

**(1978) 10 DEL CK 0003**

**Delhi High Court**

**Case No:** Civil Writ Appeal No. 683 of 1978

Vinod Kumar Malhotra

APPELLANT

Vs

Indian Airlines Corporation

RESPONDENT

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**Date of Decision:** Oct. 6, 1978

**Citation:** (1979) 15 DLT 32

**Hon'ble Judges:** S.S. Chadha, J

**Bench:** Single Bench

**Advocate:** C.R. Soma Sekharan and G.B. Jain, for the Appellant;

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### **Judgement**

S.S. Chadha, J.

(1) This writ petition under Article 226 of the Constitution of India has arisen in the following circumstances . The Indian Airlines Corporation (hereinafter referred to as the Corporation) is a statutory Corporation established u/s 3 of the Air Corporation Act, 1953. The function of the Corporation is to provide safe, efficient, adequate, economical and properly co-ordinated air-transport services and its powers are exercised by the Corporation as to secure that air transport services are developed to the best advantage and that the services are provided at reasonable charges. For purposes of airlines operations the corporation has necessarily to employ amongst other categories of employers, pilots. The qualifications regarding licensing of Pilots are laid down in the Air-Craft Act, 1934 and the Air-Craft Rules, 1937. Save and except the qualifications statutorily laid down for such categories of employees it is open to Corporate on to adopt such recruitment policy as may bs necessary or expedient. In the present case the controversy relates to the upper age limit and the power of relaxation. The statute does not provide the upper age limit for recruitment of Pilots: On 22nd of October, 1977, a public notice was issued in the daily, news papers, by the Corporation for recruitment of apprentice pilots. One of the eligibility conditions prescribed was that the applicant should not have crossed 30 years. The affidavit of respondent No. 1 is that the upper age limit for recruitment of Pilots has been fixed taking into consideration the relevant factors of

safety of airlines operations, proper utilisation of Pilots and for reasons of efficiency, expediency and economy. The advertisement dated 22nd of October, 1977 provided:-

"Upper age limit : 30 years (relaxable by 5 years for scheduled castes/scheduled tribes candidates and Ex-defense personnel). Also relaxable by 3 years in respect of the candidates continuously employed as Pilots and in other deserving cases at the discretion of the Management

(2) The petitioner holds a Commercial Pilot's license issued by the Union of India on 18th of November, 1970. The petitioner after seeing the said advertisement held the view that because of the age limit and the absence of continuous service as a commercial pilot prescribed as a condition for relaxation of the age limit, he was not eligible and could not apply for vacancies so advertised. The petitioner did not apply for the post advertised. It is clear from the record that about 614 applications were received by the Corporation and out of which 81 (other than those continuously employed as Pilots) of the applicants were those who had crossed the age-limit of 30 years but were less than 33 years on the relevant date. The Corporation had not originally accepted the candidature of persons who were beyond 30 years of age and sent the intimation individually by letter dated 11th of December, 1977 to them that they were over-age. Later on, representation was made to the Government of India for relaxation of the upper age limit for Intermediate Pilots. The matter was thereafter further considered by the Corporation. Finally, the Corporation decided to relax the upper age limit in case of candidates between the age of 30 and 33 years, on the specified date, as deserving cases in exercise of its discretion. All these 81 persons along with other eligible candidates were advised to appear for an aptitude/technical knowledge test, to be held on 12th of June 1978 by the Union Public Service Commission. It was further intimated that on their qualifying in the test, they would be called for further test/interview at later dates. It is thereafter that the petitioner filed the present writ petition on 1st of July, 1978 claiming that the examination/recruitment impugned in the writ petition is ultra-vires Air Corporation Act, 1953 and the rules framed there under and is also violative of the petitioner's fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India. The main submission is that the public notice clearly defined the eligibility. The ineligible Candidates (81 in number) were originally excluded but due to political intervention, he said candidates were asked to take the said examination because of a special favor shown to them in that behalf. It is urged that the rationale that justified the issuance of the said public notice, demanded that the relaxation should have been similarly notified. The omission to notify the said relaxation is averred as having subjected the petitioner to hostile and invidious discrimination for which there is no justification in law. A preliminary objection about the delay in filing the writ petition was taken in the affidavit in opposition to the writ petition but not pressed seriously at the hearing. On facts, I find that on 1st of July, 1978 when this Court was moved by the present writ petition no rights had accrued in favor of any

