Captain Harish Solanki vs Go Airlines (India) Pvt. Ltd on 16 October, 2015

IN THE COURT OF SHRI NARINDER KUMAR
ADDITIONAL DISTRICT & SESSIONS JUDGE
PRESIDING OFFICER : LABOUR COURT-XIX
KARKARDOOMA COURTS : DELHI

LCA No. 46/11
Unique Case ID No. 02402C0 031302009

Captain Harish Solanki,S/o Sh. Rajendra Singh,
R/o K-35/A, Saket,
New Delhi.110017.

Versus

1. Go Airlines (India) Pvt. Ltd.,
through its Chairman-cum-Managing Director,
Neville House, J.N. Heredia Marg,
Ballard Estate, Mumbai-400 001.
and also at
Terminal 1-B,
Near Balaji Restaurant,
IGI Airport, New Delhi-110037.

2. Union of India
through its Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
New Delhi-110001.

Date of institution of the case : 29.01.2009
Date of passing the award : 16.10.2015

LCA No. 46/2011
AWARD

This is a claim u/s 33C(2) of the Industrial Disputes Act filed

the workman seeking directions to the management to pay him a sum of Rs.

38,58,848/- with interest @ 24% p.a.

Case of the workman:-

2. In brief, case of the workman as per statement of claim is that

initially on 08.02.2006, he was appointed as 'First Officer' and paid monthly

stipend of Rs. 80,000/- only. Case of the workman is that he was so appointed

as 'First Officer' wrongly, as vide email dated 07.12.2005, he was invited to join the management as a Trainee Captain. Therefore, he lodged protest with the management and did not sign the 'Pilot Agreement'. He kept on serving the management presuming that he was appointed as a Captain. He is alleged to have satisfactorily completed 'Flight Crew Transition' course. He was issued correct-appointment-letter on 17.12.2007 and he signed the same. In th manner, the management removed the anomaly and showed his appointment as Captain w.e.f. 08.02.2006.

Further it is case of the workman he joined employment w management under the designation of 'Captain' as per the 'Pilot Employment Agreement' signed by the GM-HR of the management on 21.11.2007 and by

the workman on 17.12.2007 and it was agreed that he shall be paid salary of Rs. 4,06,000/- per month.

But the management was inconsistent in making pay salary period from 08.02.2006 to 17.04.2007 , arrears and allowances etc..

Despite his several requests and reminders, management did not pay him legitimate dues. He sent demand notice to management but the same was not replied. Hence, this claim. Grievance of the workman is th management illegally withheld the arrears of salary and allowances, which come to the tune of Rs. 38,58,848/-.

The dues claimed by the workman and as described in Para 9 of the statement of claim read as follows:-

Sl. No.	Salary/Arrears/Dues claimed
1.	February 2006 (19 days)
2.	March 2006 (31 days)
3.	April 2006 (30 days)
4.	May 2006 (31 days)
5.	1 - 28 June 2006

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6. 29th June 2006 to 30 June
7. 1st July 2006 to 31st March 2007
8. 1st April 2007 to 17th April 2007
9. Leave encashed @ Rs. 35000/- p.m. instead of Rs. 7,90,000/-

4,30,000/- p.m.
10. Ticket from Bombay - Delhi by Kingfisher Airlines
11. Travelling Allowance (3 days in Tunisia)
12. Taxi fare (in London)

Total

Version of Management:-

3. In its written statement, management has raised certain prel objections. The first objection is that claimant is not a workman as envisaged under Section 2 (s) of the Act. Then, the objection is that Labour Court at Delhi has no jurisdiction to try and adjudicate upon the present application since the Pilot Employment Agreement between the parties specifically provides that any dispute between the parties shall be subject to the jurisdiction of Mumbai Courts. Another objection raised by the management is that the Labour Court has no jurisdiction first to decide entitlement of the workman

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and then proceed to compute the benefit. In other words, it is only where entitlement has already been adjudicated or recognized by the employer that the amount is to be calculated to remove ambiguity for the purpose implementation or enforcement. Plea that the claim is time barred has also been raised. Another plea is that the workman by his own conduct entitled to the claims raised by him in the present application. It has been alleged that the workman was not qualified as a Captain for the period 8th February, 2006 to 17th April, 2007. It has been submitted that he was working as a co-pilot with the respondent/management for the above mentioned period.

