INDIAN AIRLINES OFFICERS' ASSOCIATION A

v.

INDIAN AIRLINES LTD. & ORS.

JULY 30, 2007

[H.K. SEMA AND V.S. SIRPURKAR, JJ.] B

Service Law:

Constitution of India, 1950; Article 14:

C

Service conditions—Scheme of merger of Vayudoot with Indian Airlines and Air India—Seniority and promotions of employees of Vayudoot in Indian Airlines vis-à-vis Air India—Discrimination—Held: Merger of Vayudoot and absorption of its employees in Indian Airlines and Air India were two completely independent processes commenced and ultimately certain decision D *in connection thereof concerning seniority and promotion have been taken—Raising of demands by the employees of Vayudoot absorbed in Indian Airlines concerning promotion prospects but no such demands raised by the employees of Vayudoot absorbed in Air India—Besides, employees of Vayudoot absorbed as fresh appointee in Air India, however, in case of Indian Airlines they were placed in the bottom of each grade/category of posts—Thus, Air India and* E *Indian Airlines are not comparable to each other so far as absorption of employees of Vayudoot in these two organizations is concerned—Merely because some employees of Indian Airlines would be affected adversely in terms of future chance of promotion, the whole Scheme of merger could not be rejected as discriminatory or arbitrary.*

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Integration of employees of Vayudoot in Indian Airlines—Necessity of—Held: It was necessary in order to resolve the grievances of substantial number of employees of Vayudoot.

Absorption of employees of Vayudoot in Indian Airlines and Air India without consulting them—Principles of Natural Justice—Violation of—Held: G *The Policy of merger formulated in conformity with the principles of law, functional similarity of the posts in two Organisations avoiding undue advantage to some and undue hardship to others—Merely because appellant—Union was not called upon for direct negotiations in the decision*

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A *making while formulating the Policy, it cannot be said that the Policy makers were not alive to the welfare of the employees—There is no arbitrariness in the Policy besides equities between the two Organisations have been properly balanced—This is not a case where the principles of natural justice could be brought in—Administrative Law—Principles of Natural Justice.*

B The Government of India took a policy decision to merge Vayudoot with Indian Airlines and Air India. Initially, a separate department was created in Indian Airlines called 'Short Haul Operations Department' (SHOD) for absorption of erstwhile Vayudoot employees in terms of certain conditions. Accordingly, the appointment orders were issued in favour of the Vayudoot C employees appointing them in SHOD. However, after their absorption in SHOD, the employees of Vayudoot started raising demands for better promotional prospects. It was decided by the Central Government to merge them in Air India and Indian Airlines. A scheme of merger was formulated accordingly. However, the employees of Vayudoot who opted for their absorption in Indian Airlines raised various demands concerning their service D conditions. A meeting was held at the instance of Secretary, Civil Aviation to resolve these demands. Thereafter, another meeting was held between the officers of Ministry of Civil Aviation and the representatives of Indian Airlines. It was decided that unless and until SHOD employees were merged in Indian Airlines, they would have no legal rights to raise demands, and E therefore, their merger was agreed as suggested in earlier meeting. It was also resolved that Indian Airlines should take necessary steps of merger of SHOD employees in the mainstream of Indian Airlines not only on individual basis but on the basis of various classes/categories of employees. Accordingly, the Ministry advised Indian Airlines to take necessary action as per the minutes issued by the Ministry. However, the employees of Indian Airlines F felt that though in the meeting, the decision taken was that SHOD employees were to be adjusted at the "entry point" but the minutes reflected as if they were to have the "horizontal entry". Aggrieved by the decision of the Central Government they had challenged the decision of the Government by filing writ petitions. Another writ petition was filed by an individual who was working G as Deputy Manager in the Vayudoot Karamchari Sangh. The writ petitions came to be allowed by the Single Judge of the Delhi High Court by quashing the decisions so taken in the meeting and directing that the whole exercise should have been taken afresh after considering all the aspects. The Single Judge did not specifically approve the "Horizontal entry" of the employees of Vayudoot in the Indian Airlines and reiterating that such an entry would mean H injustice to the employees of the Indian Airlines who had spent number of

years for getting the promotion in terms of extant rules, on the other hand, employees of Vayudoot had got the promotions in the most arbitrary manner. The judgment of the Single Judge of the High Court was appealed against by the Indian Airlines and others before the Division Bench of the High Court. The Division Bench of the High Court allowed the appeals. Hence the present appeals.

Appellants contended that there was no formal merger between the Indian Airlines and the Vayudoot. Consequently, the decision taken in the meeting dated 16.3.2000 followed by the notification dated 5.2.2001 would be non-est in law and would be liable to be quashed; that the impugned notification as also the minutes of the meeting dated 16.03.2000 clearly suggest that at the time of absorption the Vayudoot employees, who were serving *in SHOD, would* be placed at the bottom of the respective grade/pay-scale as on 10.3.1998 with protection of their pay and past services; that the main point of conflict was as to whether an employee or more particularly, the officer serving in Vayudoot should be placed in the same grade with the same nomenclature or should be placed at the entry level of the cadre; that in case of Air India, the employees of SHOD were not given the horizontal entry but were put at the bottom at the entry level of their own cadre; that there was no equation between the posts in Indian Airlines and Vayudoot; that horizontal entry of SHOD officers could not be allowed without equation of posts, particularly taking into consideration the qualification for the post, nature of duties and functions and length of service required for promotion to the next grade as also scales of pay, etc.; and that the minutes of the meeting dated 16.3.2000 as also the notification dated 5.2.2001 were liable to be quashed on the ground of gross violation of principles of natural justice since the appellant Association was not associated in the discussions at the time of the policy decision taken nor were they made party in the subsequent discussions/meetings, and as such they were denied any say in the process of decision making affecting the rights of its members.

Respondents submitted that merely because a particular policy was taken in case of Air India would not by itself create any obligation that the same kind of policy should be taken in case of Indian Airlines also; that it was a case of merger or absorption of ex-Vayudoot employee with Air India like in case of Indian Airlines; that those employees who were inducted in Air India way back in 1994, were treated as the fresh appointees, they were bound to be placed at the entry level in Air India; that issues like horizontal entry of SHOD Officers and equation of the posts in *Indian Airlines and* Vayudoot were discussed threadbare in the various meetings held earlier and

A it is only thereafter that the decision of fusion or as the case may be merger was taken by fixing a particular cut off date; and that the basic structure of the service in Vayudoot and Indian Airlines was comparable if not entirely identical with each other.

Dismissing the appeals, the Court

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HELD: 1. The decision to merge Vayudoot with Indian Airlines was taken as back as 25.5.1993 and it was a policy decision of the Central Government. It may be that till 16.3.2000 or the consequent notification dated 5.2.2001 there was no formal merger between the two, however, that by itself will not invalidate the decisions taken on 16.3.2000 or 5.2.2001. The policy C decision taken was not only pursued but definite steps were taken in pursuance thereof and for that purpose Short Haul Operation Department (SHOD) was created as part and parcel of the Indian Airlines. After the decision was taken to merge, the facts indicate that the existence of Vayudoot was a mere formality. True it is that there was a separate procedure and that other legal formalities were not yet over, however, that by itself would not have the effect of wiping D out the decision taken earlier. [Para 23] [673-A, B, C]

2.1. The entire process of merger of ex-Vayudoot employees and their absorption in Indian Airlines was a completely independent process.

