(2019) 09 DEL CK 0062

Delhi High Court

Case No: Civil Writ Petition No. 4041, 5396 Of 2014, 1613 Of 2015, Civil Miscellaneous Application No. 14891 Of 2014

Col. (Retd) Rama Krishna Sareen		APPELLANT
	Vs	
Pawan Hans Helicopters Ltd		RESPONDENT

Date of Decision: Sept. 11, 2019

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16
- Aircraft Rules, 1937 - Rule 68, 69, 70, 71, 72, 73, 74, 74(3), 75, 76, 77, 77C, 160
- Aircraft (Investigation Of Accident An Incident) Rules, 2012 - Rule 3
- Industrial Disputes Act, 1947 - Section 2(s), 2(oo), 2(oo)(bb), 10, 11A, 25F, 33
- Indian Contract Act, 1872 - Section 23
- General Clauses Act, 1897 - Section 6

Hon'ble Judges: C. Hari Shankar, J

Bench: Single Bench

Advocate: Setu Niket, Esha Mazumdar, Saksham Ahuja, Rajesh Kumar Gogna, Perala Upendra Sai, Akhilesh Sagar, Rajat Arora, Murad Khan

Final Decision: Disposed Off

Judgement

C. Hari Shankar, J

1. The petitioner who, at the time, was serving in the Indian Army, was posted, on deputation, as a pilot, with the respondent, with effect from 21st

March, 2009. While he was thus employed, the petitioner superannuated from the Army on 31st May, 2011, whereupon he was appointed with the

respondent as Assistant Flight Safety Officer with effect from 1st June, 2011.With effect from 1st August, 2011, the petitioner was appointed as Pilot

â€œBâ€, with the respondent, on contract basis, for five years. The following clauses, of the letter of appointment, dated 1st August, 2011, are

relevant:

â€œ1. Contractual Appointment

a) Duration

You will be appointed as Pilot â€˜Bâ€™ on contractual basis for a period of 5 (five) years w.e.f. 01.08.2011 or from the actual date of assuming

flying assignment which will come to an end on completion of 05 (five) years or your attaining age of 60 years whichever is earlier without any further

action or orders by the company.

Be it understood and agreed clearly that due to the fluctuating and uncertain nature of contracts awarded to the company by its clients, this contractual

appointment is purely temporary and for a fixed term only and shall automatically come to an end on the stipulated date as above or on any other

earlier date as and if communicated to you by the Management. Further, continuance of the contractual employment would not entitle you to any right

for regulation (sic regularisation) in the Company.

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iii) Performance Review/Termination of Service

Your performance will be reviewed quarterly during the 1st year of service and if found unsatisfactory, your services are liable to be terminated

without any notice.

Thereafter, the company can terminate your contract at any time by giving two monthâ€s notice subject to the completion of contractual obligation on

your part as laid down in the Bond as well as the relevant clause of CAR dated 1.9.2005 issued by DGCA. In no case, there would be any payment in

lieu of notice period to waive off the actual notice period for resignation.

3. Service Agreement Bond

At the time of joining, you will be required to execute a Bond of Rs. 25,00,000/â€" (Rupees twenty five lacs) only along with two sureties as per draft

attached herewith to serve the company for a period of 05 (five) years.â€

2. According to the petitioner, the respondent was operating the helicopters, under its control, in violation of various Flight Safety Rules prescribed by

the Directorate General of Civil Aviation (DGCA), resulting in avoidable fatal accidents, and that, despite his having repeatedly drawn the attention, of

the respondent, to this fact, there was no improvement in the situation. In November, 2011, the petitioner was asked to fly a â€œDhruvâ€ helicopter, in

Gadchiroli, in anti-naxal operations. The petitioner stopped flying the helicopter, for ten days, purportedly because of the inaction, by the respondent,

regarding the protests, of the petitioner, regarding the manner in which the helicopters were being operated. On, however, being assured, by the

respondent, that the interests of the pilots would be kept in mind, the petitioner resumed flying.

3. On one such mission, the helicopter, piloted by the petitioner at the time, met with an accident, on 15th January, 2012. There were, however, no

casualties, though two crew members sustained serious injuries, and three crew members sustained minor injuries. An inquiry, into the incident, was

conducted, by the Ministry of Civil Aviation, under Rule 74 of the Aircraft Rules, 1937 (hereinafter referred to as â€œthe Aircraft Rulesâ€). The

result of the inquiry attributed the mishap to be, at least in part, owing to the lack of skill and knowledge exhibited by the petitioner. While the inquiry

was pending, the petitioner was requested to attend a refresher training, to be conducted between 13th and 15th February, 2012, to be followed by a

test. He appeared in the said test, wherein, as per communication dated 2nd March, 2012 from the General Manager (OPS) to the General Manager

(NR), it was informed that the performance of the petitioner â€" as well as of four other pilots who had been subjected to test â€" was â€œfound to

be marginalâ€. As a result, the said communication had revoked, with immediate effect, the Pilot In Command (PIC) status of the said five pilots â€

including the petitioner. The GM (OPS) was, therefore, requested to inform the petitioner, inter alia, to appear in a retest, to be conducted on 13th

March, 2012, further stating that the PIC status of the five pilots would be reinstated only after clearing all the three papers in the said retest.

4. The petitioner, however, wrote, on 9th March, 2012, to the GM (OPS), refusing to appear in the retest. It is not necessary to refer to the various

arguments advanced, in the said letter, to justify the refusal, on the part of the petitioner, to undergo the retest; suffice it to reproduce the concluding

paragraphs 6 to 8, of the said letter, thus:

â€œ6. The undersigned was taking RISK by Flying BSF Dhruv Helicopter/Dhruv of HAL (deployed for Maharashtra Police), instead of helicopter

owned by PHHL as given in the Appointment Letter. This was being done for the sake and interest of the Company. Now by subjecting the Pilot to

the various above-mentioned Tests, the Company has made up its mind to Penalise the Pilot even before the enquiry is concluded. As per CAR, a

team of the Accident investigation is not to apportion Blame or Liability to the Pilot, it is to find out the Cause to prevent Accidents in Future and to

Know â€œwhy and what has happenedâ€. At nowhere it has been mentioned that it should be to impose penalty on the Pilot by way of stopping his

Pay and allowances. De-rostering of a Pilot does not automatically translate into stopping his Flying Allowance if he is Medically Fit. Even Pilots on

â€œOff Periodâ€ do not Fly but are given MASTA. It is noteworthy that all the DHRUV pilots have not flown for last 2 months but are being paid

flying allowances. Further Orders in writing as per Air Safety Circular 9/2009 have not been issued by DGCA as preliminary investigations does not

reveal issues of Pilot Proficiency.

7. It is pertinent to note that the power to test the ability of the professional pilots rests with the regulator and is clearly mentioned in recurrent training

requirements. The periodical Proficiency checks and Ruth checks are designed to ensure that the Proficiency of pilots is tested in all respects, which

includes checks and procedures, emergency handling and AC knowledge. Subjecting the undersigned to repeated, humiliating â€œtestsâ€ is against the

law as laid down by the regulator and against the conditions of the contract.

