

P.C. Sen Vs Union of India and Others

Court: Delhi High Court

Date of Decision: Feb. 12, 2013

Acts Referred: Air Corporations Act, 1953 " Section 9

Hon'ble Judges: D. Murugesan, C.J; V.K. Jain, J

Bench: Division Bench

Advocate: P.C. Sen and Ms. Sara Sundaram, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The appellant, who was a member of Indian Administrative Service, was appointed as Managing Director of Indian Airlines, on deputation

basis, with effect from 1.3.1994. The terms and conditions governing the deputation of the appellant were decided vide communication dated

9.11.1994, issued by the Ministry of Civil Aviation. It appears that Air India in the meeting of its Board of Directors held on 30.11.1996 resolved

to allow Post Retirement Passage Facility to its Chairman, Part-Time Chairmen and Managing Director including those appointed from outside or

on deputation. On the said resolution being brought to the notice of Government of India, the matter was examined by the Ministry of Civil

Aviation, which felt that the said resolution of Air India was in violation of instructions issued by the said Ministry vide letter dated 27.4.1992 and

later passages. Therefore, the Central Government, in exercise of the powers conferred by Section 9 of the Air Corporation Act, directed Air

India to adhere to the directions contained in its communication dated 16.12.1994 which inter alia provided that Post Retirement Passage may be

allowed on retirement or on resignation of Managing Director, including those appointed in acting capacity, provided they had been in continuous

employment with the Corporation for a period of three years. It was further directed that the said instructions will also be applicable, mutatis

mutandis, to Indian Airlines also. On receipt of the said communication from the government, Indian Airlines, vide letter dated 21.12.1996, wrote

to the government that as per their understanding of the directions of the government, full time Managing Director, appointed from outside or on

deputation, was eligible for passages on retirement, resignation or demitting office, provided he had been in continuous employment with the

company for three years. It was further conveyed to the government that as per the understanding of Indian Airlines, in case of officers on

deputation, the passages would be admissible on demitting office since resignation does not arise in their cases. Vide letter dated 28.1.1997, the

Government of India, Ministry of Civil Aviation informed the Indian Airlines that full time Managing Director appointed on deputation basis would

also be liable for free passages, if admissible under the terms and conditions of their appointment, issued by the Competent Authority. It would thus

be seen that as far as Managing Directors appointed on deputation basis were concerned, they were to be entitled for free passages, only if such a

facility was admissible to them under the terms and conditions of their appointment issued by the Competent Authority. Therefore, the next

question which comes up for consideration is as to whether under the terms and conditions of his appointment as Managing Director in Indian

Airlines, the appellant was entitled to free air passages, on demitting office of the Managing Director of the said company. A perusal of the

appointment letter dated 9.11.1994 issued by the Government of India, Ministry of Civil Aviation and Tourism, Department of Civil Aviation,

would show that comprehensive terms and conditions running into as many as 12 pages were issued by the Government, governing the

appointment of the appellant as Managing Director of Indian Airlines, on deputation basis. There was no specific term providing for grant of free

air passages to the appellant. Clause (xvii) of the aforesaid letter dated 9.11.1994 reads as under:

Residuary Matters: In all matters relating to the conditions of service not covered by items (i) to (xvi) above, he will be governed by

Rules/Regulations/Orders applicable to a member of the Indian Administrative Services, serving in connection with the affairs of the Union.

2. It would thus be seen that in respect of all matters which were specifically covered by the letter dated 9.11.1994, issued by Department of Civil

Aviation, the appellant was to be governed by the provisions contained in various rules/regulations/orders applicable to the members of Indian

Administrative Services, serving with the Central Government. Admittedly, there is no rules/regulations/orders applicable to a member of Indian

Administrative Services which entitles him to grant of free air passages. Therefore, it cannot be said that the residual clause extracted above, by

itself entitles the appellant to free air passages in terms of communication dated 28.1.1997 issued by the Government.

3. It was contended by the learned counsel for the appellant that the rules/regulations/orders applicable to members of Indian Administrative

Service do not prohibit grant of free air passages to a member of the said service and, therefore, the appellant would be entitled to grant of free air

passages in terms of the residual clause of the appointment letter dated 9.11.1994. We, however, cannot accept the contention advanced by the

learned counsel for the appellant. The aforesaid residual clause entitles the appellant, in addition to the benefits specifically granted vide letter dated

9.11.1994 only to those facilities which a member of Indian Administrative Services gets as a matter of right under the rules/regulations/orders

applicable to him. There needs to be a specific rule/regulation/order, entitling a member of Indian Administrative Service to free air passages. That,

admittedly, is not the position. The appellant would not be entitled to free air passages merely because there is no prohibition against grant of such

facility to a member of Indian Administrative Service. What was necessary, for entitling the appellant to grant of free air passages was a positive

provision whereby all the members of the Indian Administrative Services get such a benefit irrespective of the place they are posted and the

organization they are serving. In the absence of a positive rule/regulation/order entitling the members of Indian Administrative Services to free air

passages, the appellant would not get such a benefit in terms of residual clause contained in appointment letter dated 9.11.1994.