of the candidates and the Corporation was yet in the process of making the recruitment. The commercial air-traffic for both passenger and cargo services is monopolised by the Government of India under the Air Corporation Act, 1953. The Commercial internal flights are exclusively operated by the Indian Airlines and external flights by Air India International, which are both public sector Corporations created in terms of section 3 of the Air Corporation Act, 1953. Thus for commercial pilots job, the main opportunity is with either of the aforesaid two airlines. Some opportunity may be available with private operators or on those air-craft employed for crops spraying. To get a commercial license a person has to complete training in flying and complete specified number of flying hours, before appearing in the examination conducted by the Government. After obtaining the license it has to be kept valid by undergoing 15 hours of flying afresh every year. This has to be at a considerable cost and expense. Considered in this background the petitioner alleges that had he known that the Corporation was going to relax the upper age limit, he would have applied for the same and completed. The main argument of Shri Somasekharan, learned counsel for the petitioner is that power, of relaxation which was reserved in the public notice dated October 22, 1977 was 106 only in deserving cases and could not be exercised as a matter of routine, or in a blanket manner in the case of all the 81 applicants, who were above the age of 30 years. It is urged that the Corporation had understood this clause of relaxation in the right spirit behind it, when the letters dated November 12, 1977 were issued to all the 81 applicants who were told that they were over-age. It is contended that when it was decided to relax the upper age limit, the same called for a fresh public notice so that all the candidates who came within the purview of the said relaxation could also have applied. The power of relaxation otherwise could not be exercised as it would be violative of Articles 14 and 16 of the Constitution of India. Reliance is placed on *Kuldip Singh Gill v. State of Punjab and others* (1972) S.L.R. 706. In that case it was held that no relaxation can be granted when an advertisement has been issued inviting applications of the persons possessing the qualifications advertised are available and submit their applications. It was further held that if a relaxation has to be allowed, the advertisement should be issued again so that all eligible persons, in view of the relaxation to be allowed, should be able to apply for the job. It is not disputed that the petitioner holds a Commercial Pilot's license. The petitioner must have spent considerable amount on his training and may be the best part of his youth in that pursuit before obtaining the Commercial Pilot's license. It is also true that the two main avenues of employment for the pilots are the Indian Airlines Corporation and Air India, International. The petitioner may, Therefore, be keen in getting the employment under the Indian Airlines Corporation. Article 16 of the Constitution guarantees equality of opportunity for all citizens in matters relating to the appointment under the State. I will proceed on the assumption that Indian Airlines Corporation being an authority under Article 12, their employees can claim protection under Article 16 of the Constitution. In the matters relating to employment, there can be no discrimination even by an administrative or executive