[Para 26] [675-F]

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2.2. Vayudoot employees who were placed in SHOD were to keep their independent identity. However, SHOD employees were not satisfied with this and started demanding some better chances by getting into the mainstream of Indian Airlines and this was not unnatural because after the merger decision they had lost their independent status as Vayudoot employees, they F were to be treated as Indian Airlines employees but belonging to SHOD, thereby though they were part of the Indian Airlines family, they were to be treated differently to their chagrin. It is only because of this that a completely new and independent process was commenced holding several meetings, talks and ultimately a scheme was evolved for absorbing SHOD employees into the mainstream of Indian Airlines. All this was conspicuously absent in case of G Air India. Indeed no evidence has been brought before this Court that such kind of exercise was done in case of Air India also. Hence, the contention that in case of Air India the Vayudoot employees went as the fresh appointees and that was the basis of merger or as the case may be, absorption of the Vayudoot employees into Air India is accepted.

H [Para 26] [675-G; 676-A, B, C]

2.3. The case of Air India and Indian Airlines are not comparable to each other. Whereas about 300 employees went to Air India as the fresh appointees, more than thrice that number had to be adjusted in Indian Airlines. The number was substantial which lost their identity as the Vayudoot employees and as a result of the demand raised by them and after lot of discussions in Civil Aviation Ministry on one hand and the Indian Air Lines authorities on the other a scheme was formulated. There was nothing wrong done in adopting two different methodologies in case of Air India and Indian Airlines. [Para 27] [676-D, E, F] A B

2.4. Merely because some of the employees of Indian Airlines would suffer in terms of seniority and ultimately in terms of their further chances of promotion, the whole scheme can not be rejected as discriminatory or arbitrary. [Para 28] [676-F] C

2.5. If the erstwhile Vayudoot employees are being fixed horizontally as the junior most employees of that post, there would be no question of injustice to Indian Airlines employees. [Para 29] [679-E] D

Tamil Nadu Education Department Ministerial and General Subordinate Services Association & Ors. v. *State of Tamil Nadu,* [1980] 3 SCC 97, relied on.

2.6. There is clear evidence available that the policy of absorption was chalked out in conformity with the principles of law, functional similarity in the posts of two organisations and was a well thought out policy avoiding undue advantage to some and undue hardship to others. E

[Para 30] [679-B, C]

3.1. Fixing the cut-off date on 10.03.1998 when broadly the principles of merger were arrived at for the first time after thorough discussions, would not be an arbitrary exercise. There was nothing wrong in fixing 10.03.1998 as the cut-off date. It balanced the equities between the erstwhile Vayudoot employees and the present Indian Airlines employees, inasmuch as though the merger was five years old by then, the Indian Airlines employees got five years advantage whereas the Vayudoot employees had to sacrifice those five years in lieu of the better deal of the service they got because of the merger. F G

[Para 31] [679-D, E]

3.2. It was completely optional for the employees of SHOD to join the mainstream of Indian Airlines which was one of their major demands. They H

A were all the time clamouring that by remaining in SHOD they would have bleak future, whereas if they are allowed to join the mainstream of Indian Airlines, they would have better chances of promotions. After the deliberations in various meetings it was decided that they would have an option to join the Indian Airlines subject to certain conditions and one of the condition was that the cut off date was to be 10.3.1998. It was, therefore, open for SHOD B employees not to opt for joining the mainstream of Indian Airlines if they felt that they would be losing five years of service in joining Indian Airlines. However, the statistics show that practically all the SHOD employees chose to join Indian Airlines. Therefore, they cannot now turn back and raise a plea that injustice is caused to them by fixing 10.3.98 as a cut off date instead of 25.5.1993 or as the case may be, 10th April, 1994.

C [Para 32] [679-F, G; 680-A, B]

B.K. Mohapatra v. *State of Orissa and Anr.*, [1987] Supp. SCC 553 and *Dwijen Chandra Sarkar and Anr.* v. *Union of India & Ors.*, [1992] 2 SCC 119, held inapplicable.

D 4.1. True it is that the Appellant Union was not called for direct negotiations in decision making but it cannot be said that the policy makers were not alive to the welfare of the Indian Airlines employees and secondly no right accrue in favour of the appellant Association so that their non participation in policy making would result in wiping out the policy decision altogether. This is not the case where the principles of natural justice could E be brought in so as to hold that if the appellant Association was not made a party to the discussions for policy making, such decision making the policy would be hit by the principles of natural justice. [Para 35] [683-B, C]

4.2. It is seen that the authorities were alive to the service conditions of the Indian Airlines employees and had their future in mind also, the authorities F were not bound to negotiate with the Appellant Association before formulating the policy. Such policy which is framed without active negotiations with the Appellant-Union would not for that reason alone be rendered non est and would suffer from the vice of arbitrariness. After-all in ultimate policy which has been culled out, no arbitrariness is seen. On the other hand, the equities in G between the Indian Airlines employees and SHOD employees have been properly balanced and counter-balanced. [Para 35] [683-E, F]

Balco Employees Union (Regd.) v. *Union of India*, [2002] 2 SCC 333, relied on.

H 5.1. There was no specific evidence put before this Court that the

managerial cadres in Indian Airlines had very high qualifications, responsibilities, duties and salaries and such high responsibilities, duties and salaries were not applicable to the employees of Vayudoot. However, attention was repeatedly drawn to the counter affidavit filed by Indian Airlines before the Single Judge of the High Court where it was said that the two cadres were not comparable. However, one must bear in mind that at that time the only question was as to whether the erstwhile Vayudoot employees could be allowed to compete for the higher posts in Indian Airlines when there was a complete compartmentalization between the employees of Vayudoot and Indian Airlines in the sense that the Indian Airlines employees could not be transferred to Vayudoot and vice-a-versa and further the SHOD employees were to be maintained as a separate and distinct Department from the Indian Airlines. The defence raised in that case, at that time, could not be said to be a be all and end all of the matter so as to hold that the two cadres even at the later point of time were wholly incomparable so that they could not be integrated at all. [Para 37] [685-G; 686-A, B, C]

State of Maharashtra & Anr. v. *Chandrakant Anant Kulkarni & Ors.*, [1981] 4 SCC 130; *Union of India & Ors.* v. *S.L. Dutta and Anr.*, [1991] 1 SCC 505 and *S.P. Shivprasad Pipal* v. *Union of India & Ors.*, [1998] 4 SCC 598, held inapplicable.

5.2. In the matter of integration or as the case may be, fusion of the employees was a matter of policy which had become necessary in order to contain the grievances of substantial number of Vayudoot employees. Any such policy decision, unless the said decision was arbitrary, unreasonable or capricious, could not have been challenged by the employees.

[Para 37] [686-C, D]

Union of India & Ors. v. *S.L. Dutta and Anr.*, [1991] 1 SCC 505, referred to.