4. In support of his contention that in the absence of prohibition in the rules/regulations/orders governing members of Indian Administrative

Services, the appellant is entitled to free air passages, the learned counsel for the appellant relied upon the decision of the Supreme Court in P.C.

Wadhwa Vs. State of Haryana and others, . We have carefully examined the decision relied upon by the learned counsel for the appellant. In the

case before the Supreme Court, services of the appellant, a member of Indian Police Services, allotted to the State of Haryana, were placed at the

disposal of Haryana State Electricity Board, where he was to work as DIG of Police for Vigilance Work. The terms and conditions settled by the

Haryana Government for his deputation did not mention anything about payment of deputation allowance to him. He made a representation to the

Central Government for payment of deputation allowance in accordance with Rule 2(b) of the All India Services (Condition of Service- Residual

Rules), 1960. The representation having been rejected, he filed a writ petition which came to be dismissed by the High Court. Being aggrieved, he

filed an appeal before the Supreme Court by way of a special leave. The Supreme Court noted that he being an officer of Indian Police Services,

the appointment was governed by All India Services Act, 1951 and the Rules made thereunder and insofar as deputation allowance was

concerned, he was governed by residual rules. The provision of Rule (2) of Residual Rules provided that till Regulations were made by the Central

Government to regulate any matter relating to condition of service, all persons appointed to All India Service, for which there was no provision in

the Rules made or deemed to have been made under All India Services Act, 1951, such matters shall be regulated in case of persons serving in

connection with the affair of a State by the rules, regulations and orders applicable to officers of the State Civil Services, Class I, subject to such

exceptions and modifications as the Central Government may, after consultation with the State Government concerned, by order in writing, make.

Thus, in terms of Rules applicable to the appellant before the Supreme Court, he was entitled to a deputation allowance equivalent to that which

was given to the officers of State Civil Services Class-I. The Supreme Court noted that by virtue of the order issued by Punjab Government, which

also applied to Haryana, the officers of State concerned holding Class-I post would be entitled to deputation allowance. The Court, therefore, held

that the appellant was entitled to deputation allowance in terms of the aforesaid order issued by Punjab Government which also applied to State of

Haryana. It was contended on behalf of State of Haryana that since there was no provision in Rule 6 of IPS (Cadre) Rules, 1954, or in Rule 9 of

IPS(I) Rules, 1954 regarding payment of deputation allowance, it should be held that any officer belonging to IPS Cadre was debarred from

getting any deputation allowance, since there was an express provision in the said Rules. The contention was rejected by the Apex Court holding

that there was nothing in the Rules prohibiting or barring payment of deputation allowance to officer of IPS Cadre on deputation to any of the

authorities mentioned in the aforesaid Rule and mere absence of provision for payment of deputation allowance could not be interpreted to impose

an absolute bar to the receipt of such allowance. However, the facts of the case before us are altogether different. Unlike in the case before the

Supreme Court, there are no rules/regulations/orders applicable to a member of Indian Administrative Services which entitles him to free air

passages as a matter of right. Therefore, the decision relied upon by the learned counsel for the appellant does not apply to the case before us.

5. It was contended by the learned counsel for the appellant that since the facility of free air passages was granted to some other members of

Indian Administrative Service, appointed as Managing Director of Indian Airlines, withholding all such facilities to the appellant would be arbitrary

and discriminatory. We, however, cannot agree with the learned counsel for the appellant. The Government of India in its wisdom, while approving

the terms and conditions governing deputation of the appellant as Managing Director of Indian Airlines did not deem it appropriate to provide the

facility of free air passages to him, on his demitting the office of the Managing Director of Indian Airlines. If the terms and conditions stipulated by

the Government were not acceptable to the appellant, nothing prevented him from rejecting the same and declining to proceed on deputation as the

Managing Director of Indian Airline. But, having accepted the aforesaid terms and conditions and having worked with Indian Airlines on those

terms and conditions, he cannot challenge them at a latter date on the ground that certain facilities provided to other persons who served in the

same post, were not provided to him. Once the appellant accepted the terms and conditions stipulated by the Government, he is precluded from

challenging those conditions at a later date. In our opinion, no discrimination or arbitrariness is involved in the government not granting the facility of

free air passages to the appellant on his demitting the office of Managing Director of Indian Airlines, even if it had in the past provided such facilities

to some other person(s), as part of the terms and conditions of their appointment. This is not the case of the appellant that other persons who

served as Managing Director of Indian Airlines were granted the facility of free air passages, after issue of Government of India's letter dated

28.1.1997, without there being a specific term in their appointment letter for grant of such facilities. No other submission was advanced by the

learned counsel for the appellant. We, therefore, find no merits in the appeal and the same is hereby dismissed, without there being any order as to

costs.