It has been also submitted that the workman was receiving the salary of a co□pilot for the period 8th February, 2006 to 17th April, 2007 which was accepted without any objection and thus, the acquiescence of the workman in accepting the salary of a co□pilot has led to waiver of his right to claim any remuneration in the category of Captain for that period. Management has pleaded that the workman signed the provisional appointment letter vide which he was appointed as first officer and as such he cannot claim ignorance in this regard. Since he got P□1 endorsement in his license only in April, 2007, since he was paid salary as a Captain from that month.

Other benefit claimed by the workman have also been disputed by the management by pleading that workman was not entitled to any such benefit Rejoinder:□

4. Workman filed rejoinder controverting the pleas put forth in the written statement and reiterating the version put forth in the claim. Points for determination :

5. Vide order dated 05.06.2009 and 23.05.2011, following issues were framed:□

1.Whether this court has no jurisdiction to entertain this application ?OPM.

2. Whether this application is not maintainable U/s 33□C(2) I.D. Act ?OPM.

2A.Whether the 'Govt. of NCT of Delhi' or the 'Central Government' is the appropriate Government in the present dispute? Onus on parties.

3.To what relief, if any, is the applicant entitled to receive in terms of money computed on the basis to this application?OPW.

4.Relief.

6. It may be mentioned here that earlier, my Ld. Predecessor treated issued no. 1 and 2 as preliminary issues and disposed of the same vide order dated 08.02.2010. Feeling aggrieved vide order dated 08.02.2010, the management filed W.P.(C) No. 2587/10. Vide judgment dated 28.09.2010, Hon'ble High Court quashed the order dated 08.02.2010 and issued directions to the Labour Court to answers all the issues together in order to avoid any further delay and piece meal adjudication. However, when the workman filed LPA no. 847/10, Hon'ble High Court made observations as to para no. 14 to 16 of the order impugned. That is how, claim application is before the Court. Evidence

7. In order to prove his case, the workman stepped in the witness box as WW1 and tendered in evidence his affidavit Ex.WW1/1 and documents Ex.WW1/2 to WW1/22.

8. On the other hand, management has examined MW1 Sh. Prasad M.Pathare, its Manager (Legal). MW1 tendered in evidence his affidavit MW1/1 and documents Ex.MW1/2 to MW1/5.

Issue No. 2A (Whether the 'Govt. of NCT of Delhi' or the 'Central Government' is the appropriate Government in the present dispute?)

9. This issue was framed on the submission of Ld. AR(M) on 23.05.2011. In the course of arguments, no argument has been advanced on this issue. Even in pleadings, no such plea was put forth by the management. This is a Labour Claim Application and not an industrial dispute. Therefore, the issue is of no significance at all for adjudication of the matter in dispute. Accordingly, this issue is therefore, decided against the management. Issue no. 2. (Whether this application is not maintainable U/s 33 C(2) I.D. Act ? OPM.)

10. As noticed above, workman has filed labour claim application under Section 33 C(2) of the Act, claiming salary, allowances, arrears/dues as described in para no. 9 of the claim. Management has opposed the claim of the workman inter alia on the ground that this question of entitlement of the workman to benefit is beyond the purview of jurisdiction of labour court, when he has not shown as to how he is entitled to a salary of a Captain.

11. Section 33 C (2) reads as under: "Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

> provided that where the presiding officer of a Labour Court considers it necessary or expedient so it do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

12. Ld. Counsel for the workman has also referred to decision in Jeet Lal Sharma Vs. Presiding Officer, Labour Court IV & Anr., 2000 IV AD (Delhi) 1; Vishnu Kumar Mangla Vs. Dhaneshwar Gupta & Sons, [2012 (134) FLR 455]; In Vishnu's case (supra), claim of the workman as regards wages was held to be maintainable under Section 33 C(2) whereas his claim for Gratuity and Bonus was held to be outside the scope of this application.