5.3. Even the managerial duties in the Indian Airlines as well as Vayudoot would involve the technical questions as to the nature of duties, training required and desirable qualifications. Again, the lengthy deliberations in various meetings to arrive at a proper decision taken by the responsible persons like Senior officers of Ministry of Civil Aviation, Senior Officers including the CMD of Indian Airlines as also the Ex-Director of SHOD and the Director (HRD) of Indian Airlines, cannot be ignored. In the wake of these personalities spending their valuable time to frame the policy regarding the fusion, Court would be slow to interfere with such policy. Hence, the

A **Division Bench of the High Court was right in upsetting the judgment of the Single Judge of the High Court. [Paras 37 and 40] [687-A, B, C; 688-D]**

S.P. Shivprasad Pipal **v.** *Union of India & Ors.*, **[1998] 4 SCC 598 and** *Union of India & Anr.* **v.** *International Trading Co. & Anr.*, **[2003] 5 SCC 437, relied on.**

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CIVIL APPELLATE JURIDICTION : Civil Appeal No. 1269 of 2007.

From the Judgment & Order 08.02.2006 of the High Court of Delhi at New Delhi in L.P.A. Nos. 648 & 649 of 2004.

C WITH

C.A. Nos. 1270-1272 of 2007.

P.P. Rao and L.Nageswara Rao, Naresh Kaushik, Lalita Kaushik, Vikas Mahajan, Sidharth Gupta ,Bhasker Y. Kulkarni , Raja Chatterjee, G.S. Chatterjee, D Anita Shenoy, Nitin Ramesh, Lalit Bhasin, Ramesh Singh, Nina Gupta, Akanksha, Neha Sharma and Bina Gupta, for the appearing parties

The Judgement of the Court was delivered by

V.S. SIRPURKAR, J. 1. This Judgment will dispose of Civil Appeal Nos. E 1269, 1270, 1271 and 1272 of 2007. Civil Appeal No. 1269 of 2007 is preferred by Officers' Association of Indian Airlines; the representative body of the Indian Airlines employees. The Civil Appeal No. 1270 of 2007 is preferred by Indian Airlines Cabin Crew Association while Civil Appeal No. 1271 of 2007 is preferred by Vayudoot Karamchari Sangh and Civil Appeal No. 1272 of 2007 by Indian Airlines Officers' Welfare Forum respectively. All these appeals F challenge a common judgment passed by the Division Bench of the Delhi High Court whereby the Division Bench has set aside the common judgment passed by the Ld. Single Judge of that Court which had allowed the four Writ petitions filed by the Officers' Association of the Indian Airlines and the employees of the Vayudoot Limited.

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2. The learned Single Judge in his judgment had dealt with four writ petitions filed and had granted the relief in the following terms :

"Rule is made absolute. Decision of the respondents to offer merger to SHOD employees by placing them at the bottom of the seniority

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list of the post held by them after the existing employees of Indian Airlines is quashed. Notification dated 05.02.2001 is quashed. Notification dated 05.02.2001 requiring SHOD employees to exercise option in terms of the first notification dated 05.02.2001 is also quashed. Directions are issued to Indian Airlines and the Union of India to re-frame the policy of cadre merger by assessing and determining the equation of posts by taking into consideration the four guiding factors laid down by the Supreme Court in *Chanderkant Anant Kulkarni's* case and in light of the observations made by me in the present decision."

3. This direction was upset by the impugned judgment of the Division Bench whereby the Division Bench has set aside the whole judgment and allowed LPA nos. 646 to 649 of 2004, all writ appeals were filed by Indian Airlines Corporation. The Division Bench by the same judgment also dismissed one LPA No. 382 of 1999 filed by the Vayudoot employees.

FACTS :

*Indian Airlines Ltd. and Air India came to be established under the Air Corporations Act, 1953.

*Vayudoot Pvt. Ltd. was incorporated in 1982.

*Vayudoot was converted into a Public Ltd. Company in 1983 and its shares were held by Indian Airlines and Air India jointly.

*The Government of India took a decision on 25th May, 1993 to merge Vayudoot with Indian Airlines. Some salient features of that decision were :

(i) Vayudoot should be merged with Indian Airlines instead of retaining the present form of joint ownership by Indian Airlines and Air India.

(ii) The dues owed by Vayudoot to creditors in the public sector on the date of take-over by Indian Airlines would remain frozen for five years. There will thus be a moratorium for five years on repayment and servicing of the dues; thereafter the liabilities will be discharged by Indian Airlines in 10 annual instalments.

(iii) Equity shares of Vayudoot Limited held by Air India will be transferred in favour of Indian Airlines on a token consideration.

(iv) Vayudoot will be retained as a clearly identifiable separate Division of Indian Airlines.

4. Keeping with these principles, there came a circular dated 25.05.1994 whereby a separate department was created in Indian Airlines called Short Haul Operations Department (hereinafter called 'SHOD' in short) for absorption of erstwhile Vayudoot employees. The features of the absorption are as follows :

(1) By this circular, the employees so absorbed in SHOD were given the Indian Airlines pay scales and other benefits enjoyed by the Indian Airlines employees.

(2) There were no inter-departmental transfer in between SHOD employees and Indian Airlines.

(3) The Indian Airlines Recruitment and Promotion Rules as well as service conditions were made applicable to the employees of SHOD.

(4) On absorption of employees of Vayudoot in SHOD, the basic pay drawn by the employees was to be at appropriate pay scales as comparable to scales of pay of Indian Airlines.

(5) For the employees of SHOD who then possessed a particular designation but did not have requisite length of service for such posts as per Indian Airlines Rules firstly their basic pay was protected and secondly those persons were to be given designation commensurate with the employee's length of service and that designation was to remain till the employee put in the length of service required in accordance with the rules of Indian Airlines.

5. Any problem arising after the absorption of Vayudoot employees into SHOD was to be referred to a Committee constituted for that purpose. Accordingly, the appointment orders were issued in favour of the erstwhile Vayudoot employees appointing them in SHOD on and around 29.11.1994. In these appointment letters, some conditions were mentioned in which condition nos. 4 and 9 were as under :

"Condition No. 4: Your seniority will be maintained separately in the Short Haul Operations Department (SHOD) of Indian Airlines Limited and the same will be determined as per existing rules.

> Condition No.9: If the offer of appointment on the above terms and conditions is acceptable to you, please return to us the attached duplicate copy of this letter, duly signed, in token of your acceptance of this offer latest by 30th November, 1994. Please send your joining Report in token of your having reported for duty in SHOD department on or after 01.12.1994 through your regional head/ Departmental heads."

6. A circular was issued on 17.12.1994 on the functioning of 'SHOD'. However, after their absorption in SHOD, the erstwhile employees of Vayudoot started making demands. A meeting dated 10th March, 1998, therefore, was convened by the Secretary, Civil Aviation Department to discuss the issues. In that meeting, those demands were discussed and considered. The minutes of that meeting firstly mentioned the background wherein it was noted that out of the total 1334 employees of the Vayudoot, 311 employees were absorbed in Air India while remaining 1023 were absorbed in Indian Airlines. The minutes firstly mentioned the creation of SHOD and it was further mentioned in the minutes :

> "In order to absorb such a large number of employees, the Indian Airlines created a Short Haul Operations Department (SHOD) which consisted of Vayudoot employees in their grouped order of seniority as per their length of service with designation as were applicable in Indian Airlines. This took care of the opposition from the Indian Airlines' Unions and absorption of Vayudoot employees on the one hand and met with the direction of the Government on the other. However, slowly over a period of time SHOD employees started representing on various counts such as the lack of gainful utilization of their services, maintenance of separate seniority list of employees of SHOD from that of the Indian Airlines employees, no avenues for career progression, etc. The various cadres such as the pilots, the engineers, the technicians, the general category staff and officers repeatedly represented and held discussion with the management of the Indian Airlines."