8. It is humbly prayed that the above decisions regarding Re-Test and stoppage of Flying Allowance along with all the Issues mentioned above be

reviewed at the earliest keeping the Slogan of the PHHL â€œWE FLY FOR YOUâ€ in mind (by Pilots taking personal risk of life and future of

Family at stake in the interest of the Company).â€

5. This resulted in the issuance, to the petitioner, by the GM (NR), of a Show Cause Notice, dated 9thApril, 2012. The attention of the petitioner was

invited, in the said Show Cause Notice, to his liability, to undergo training/refresher courses and to undertake such examinations/tests, as may be

prescribed by the respondent from time to time. It was alleged that, by absenting from the training/retest, the petitioner had violated the rules of

discipline/administrative instructions applicable to him, which tantamounted to wilful disobedience of an official order, and commission of an act

subversive of discipline or good behaviour, in the establishment of the respondent, which was â€œmisconductâ€. The petitioner was, therefore,

directed to explain, in writing, as to why stringent disciplinary action, including termination of his contract, be not initiated against him.

6. The petitioner responded, vide communication dated 13thApril, 2012, denying the allegation that he had violated any rule of discipline, or

administrative instruction, or had committed wilful disobedience of any official order issued to him. The petitioner invited the attention of the

respondent to his letter, dated 9th March, 2012, which had prayed for a review, of the directions, issued to him, to attend the retest, and pointed out

that no response had been received, to the said letter. Alleging that it was the respondent which had violated the terms of the contract, entered into

between the petitioner and the respondent, by not disbursing, to the petitioner, his pay and allowances, with effect from 16th January 2012/1st March,

2012, without any reasons or show cause notice, the petitioner stated that he would provide a â€œdetailed written explanationâ€, to the aforesaid

Show Cause Notice, dated 9th April, 2012, only on receipt of replies, to all the letters addressed, by him, to the respondent.

7. Vide letter dated 1st June, 2012, issued by the GM (P & HRD) in the office of the respondent, the services of the petitioner were terminated with

immediate effect, in terms of Clause (i) of his appointment letter dated 1st April, 2011. The said communication refers to the Show Cause Notice,

dated 9th April, 2012 supra, issued to the petitioner by the respondent, and opined that the explanation, submitted by the petitioner, on being perused,

was found to be unsatisfactory. As such, keeping in view the petitionerâ€s past performance, his licence status and the flying needs of the respondent,

it was stated that the petitioner services were no longer required. The petitioner was also directed to pay Rs. 25 lakhs, in terms of the Service Bond

executed by him, at the time of his appointment and, consequent thereto, to collect his dues, including two monthsâ€ notice pay.

8. Aggrieved by the aforesaid order, dated 1st June, 2012, terminating his services, the petitioner approached, first, the Ombudsman of the respondent

and, thereafter, the Conciliation Officer, seeking reinstatement in service. On expiry of 45 days, from the moving of the application, by him, before the

Conciliation Officer, without any conciliation being effected, the petitioner filed a Statement of Claim, before the learned Industrial Tribunal, for

adjudication of the dispute, between him and the respondent. The claim of the petitioner was registered as an industrial dispute (ID No. 103/2012),

which stands adjudicated by the impugned award, dated 14th February, 2014.

9. In his Statement of Claim, the petitioner alleged that his was a case of illegal termination from service. It was further alleged that the respondent

was victimising the petitioner, as he had acted as a whistleblower against the respondent, on the basis of which an inquiry had been initiated by the

DGCA, to look into the repeated accidents of helicopters being operated by the respondent. The proficiency of the petitioner, in flying helicopters, it

was asserted, had been sufficiently assessed, in the earlier tests conducted by the DGCA and M/s Hindustan Aeronautics Ltd. (HAL), which the

petitioner had successfully cleared. It was also pointed out that all pilots underwent â€œproficiency checksâ€ every six months, by examiners/Check

Pilots, duly authorised by the DGCA, who ensured and examined the proficiency of the pilots and that, in the said proficiency test, the petitioner had

passed, on 8th October, 2011, and was graded â€œgoodâ€, whereafter he had been cleared to fly as a Captain of the Dhruv Helicopter. The

insistence, on the petitioner undergoing a â€œretestâ€, even during the period of validity of the said proficiency check, it was submitted, was unjustified

in law. The petitioner also submitted that various financial dues, to which he was entitled, had not been paid by the respondent. It was also alleged that

the respondent had defaulted in paying two monthsâ€ notice pay, as mentioned in the aforesaid letter, dated 1st June, 2012, terminating his services,

and that the petitioner was being blackmailed into coughing up, in the first instance, the alleged â€œbond moneyâ€ of Rs. 25 lakhs, before being

disbursed the said two months notice pay. The petitioner also contended that the termination of his services had been effected in violation of the

principles of natural justice and fair play, without holding any departmental inquiry and without affording him an opportunity of prior hearing. Such

termination, at the time when the DGCA inquiry, into the cause of the accident, which had taken place on 15th January, 2012, was still in progress, it

was submitted, was totally unwarranted. It was further contended, by the petitioner, that the grounds, cited in the order dated 1st June, 2012,

terminating his service, were different from those contained in the Show Cause Notice dated 9th April, 2012, preceding it. It was pointed out that the

Show Cause Notice required the petitioner to show cause as to why an inquiry be not conducted against him and that, therefore, the respondent was

not justified in summarily terminating his service, vide the Order dated 6th June, 2012 supra, without holding any such inquiry. The termination of his

service, therefore, alleged the petitioner, amounted to unfair labour practice, and also attracted the definition of â€œretrenchmentâ€, as contained in

Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as â€œthe ID Actâ€), as the petitioner had served the respondent for more

than 240 days, in over two consecutive years. The decision, having been taken in violation of the applicable law in that regard, the petitioner contended

that his retrenchment was not sustainable, and, on that basis, claimed reinstatement in service.

10. In its written statement, filed in response, before the learned Industrial Tribunal, to the Statement of Claim of the petitioner, the respondent raised a

preliminary objection regarding the maintainability of the petitionerâ€s claim, contending that he was not a â€œworkmanâ€, within the meaning of the

expression as defined in clause (s) of Section 2 of the ID Act, as his last drawn salary was Rs. 52,000/, per month, apart from which the petitioner

was entitled to detachment allowance of Rs. 14,000/â€" per month, minimum assured flying incentive of Rs. 21,875/â€" per month, minimum assured

flying allowance of Rs. 34,300/â€" per month and other allowances as per the relevant rules, resulting in a total â€œtake-homeâ€ salary of Rs.

1,22,175/â€" per month. His initial basic pay, it is emphasised, was of E-2 (Executive Grade 2), which was at par with the E-2 grade of executives of

the respondent. Given the nature of his duties, as well as the contractual nature of his appointment, the respondents sought to contend that the

petitioner could not be regarded as a â€œworkmanâ€.

11. Further, the nature of the petitionerâ€s appointment being contractual, and his termination having been effected in terms of the clauses in the

contract, the respondent contended that the petitioner could not maintain any claim under the ID Act.

