

(2007) 07 CAL CK 0003

Calcutta High Court

Case No: F.M.A. 2987 of 2002

Indian Airlines Limited

APPELLANT

Vs

Joynath Victor De and Others

RESPONDENT

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**Date of Decision:** July 6, 2007**Acts Referred:**

- Aircraft Act, 1934 - Section 5, 7, 8(2)
- Constitution of India, 1950 - Article 12, 14, 32
- Contract Act, 1872 - Section 23

**Citation:** 111 CWN 806**Hon'ble Judges:** Tapas Kumar Giri, J; Ashim Kumar Banerjee, J**Bench:** Division Bench**Advocate:** Shaktinath Mukherjee, R.N. Majumder and Susanta Pal, for the Appellant; P.K. Das, O.P. Jhunhunwala and Tilak Bose, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Ashim Kumar Banerjee, J.

The respondent No. 1 was a cabin crew working in Indian Airlines Limited, the appellant above named. He had his moustache covering half of his face. He was given repeated reminders to trim his moustache in accordance with the Dress Code applicable for cabin crew. He refused to do so on religious and custom ground. He was grounded for sometime. Thereafter he was retired compulsorily after crossing 55 years of age applying Regulation 12. Before retirement he was given an opportunity to showcause. He replied to the showcause notice. The authority, however, was not satisfied with the reply and he was compulsory retired. He approached this court by filing a writ petition.

Proceeding before the learned single judge : The learned Single Judge rejected his contention holding that Regulation 12 was rightly applied in his case as he had crossed the age of 55 years. His Lordship, however, quashed the order of retirement

considering the facts and circumstances after holding that the Dress Code so made applicable in his case was not valid on the day it was sought to be applied.

Appeal :

2. The appellant preferred the instant appeal which we heard on the above mentioned dates.

Contention of the appellant :

3. Mr. Shaktinath Mukherjee, learned senior counsel appearing for the appellant, contended as follows :

i) The Dress Code as contained in the Operational Manual was applicable for a long time till it was withdrawn from the Operational Manual and re-introduced independently. The respondent was obliged to adhere to such Dress Code applicable to him.

ii) New Dress Code was issued in usual course by the management. The respondent being an employee of the appellant, was obliged to adhere to such circular.

iii) Regulation 12 empowered the appellant to hive off employees who had crossed the age of 55 years without showing any reason whatsoever. In the instant case the appellant applied the said clause, however, gave opportunity to show cause and thereafter passed appropriate order of retirement.

iv) The authority to maintain transparency passed a reasoned order although not obliged to under Regulation 12. Hence, it was not open to judicial review.

Contention of the respondent :

4. Mr. P. K. Das learned senior counsel appearing for the respondent/ employee contended as follows :

i) The Operational Manual was having a statutory force. The appellant consciously withdrew the Dress Code from the Operational Manual and did not include the same in the new Operational Manual. Hence, the purported Dress Code introduced by way of administrative circular was not binding upon the respondent No. 1.

ii) Regulation 12 was nothing but an attempt to hive off employees without holding any regular disciplinary proceeding which was illegal and contrary to the Apex Court decisions in the case of Brojo Nath Ganguly and DTC Majdur Congress.

iii) The reasoned order passed by the authority was arbitrary, wrongful, illegal, malafide and liable to be quashed and/or set aside.

Cases cited at the Bar :

5. In support of their respective contentions the parties cited the following decisions :

- i) [S. Pratap Singh Vs. The State of Punjab,](#)
- ii) [Sant Ram Sharma Vs. State of Rajasthan and Another,](#)
- iii) [Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char,](#)
- iv) 1977, CHCN 1014 (Sunil Kumar Mukherjee vs. State of West Bengal & Ors.)
- v) [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another,](#)
- vi) [Baldev Raj Chadha Vs. Union of India \(UOI\) and Others,](#)
- vii) 1980 CHCN 2 35 (Bimala Kanta Mukherjee vs. State of West Bengal & Ors.)
- viii) [V.T. Khanzode and Others Vs. Reserve Bank of India and Another,](#)
- ix) [West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others,](#)
- x) [Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,](#)
- xi) 1987, CKLJ 2, 344 (Director [Inspection and Quality Control] Export Inspection Council of India & Ors. vs. Kalyan Kumar Mitra & Anr.)
- xii) [Brij Mohan Singh Chopra Vs. State of Punjab,](#)
- xiii) [Union of India \(UOI\) and Others Vs. R. Narasimhan,](#)
- xiv) [Senior Superintendent of Post Offices, Allahabad and Others Vs. Izhar Hussain,](#)
- xv) [Union of India \(UOI\) and Others Vs. Shaik Ali,](#)
- xvi) [Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,](#)
- xvii) [Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another,](#)
- xviii) All India Reporter, 1995, Supreme Court, Page 111 (S. Ramachandra Raju vs. State of Orissa)
- xix) 1995 Volume III, Supreme Court Cases, Page 608 (Chief General Manager, State Bank of India, Bhubaneswar & Ors. vs. Suresh Chandra Behera)
- xx) 1996, Volume IV, Supreme Court Cases, Page 504 (Allahabad Bank Officers' Association & Anr. vs. Allahabad Bank & Ors.)
- xxi) 1998, Volume - VII, Supreme Court Cases, Page 310 (M.S. Bindra vs. Union of India & Ors.)
- xxii) 2001, Volume - II, Supreme Court Cases, Page 305 (Biswanath Prasad Singh vs. State of Bihar & Ors.)

