresponding post with the existing employees of Indian Airlines by including the service rendered by them under Vayudoot. As expected, the integration was opposed by the existing employees of the Indian Airlines. Negotiations were held and in the meeting held on 10 th March, 1988, one of the decisions' taken was as under:

"PILOT

1. SHOD pilots will undergo training in IA aircraft and on getting type endorsement will be placed at the bottom of the seniority of First Officers (Co-Pilots). However, their past services will be counted for the purpose of pay protection and other financial benefit. Their future growth will be on the basis of the line of seniority. The IA will take necessary action to initiate their training within a period of one month.
2. Pilots who fail to obtain licence endorsement as per IA rules will be retained in SHOD. Such pilots may be provided appropriate ground job. Their basic pay and allowances in such cases will be protected. The proposal is based on the basis of the policy adopted by the company while phasing out turboprop aircraft in 1982.
3. Four executive Pilot will remain in SHOD and will be sent on deputation to Alliance Air. After acquiring training and getting Boeing endorsement they will be appointed as Co-Pilots. Their pay and allowances and status will be protected."

7. Thereafter, some more decisions were taken, with which we are not directly concerned in this appeal except to note that in order to find an amicable solution to the demands/grievances of the employees of Indian Airlines and SHOD, in the meetings held on 21 st April, 1998 and 16 th March, 2000, it was decided that the SHOD employees will have to complete their training and obtain the licence to fly an Indian Airlines' aircraft in three attempts. Accordingly, vide communication dated 6 th September, 2001 the appellants were informed that since they had failed in two attempts, their training was being terminated and they would

revert to SHOD with immediate effect. The appellants protested, inter alia, on the ground that they were entitled to three opportunities, instead of two, to obtain the requisite licence. However, on 15 th November, 2002, the appellants were directed to appear for an interview for selection to the post of Assistant Manager (Flight Safety). The said action on the part of the Indian Airlines was questioned by the appellants by preferring writ petitions in the High Court. Their plea was that as per the agreed arrangement, they had to be given three chances to obtain the licence endorsement and in the alternative they had a right to be automatically inducted in a ground job post of equivalent status with protection of pay and allowances. Notwithstanding the filing of the writ petitions, the appellants joined on the post of Assistant Manager (Flight Safety), offered to them in terms of the letter issued by the respondent on 23 rd April, 2003, which contained the following note:

"Please note that you are being given this last and final, opportunity to accept our offer of appointment as Asstt. Manager (Flight Safety) with protection of basic pay. If you fail to report for Medical Examination by the stipulated date as mentioned above, it will be presumed that you are not interested in the alternate employment as a rehabilitation measure offered by the Management and the Management would be constrained to terminate your services."

8. Be that as it may, ultimately the writ petitions preferred by the appellants were disposed of by the learned Single Judge on 11 th October, 2004 in the following terms:

"Petitioners on failing 3 tests are undoubtedly entitled to be automatically placed for a ground job with benefit of past service. This grounding cannot be at a post lower in the scale held by the petitioners. Since no material has been placed to show what was the scale of post of Assistant Manager (Flight Safety), writ petitions are disposed of with the following directions:-

(i) Petitioners would be entitled to benefit of past service right from inception when they joined service under Government of India for purposes of all terminal benefits and in-service benefits linked to length of service.

(ii) Petitioners would be entitled to be posted to a post in equivalent scale held by them when letter dated 23.4.2003 was issued.

(iii) Petitioners would be entitled to basic pay protection.

(iv) If as a result of direction (ii) above, petitioners are to be put in a post of higher grade, arrears of pay and allowances would be paid within 6 weeks from today.

(v) Petitioners would be entitled (only) to the allowances for the ground post in which they are to be posted."

9. On 25 th November, 2004, appellant - K.A. Ansari, communicated the said order to the Chairman- cum-Managing Director of the Indian Airlines, requesting for his posting to a post in the equivalent scale, i.e. Deputy Manager, in terms of direction (ii), extracted above, with consequential relief. In response thereto, the Indian Airlines informed him that he had been placed in the proper scale and his basic pay was duly protected in terms of the aforementioned direction (iii) and service rendered in Vayudoot shall also be taken into consideration for the purpose of gratuity, provident fund, loans, advances and medical facilities etc.
10. Not being fully satisfied with the response of the Indian Airlines, the first appellant moved a miscellaneous application before the High Court, seeking a direction to the respondent to place him in a ground job in the equivalent pay scale of Deputy Manager, as directed in the final order dated 11 th October, 2004. In short the grievance of the applicant was that although on 23 rd April, 2003, when Indian Airlines had asked him to join on the post of Assistant Manager (Flight Safety), he was in the grade of Rs.6200- 175- 6550- 200- 7500- 225- 7775- 250- 8025 but he had been placed in the pay scale of Rs.5675- 175- 6550- 200- 7500- 225- 7775- 250- 8025.
11. After notice to the Indian Airlines, as noted earlier, the learned Single Judge disposed of the application vide order dated 4 th March, 2005. Inter alia, observing that counsel for the Indian Airlines had not disputed that when letter dated 23 rd April, 2003 was issued to the appellants they were in the grade of Rs.6200- 175- 6550- 200- 7500- 225- 7775- 250- 8025, the learned Single Judge disposed of the application with the following directions to the Indian Airlines:-

"It is not being in dispute that when letter dated 23.4.2003 was issued petitioner being a first officer was in the pay scale of Rs.6200- 175- 6550- 200- 7500- 225- 7775- 250- 8025.