12. On merits, the respondent contended that only six helicopters remained operational, and the need for Pilots, to operate Dhruv helicopters had

reduced, so that there was no further requirement of any â€œPilot Bâ€. The respondent also contested the claim, of the petitioner, that he had been

illegally terminated. The allegations of malafide and victimisation, as levelled by the petitioner against the respondent were also, needless to say,

emphatically denied. It was further contended that the Dhruv helicopter, which met with an accident while it was being piloted by the petitioner, had

been duly certified, regarding its airworthiness, by the DGCA. The respondent submitted that, according to it, the accident, which had taken place on

15th January, 2012, was attributable to pilot error. In view of the said accident, the respondent contended that, unless and until the petitioner, being the

pilot involved in the said accident, was cleared of culpability by the DGCA, he could not be assigned any further flying duties, as per Air Safety

Circular No. 9 of 2009.

13. The written statement specifically apportions blame, to the petitioner, for having refused to undertake the retest, as directed by the respondent. It

was contended that, in view of safety requirements, the respondent had the right to check, periodically, the ability and competence of its pilots. The

direction, to the respondent, to undergo a retest, as communicated vide letter dated 2nd March, 2012, it was submitted, was owing to his unsatisfactory

performance in the test conducted, following the refresher training between 13th and 15th February, 2012. The decision, of the respondent, to absent

himself from the retest, it was submitted, amounted to clear disobedience of the direction of the higher authorities, without any reasonable justification

whatsoever. The respondent submitted that the decision as to the necessity, or otherwise, of the test or retest, was within the prerogative of the

respondent, and the petitioner had no authority to challenge the decision to hold such test, or retest. The respondent also sought to support its direction,

to the petitioner, to pay the bond money of Rs. 25 lakhs, before being granted the two-month notice pay, as per the contract. The termination of the

petitioner, it was reiterated, was as per Clause 1(iii) read with Clause 4(e) of the appointment letter dated 1stAugust, 2011. In view of the fact that the

petitionerâ€s termination was in accordance with the terms of his appointment, the written statement sought to contend that there was no need for

holding any departmental inquiry, and that there had been, therefore, no violation of the principles of natural justice. In this connection, the fact that the

petitioner had been issued a Show Cause Notice, dated 9th April, 2012, and had filed his response thereto, which was taken into consideration, was

emphasised.

14. The contention, of the petitioner, that the respondent ought to have awaited the outcome of the inquiry being conducted by the DGCA, was sought

to be traversed by asserting that the termination of the petitioner was based on the contract between the petitioner and the respondent, and was not

related, in any manner, to the inquiry being conducted by the DGCA.

15. For all these reasons, the written statement, filed by the respondent, exhorted the Industrial Tribunal to reject the claim of the petitioner.

16. Consequent to filing of the aforesaid written statement, the following issues were struck, by the Industrial Tribunal, as arising for its consideration:

(i) Whether claimant is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 ?

(ii) Whether the action of the management in terminating his services amounts to retrenchment within the meaning of section 2(oo) of the Industrial

Disputes Act, 1947 ?

(iii) Whether the claimant is entitled to relief of reinstatement in service? If not, to what relief he is entitled ?

17. The petitioner led his own evidence, as WW-1, whereas the respondent led the evidence of Sanjiv Agrawal, its Company Secretary and General

Manager (Legal), as MW-1. Affidavits-in-evidence were filed by the petitioner, as well as by Sanjiv Agrawal, which were proved in evidence and on

which the respective deponents were cross-examined. It is not necessary to allude, specifically, to the evidence of the petitioner, or of Sanjiv Agrawal,

as they were broadly reiterative of the statement of claim and the written statement, respectively.

18. Separate findings were recorded, by the Industrial Tribunal, on each of the three issues flagged by it as arising for its consideration.

19. The first issue, viz., as to whether the petitioner was a â€œworkmanâ€, or not, was decided, by the Industrial Tribunal, in favour of the workman,

relying on the judgment of this Court in Mathur Aviation v. Lieutenant Governor, Delhi, 1977 (2) LLJ 255. It was also observed that the respondent

had not been able to provide any evidence to indicate that the petitioner was performing supervisory, managerial or administrative duties.

20. The second, and main, issue, viz., as to whether the termination of the petitioner amounted to â€œretrenchmentâ€, within the meaning of the ID

Act, was also answered, by the Industrial Tribunal, in favour of the petitioner. In addressing this issue, the Industrial Tribunal has held that the clause,

in the letter, dated 1st August, 2011, whereby the petitioner was appointed as Pilot-â€Bâ€, enabling the respondent to terminate the contract, with the

petitioner, at any time, by giving two months notice, was void, being violative of Articles 14 and 16 of the Constitution of India as well as Section 23 of

the Indian Contract Act, 1872. It was further held that the stipulation, in the said order of appointment, to the effect that the petitionerâ€s performance

would be reviewed, quarterly, during the first year of his service, made it apparent that he was on probation for the said period. It was noted that the

said clause contemplated a quarterly review of the petitionerâ€s performance, but his performance could be reviewed only for three quarters, as his

services were dispensed with, at the end of the third quarter, â€œwithout permitting him to prove his worth in the fourth quarter of the yearâ€. It was

further held that, though the order, dated 1st June, 2012 supra, whereby the services of the petitioner were terminated, appeared to be innocuous, it

had been issued â€œin the backgrounds of acts of misconduct allegedly committedâ€ by him, thus rendering it, effectively, an order of dismissal from

service for misconduct, as set out in the Show Cause Notice dated 9th April, 2012 supra. The order was, therefore, held to be an order, not of

discharge simplicitor, but a stigmatic order of dismissal on the ground of misconduct. Inasmuch as the said order had been passed without granting any

opportunity of hearing to the petitioner and, in fact, without holding any inquiry at all, the Industrial Tribunal held the order of termination not to be fair

and legal and as having been issued in violation of the principles of natural justice. Consequently, it was held that such termination amounted to

â€œretrenchmentâ€, within the meaning of Section 2(oo) of the ID Act.

21. On the third issue framed by it, the Industrial Tribunal noted the settled position that, even if retrenchment, in violation of Section 25-F of the ID

Act, was found to have taken place, it was always open to the management to prove, before the Labour Court or the Industrial Tribunal, the charges

against the employee. This burden, according to the impugned Award of the Industrial Tribunal, stands successfully discharged, by the respondent in

the present case. The Industrial Tribunal has relied on the findings, dated 24th April, 2013, of the Inquiry Committee appointed by the DGCA, which

held that the mishap, that occurred on 15th January, 2012, was attributable, inter alia, to loss of situational awareness by the petitioner, and lack of

proper judgment in arresting the dissent of the helicopter. This, according to the Industrial Tribunal, demonstrated lack of proficiency and skill, and

inefficiency, on the part of the petitioner, leading to the disaster, and amounted to â€œgross misconductâ€. The Industrial Tribunal also noted the fact

that the petitioner had failed to follow the lawful orders, issued by the respondent, to undergo the test, on the basis of the Civil Aviation Requirements,

which was held to be subversive of discipline. In such circumstances, the Industrial Tribunal held that the decision, of the respondent, to terminate the

petitioner from service was appropriate, and did not warrant interference. In view of the fact that the petitioner lacked proficiency and skill, the

Industrial Tribunal held that it was not possible to retain him in service and that, therefore, no case for interference, with the decision to terminate his

service, was made out.