Ld Counsel for management has argued that since claim of workman has been disputed by the management and court cannot adjudicate entitlement of workman to rate of wages, which is in dispute, this court has no jurisdiction to decide the dispute U/s 33 C (2) and rather, the workman should have raised an industrial dispute separately. In support of his contention, Ld Counsel has referred to decision in Central Inland Water Transport Corporation Limited Vs The Workmen and Anr., [AIR 1974 SC 1604]; The Central Bank of India Ltd. Vs P. S. Rajagopalan etc. [AIR 1964 SC 743].

In Central Bank's case (supra), Hon'ble Court observed:

> "The claim under section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-s. (2)."

As regards benefits, Ld Counsel for workman has referred to decision in Chief Mining Engineer East India Coal Co. Ltd Vs Rameswar & Ors., [AIR 1968 SC 218] and V. M. Vankar (Macwana) Vs Indian Farmers Fertiliser, [1983 GLH 586].

Herein, workman is not a discharged employee. He of his own left the job. Decision in Central Inland Case (Supra) cited by Ld Counsel for management is therefore, not of any help to management, as that case is distinguishable on the ground that it was a case of discharged employee claiming money from employee. In view of the provisions of Section 33 C (2), the decision in Vishnu Kumar Mangla's case (supra) and service conditions as stipulated under provisional appointment letter and Pilot employment Agreement (both admitted documents as to employment and service conditions), the claim of the present workman in respect of wages, and benefits, capable of being computed in terms of money can safely be said to be maintainable under Section 33 C(2) particularly when ambiguities involved require interpretation.

Issue no. 1.(Whether this court has no jurisdiction to entertain this application ?OPM.)

13. One of the preliminary objections raised by the management is that the Labour Court has no jurisdiction to try and adjudicate upon the present Labour Claim Application, since the Pilots Employment Agreement signed by the workman specifically states that any dispute arising between pilot and the management will be subject to jurisdiction of Mumbai Courts.

14. On the other hand, workman has claimed in the rejoinder that Clause XI of the Pilot Employment Agreement barred jurisdiction of this Court, when as per version of the management itself, the operating base of the workman was in Delhi; management has its branch office in Delhi; and the workman reported for duty at Delhi and received salary in Delhi.

15. Pilot Employment Agreement was arrived at between the parties. The workman signed the same on 17.12.2007 whereas the management had already signed it on 21.11.2007.

16. As per para no. 11 of the agreement, the parties agreed that any dispute of whatsoever of nature between a pilot and the management shall be subject to the exclusive jurisdiction of the Courts of Mumbai.

Admittedly, as per the terms and conditions of the Agreement, the pilot was initially to be based in Delhi but he could be offered option of choosing home base as soon as new base was opened. Even as per provisional appointment letter dated 08.02.2006, not in dispute between the parties, the operating base of the workman was to be in Delhi.

When the workman was subjected to cross examination, he was not put any question on the point of jurisdiction of the Court or even suggested that the Labour Courts at Delhi has no jurisdiction to entertain and try this Labour Claim Application.

17. In support of the contention that the Court at Delhi has jurisdiction to entertain and decide such like claim application,Ld. Counsel for the workman has referred to decision in S.A Manjunath and Ors. Vs. The Management of Cross Lands Research Lab Limited and Anr. [2005 (4) KarLJ 425].

18. In S.A. Manju Nath's case (supra), application under Section 33 (C) 2 claiming monetary benefits, filed by the workman was contested by the management. Therein, the management raised objection to jurisdiction Courts at Bangalore in the light of Clause 17 of the appointment letter issued to the workman. Accordingly, it was submitted on behalf of the management that any dispute arising out of or related to employment shall be subject to Bombay jurisdiction only.

Hon'ble High Court of Karnataka at Bangalore held that Labour Court had every right and jurisdiction to decide issues despite a clause in the appointment order. Accordingly the matter was remanded for decision on merits, while observing as under: "Section 33 C(2) is a statutory remedy given to an employee in the matter of recovery of money. Statutory remedy cannot be scuttled by way of contract between the parties. Any contract contrary to a statute remedy would be opposed to public policy in the matter. Industrial Dispute Act is a special Act providing for settlement and jurisdiction with regard to a claim by a workman against the employer. Several Statutory remedial measures are provided under the Industrial Disputes Act. They are conciliation,adjudication and arbitration. Social welfare legislation providing for a remedy cannot be curtailed or taken away by way of a clause in the appointment order. The said clause in the appointment order, in my opinion, cannot be a bar for enforcing a statutory remedy by a workman before a statutory court. Even if there is any clause, such clause has to pave way for statutory remedy to the authority to decide a statutory application in terms of provisions of the Industrial Disputes Act. Therefore, Labour Court in my view is not right in rejecting the application by relying on Clause 17 of the appointment order in the case on hand.