The minutes further mentioned that there were a number of talks held on the demands. Discussions were held at length and views of said employees as well as the Indian Airlines employees were presented.

7. The decisions were taken in respect of pilots, aircraft engineers and technicians with which we are not concerned in these appeals. Shortl stated, all the employees of the aforementioned three categories of pilot, aircraft

A engineers and technicians were to be absorbed at the bottom of the seniority lists of the posts on which they were to be absorbed. As regards the general category staff, it was decided as under :

> *"General Category Staff :* It was decided that the general category staff of SHOD will be placed at the bottom of each grade in respective
B departments as on 10th March, 1998.
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> *General Category Officers :* It was decided to discuss the issue of the general category officers again since some reservations were expressed during the meeting with regard to induction of SHOD officers into the respective grades.
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> *Seniority :* It was decided that SHOD employees should be reckoned in respective seniorities for the general category staff in respective grades of each department from 10th March, 1998. Future promotions should consider such employees as per the revised seniority of the Indian Airlines."
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> Inter-se seniority of SHOD employees will be maintained while placing them in different grades.

8. A notification was published earlier to that on 2.2.1998 which was issued by the General Manager (Personnel) whereby only few Deputy
E Managers (Commercial) of Northern Region of Indian Airlines were to appear for personal interview for the post of Manager (Commercial) thereby excluding some of the Deputy Managers (Commercial) working in SHOD. This was challenged by a Writ Petition No. 723 of 1998 and also by another writ petition no. 931 of 1998 which writ petitions were eventually dismissed by Delhi High
F Court (Ramamoorthy, J.) on 12.07.1999, the LPA No.388 of 1999 against which was also disposed of by the impugned judgment.

9. In writ petition no. 723 of 1998, the present appellant - Indian Airlines Officers Association was allowed to be impleaded. As has already been stated, the said writ petitions were dismissed. However, in the present appeal,
G the appellants herein seek to rely substantially on the counter affidavit filed by the Indian Airlines.

10. It seems thereafter also the question of the demands of the 'SHOD' officers had remained unanswered and undecided and therefore a meeting was held at the instance of Secretary, Civil Aviation on 16.03.2000.

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11. As has been seen, till then there was no merger. Paras 2 and 3 of the minutes of this meeting are worth noting :

> "2. Secretary, Civil Aviation expressed serious concern over the delay in deciding the merger of SHOD employees in the mainstream of Indian Airlines although the Government had approved the merger of Vayudoot into Indian Airlines on 25.05.1993. This is also resulting in avoidable criticism in the parliament and having a demoralizing effect on the employees of Vayudoot without proper career progression. Secretary, Civil Aviation, therefore, directed Indian Airlines to take immediate necessary action to resolve the issues once for all. Chairman, Managing Director, Indian Airlines Limited also assured that the action will be ensured in a time- bound manner.
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> 3. It was observed that a common type of offer had been made to all categories at the time of joining SHOD on 01.12.1994, which provided for their absorption in Indian Airlines as a separate entity under SHOD, in which their inter-se seniority of Vayudoot would be carried over and provided time-bound promotion as per their career progression. These employees would, therefore, have no other legal claim if SHOD is not merged with Indian Airlines. It was accordingly decided that :
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> (a) The employees of SHOD be offered to merge with mainstream of Indian Airlines on voluntary basis in terms of the scales defined by the Indian Airlines taking all factors into consideration.
>
> (b) Those opting against the merger should be allowed to remain in SHOD, and the time-bound promotion as per their career progression under SHOD be released immediately by the Indian Airlines management.
>
> (c) The date of merger of SHOD employees in the mainstream of Indian Airlines be uniformally kept as 10.03.1998."
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> After detailed discussions, the category-wise decisions were taken in the meeting within the framework indicated in para 3 above.

12. In the mi utes of the meeting dated 16.03.2000, we are not concerned in respect of the Pilots, Executive Pilots and Aircraft Engineers whose conditions of merger were decided in the meeting but we are concerned with the general category of staff :

A "*General Category Staff* :It was decided that the general category officers may be merged on voluntary basis with Indian Airlines as on 10.03.1998 in their respective grades and cadres with protection of their pay and past services. Those having objections against the merger may be retained in SHOD and offered time- bound promotion as per their career progression."

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13. It will be seen from the Minutes, this meeting was attended by the following participants :

Ministry of Civil Aviation :

C S.No. Name & Designation

1. Shri Ravindra Gupta, Secretary (CA) in Chair
2. Shri Anurag Goel, JS(G), MCA
3. Shri R.S. Meena, Dy. Secy, MCA

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Indian Airlines

4. Shri Anil Baijal, CMD, IAL
5. Shri R.N. Saxena, Ex. Director, SHOD, IAL

E 6. Shri Shekhar Ghore, Director (HRD), IAL

14. Another meeting was held on 6th May, 2000 between the officers of Ministry of Civil Aviation and the representatives of Indian Airlines. The Minutes of this meeting suggest that it was noted that unless and until SHOD employees were merged in Indian Airlines, they would have no legal rights F and therefore, their merger was done as suggested in meeting dated 10.03.1998. The Minutes further declared that Indian Airlines had taken various measures for merger of SHOD employees to the mainstream of Indian Airlines not on the individual basis but on the basis of various class/category of employees. Minutes do refer to the decisions taken in the meeting dated 16.03.2000 which are as under :

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"1. Whenever the principle of merger already enunciated by Ministry has been accepted by a category of employees and the merger process had already commenced, the same will continue.

2. Wherever the merger process has not commenced, the employees H of SHOD will be offered merger with the mainstream of Indian

Airlines only on voluntary basis on the terms enumerated below. A

3. Those opting against such absorption will continue to be in SHOD and their career progression will be separately decided. The date of merger will be kept as 10th March, 1998 as has been agreed earlier."

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15. The Minutes also reiterate the decisions taken in case of general category employees and general category officers, again in paragraph 4 & 5 which are as under :

"4. General Category Employees: Management representative informed that merged seniority has already been displayed and objections C raised have been replied to. In most of the cases, the final seniority has already been displayed. It was decided by the Ministry that general category employees will be given opportunity to opt for such merger with the main stream of India Airlines as on 10th March, 1998 at the bottom of the seniority in their respective grades. Those who do not agree for this dispensation shall continue to be retained in D SHOD and their career progression will be separately decided.

5. General Category Officers : It was decided that the general category officers will be merged on voluntary basis as on 10th March, 1998 and they will take their seniority at the bottom of the entry point of officers i.e. at the category of Asstt. Managers in their respective E Departments with protection of basic pay. Those having objections against such a merger shall be retained in SHOD and their career progression will be separately determined."