22. Resultantly, the Industrial Tribunal dismissed the claim of the petitioner, and passed the impugned award, in favour of the respondent and against

the petitioner.

23. Aggrieved thereby, the petitioner has moved this Court by way of W.P. (C) 4041/2014 and W.P. (C) 5396/2014. W.P. (C) 4041/2014 is directed

against the aforementioned award, dated 14th February, 2014, issued by the Industrial Tribunal, whereas W.P. (C) 5396/2014 challenges the report of

the Inquiry Committee set up by the DGCA, on which the award places reliance. The respondent, too, has challenged the award, dated 14th February,

2014, by way of W.P. (C) 1613/2015, challenging the finding, of the Industrial Tribunal in the said award, to the effect that the termination of the

petitioner amounted to â€œretrenchmentâ€, within the meaning of the ID Act.

24. Detailed arguments have been heard, on all the writ petitions, which are, therefore, being decided by this common judgment.

25. Arguing on behalf of the petitioner, Mr. Setu Niket submits that the Industrial Tribunal fell into serious error in calling for the Inquiry Report of the

DGCA in a sealed cover and, placing reliance thereon, without disclosing the report to the petitioner, holding the termination of the petitioner to be

valid. He objects to the usage, by the Industrial Tribunal, of the expression â€œchargesâ€ against the petitioner, pointing out that no charge-sheet had

ever been issued to the petitioner, and there could, therefore, be no question of any misconduct having been committed by him. As such, Mr. Niket

would contend that the finding, of the Industrial Tribunal, that termination from service was a punishment appropriate to the misconduct committed by

the petitioner, could also not sustain.

26. Arguing W.P. (C) 5396/2014, Mr. Niket submits that the report, dated 22nd April, 2013, was never made available to the petitioner, and was

provided to the Industrial Tribunal, in a sealed cover, by the DGCA. He further submits that the manner in which the inquiry was conducted by the

DGCA, and the report drawn up by it, was in stark violation of Rule 74(3) of the Aircraft Rules. For ready reference, Rule 74 of the Aircraft Rules is

reproduced, thus:

â€œ74. Committee of Inquiry. â€" (1) The Central Government may, at its discretion, appoint a Committee of Inquiry composed of two or more

persons to hold an inquiry into an accident in which an aircraft is involved, and such a Committee shall have the same powers as an Inspector of

accidents under rule 72.

(2) The Committee of inquiry may at its discretion hold the inquiry in public or in private.

(3) The inquiry shall be conducted in such a manner that if a charge is made or likely to be made against any person, that person shall be given notice

that blame may be attributed to him and thereupon he may be given a reasonable opportunity of being present in making any statement or giving any

evidence and producing witnesses on his behalf and examining any witnesses from whose evidence it appears that blame may be attributed to him.

(4) A public notice that an inquiry is taking place may be given by the Central Government in such manner as it may think fit and every such notice

shall state that any person who may desire to make representations concerning the circumstances or causes of the accident may do so in writing

within the time specified in the notice.

(5) The Committee of Inquiry shall make a report to the Central Government in the format specified by the Director-General.

(6) The Central Government may cause the whole or part of any such report of the Committee of Inquiry to be made public in such manner as it may

think fit.

(7) When a person other than an officer of Government is appointed as a member of the Committee of Inquiry he may be granted such fee and

expenses as may be determined by the Central Government.

(8) Every person summoned by the Committee of Inquiry as a witness in accordance with these rules shall be allowed such expenses as the Central

Government may from time to time determine.â€

27. Inasmuch as the aforesaid findings, of the Committee of Inquiry set up by the DGCA, which had been arrived at, without following the procedure

prescribed by Rule 74 of the Aircraft Rules, had led to the Award dated 14th February, 2014, Mr. Niket would contend that the award itself stood,

consequently, vitiated. Mr. Niket acknowledged that the Aircraft Rules had been superseded by the Aircraft (Investigation of Accident an Incident)

Rules, 2012 (hereinafter referred to as â€œthe 2012 Rulesâ€), but relied on Section 6 of the General Clauses Act, 1897, whereunder action initiated

under the erstwhile Aircraft Rules would continue under the said Rules. It was admitted, in the counter-affidavit of the respondent, that the Inquiry

Committee of the DGCA had been appointed under the erstwhile Aircraft Rules. For all these reasons, Mr. Niket would seek to contend that the

report, dated 22ndApril, 2013, of the Inquiry Committee constituted by the DGCA, could not sustain the scrutiny of law.

28. Arguing in response, Mr. Jagat Arora, representing M/s Pawan Hans Helicopters Ltd (PHHL), submitted that, as the petitionerâ€s services had

been terminated keeping in view his license status, the termination could not be regarded as â€œretrenchmentâ€. Attention is invited, in this context, to

communications, addressed to the respondent by the DGCA, which make it clear that the petitioner was not holding a valid Commercial Pilots License,

on the date of his termination.

29. Mr. Arora would further submit that the period for which the petitioner had been appointed by the respondent has expired in 2017. It was further

contended that the petitioner was not a â€œworkmanâ€, within the meaning of the ID Act, and that the termination of his service was not

â€œretrenchmentâ€, being covered by the exception engrafted in sub-clause (bb) in clause (oo) of Section 2 of the ID Act.

30. Mr. Rajesh Gogna, appearing on behalf of the DGCA, earnestly pleaded that the investigation into the accident which had taken place on 15th

January, 2012, by the DGCA, was not intended at apportioning or fastening any blame on any particular person, but was essentially aimed at

determining the cause of the accident, and invited attention, in this context, to para 3.1 of the Objective of Investigation, as contained in Annexure 13

to the Convention on International Civil Aviation (ICAO), which declared that the sole objective of the investigation of an accident was the prevention

of the occurrence of such accidents and incidents, and that the purpose of such activity was not to apportion blame or liability. Para 5.1 of the same

Annexure clarified the matter further, by ordaining that any investigation, conducted in accordance with the provisions of the said Annexure, would be

separate from any judicial or administrative proceedings, to apportion blame or liability. These standards, Mr. Gogna submits, are binding on India, as a

consenting signatory to the ICAO Convention, having adopted all the standards and recommended practices contained in proposed therein. The

Standards and Recommended Practices, contained in Annexure 13 to the ICAO Convention, Mr. Gogna points out, stand incorporated in Rules 68 to

77C of the Aircraft Rules. Rule 3 of the 2012 Rules specifically stated thus:

â€œ3. Objective of the investigation of accidents and incidents: â€

(1) The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents and not to apportion blame or

liability.

(2) Any investigation conducted in accordance with the provisions of these rules shall be separate from any judicial or administrative proceedings to

apportion blame or liability.â€

Mr. Gogna conceded, fairly, that the Inquiry Report, of the DGCA, ought not to have been used against the petitioner, and also pointed out that the

petitionerâ€s termination from service was almost a year prior to the issuance of the said report. He also points out that, in its recommendations,

contained in para 4 of the Report, the Inquiry Committee set up by the DGCA did not recommend taking of any disciplinary or punitive action against

the petitioner.