Hon'ble Court further observed:

> "From a reading of the judgment, what is clear to this Court is that a statutory remedy before a Labour Court is available with the test of jurisdiction as enunciated in the said judgment i.e., whether parties reside within jurisdiction or whether the subject matter of the dispute substantially arises within its jurisdiction. Labour Courts can certainly entertain a dispute between the parties subject to the above test of jurisdiction. In the case on hand, parties reside within the jurisdiction of the Labour Court and the claim also has been arisen within the jurisdiction of Labour Court, Bangalore. Therefore, notwithstanding Clause 17 of the appointment order, Labour Court has jurisdiction in terms of the law laid down by the Supreme Court."

19. In S.A. Manju Nath's case there is reference to case titled as Workmen of Shri Ranga Vilas Motors (Private) Limited Vs. Sri Rangavilas Motors (Private) Limited and Ors., (1967) II LLJ 12

(SC). In Shri Ranga Vilas Motors case, Hon'ble Apex Court took into consideration the following observations made in Indian Cable Company Limited Vs. Its Workmen, 1962 1 LLJ 409 (SC) as under:□"The Act contained no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C.J., observed in Lalbhai Tricumlal Mills Limited V. Vin: AIR 1955 Bom 463:

> "But what we are concerned with to decide is, where did the dispute substantially arise? Now, the Act does not deal with the cause of action, not does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well□known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject□matter of the dispute substantially arises within jurisdiction."

20. Herein, when it is not in dispute that the operating base of the workman was Delhi; the workman is resident of Delhi, the management had its branch office in Delhi and the workman reported for duty at Delhi and also received his salary here, it can safely be said that the Labour Court at Delhi has the jurisdiction to entertain and try the matter in dispute in this Labour□Claim□ Application.

21. It is true that where Courts at two places have jurisdiction to entertain and try the matter in dispute, parties to the agreement may choose one of the Courts to be having jurisdiction, but the parties can not confer jurisdiction, by consent on a Court which does not have jurisdiction.

The question arises whether the Labour Court at Mumbai had jurisdiction and as to whether the parties rightly conferred jurisdiction on court at Mumbai by way of choice of forum.

22. Management has nowhere pleaded in the written statement as to which facts conferred jurisdiction on the Labour Courts in Mumbai. It has raised objection to the jurisdiction of the Courts at Delhi simply because on the ground that by consent parties conferred jurisdiction on Mumbai Courts. The only ground raised during arguments is that Management's registered office is situated in Mumbai.

As per provisions of Section 33 C(2) the decision of the Labour Court is required to be forwarded to the "appropriate Government" and any amount computed by the Court may be recovered under Section 33 C (1). For recovery of money under Section 33 C (1), the workman is required to file an application before the appropriate Government. The appropriate Government is required to issue a certificate for the said amount and send the same to the Collector. The Collector is required to recover the same in the same manner as arrears of land revenue. Having regard to these provisions of sub Section (1) and (2) of Section 33 C, this Court finds that in case any amount is found due to the workman from the management, for the purpose of its realization, the Collector of Delhi shall be empowered to recover the said amount from the management, on the basis of certificate issued by the appropriate Government. Herein, the office of the management being in Delhi, recovery of the amount can safely be made by the Collector at Delhi. Therefore, only Labour Court at Delhi has

jurisdiction to entertain & try this claim.

This issue is therefore decided in favour of workman and against the management.

Issue No. 3 (To what relief, if any, is the applicant entitled to receive in terms of money computed on the basis to this application?OPW).