16. It seems that after this meeting of 16.03.2000, there was lot of F correspondence in between the Indian Airlines and the Ministry of Civil Aviation. On 8th May, 2000, Chairman and Managing Director, IAL wrote letter No. HRD/00//236 wherein he referred to his earlier letter dated 6.4.2000 bearing No. Av.18050/3/96-ACIA-Vol.II and suggested that the Minutes of the meeting dated 16.03.2000 did not reflect the exact position of the decisions taken in the meeting. He, therefore, sent a proposed draft of the Minutes for G the approval of the Ministry of Civil Aviation. This letter was answered by the Civil Aviation Ministry on 19.05.2000 bearing No. AV.18050/3/96-ACIA wherein the Ministry advised Indian Airlines to take necessary action as per decision contained in the minutes issued by the Ministry vide letter dated 06.04.2000. A compliance report was also sought for.

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A 17. Another letter was written by Indian Airlines bearing no. CMD/00/226 dated 06.06.2000 wherein it was again reiterated that the Minutes in the letter dated 06.04.2000 regarding the meeting dated 16.03.2000 did not reflect exactly the decision taken in the meeting. It was further reiterated in the letter that contrary to the decision taken, the minutes reflected as if the decision was for horizontal entry in their respective grades which was not factual B recording of the decision and such decisions were likely to be strongly resisted by the Unions/Associations of the Indian Airlines, other than possibly the ACEU. In this letter, particularly, the stand of the Indian Airlines was that in the meeting dated 16.03.2000, the option given to the SHOD employees was to join Indian Airlines at the entry point at the bottom of the seniority or C alternatively continue to remain in SHOD. In short, the difficulty felt by the Indian Airlines was that though in the meeting dated 16.03.2000, the decision taken was that SHOD employees were to be adjusted at the "entry point" but the minutes reflected as if they were to have the "horizontal entry". This letter again reiterates and refers to the letter dated 08.05.2000 for the correction of the minutes. This letter was however replied to by the Civil Aviation Department D by its letter dated 17.02.2000 wherein the Civil Aviation department took a very clear stand that there was no need to modify the minutes of the meeting dated 16.03.2000 taken by the then Secretary, Ministry of Civil Aviation, meaning thereby that the entry of SHOD employees would be in the horizontal level and not at the entry point of the cadre, e.g. if a Deputy Manager of E SHOD was to be merged with Indian Airlines, he would be merged as a Deputy Manager at the bottom of the seniority list of the Deputy Managers and not as an Assistant Manager which is the entry point of the managerial cadre. In pursuance of this, ultimately on 05.02.2001, came the last decision which was as under :

F "Consequent to the decision taken by the Ministry of Civil Aviation to merge, the seniority of General Category officers of SHOD in the mainstream of India Airlines Ltd. on voluntary basis, those officers of SHOD in the aforesaid categories who are desirous of merger of their seniority as on 10.03.1998 will be placed at the bottom of the respective grade/pay scales as on 10.03.1998 with protection of their pay and G past services.

In pursuance to the above, you are advised to exercise your option for merger of your seniority with Indian Airlines Ltd. in the prescribed format to be submitted to the office of general managers (personnel)of the respective Region/HQrs. through proper channel within 30 days H

of this notification.

Employees in respect of whom such an option is not received within the stipulated period, it shall be presumed that he/she has opted to remain in SHOD. Such employees shall forfeit all claims for merger with mainstream. They will be retained in SHOD and offered time bound promotions as per their career progression."

(emphasis supplied)

18. It is this letter which was challenged by four different writ petitions mainly by the representatives of the Indian Airlines employees Association, officers' Association, Indian Airlines Cabin crew Association. One writ petition was filed by an individual Shri U.K. Bhowmik, who was working as Deputy Manager and lastly by the Vayudoot Karamchari Sangh. The only reason why Vayudoot Karamchari Sangh challenged this letter was that they objected to the implementation w.e.f. 10.03.1998. They wanted the implementation from the date of merger, i.e., right from the year 1994. Their contention was that their four years have been lost because of the impugned order which was to apply w.e.f. 10.03.1998. As stated earlier, these four writ petitions came to be allowed by the learned Single Judge of the Delhi High Court Hon. Nandrajyog, J. who quashed these decisions and directed that the whole exercise should be taken afresh after considering all the aspects. The learned Single Judge did not specifically approve the "Horizontal entry" and reiterated that such horizontal entry would mean injustice for the Indian Airlines employees who were governed by the rules and had spent number of years for getting the promotion. As against this, the Vayudoot employees did not have any rules to govern them and had got the promotions even without any rules and in the most arbitrary manner.

19. The learned Judge therefore was of the opinion that in ordering the horizontal entry of the then Vayudoot employees (now SHOD employees) into the Indian Airlines, equal treatment would be given to the unequals. He therefore directed the reconsideration of the whole process taking into consideration particularly all these matters shown in the judgment.

20. As has already been stated, this judgment was appealed against before the Division Bench of the Delhi High court and the appeal was allowed setting aside the judgment of the learned Single Judge.

21. We had already pointed out, earlier to these decisions some of the

A erstwhile Vayudoot employees had filed writ petitions claiming the treatment on par in the matter of promotions to the post of Manager from the post of Deputy Manager and the learned Single Judge Ramamoorthy, J had refused to entertain these writ petitions on the ground that the Vayudoot employees and the Indian Airlines employees could not be compared to each other. In the aforementioned writ petitions, before Hon. Nandrajyog, J., the counter B filed by the Indian Airlines reiterating the incompatibility between the Vayudoot employees and the Indian Airlines employees was highlighted and was accepted by the learned Single Judge. That was also the main stay of the arguments before us as well as before the Division Bench of the Delhi High Court, which judgment is impugned before us herein. However, Delhi High C Court did not accede to that challenge and went on to decide the matter holding that this would amount to the interference by the High Court in the administrative policies of the promotions by Indian Airlines or as the case may be by the Government of India. It is this judgment of the Delhi High Court which is before us .

D 22. Since these appeals have been filed by the parties having conflicting interests, we propose to deal with them separately. Strangely enough, the impugned judgment is challenged by the Indian Airlines Officers Association contending that there is no formal merger as yet between Vayudoot and Indian Airlines. Hence there cannot be a merger of the employees of these E two organizations, that too with retrospective effect. Diametrically opposite is the stand of the Vayudoot Karamchari Sangh suggesting that this is a merger of their seniority, therefore, the cut off date of seniority should have been from 1994 and not from 1998. The stands are thus conflicting and, therefore, it will be better for us to consider these appeals individually. We shall first take up the appeal filed by Indian Airlines Officers Association F being Civil Appeal No.1269 of 2007. The stand taken in Civil Appeal No.1269 of 2007 was endorsed and supported by the Indian Airlines Cabin Crew Association who filed Civil Appeal No.1270 of 2007, whereas the conflicting stand was taken on some points by the Indian Airlines Officers Welfare Forum in Civil Appeal No.1272 of 2007 and by Vayudoot Karamchari Sangh in Civil Appeal No.1271 of 2007. We will first take up, for consideration, the G Civil Appeal Nos.1269 and 1270 of 2007.