31. Arguing in rejoinder, Mr. Niket pointed out that the Inquiry Report, of the DGCA, clearly attributed blame to the petitioner, in para 3.2 thereof. As

such, he submits, Rule 74(3) of the Aircraft Rules was squarely applicable to this case. The termination of services of his client, Mr. Niket would

submit, could not be regarded as a termination simplicitor.

32. In response to the submissions, of Mr. Arora regarding the license status of the petitioner, Mr. Niket submits that the communication, dated 2nd

March, 2012, supra, from the GM (NR), to the GM (OPS) in the PHHL, revoked the Pilot in Command (PAC) status of the petitioner, and did not

affect his license to fly. Rather, Mr. Niket would submit, Rule 160 of the Aircraft Rules exempted the petitioner from the requirement of a license, so

that there could be no question of revocation of the petitionerâ€s license. He emphasised the fact that no material could be produced, by PHHL, to

demonstrate that the petitionerâ€s license status was revoked by the Central Government, and submitted that all arguments, relating to the

petitionerâ€s license status, were effectively made in vacuo, without any supportive material on record.

Analysis

33. The Industrial Tribunal has correctly delineated the three issues arising, for consideration, in the present case, as being (i) whether the petitioner

was a â€œworkmanâ€, for the purposes of applicability of the ID Act, (ii) whether the termination of the petitionerâ€s service, by the PHHL, could be

regarded as â€œretrenchmentâ€, within the meaning of the ID Act and (iii) whether the petitioner was entitled to any relief.

34. I, too, therefore, propose to examine the present case seriatim on these three aspects.

35. As already noted hereinabove, on these three aspects, the Industrial Tribunal has held that (i) the petitioner was a â€œworkmanâ€, within the

meaning of the ID Act, (ii) the termination of the petitioners services, by PHHL, did amount to â€œretrenchmentâ€, within the meaning of Section

2(oo) of the ID Act and (iii) the petitioner was, nevertheless, not entitled to any relief as PHHL had been able to establish, before the Industrial

Tribunal, the commission of â€œmisconductâ€, by the petitioner, which warranted disciplinary action against him, resulting in the termination of his

services.

Was the petitioner a â€œworkmanâ€, within the meaning of the ID Act?

36. â€œWorkmanâ€ is defined, in clause (s) of section 2 of the ID Act thus â€œ(s) â€œworkmanâ€ means any person (including an apprentice)

employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms

of employment the express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such

person who has been dismissed, discharge or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or

retrenchment has led to that dispute, but does not include any such person â€

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, drawers wages exceeding ten thousand rupees per mensem or exercises, either by the nature of

the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.â€

37. There can be no doubt about the fact that the petitioner had been employed, by PHHL, to do skilled work, for hire and would, therefore, fall within

the â€œmain partâ€ of the definition of â€œworkmanâ€, as contained in clause (s) of Section 2 [hereinafter referred to, for the sake of convenience,

as â€œSection 2(s)â€] of the ID act supra. The respondent, however, seeks to except the petitioner, from the ambit of the said definition, by

entrapping him within exceptions (iii) and (iv) to Section 2(s). For this purpose, it is sought to be contended, by the respondent, that the petitioner was

engaged in a managerial/administrative/supervisory capacity. The respondent also seeks to emphasise the salary being drawn by the petitioner, as

incompatible with that which would be drawn by a â€œworkmanâ€ in ordinary course.

38. Neither submission, however, impresses. The Industrial Tribunal has held, rightly, that no evidence, worth the name, has been led, by the

respondent, to support its allegation that the petitioner was engaged in a managerial or supervisory capacity. This clause, being in the nature of an

exception to the definition of â€œworkmanâ€, the onus was on the respondent, seeking to pigeonhole the case of the petitioner into the clause, to lead

evidence in support thereof. Even otherwise, in ordinary parlance, one would not understand the pilot of a helicopter to be exercising managerial, or

supervisory, functions. Be that as it may, no evidence, in support of its stand, that the petitioner was discharging managerial or supervisory functions,

having been led by the respondent, the said submission was rightly rejected by the Industrial Tribunal.

39. The salary being drawn by the petitioner was entirely irrelevant. Exception (iv) to Section 2(s) made the salary, drawn by the employee concerned,

relevant only where the employee was employed in a supervisory capacity. There being no evidence to indicate that the petitioner was employed in a

supervisory capacity, the salary drawn by him paled into insignificance.

40. Jurisprudentially, the question of whether a pilot is, or is not, a â€œworkmanâ€ has been answered, in the affirmative, in more than one decision.

The reliance, by the Industrial Tribunal, on Mathur Aviation (supra), was, in this context, apt. Mathur Aviation (supra) specifically addressed the issue

of whether the pilot of an aircraft could be treated as a â€œworkmanâ€. As in the present case, it was sought to be contended, in that case, too, that a

pilot discharged managerial, administrative, or supervisory, functions and, ipso facto, stood excepted from the definition of â€œworkmanâ€, by

statutory fiat. A learned Single Judge of this Court held, on the issue, thus:

â€œIt can be seen from this definition that the persons who are excluded are persons employed in a managerial or administrative capacity or persons

drawing wages above Rs. 500 per month employed in a supervisory capacity, or persons who function by reason of the powers given to them mainly

in a managerial capacity. There is no doubt that respondent 3 is not employed in a managerial or administrative capacity being a pilot engaged for air

spray work. I do not think that he is employed in a supervisory capacity or that he functions mainly in a managerial capacity The only reason why it is

submitted that the said respondent is not a workman is that he has also an engineer, three mechanics, two helpers, one field officer and one assistant,

for whose operations he is responsible. It can hardly be denied that the operation in question was air spraying of agricultural crops. No, doubt, for this

work, Captain Narinder Singh had helpers to assist him. It also cannot be doubted that this whole work would be under his control, but can it be said

that the employee was being employed in a managerial or administrative capacity or that he was employed in a supervisory capacity merely because

he had helpers to do the work. I do not think that the section can be interpreted in this manner. As I understand it, managerial or administrative

functions require a person to control the work of others. It does not mean that a person, who does some work and gets assistants for doing that work,

can be described as a person who is working in a managerial or administrative capacity. Similarly, a person cannot be said to be working in a

supervisory capacity merely because be has to supervise a person who helps him in doing the work he himself has to perform. When one talks of a

person working as a supervisor, one understands it to mean a person who is watching the work being done to see that it is being performed properly. I

fully agree with the Tribunal that whatever supervisory work Captain Narinder Singh may be doing, it must be said to be incidental to his work.â€

(Emphasis supplied)

41. The High Court of Bombay was even more emphatic, on the issue, in Cedric Dâ€™ Silva v. U.O.I., 2007 LS (Bom) 72,5 in which it was held

thus:

â€œA pilotâ€s main duty is to drive an aircraft. He performs a highly skilled technical work. The difference between a driver of the aircraft and that

of any other machine e.g. motor car or a steam engine is one of the nature of machine to be driven and one of the nature of the training required for

the work. The main work of a chief pilot is to drive the aircraft. All those who have undertaken air journey know it well that he hardly spends any time

in exercise of control over the passengers. His position cannot be compared to that of the captain of a ship. A ship contains a much larger number of

passengers and greater quantity of cargo. The trip of a ship is much longer in duration than that of an aircraft. A ship has many departments which an

aircraft has not, e.g. medical. According to the wage structure given in the Services Committee Report, a senior captain of an aircraft can rise upto