23. The first document which the workman has produced on record regarding his employment with the management is Ex. WW1/2. This electronic record is E□mail dated 28.11.2015 from the management to the workman. Vide this correspondence, management acknowledged to have received resume of the workman and expressed its interest in taking the position of "Trainee Captain". At the same time, management inquired if he had got any hours as PIC or first officer on B□73.

No response to this e□mail has been placed on record so that this Court could gather as to what was expressed by the workman in reply.

Workman has placed on record "provisional appointment letter"

> dated 08.02.2006. Management has not disputed this document. As per this appointment letter, management offered to the workman position of first officer and that too on monthly gross stipend of Rs. 80,000/□"during training"

subject to the 7 conditions stipulated therein. The date of joining was not to be beyond 09.02.2006. It was made clear by this appointment letter that on successful completion of training on Airbus 320 and subsequent P□2 endorsement on Indian license, workman shall be issued a regular appointment letter giving detailed terms and conditions. It was also specified that from the date of endorsement as a qualified P□2, his gross starting salary shall be Rs. 2,35,000/□per month. The workman was required to sign copy of this letter as a token of acceptance.

Workman has come up with the version that this letter dated 08.02.2006 was handed over to him on 25.02.2006 when he was about to proceed to Tunisia for training. No documentary evidence is on record to suggest that the provisional appointment letter was delivered to the workman on 25.02.2006. MW1 was not subjected to any cross□examination on the point that this provisional letter was delivered to him on that date.

24. Management has come up with the plea that the workman joined the management company as first officer from 09.02.2006, in terms of offer vide letter dated 08.02.2006 and as such it cannot be said that he joined as a Captain.

As regards, the subsequent employment agreement signed in December, 2007, case of the management is that it could not have retrospective effect on the employment relation when the workman was working in the capacity of trainee till P□2 endorsement was made on his license. Further it has been submitted that up to 29.06.2006, workman was not qualified to fly Air bus 320.

25. It is case of the workman himself that management, through, Capt. V.K.Sharma, promised to issue letter of appointment as a Captain on returning after successful completion of training in Tunisia. Workman has not examined Sh. V.K. Sharma to prove this fact. He has also not brought in cross examination of MW1 that he was so promised on behalf of management.

It is in the cross examination of the workman that he joined employment with the management on 09.02.2006. There is no explanation from the workman as to why did he join employment on 09.02.2006, in case he had not yet received provisional appointment letter dated 08.02.2006. From the conduct of the workman in having joined employment with the management on 09.02.2006, it can safely be said that he impliedly accepted the terms and conditions as available in provisional letter of appointment dated 08.02.2006.

In the given circumstances, when the workman joined employment with the management as per provisional letter dated 08.02.2006, it can be safely be said that he so joined as a trainee and further that regular appointment letter was to be issued to him only on successful completion of his training on Airbus□320 and subsequent P□2 endorsement on his license. Till then, he was entitled to claim / get gross stipend @ Rs. 80,000/□ Compliance with terms & condition of training and P2 endorsement on the license.

26. Workman has admitted in his cross examination that the management sent him to ATCT, Tunisia, on training which was to start from 28.03.2006. He underwent training in Tunisia from 28.03.2006 to 15.05.2006. He has further admitted in cross examination that in the said training he was trained as a Captain on Airbus 320 and further that on the basis of this training, on 29.06.2006, he got DGCA endorsement on Airbus 320 on 29.06.2006. It is also in his cross examination that having completed A□320 Type rating from Tunisia, helped him get DGCA license. From the above evidence on record, it stands proved that the workman fulfilled terms and conditions with the management only on completion of training on Airbus 320 during the period from 28.03.2006 to 15.05.2006, and had endorsement from DGCA on 29.06.2006. It also stands established from evidence that the workman got endorsement from DGCA to fly as Pilot in command A□320 Airbus on 18.04.2007.

Accordingly, the management was justified in entering in Pilot Employment Agreement with the workman and designating him afresh to carry out the duties of the Pilot in Command/Co□Pilot.

27. It has been submitted on behalf of the workman that in the Pilot Employment Agreement, the parties agreed that the same shall be effective from 08.02.2006 and as such the workman is entitled to difference in wages and other benefits from the said date and not w.e.f. 18.04.2007 i.e. when he got endorsement from DGCA to fly A□320 airbus as Pilot in command.