23. Shri P.P. Rao, learned Senior Advocate, appearing on behalf of Indian Airlines Officers' Association (hereinafter referred to as "Officers Association" for short) firstly urged, relying upon the pleadings of the Indian H Airlines, that there was no formal merger as yet between the Indian Airlines

and the Vayudoot. Consequently, the decision taken first in the meeting dated 16.3.2000 followed by notification dated 5.2.2001 would be non-est in law and would be liable to be quashed. In our opinion, the argument raised has no merit. The decision to merge Vayudoot with Indian Airlines was taken as back as 25.5.1993 and this was a policy decision of the Central Government. It may be that till 16.3.2000 or the consequent notification dated 5.2.2001 there was no formal merger between the two, however, that by itself will not invalidate the decisions taken on 16.3.2000 or 5.2.2001. The policy decision taken was not only pursued but definite steps were taken in pursuance thereof and for that purpose SHOD was created as part and parcel of the Indian Airlines. After the decision was taken to merge, the facts indicate that the existence of Vayudoot was a mere formality. True it is that there was a separate procedure and that other legal formalities were not yet over, however, that by itself would not have the effect of wiping out the decision taken on 16.3.2000 or the notification dated 5.2.2001. That would be putting the clock back resulting in utter chaos now and further that by itself would be no reason to start everything afresh taking a view that since the formal merger is not there, the subsequent exercise would be non-est. On the basis of this Shri P.P. Rao also questioned the cut off date i.e.10.3.1998 provided in the notification dated 5.2.2001. This argument is principally raised in order to wipe out the cut off date. The members of the Appellant-Association could be benefited, if the cut off date is pushed forward because in that case the employees of the erstwhile Vayudoot and thereafter SHOD would be getting the seniority not from 10.3.1998 but from subsequent date. In our opinion the argument is completely incorrect.

24. Very strangely, the argument by Vayudoot Karamchari Sangh in CA 1271 of 2007 is completely contrary where they insist that this was a case of merger of Vayudoot with Indian Airlines. They rely on the notification dated 25.5.1993 issued by the Government of India and assert that it is a case of merger of Vayudoot with Indian Airlines. Their further argument is, therefore, the cut off date should not be 10.3.1998 but 25.5.1993 itself or, as the case may be, 10.4.1994 when the principles to merge the employees were being crystallized. That subsequent argument will be considered later on, however, we do not agree with the learned counsel Shri P.P. Rao that unless there is a formal merger all the subsequent decisions are rendered non est, as much water had flown under the bridge and now there is no point in putting the clock back. The first submission, therefore, is rejected.

25. Shri P.P. Rao raised one very important question regarding the

A Government's dual and contradictory policies in case of Air India and Indian Airlines. It was submitted that the impugned notification dated 5.2.2001 as also the minutes of the meeting dated 16.3.2000 clearly suggest that at the time of absorption the Vayudoot employees, who were serving in SHOD, would be placed at the bottom of the respective grade/pay-scale as on 10.3.1998 with protection of their pay and past services. The main point of B conflict was as to whether an employee or more particularly, the officer serving in Vayudoot should be placed in the same grade with the same nomenclature or should be placed at the entry level of the cadre. It would be better for us to take an example to understand the controversy. In the managerial cadre, the entry level post is Assistant Manager, the second post is Deputy C Manager and above that is the Manager. The contention of the appellant-Officers Association is that even if a person is serving as a Manager, or the case may be, a Deputy Manager in Vayudoot, when he is absorbed in the Indian Airlines, he should be placed at the entry level, i.e., as the Assistant Manager. While the contention of the Government, Indian Airlines and also the erstwhile Vayudoot Karamchari Sangh is that such officer should be D placed as the junior-most officer in the same grade, for example, if a Manager is to be absorbed, he should be made a junior-most Manager. Similarly, if a Deputy Manager is to be absorbed, he should be absorbed as a junior-most Deputy Manager. Shri Rao took us to various individual examples and also to a chart to suggest that if this horizontal entry is allowed, then a person E who is junior to the officers of the Indian Airlines in the length of service would be put on their head at the upper level and as such the chances of promotion of the Indian Airlines Officers would be seriously affected. Taking the example of one Mr.U.K. Bhowmick from Indian Airlines Officers, he pointed out that Shri Bhowmick joined the organization on 3.9.1973 and by getting various promotions had become Assistant Manager (Personnel) on 1.7.1994 F and was further promoted as the Deputy Manager on 1.7.1998. As against this he took the example of one Shri S.D. Das, a SHOD officer who had joined the organization of Vayudoot after about 11 years, i.e., 1.8.1994 and was absorbed in SHOD on 1.12.1994 as Assistant Manager. Thus he was junior in length of service to Sh.U.K. Bowmick, in so far as absorption in SHOD is concerned G which was five months after Shri Bhowmick's promotion, yet he was promoted in SHOD on 1.1.1996 as Deputy Manager. Shri Rao explained that when Shri Das is to be absorbed as a Deputy Manager, i.e., on the basis of the horizontal principle, he would be senior to Shri Bhowmick who was in fact much senior to Shri Das if the overall service is to be taken into consideration. Shri Bhowmick's case was compared with the case of Shri Navneet Sidhu, Shri P.K. H Sengupta, etc. Similarly, Shri Rao compared the cases of Shri Manab Dhar,

Shri Anup Nandi Majumdar, Shri S.S. Talapatra, Shri Arpan Sanyal and Mrs.Swapna Khisha from various other disciplines like, Audit Department, Finance Department, Traffic Department, Commercial Department, etc. and pointed out that in all these Departments the Vayudoot employees would steal a march over the Indian Airlines employees, more particularly the officers which would not only hamper their chances of promotion but would also amount to discriminatory attitude against them. Taking his arguments further Shri Rao pointed out that this was scrupulously avoided in case of Air India where the employees of SHOD were not given the horizontal entry but were put at the bottom at the entry level of their own cadre as, for example, even if the person is serving as a Deputy Manager in Vayudoot, when he went to Air India he did not go as a Deputy Manager but went as the junior-most Assistant Manager which was the entry level post of the managerial cadre. He pointed out that thus the Government and the Indian Airlines had shown a discriminatory attitude as against Indian Airlines employees. Learned Senior Counsel questions as to how the Central Government can take a different attitude in respect of Air India and Indian Airlines.