Rs.1,550 per mensem. Besides this basic wage, he has many allowances also. He is a technical worker. He does work with his own hands. The

definition of workman given in Section 2(s) of the Industrial Disputes Act, 1947 brings within its ambit â€œany person employed in any industry to do

any technical work for hire or reward: irrespective of the salary drawn by him. This is in contradiction with persons employed in a supervisory

capacity who fall within the definition of a â€œworkmanâ€ only when they draw wages not exceeding Rs. 500/- per mensem. I hold that all pilots,

whether co-pilot or chief pilot, are â€œworkmenâ€ and they fall within the purview of this reference.â€

(Emphasis supplied)

42. Following the above pronouncements, this Court has again reiterated, somewhat more recently, in King Airways v. Captain Manjit Singh, (2013)

198 DLT 749, that a pilot of an aircraft was a â€œworkmanâ€, within the meaning of the ID Act.

43. The finding, of the Industrial Tribunal, that the petitioner was a â€œworkmanâ€, within the meaning of Section 2(s) of the ID Act, therefore,

deserves to be upheld.

Whether the termination of the petitionerâ€s service, by the respondent, amounted to â€œretrenchmentâ€?

44. â€œRetrenchmentâ€ is defined, in Section 2(oo) of the ID Act, thus:

â€œ(oo) â€œretrenchmentâ€ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a

punishment inflicted by way of disciplinary action, but does not include â€

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation the contract of employment between the employer and the workman concerned

contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman

on its expiry or of such contract been terminated under the stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;â€

45. The issue of whether the termination of the workman, from service, is liable to be regarded as â€œretrenchmentâ€, or comes within one of the

â€œexceptedâ€ categories of termination, contemplated by sub-clause (bb) of Section 2(oo) of the ID Act, has essentially to be determined on the

basis of the words contained in the order of termination itself. In the present case, it would also be necessary to refer back to the Show Cause Notice,

dated 9th April, 2012 supra, issued to the petitioner, as the said Show Cause Notice, and the petitionerâ€s response thereto, is cited, in the order of

termination, as a justification, for disengaging the petitioner. For this purpose, one may reproduce, here, the Show Cause Notice dated 9thApril, 2012,

and the order, dated 1st June, 2012, terminating the petitionerâ€s services.

46. The Show Cause Notice, dated 9thApril, 2012, issued to the petitioner by the respondent, read thus:

â€œPAWAN HANS HELICOPTERS LIMITED (A Government of India Enterprise)

A MINI RATNA COMPANY

PHHL: NR: P&A: 20293:/294 Dated: 09/04/2012

Col. R. K. Sareen

Pilot â€œBâ€

Block No. 12, House No. 2,

Subhash Nagar,

New Delhi-110027

Sub: Show Cause

It has been reported that you were instructed to attend refresher training from 13/02/2012 to 15/02/2012 to be followed by test. You appeared in the

test but due to your unsatisfactory performance you were instructed to undergo a retest vide office letter No. PHHL:CO:OPS: 4030:2:4059 dated

02/03/12. However, it was reported that you absented yourself from appearing the retest without any information/permission from the appropriate

authority. Please note that you are liable to undergo such training/refresher courses for such period and to undertake such examination/tests as may be

prescribed by the management from time to time. By absenting from the training/retest you have violated the rule of discipline/administrative

instructions as applicable to you. Further, the above acts of yours are act of willful disobedience of official order and commission of an act subversive

of discipline or good behaviour in the premises of the establishment tantamount to misconduct.

You are hereby required to explain in writing as to why stringent disciplinary action including termination of contract should not be initiated against you

so as to reach the undersigned within a period of 3 days of receipt of this letter failing which it will be presumed that you have admittedyour mistake

and you have no explanation to offer in your defence for which further action on merits of the case would be taken without any further reference to

you.

Please note that in the event of termination of your contract you are liable to fulfill the bond obligation executed by you at the time of joining PHHL.

(M. P. Singh)

General Manager, NRâ€

47. Consequent to submission of his reply, dated 13th April, 2012 supra, to the afore-extracted Show Cause Notice dated 9th April, 2012, the services

of the petitioner were terminated, vide the following communication, dated 1st June, 2012:

â€œPAWAN HANS HELICOPTERS LIMITED (A Government of India Enterprise)

A MINI RATNA COMPANY

Pawan Hans/CO/PERS/1250-GI/1075 01/06/2012

Col. R. K. Sareen

Pilot â€œBâ€

Block No. 12, House No. 2,

Subhash Nagar,

New Delhi-110027

THROUGH- GENERAL MANAGER (NORTHERN REGION)

This has reference to show cause notice No. PHHL/NR/P&A/20293/11294 dated 09.04.2012 issued to you and your reply thereto videyour letter

dated 13.04.2012. The explanation submitted by you has been perused and is found to be unsatisfactory and keeping in view your past performance,

license status and the flying need of the company, your services are no longer required and your contract of employment is hereby terminated with

immediate effect in terms if Clause Clause No i) (Performance Review/Termination of Service0 of your appointment letter No.

PHHL/CO/PERS/1268/B/498 dated 01.08.2011. You are liable for payment of Service Bond amount of Rs. 25 lacs in terms of Clause No. 9 of

Service Agreement dated 1stAugust 2011 executed by you along with your sureties.

You may collect your dues including two months notice pay from F & A Department of NR during working hours after payment of Bond Money.

(R. B. KUSHWAHA)

General Manager (P & HRD)â€

48. The definition of â€œretrenchmentâ€, as contained in Section 2(oo) of the ID Act, excepts, from its ambit, cases of termination â€œas a

punishment inflicted by way of disciplinary actionâ€. â€œDisciplinary action is not defined the ID Act, but is an expression, not of art, but of common

understanding. P. Ramanatha Aiyar, in his classic

â€œAdvanced Law Lexiconâ€, defines â€œdisciplinary proceedingâ€ as â€œan action initiated to reprimand, suspend, or punish an official for his

unethical or illegal conduct.â€ A conjoint and juxtaposed reading of the Show Cause Notice, dated 9th April, 2012, and the letter, dated 1st June, 2012,

whereby the services of the petitioner were terminated, indicates, in the opinion of this Court, unequivocally, that the services of the petitioner were

terminated, at least inter alia, â€œby way of disciplinary actionâ€. The Show Cause Notice specifically drew the attention of the petitioner to the fact

that he had disobeyed the instruction, given to him, to undergo a retest, as contained in the Office letter dated 2nd March, 2012 supra. It was alleged,

without equivocation, that, by absenting from the said training/retest, the petitioner had violated the rules of discipline/administrative instructions as

applicable to him, and that the said act was an â€œact of wilful disobedience of official orderâ€, which was â€œsubversive of discipline or good

behaviourâ€, tantamounting to misconduct. The letter, dated 1st June, 2012, whereby the petitioner services were terminated, commences with a

reference to the said Show Cause Notice, dated 9th April, 2012, and the petitionerâ€s response thereto, and opines, clearly, that the explanation

submitted by the petitioner has been perused and found to be unsatisfactory. The usage of the word â€œandâ€, as contained in the second sentence of

the order dated 1st June, 2012 supra, indicates that this act of the petitioner, of wilful disobedience of official orders, along with the petitionerâ€s past

performance, license status and flying need of PHHL, resulted in the termination of the petitionerâ€s contract of employment. The reference to sub-

clause iii) of the appointment letter, dated 1st August, 2011, of the petitioner, is also instructive in this regard, as the said clause contemplates

immediate termination, without notice, of the services of the petitioner â€œif found unsatisfactoryâ€.