xxiii) 205, Volume-VI, Supreme Court Cases, Page 224 (M. L. Binjolkar vs. State of M.P.)

Our view :

6. The facts are all admitted by the parties. Hence, we may not dilate on that. On perusal of the respective contentions we find that two principal issues are germane herein which need to be addressed by us.

(i) The authority and propriety of the administrative circular imposing the Dress Code.

(ii) Authority and propriety of Regulation 12.

Dress code :

7. Indian Airlines Limited is a company incorporated under the provisions of Companies Act 1956. Under the Air Corporation (Transfer and Undertaking and Repeal) Act, 1994 Indian Airlines Corporation and Air India Corporation were transferred to two companies set up therefore. Indian Airlines Limited came into being after the said Act of 1994 coming into force. The Aircraft Act 1934, inter alia, provides for making of Rules by the Central Government for specific purposes. Imposing Dress Code was neither within the scope of the Aircraft Act, 1934 or the Rules made thereunder.

8. Aircraft Rules 1937 was enacted by virtue of powers conferred under the Central Government under Sections 5, 7 and 8(2) of the Aircraft Act, 1934. u/s 5 of the Aircraft Act the Central Government was empowered to make Rules regulating manufacture, use, operation, sale, import or export of aircraft and for securing safety of aircraft operation. u/s 7 the Central Government was entitled to make Rules for investigation of any accident in course of navigation of any aircraft in or over India. u/s 8(2) the Central Government was entitled to make Rules regulating all matters incidental or subsidiary to the exercise of their power. Rule 140 of the Aircraft Rules 1937, inter alia, provides for Operational Manual in the form approved by the Director General to be maintained by the Corporation with regard to the instruction outlining responsibilities conducting flight operation.

9. On a combined reading of Sections 5, 7 and 8(2) of the said Act of 1934 and Rule 140 of the Rules of 1937 we are of the view that the Operational Manual was principally to regulate functioning of an aircraft belonging to the corporation. These Corporations were dissolved in 1994 by virtue of the said Act of 1994 coming into force. We, however, do not find any Dress Code to be maintained by the cabin crews under any statutory provision so referred to above. In our view, the Operational Manual was mainly to secure safety and security of the aircraft as a whole and obviously the passengers flying by the said aircraft. The earlier Operational Manual was replaced by a new one. The earlier Operational Manual of 1991 did include Chapter 10 dealing with the Dress Code at the time the Corporation was existing

and Rule 140B was then very much applicable.

10. The company came into being in 1994. In 1996 Chapter 10 was withdrawn and stood deleted from the Operational Manual of 1991. The new Operational Manual came in September, 1999 when the said Dress Code was not incorporated therein. The Dress Code was again reintroduced by a separate circular dated June 25, 1998 which was made applicable for all cabin crews including the respondent No. 1.

11. It was sought to be contended by the respondent No. 1 that once the Chapter 10 was deleted from the Operational Manual and it was not re-introduced in the next Manual in 1999 the circular issued in 1998 could not be made applicable having no statutory force in law.

12. We do not find any logic in support of such contention. Assuming the Operational Manual had a statutory force despite the company came into being introduction of Dress Code was well within the power of an employer and employer was entitled to regulate and introduce Dress Code for its employees so long it was not touching anybody's fundamental rights guaranteed under the Constitution.

13. A body corporate is entitled to maintain discipline in its work force. To maintain discipline it is within their right to introduce appropriate rules applicable for their employees. As long it is not termed as arbitrary and unreasonable we are unable to find any logic as to how an employee can defy such instruction.

14. Keeping moustache by making it properly trimmed was not an unreasonable instruction to its employees. The respondent No. 1 was right in saying that he was entitled to maintain his religious custom. He, however, could not prove the same by producing appropriate evidence therefore. By saying that he had to maintain the moustache as and by way of religious and customary measure to maintain his family tradition, in absence of any proof the respondent No. 1 was not right in insisting upon maintaining the moustache contrary to the Dress Code.