26. We would consider the question of comparative hardship a little later but would first deal with the argument regarding the different attitude taken in case of Air India and Indian Airlines. Shri Nageshwar Rao, learned Senior Advocate appearing on behalf of Indian Airlines, urged that merely because a particular policy was taken in case of Air India would not by itself create any obligation that the same kind of policy should be taken in case of Indian Airlines also. Shri Nageshwar Rao urges that that was a case of merger or absorption of ex-Vayudoot employee with Air India like in case of Indian Airlines. He points out that those employees who were inducted in Air India way back in 1994, were treated as the fresh appointees. According to the learned counsel they were bound to be placed at the entry level in Air India. Learned counsel urges, and in our opinion rightly, that the entire process of merger of ex-Vayudoot employees and their absorption in Indian Airlines was a completely independent process. Shri Nageshwar Rao pointed out that though a separate Department SHOD was created for the Vayudoot employees, the Vayudoot employees demanded for their absorption in Indian Airlines as otherwise they would have stagnated in SHOD because there was a little scope for SHOD employees for a better future or career progression. In fact, SHOD employees initially were not to be transferred from SHOD to Indian Airlines and no Indian Airlines employee was liable to be transferred to SHOD. In short the Vayudoot employees who were placed in SHOD were to keep their independent identity. However, SHOD employees were not

A satisfied with this and started demanding some better chances by getting into the mainstream of Indian Airlines and this was not unnatural because after the merger decision they had lost their independent status as Vayudoot employees, they were to be treated as Indian Airlines employees but belonging to SHOD, thereby though they were part of the Indian Airlines family, they were to be treated differently to their chagrin. It is only because of this that B a completely new and independent process was commenced holding several meetings, talks and ultimately a scheme was evolved for absorbing SHOD employees into the mainstream of Indian Airlines. According to learned counsel, and very rightly, all this was conspicuously absent in case of Air India. Indeed no evidence has been brought before us that such kind of C exercise was done in case of Air India also. We would, therefore, accept the contention raised by Shri Nageshwar Rao that in case of Air India the Vayudoot employees went as the fresh appointees and that was the basis of merger or as the case may be, absorption of the Vayudoot employees into Air India. The argument is absolutely correct and we accept the same. We, therefore, reject the contention of Shri P.P. Rao that there was a discrimination D or that there was a contradiction in the stand taken by the Government of India in case of Air India on one hand and Indian Airlines on the other.

27. Again the case of Air India and Indian Airlines are not comparable to each other. Whereas about 300 employees went to Air India as the fresh E appointees, more than thrice that number had to be adjusted in Indian Airlines. The number was substantial which lost their identity as the Vayudoot employees and as a result of the demand raised by them and after lot of discussions in Civil Aviation Ministry on one hand and the Indian Air Lines authorities on the other a scheme was formulated. We do not think that there was anything wrong done in adopting two different methodologies in case F of Air India and Indian Airlines.

28. For the similar reasons we do not think that merely because some of the employees of Indian Airlines would suffer in terms of seniority and ultimately in terms of their further chances of promotion, the whole scheme can be rejected as discriminatory or arbitrary. In *Tamil Nadu Education* G *Department Ministerial and General Subordinate Services Association & Ors.* v. *State of Tamil Nadu,* [1980] 3 SCC 97, this Court was considering the question regarding the principle underlying the fixation of ratio between the two wings of a service in different levels like primary, middle and higher schools which were run by public sector consisting of Panchayats, District H Boards and Governments. Eventually Panchayat schools were absorbed by

the District Boards and ultimately the schools managed by the District Boards were taken over by the Government. While this fusion took place, the cut off date was the date of entry into the District Board service and not the service under Panchayat which was regarded as relevant for the purpose of reckoning the seniority. This was challenged as it resulted in wiping out the earlier services of the teachers who had served with the Panchayat. The whole scheme of equalization and absorption was challenged. This Court also noted that the staff i.e. teaching and the non-teaching staff absorbed as such was to be treated as if they were in the separate service in education department. In that, the promotional prospects which were available to the erstwhile government employees were not open to the members of this new service who were erstwhile District Board's servants. The Court also noted that the Government, on account of the representations by the absorbed staff, issued a new Government Order and considered afresh the question of integration of the two services, namely, the Government schools' servants and the former District Board schools' servants. Certain measures were taken in connection with promotional prospects and promotions for those from the erstwhile District Board schools services which exercise also came under the fire and ultimately the Government chalked out the principles of integration of the two cadres by fixing the ratio between the two wings and by fixing the principles for computation of service in determining the common seniority. This was challenged before this Court. In this Court, the criticism was that some of the persons who were the erstwhile Government employees would suffer greatly because they would be rendered junior to some others who came from the erstwhile District Boards cadre. It was observed by (Hon. Krishna Iyer, J.) as under :

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> "7. In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. Under Article 32, this Court is the constitutional sentinel, not the national ombudsman. We need an obudsman but the court cannot make-do.
>
> 8. The feeble criticism that the promotional proportion between the

A two wings, in the process of interlacing and integration, is unsupported by any rational guide-line is pointless. The State's case is that when two sources merge it is not uncommon to resort to the quota rule for promotion, although after getting into the common pool further 'apartheid' shall be interdicted save in a limited class with which we are not concerned here. Of course, even if the quota rule is an B administrative device to inject justice into the integrating process, the ratio cannot be arbitrary nor based on extraneous factors. None such is averred nor established. The onus is on the challenger and, here, the ratio is moderately related to the numbers on both sides and we see nothing going 'berserk', nothing bizarre, nothing which makes C you rub your eyes to query what strange thing is this government doing? Counsel for the respondents explain that when equated groups from different sources are brought together quota-rota expedients are practical devices familiar inducted, the ratio is rational. May be, a better formula could be evolved, but the court cannot substitute its wisdom for government's save to see this unreasonable perversity, D mala fide manipulation, indefensible arbitrariness and like infirmities do not defile the equation for integration. We decline to demolish the order on this ground. Curial therapeutics can heal only the pathology of unconstitutionality, not every injury."

E 29. That was a case of quota. Here if the erstwhile Vayudoot employees are being fixed horizontally as the junior most employees of that post there would be no question of injustice to Indian Airlines employees. As held by the Supreme Court in the aforementioned case "if some of the employees suffer because of the merger or absorption or some employees would be of the same field but of the different organizations that by itself, would not be F a reason to eradicate the whole scheme if the scheme is not found malafide or unreasonable." We do not think that the scheme by itself was malafide and or unreasonable. In paragraph 16 also, the Supreme Court expressed :

"16.....For argument's sake, let us assume that there is a volte face on the part of the government in shifting its stand in the matter of G computation of seniority with reference to length of service. Surely, policy is not static but is dynamic and what weighed with the government when panchayat institutions were amalgamated with the District Board institutions might have been given up in the light experience or changed circumstances. What was regarded as H administratively impractical might, on later thought and activist

reconsideration, turn out to be feasible and fair. The Court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls. It is impossible to maintain that the length of service as District Board employees is irrational as a criterion. ....."

30. In view of these expressions, the argument by Shri Rao based on the comparative charts of some of the employees of Indian Airlines and Vayudoot would have to be rejected. There is clear evidence available that this policy was chalked out in conformity with the principles of law, functional similarity in the posts of two organisations and was a well thought out policy avoiding undo advantage to some and undue hardship to others. It will be seen that though the merger was principally agreed in the year 1993, the basic seniority offered to the erstwhile Vayudoot employees was from 10.03.1998 when the principles of merger were taken up for consideration though ultimately they were finalized three years thereafter.

31. In our opinion, fixing the cut-off dated on 10.03.1998 when broadly the principles of merger were arrived at for the first time after thorough discussions, would not be an arbitrary exercise. We are, therefore, of the clear opinion that there was nothing wrong in fixing 10.03.1998 as the cut-off date. It balanced the equities between the erstwhile Vayudoot employees and the present Indian Airlines employees, inasmuch as though the merger was five years old by then, the Indian Airlines employees got five years advantage whereas the Vayudoot employees had to sacrifice those five years in lieu of the better deal of the service they got because of the merger. We, therefore, reject the argument of Shri Tankha, Senior Advocate for Vayudoot Karamchari Sangh. For the same reasons we reject the stand taken by the appellant that the cut off date should be 5.2.2001 and not 10.3.1998.