49. This Court is, therefore, of the view that the termination of the petitionerâ€s services, vide letter dated 1st June, 2012 supra, was clearly â€œby

way of disciplinary actionâ€, even though the letter may have referred, additionally, to the petitionerâ€s past performance, license status and flying

needs of the respondent.

50. Clause (oo) of Section 2 of the ID Act clearly excludes, all cases of termination of service by way of disciplinary action, from the ambit of the

expression â€œretrenchmentâ€. The question of whether the action was taken in violation of the principles of natural justice, or in compliance

therewith, is entirely irrelevant in this context. So long as the termination of the services of the employee concerned, is â€œby way of disciplinary

actionâ€, it stands excluded from the definition of â€œretrenchmentâ€. The inevitable sequitur would, therefore, be, that Section 25-F, of the ID Act,

too, would have no applicability to such a case.

51. This Court is, therefore, unable to concur with the finding, of the Industrial Tribunal, the termination of the services, vide letter dated 1st June,

2012, amounted to â€œretrenchmentâ€, and holds that this question, as framed by the Industrial Tribunal, has necessarily to be answered in favour of

the respondent-management, and against the petitioner-workman.

Overstepping of jurisdiction by the Industrial Tribunal

52. Before proceeding further, this Court deemed it appropriate to observe that there has, in the impugned award, dated 14th February, 2014, been a

serious overstepping of jurisdiction, by the Industrial Tribunal, in holding the clause, in the terms of appointment, governing the petitioner, permitting the

respondents to terminate the contract of employment, with the petitioner, by giving two monthsâ€ notice or salary in lieu thereof, to be void. In the

opinion of this Court, the industrial adjudicator has no jurisdiction to declare any clause, of the terms of employment, between an employer and

employee, to be void. The province of jurisdiction, of the industrial adjudicator, is circumscribed by the terms and conditions governing the employment

of the workman concerned, and the industrial adjudicator has no competence to modify the said terms, or to eviscerate any clause thereof, deeming it

to be void or illegal. To the extent, therefore, the Industrial Tribunal has, in the impugned award, held the clause, in the appointment letter of the

petitioner, vesting the right, in the respondent, to terminate the contract of the petitionerâ€s employment by way of two monthsâ€ notice or salary in

lieu thereof, to be void, this Court holds that the Industrial Tribunal has erred. The said finding is, accordingly, set aside.

Is the petitioner entitled to any relief?

53. The powers of the Industrial Tribunal â€" or Labour Court â€" are circumscribed by section 11A of the ID Act, which reads thus:

â€œ11A. Powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. â€

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for

adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that

the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and directed reinstatement of

the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser

punishment in view of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials

on record and shall not take any fresh evidence in relation to the matter.â€

54. Inasmuch as this Court, adjudicating the present writ petition, is effectively stepping into the shoes of the Industrial Tribunal, it is necessary, now,

to examine whether the order, dated 1st June, 2012, terminating the services of the petitioner, was justified, or not. In doing so, it has to be borne in

mind that, even if an order of termination of service, or discharge, or dismissal, of a workman, is found to be violative of the principles of natural

justice, the Labour Court, or Industrial Tribunal would not be justified, solely on that ground, in reinstating the workman in service, or in declaring the

dismissal, or discharge, of the workman, from service, to be unjustified. The exercise of examination, of whether an order of discharge, or dismissal,

from service, of a workman, is, or is not, justified, encompasses two stages, i.e., (i) assessment of whether the order has been passed in violation of

the principles of natural justice, or is vitiated for any other procedural reason, and (ii) even if the answer to (i) were to be in the affirmative,

examination of whether, independently, the factum of commission of misconduct, by the workman concerned is, or is not, established by the

management before the Labour Court, or Industrial Tribunal. The Industrial Tribunal has, in the present case, therefore, rightly held that the

management is, therefore, entitled, even in a case where it discharges, or dismisses a workman from service, in violation of the principles of natural

justice, to seek to establish, before the industrial adjudicator, the factum of commission of misconduct by the workman, and the industrial adjudicator is

bound to allow such plea, if advanced. The line of judicial authorities, expounding this proposition, is lengthy; one may, for ready reference, merely

reproduce the following passages, from Bharat Iron Works v. Bhagubhai Balubhai Patel, (1976) 1 SCC 518:

â€œIn a long line of decisions of this Court the ambit of Section 33, Industrial Disputes Act, 1947, is now well-established. There is also no difference

in principle of the law applicable to a case under Section 10, Industrial Disputes Act and that under Section 33. To put it clearly, it is this.

2. When an application under Section 33 whether for approval or for permission is made to a tribunal it has initially a limited jurisdiction only to see

whether a prima facie case is made out in respect of the misconduct charged. This is, however, the position only when the domestic enquiry preceding

the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. If on the other hand,

there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any, and also to the

workman to rebut it if he so chooses. In the latter event the Tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced

before it with regard to the proof of the misconduct charged, and the tribunal, then, will not be confined merely to consider whether a prima facie case

is established against the employee. In other words, in such an event, the employer's findings in the domestic enquiry will lapse and these will be

substituted by the independent conclusions of the Tribunal on merits.

3. There is a two-fold approach to the problem and if lost sight of, it may result in some confusion. Firstly, in a case where there is no defect in

procedure in the course of a domestic enquiry into the charges for misconduct against an employee, the Tribunal can interfere with an order of

dismissal on one or other of the following conditions:

(1) If there is no legal evidence at all recorded in the domestic enquiry against the concerned employee with reference to the charge or if no

reasonable person can arrive at a conclusion of guilt on the charge levelled against the employee on the evidence recorded against him in the domestic

enquiry. This is what is known as a perverse finding.

(2) Even if there is some legal evidence in the domestic enquiry but there is no prima facie case of guilt made out against the person charged for the

offence even on the basis that the evidence so recorded is reliable. Such a case may overlap to some extent with the second part of the Condition 1

above. A prima facie case is not, as in a criminal case, a case proved to the hilt.

4. It must be made clear in following the above principles, one or the other, as may be applicable in a particular case, the tribunal does not sit as a

court of appeal, weighing or reappreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence in the domestic

enquiry as it is, in order to find out either whether there is a prima facie case or if the findings are perverse.

5. Secondly, in the same case i.e. where there is no failure of the principles of natural justice in the course of domestic enquiry, if the Tribunal finds

that dismissal of an employee is by way of victimisation or unfair labour practice, it will then have completeto interfere with the order of dismissal

passed in the domestic enquiry. In that event the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry

will absolutely lose its importance or efficiency.