There is no doubt that Pilot Employment Agreement begins with the sentence " this agreement for employment is entered w.e.f. February, 8, 2006"; but from this sentence it cannot be said that the workman was entitled to wages at the rate of 4,06,000/□and other benefits w.e.f 08.02.2006. There is nothing in this Pilot Employment Agreement to suggest that the salary as prescribed in para 8.2 was to be paid by the management to the workman w.e.f. 08.02.2006.

As per para 8.4.1, as a co-pilot, the workman was to be paid gross salary to the tune of Rs. 2,35,000/-. This shows that he was not entitled to wages @ Rs 4,06,000/- w.e.f 08.02.2006.

As noticed above, as per admissions of the workman himself he underwent training on Airbus-320 from 28.03.2006 to 15.05.2006; that he met the requirement of co-pilot on Airbus A-320 after he had endorsement from DGCA on 29.06.2006; that he got endorsement from DGCA to fly A-320 Airbus as Pilot in command on 18.04.2007.

As a result, during his posting as first officer w.e.f. 09.02.2006, the workman was entitled to claim stipend @ Rs. 80,000/-. He was entitled to stipend at this rate upto 28.06.2006. In other words from 09.02.2006 to 28.06.2006, the workman was not entitled to claim salary @ Rs. 4,06,000/-.

After having successfully undergone training on Airbus-320 and subsequent P-2 endorsement on 29.06.2006, he was entitled to claim salary @ 2,35,000/- per month. He was so entitled to claim salary at this rate upto 17.04.2007, as on 18.04.2007 he got endorsement for DGCA to fly Airbus A-320 as pilot-in-command.

28. Ld. AR(W) has submitted that the management paid to many other trainee captains, salary of captain, from the date of their joining and as such the management should have paid salary of captain even to the workman and that too from the date of his joining.

In support of this argument, Ld. AR(W) has referred to order dated 03.05.2012 passed on an application under Section 11 (3) of Industrial Disputes Act seeking production of documents from the management, and that the management did not produce salary slips/records of the four captains named in the application, and as such an adverse inference should be drawn against the management.

29. During pendency of this claim, the workman filed two applications i.e. one u/o 11 r 14 CPC read with Section 11(3) of the I.D. Act for production of documents by the management and another u/o 11 R 14 read with Order 7 r 14 (3) of the CPC and Section 11 (3) of the ID Act for filing additional evidence.

Vide order dated 03.05.2012, the workman was allowed to place on record documents and further to lead additional evidence as prayed in the application.

It appears that in the operative part of the order dated 03.05.2012 no specific direction could be issued to the management by my Ld. Predecessor for production of documents i.e. the salary slips/salary record pertaining to the four captains. But management can safely be said to be aware of the prayers made in the two applications and that as per order, both the applications were allowed. So, Management should have produced the concerned documents. But the fact remains that same were not produced.

30. However, this court does not find any ground to draw any adverse inference against the management simply from non production of the requisite record. Firstly, the workman did not

allege anywhere in the claim that the management had discriminated in making payment of salary in comparison to other trainee captains. Secondly, the workman did not amend his claim to so plead. Thirdly, the workman could examine those four captains to bring evidence to support his claim, but he did not take any such step. Therefore, non production of documents by the management does not help the workman. Leave encashed @ Rs. 35000/□p.m. instead of Rs. 4,30,000/□p.m. □7,90,000/□

31. In his affidavit, workman has testified about anomaly /shortfall in leave encashment on the basis of wages @ Rs. 4,30,000/□ The management has denied this claim by pleading that the workman has wrongly computed the salary for the period from 08.02.2006 to 17.04.2007 as he was only a co□ pilot and not a captain.

As discussed above, the workman was not entitled to wages at the rate the workman has claimed, for the period from 08.02.2006 to 17.04.2007. It is not case of workman that management did not pay him at all against leave due. There is no merit in the claim of the workman that there is shortfall in the amount of leave encashment.