15. The appellant, however, did not proceed against him departmentally. They grounded him for sometime and thereafter applied Regulation 12 after he had attained the age of 55 years.

Regulation- 12 :

16. Lot of thrust was given on the decision of the Apex Court in the case of Brajo Nath Ganguly (Supra) and DTC Majdur Congress (supra).

17. In the case of Brajanath Ganguly (supra) it was incorporated in the agreement of employment that the employer was entitled to terminate any permanent employee on giving three months notice or equivalent pay therefore. Such clause came up for consideration before the Apex Court. The Apex Court observed that such clause was unconscionable in a contract of employment and void u/s 23 of the Indian Contract Act as being opposed to public policy. It was also void as infringing Article 14 of the

Constitution as the employer was a "State" within the meaning of Article 12.

18. In the case of DTC Majdur Congress (supra) a similar clause was considered by the 5 Judges' Bench of the Apex Court where the decision in the case of Brajanath Ganguly (supra) was reaffirmed while considering an identical issue.

19. In both these cases the clause enabling the employer to terminate any permanent employee at any time by giving three months notice or equal pay therefore was considered and was held as unconscionable being opposed to public policy and was quashed and/or struckdown.

20. In the instant case Regulation 122 prescribes empowerment of the employer to hive off employees who had attained the age of 55 years by retiring them prematurely i.e. before the actual date of superannuation at 58 years. This clause was considered by the Apex Court in various cases cited by Mr. Mukherjee before us referred to above. We, however, wish to refer to the latest one being the case of Biswanath Prasad Singh (supra).

21. In the case of Biswanath Prasad Singh (supra) Bihar Superior Judicial Service Rules containing a similar clause came up for consideration. 52B of the Service Rules therein prescribed that while the superannuation of age of every sub-ordinate judicial officer would stand extended upto 60 years the respective High Courts should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within the time before he attains the age of 58 years by following the procedure for compulsory retirement under the Service Rules. The appellant in the said case was not given the benefit of serving the Judiciary upto 60 years. He approached the Apex Court directly under Article 32 of the Constitution. His challenge was negated by the Apex Court holding, that such Rule was valid and binding. The Apex Court while considering the issue relied on the All India Judges' Association case reported in 1993 Volume IV, Supreme Court Cases, page 288.

22. The Clause in DTC Majdur Congress and Brajo Nath Ganguly (supra) empowered the employer to terminate service of an employee at any point of- time without assigning any reason. Such clause was found unconscionable. In the instant case the employer invoked Regulation 12 after the respondent attained the age of 55 years. The employer could do so without assigning any reason. They, however, to maintain transparency, issued a showcause notice and gave ample opportunity to the respondent to resist such premature retirement. The authority was not satisfied with his reply. They assigned reasons in the reasoned order passed therefore. No stigma was attached to the respondent while passing the order of premature retirement.

23. The contention of the respondent No. 1 was thus rightly negated by the learned Single Judge on that score.

Conclusion :

24. The respondent No. 1 was given repeated reminders contemporaneously to trim his moustache. He refused to do so. The authority to maintain discipline grounded him. He was allowed to serve the organization upto the age of 55 years. Thereafter the authority, after giving him opportunity to showcause, superannuated him prematurely. We do not find any scope to interfere with such action of the employer. We are of the view that the learned Judge was right in rejecting the contention of the respondent No. 1 on the applicability of Regulation 12.

25. The learned Judge, however, was not correct in interfering with the order of retirement on merits.

26. Lot of arguments were advanced on the Issue of Operational Manual having statutory force. To examine whether any Rule or Circular is having a statutory force or not the primary test is to find out how and by whom it was issued and implemented. In the instant case the Operational Manual was issued by the Authority of the Managing Director of the appellant company with the approval of the Central Government. The Managing Director is not a statutory authority to issue any enactment. The Operational Manual was also not issued by the legislature or executive of the State. It was not published in the Gazette. None of these provisions were followed in the instant case.

27. We are unable to agree with His Lordship on this score. Order:

28. The judgment and order of His Lordship to the extent it quashed the order of retirement, is set aside. The writ petition is dismissed.

29. This order of dismissal would, however, not preclude the respondent No. 1 to avail all his retrial benefits in accordance with law by treating his retirement at the age of 55 years.

30. Appeal is disposed of accordingly without any order as to costs. The cross-objection filed by the respondent No. 1 is dismissed. Urgent xerox certified copy would be given to the parties, if applied for.

Tapas Kumar Giri, J.

I agree.