6. Whether and under what facts and circumstances a tribunal will accept the plea of victimisation against the employer will depend upon its judicial

discretion.â€

(Emphasis supplied)

55. Applying the above principles to the facts of the present case, this Court is unable to discern any procedural infirmity, whether by way of violation

of the principles of natural justice, or otherwise, in the decision, of the respondent, to terminate the services of the petitioner, as communicated vide the

letter dated 1st June, 2012 supra. It is not necessary, for this purpose, to enter into any lengthy excursus into the findings of the Inquiry Committee,

constituted by the DGCA, or to look into the cause of the accident, which had occurred on 15th January, 2012. Indeed, it has to be held that the

Industrial Tribunal signally erred, on this ground, in allowing the report of the Inquiry Committee to be introduced into the proceedings, in a sealed

cover, and placing reliance, thereon, to the prejudice of the petitioner. There can be no justification, whatsoever, for this inexplicable course of action,

which the Industrial Tribunal chose to follow. It was obviously impermissible, for the Industrial Tribunal, to rely on the findings, in an inquiry report,

which had never even been furnished to the petitioner, and which, therefore, he had no occasion to rebut or refute. That apart, the said report was

issued, by the Inquiry Committee, on 22nd April, 2013, which was almost a year after the termination of the petitioners services, by the respondent,

vide the order dated 1st June, 2012 supra. In view of the order, which I am proceeding to pass in the present case, it is not necessary, for this Court, to

express any further opinions, regarding the validity of the said report. Suffice it to state that the impugned award, insofar as it relies on the said Inquiry

Report, dated 22ndApril, 2013, cannot be sustained.

56. This Court is, however, of the opinion that it was not necessary, for the Industrial Tribunal, to venture into the arena of the report of the DGCA

Inquiry Committee, in the present case. There is no dispute about the fact that the order, dated 1st June, 2012 supra, terminating the services of the

petitioner, was preceded by a Show Cause Notice dated 9th April, 2012. It was specifically alleged, in the said Show Cause Notice, that the petitioner

had committed a breach of discipline in refusing to comply with the direction, of the respondent, to undergo the retest, as directed vide their letter

dated 2nd March, 2012, of the respondent. The duty of a pilot involves a high degree of skill, and, in the opinion of this Court, no pilot can object to

being tested, regarding his skill or proficiency. The performance of a pilot may have been outstanding, or even exemplary; there is, nevertheless, no

embargo on his being required to subject himself, periodically, or on any particular occasion, to a proficiency or skill test. These are matters relating to

air safety, regarding which there can be no compromise. A pilot, who is directed, by the airline, or Aviation Company, with which he is employed, to

undergo a test to assess his proficiency and skill, has necessarily to comply with the direction, and, ordinarily, cannot raise any objection thereto.

57. It is not as though, by requiring the petitioner to undergo the retest on 2nd March, 2012, the PHHL was, in any way, subjecting the petitioner to

harassment. The petitioner, admittedly, was the pilot of a helicopter which had crashed. The petitionerâ€s own assessment of his responsibility in the

incident is of no consequence. A pilot, of a helicopter which crashes, cannot completely disown responsibility for the incident. The respondent was, if

at all, unusually accommodative towards the petitioner, inasmuch as, though this performance, in the test following his refresher training, conducted

after the said crash, was not up to the mark, the respondent was, nevertheless, willing to allow the petitioner to undergo a retest, clarifying, further,

that the suspension of his authority to operate as a PIC was subject to the result of the retest, and that, if he were to successfully cleared the retest,

the said authority could be restored. It is not possible to understand how the petitioner, in the circumstances, could expect the respondent to act with

any greater degree of grace. The matter, apparently, was one of ego, with the petitioner, who obviously had a high opinion of his own capabilities as a

helicopter pilot, adamantly refusing to undergo the retest. This Court is entirely in agreement with the respondent, in its view that the said refusal

constituted a serious breach of discipline which, coming from a pilot, was unacceptable. The petitioner has only himself to thank, for his

disengagement, from the services of the respondent as, in view of his having performed below par in the test conducted after his refresher training,

and his having refused to undergo retest, the assignment of further flying duties to the petitioner, by the respondent, was obviously unthinkable. No

exception can, therefore, be taken with the decision, of the respondent, not to retain the petitioner in service any further. This Court, therefore, finds no

infirmity, whatsoever, in the order, dated 1st June, 2012, whereby the petitionerâ€s services were terminated.

58. In fact, the attitude of the petitioner is eloquently manifested even by the reply, dated 13th April, 2012, which the petitioner had tendered, by way

of response to the Show Cause Notice dated 9th April, 2012 supra. Instead of apologising, or exhibiting any contrition, for the lapse of discipline on his

part, the petitioner, rather, chose to draw the attention of the respondent, to the communications addressed, by him, protesting against the direction, to

him, to subject himself to a retest, with the further declaration that he would submit a â€œfurther detailed written explanationâ€ only on receipt of

replies to all the said letters. Instead of subjecting himself to the retest, and demonstrating his ability to pilot the helicopter, the petitioner chose, instead,

to seek a review of the direction, to him, to do so. In so electing, the petitioner acted at his own peril. Astonishingly, not only was the petitioner

unapologetic for having crashed the helicopter on 15th January, 2012, he, rather, felt himself entitled to gratitude, from the PHHL, for having saved the

lives of the four inhabitants of the helicopter.

59. Egoism, and an exalted sense of oneâ€s own ability and worth, cannot afford to constitute any part of the mental make-up of a pilot. It could not

be expected, in such circumstances, that the respondent would further accommodate the petitioner, in any manner and, if the respondent did not

choose to do so, no infraction, on its part, of the principles of natural justice and fair play, could be inferred. The decision, of the respondent, to

terminate the petitionerâ€s service, as communicated vide the letter dated 1st June, 2012 supra, therefore, sustains the scrutiny of law, both on the

aspect of compliance with the requirement of due process and natural justice, as well as on merits and is, therefore, upheld in its entirety.

Conclusion

60. Resultantly, these writ petitions are disposed of as under:

(i) W.P. (C) 4041/2014 is dismissed. This Court upholds the impugned award, dated 14th February, 2014 of the Industrial Tribunal, insofar as it affirms

the decision, of the respondent, to terminate the services of the petitioner, albeit for different reasons.

(ii) Insofar as the DGCA Inquiry Report, dated 22ndApril, 2013, is concerned, this Court holds that the Industrial Tribunal ought not to have relied on

the said report, to decide against the petitioner. However, as, for different reasons, this Court is upholding the termination of the services of the

petitioner, by the respondent, it is not necessary to examine, further, the legality of the said Inquiry Report. No further orders are, therefore, required

to be passed in W.P. (C) 5396/2014, which is disposed of as such.

(iii) W.P. (C) 1613/2015, preferred by the PHHL, is partly allowed, by affirming the decision, in the impugned award, holding the petitioner to be a

â€œworkmanâ€, as defined in clause (s) of Section 2 of the Industrial Disputes Act, 1947, but reversing the finding of the Industrial Tribunal, on the

issue of whether the termination, of the petitionerâ€s services, amounted to â€œretrenchmentâ€, within the meaning of clause (oo) of Section 2 of the

said Act.

61. The writ petitions stand thus disposed of, with no orders as to costs.