Accordingly, petitioner on ground would have to be placed in the said scale.

As this court understands the law to be, if the cadre of a person is changed he would be entitled to an equivalent pay scale and in the absence of an equivalent pay scale would be entitled to be placed in the next above scale.

Scale in which the respondent seeks to place the petitioner is Rs.5675- 175- 6550- 200- 7500- 225- 7775- 250- 8025. The fact that the upper limit of the two scales i.e., 6200- 175- 6550- 200- 7500- 225- 7775- 250- 8025, and Rs.5675- 175- 6550- 200- 7500- 225- 7775- 250- 8025 is the same is immaterial.

Application for directions is accordingly disposed of directing Indian Airlines to, after grounding, place the petitioner in the pay scale held by the

petitioner i.e., Rs.6200- 175- 6550- 200- 7500- 225- 7775- 250- 8025. In no case the petitioner be placed in a scale lower to the scale aforesaid. However, it is clarified that on grounding, if pay scale of Rs.6200- 175- 6550- 175- 6550- 200- 7500- 225- 7775- 250- 8025 is not available, petitioner would have to be placed in the next higher grade."

12. Aggrieved thereby, the Indian Airlines filed intra-court appeal and as noted above, the Division Bench has reversed the said order. That is how the appellants have come up before us in this appeal.

13. We have heard learned counsel for the parties.

14. Ms. Nisha Bagchi, learned counsel appearing on behalf of the appellants submitted that the Division Bench of the High Court failed to appreciate that in the miscellaneous application, no new dispute requiring fresh adjudication had been raised. The relief claimed in the application was only in the nature of clarification to the extent that because of protection of the pay scales at the time of absorption in the Indian Airlines, the appellants were entitled for placement in an equivalent or higher pay scale. It was asserted that by way of clarification, learned Single Judge had merely reiterated and directed implementation of the directions issued while disposing of the writ petitions. It was also pleaded that the main order dated 11 th October, 2004, having attained finality, the respondent is otherwise bound to comply with the same.

15. Per contra, Mr. R.S. Suri, learned counsel appearing on behalf of the Indian Airlines, supporting the order of the Division Bench, submitted that when the proceedings stood terminated on final disposal of the writ petitions, it was not open to the learned Single Judge to reopen the proceedings on filing of the miscellaneous application by the appellant in respect of the same subject matter.

16. It is trite that a party is not entitled to seek a review of a judgment merely for the purpose of rehearing and a fresh decision of the case. It needs little emphasis that when the proceedings stand terminated by final disposal of the writ petition, it is not open to the Court to reopen the proceedings by means of miscellaneous application in respect of a matter which provides fresh cause of action. If this principle is not followed, there would be confusion and chaos and the finality of proceedings would cease to have any meaning. (See: State of Uttar Pradesh Vs. Brahm Datt Sharma & Anr. 1). At the same time, there is no

prohibition on a party applying for clarification, if the order is not clear and the party against whom it has been made is trying to take advantage because the order is couched in ambiguous or equivocal words.

17. Therefore, the question for consideration in the instant case is whether the miscellaneous application preferred by the first appellant could be said to be founded on a fresh cause of action?

18. Having bestowed our anxious consideration on the rival submissions, we are of the opinion that keeping in view the terms of final order dated 11 th October, 2004, the miscellaneous application could not be said to be founded on a separate or fresh cause of action so as to fall foul of the aforementioned legal position viz. on termination of proceedings by final disposal of writ petition, it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided fresh cause of action. It is manifest that in direction No. (ii), the learned Single Judge had clearly directed that the

1 (1987) 2 SCC 179
writ petitioners would be entitled 'to be posted to a post in equivalent scale held by them when the letter dated 23 rd April, 2003 was issued.'
The respondent - Indian Airlines was obliged to obey and implement the said direction. If they had any doubt or if the order was not clear; it was always open to them to approach the court for clarification of the said order. Without challenging the said direction or seeking clarification, Indian Airlines could not circumvent the same on any ground whatsoever. Difficulty in implementation of an order passed by the Court, howsoever, grave its effect may be, is no answer for its non-implementation. In our opinion, in the miscellaneous application, no fresh relief, on the basis of a new cause of action, had been sought. It was an application filed for pursuing and getting implemented the relief granted in the writ petition, namely, placement in appropriate grade in which he was placed at the time when letter dated 23 rd April, 2003, was issued. This was precisely done by the learned Single Judge vide his order dated 4 th March, 2005. Without examining those factual aspects of the matter, in our judgment, the Division Bench was in error in holding that after the disposal of the writ petitions, miscellaneous application

was not maintainable and the only remedy available to the appellant was to approach the authorities and if his interpretation was not acceptable to them, then he could file a fresh writ petition.

19. For the foregoing reasons, we allow the appeal and set aside the order of the Appellate Bench and restore the order passed by the learned Single Judge on 4 th March, 2005, directing the respondent to implement the main order, dated 11 th October, 2004. In the circumstances of the case, the parties shall bear their own costs.

.....J.
(D. K. JAIN)

.....J.
(P. SATHASIVAM)

NEW DELHI;
NOVEMBER 28, 2008.