action. The equality of the opportunity means that a citizen has an equal chance with others in the matters relating to employment. The sole question for determination is whether the petitioner has been denied that equal opportunity of employment under the statutory Corporation. The notice of recruitment of Apprentice Pilots has notified to all citizens by public notice in the daily newspapers. The petitioner was thus given a right to make application for the post advertised. The petitioner was afforded equal opportunity with all other Citizens to make an application for being considered on merits; If the petitioner did not apply, then the cannot say that any principle of equality of opportunity has been violated. The public notice dated 22-10-1977 besides notifying the essential and requisite qualifications, prescribes the upper age limit of 30 years. This upper age limit was relaxable by 5 years for scheduled castes/scheduled tribes candidates and ex-defense personnel. The upper age limit was also relaxable by 3 years in respect of the two specified categories of candidates, namely : 1) those continuously employed as Pilots, and 2) in other deserving cases at the discretion of the Management. There is an age of retirement of Pilots prescribed under the Service Regulations framed u/s 45 of the Air-Corporation Act, which are statutory in character, but there is no upper age limit of recruitment prescribed in Statutory provisions. In view of the very nature of employment of Pilots, it may have been thought advisable to leave it at the discretion of the Corporation that the candidate otherwise found to be efficient and suitable are employed. 107 The safety of human lives and property is to be safeguarded and this has to be the primary considerations. The discretion for the exercise of power of employment has necessarily to be left with the Corporation to recruit best available persons. The Corporation though laid down the upper age limit, kept it subject to the power of relaxation mentioned therein. In other words, the intention to relax the upper age limit in deserving cases was made known at the time of issue of the public notice. What was a deserving case would depend entirely on the merits of the applicants to be decided at the discretion of the Management. For that purpose it was open to such persons who possessed the necessary qualifications to apply in response to the advertisement though between 30 and 33 years of age and thus there was no bar on the petitioner also applying and seeking relaxation in the upper age limit as a deserving case. About 81 persons whose age was more than the prescribed age limit, made applications for appointment to the post obviously taking into consideration the power of relaxation reserved by the Management to be exercised in deserving cases. They were not misled as the petitioner claims, it was open to the petitioner if he so desired to make an application for being considered for the post of relaxation of the Upper age limits. It is true that originally the Corporation did not accept the candidature of persons who were beyond 30 years of age as the Corporation did not decided to exercise the discretion of relaxation. Representations were made to the Government of India for relaxing the upper age limit for Intermediate Pilots. The matter was reconsidered by the Corporation on a representation made to it. The Corporation had not sent the regret letters easlier on the interpretation of the public notice that there is no power

of relaxation. The notices only intimated to 81 applicants that they are overage. Though the allegations of mala-fide have been made in coming to the decision of re-opening the question of relaxation. but no particulars have been furnished of the alleged mala-fides. The only allegation is that it was due to Political interventions and which allegations are decided in the counter-affidavit. The Secretary of the Corporation has filed an affidavit stating that the Corporation decided to relax the Upper age limit in case of candidates between the age of 30 and 33 years on the specified date as deserving cases in exercise of its discretion, and that the Corporation exercised this discretion on valid and proper considerations, namely, the number of unemployed Pilots within the upper age limit of 30 and 33 which were considered to be deserving cases by the Corporation. Since the Corporation has exercised the power of relaxation in pursuance of the notified intention in the public notice dated October 22, 1977, there can be no hostile discrimination against the petitioner or in favor of 81 candidates, who were beyond the age of 30 years of age and whose applications were earlier rejected. The petitioner was similarly situated as these other 81 candidates who were beyond 30 years of age. The petitioner had an opportunity to have his case considered as a deserving case and could have invoked the discretion of the Indian Airlines Corporation for relaxation in his favor. If the petitioner was misled by the public notice dated October 22, 1977, then, it was on account of his own interpretation of the power of relaxation reserved in the said advertisement. Kuldip Singh Gills" case relied upon by the counsel for the petitioner has no application as in that case there were statutory rules? namely Punjab Industries Department Service Rules, 1967, which provided that the Director may in special circumstances to be recorded in writing, appoint to a post in the service, any person, who does not possess qualifications prescribed for the post. The prescribed qualifications are contained in the appendix A or in the rule itself. In pursuance of the prescribed qualifications, an advertisement was issued. That advertisement did not contain a statement that the Director will exercise his power of relaxation to the qualifications advertised. It is at the stage of the recruitment that the power was sought to be exercised in relaxing the qualifications. It is in those circumstances that Tuli J. observed that if a relaxation has to be allowed, the advertisement should be issued again so that all eligible persons, in view of the relaxation to be allowed should be able to apply for the job. On the facts before me in the advertisement itself, it was clearly stated that the upper age limit of 30 years was relaxable in deserving cases at the discretion of the management and this power has been exercised in favor of 81 persons. As already pointed out there are no statutory rules or regulations prescribing upper age limit. The Corporation thus could fix the age limit for recruitment of Pilots taking into consideration the relevant factors of safety of airlines, efficiency, expediency and economy, and also reserve the power of relaxation. The above reasons, the present writ petition fails and is dismissed with no order as to costs.