Ticket from Bombay - Delhi by Kingfisher Airlines □10,640/□

32. Case of the workman is that under Clause 5.1.10 of the Pilot Employment Agreement, he was entitled to free air tickets while on duty, but the management did not provide him air ticket on 01.03.2007 after flight from MAA - PNQ□Del□Bom and he had to purchase the ticket from Delhi to Bombay in order to return homebase, by Kingfisher Airlines, spending Rs. 10,640/□

Management has simply denied entitlement of the workman to free air tickets, on the ground that he was not holding the post of captain. Management has however, not disputed travel by the workman on 01.03.2007 to return homebase.

Para 5.1.10 of the agreement provides that the management shall seek to arrange pilot's travel accommodation while on duty within India on its own flights but he could use the services of another carrier to ensure operational liability. If any carrier's services were used, the company was to pay the pilot's air fare.

In view of this provision in the agreement, the management was liable to pay and the workman was entitled to claim from the management air fare, even when he used services of M/s Kingfisher Airlines.

Workman has proved document Ex. WW1/10, i.e. electronic ticket itinerary with copy of boarding pass affixed on it. From these documents, it stands established that the workman travelled from Mumbai to Delhi on 01.03.2007 by Kingfishr airlines. The workman was not subjected to any cross examination on this point.

As a result, court holds that workman is entitled to benefit of a sum of Rs. 10,640/□which he spent from his own pocket to reach homebase from Mumbai on 01.03.2007.

Taxi fare (in London) - 5,476/□

33. As per case of the workman, while in London, when he was to reach Simulator, he was provided with wrong address by the management. So he had to hire taxi and pay a sum of Rs. 5476/□from own pocket to reach the exact destination.

Management has denied that the workman was provided with wrong address while going for simulator in Mumbai.

In order to prove his entitlement to claim this amount, workman has proved Ex. WW1/11 which is record of correspondence in the form of electronic record between the parties. Exhibition of this document was not objected to. The workman brought this fact to the notice of the management on 16.10.2007. The management assured the workman that it had been taken care of and Captain Ghosh would look into it.

Management has not led any evidence to suggest that correct address was provided to the workman while he was in London. Management has also not examined Captain Ghosh, who was to look into it, so as to prove that the allegation levelled by the workman was false.

Therefore, court holds that workman is entitled to a sum of Rs. 5,476/□from the management towards Taxi fare for which he had to foot the bill from own pocket.

Travelling Allowance (3 days in Tunisia) □23,232/□

34. As per case of the workman, while he was on training in Tunisia, he had to spend a sum of Rs. 23,232/□i.e. at the rate of 121 Euro per day on travelling allowance, during a period of three days.

Management has denied this claim on the ground that he was not entitled to travelling allowance, he being only a co□pilot.

Admittedly, the management sent the workman to Tunisia for training. Management has not specifically denied that the workman had to spend this much amount on travelling while in Tunisia. There is no merit in the objection raised by the management that the workman was not a co□pilot. Since he was sent on training, it was for the management to bear the travelling expenses, even if he was not a co□pilot at that time. Accordingly, workman is held entitled to a sum of Rs. 23,232/□ towards travelling allowance, while he was in Tunisia.

35. In view of the above discussion and findings, claim of the workman deserves to be allowed for the following three amounts/benefits:□

1. Ticket from Bombay - Delhi by Kingfisher Airlines □Rs. 10,640/□

2. Taxi fare (in London) □Rs. 5,476/□

3. Travelling Allowance (3 days in Tunisia) □Rs. 23,232/□Total □Rs. 39,348/□

36. As regards rest of the claims/benefits put forth by the workman, his claim deserves to be dismissed for the reasons already given above.

37. Accordingly, workman is held entitled to only an amount of Rs. 39,348/□under the aforesaid three heads.

So, this issue is decided in favour of workman and against the management.

Issue No. 4/(Relief)

38. In view of findings under issue no. 3 above, the claim is partly allowed for a sum of Rs. 39,348/□ with interest @ 9% per annum from the date of filing of claim i.e. 29.01.2009 till its realization. Workman is also held entitled to cost of litigation to the tune of Rs. 25,000/□

Case file be consigned to Record Room.

ANNOUNCED IN OPEN COURT ON 16th Day of October 2015 (Narinder Kumar) Addl. District & Sessions Judge Presiding Officer Labour Court□XIX Karkardooma Courts, Delhi