32. It cannot be forgotten that in so far as SHOD employees were concerned, it was completely optional for them to join the mainstream of Indian Airlines which was one of their major demands. They were all the time clamouring that by remaining in SHOD they would have bleak future, whereas if they are allowed to join the mainstream of Indian Airlines, they would have better chances of promotions. After the deliberations in various meetings it was decided by the aforesaid policy decision that they would have an option to join the Indian Airlines subject to the conditions and one of the conditions

A was that the cut off date was to be 10.3.1998. It was, therefore, open for SHOD employees not to opt for joining the mainstream of Indian Airlines if they felt that they would be losing five years of service in joining Indian Airlines. However, the statistics show that practically all the SHOD employees chose to join Indian Airlines. Therefore, they cannot now turn back and raise a plea that injustice is caused to them by fixing a cut off date of 10.3.1998 instead B of 25.5.1993 or as the case may be, 10th April, 1994. In fact all the challenges by the SHOD employees in CA No.1271/2007 lose all the significance on account of this very important factor of option. Once they chose to join the mainstream on the basis of option given to them, they cannot turn back and challenge the conditions. They could have opted not to join at all but they C did not do so. Now it does not lie in their mouth to clamour regarding the cut off date or for that matter any other condition. It is probably because of this that the learned Senior Counsel Shri Krishnamani, appearing for them, did not seriously challenge this aspect. In view of this "option", the rulings cited by Shri Tankha in *B.K. Mohapatra* v. *State of Orissa and Anr.*, [1987] Supp. SCC 553 would not apply. At any rate, it was found, as a matter of fact, that D the application of the scheme had resulted in injustice to the particular type of teachers which is not a case here. The other decision relied upon by *Shri Tankha in Dwijen Chandra Sarkar and Anr.* v. *Union of India & Ors.*, [1992] 2 SCC 119 has no application to the facts of the present case since the expressions in paragraph 17 thereof relied on by the learned counsel were E peculiar to the facts of that case and have no application to the present controversy. In our view CA 1271/2007 filed by Vayudoot Karamchari Sangh deserves to be dismissed on this count alone. Same will be the fate of CA 1272/2007 filed by Indian Airlines Officers' Welfare Forum.

33. It was also urged by Shri P.P. Rao that there was no equation F between the posts in Indian Airlines and Vayudoot. Heavy reliance was placed by the learned counsel again on the counter affidavit filed by Indian Airlines before Justice Ramamoorthy. On that basis the learned counsel urged that horizontal entry of SHOD officers could not be allowed without equation of posts, particularly taking into consideration the qualification for the post, nature of duties and functions and length of service required for promotion G to the next grade as also scales of pay, etc. Shri Nageshwar Rao, on the other hand, urged that these issues were discussed threadbare in the various meetings and it is only thereafter that the decision of fusion or as the case may be merger was taken by fixing a particular cut off date. We have already indicated earlier as to how the equities between the two classes of employees H were balanced by fixing a particular cut off date and we do not think that

these factors were not taken into consideration at the time of taking the final decision. It may be that it was tried to be shown before Justice Ramamoorthy in the aforementioned Writ Petition No.1430/2001 that the Vayudoot employees could not compared with the Indian Airlines so as to claim a right to be considered for the further promotion in Indian Airlines and to compete with the Indian Airlines in that behalf. However, it must be borne in mind that it was a specific situation prevailing at that time. The question was as to whether the Vayudoot employees, i.e., SHOD employees could be allowed to compete for the promotional posts in Indian Airlines along with employees of the Indian Airlines. At that time there was no decision taken for fusion of SHOD employees with the Indian Airlines which principles were thereafter settled by the aforementioned policy after the consideration of all the possible aspects of the matter. Under such circumstances it will now be impermissible to rely on what stand was taken by the Indian Airlines to oppose the writ petition filed by SHOD employees to assert their right to compete for the promotional post in Indian Airlines. The factual situation was entirely different. We, therefore, reject the argument that there was no exercise on the part of the authorities to consider the conditions of service, educational qualifications, salaries, responsibilities of the job etc. at the time when the decision for merger or, as the case may be, fusion was taken and the principles therefor were culled out. The argument of the learned Senior Counsel Shri P.P. Rao, therefore, must be rejected.

34. Shri P.P. Rao, argued that the minutes of the meeting dated 16.3.2000 as also the notification dated 5.2.2001 were liable to be quashed on the ground of gross violation of principles of natural justice. Learned counsel urged that the appellant Association was not associated in the discussions at the time of the basic policy decision taken in 1993 and 1994 nor were they party to the discussions on 10.3.1998. They were also excluded from participating in the meeting dated 16.3.2000 and as such they were denied any say in the process of decision making affecting the rights of its members. According to the learned counsel the exclusion of the appellants was in gross violation of principles of natural justice and fairness in action. The argument is clearly incorrect. The employees of Indian Airlines did not and could not have any say in the policy making. We do not find any such right nor is any such right established before us. It is one thing to consult an Association or as the case may be a Union for considering its views and quite another to recognize a right of such Union while taking the policy decision. We are not prepared to accept that the Indian Airlines Officers did not have in their mind the future of Indian Airlines employees and were totally oblivious to the

A same while framing the policy decision. In fact the Report of the Committee under the Chairmanship of Shri B.S Gidwani in para 18 specifically makes the reference to the strong protest from the various unions of Indian Airlines including that of the Indian Airlines Commercial Pilots Union. It is noted therein that the Union formed a Coordination Committee for the purpose and sent representations expressing their resentment over the decision. Paras 18, B 19 and 20 of this Report specifically refer to the protests by the Trade Unions particularly para 20 refers to the proposal of the Government to create Short Haul Operations Department (SHOD) in Indian Airlines. It is in pursuance of this that ultimately on 24th May, 1994 a separate SHOD Department was created. Condition No.5 of this was as follows:

C

> "For those employees who presently possess a particular designation but do not have the requisite length of service for such a post, in accordance with Indian Airlines Rules, the following procedure will be followed:
>
> D (i) Basic Pay will be protected.
>
> (ii) The persons concerned will be given the designation commensurate with his/her length of service and that designation will remain till he/she puts in the length of service required in accordance with the Rules of Indian Airlines."

E We have before us one of the appointment orders in pursuance of this decision dated 24.5.1994. Initially, therefore, while considering the merger of Vayudoot with Indian Airlines it is not as if the authorities were oblivious to the future of the employees both of Vayudoot as well as Indian Airlines. It is by way of policy to protect the interests of both the Vayudoot as well as F the Indian Airlines that SHOD came to be created on 24.5.1994 which was to remain as a separate Department without affecting the then Indian Airlines staff. It, therefore, cannot be suggested that the authorities were not alive to the representations made by the Indian Airlines employees or their Unions. The minutes of 10.3.1998 meeting specifically mention as under:

G

> "In order to absorb such a large number of employees the Indian Airlines created Short Haul Operations Department which consisted of Vayudoot employees in their grouped order of seniority as per their length of service with designation as were applicable in Indian Airlines. *This took care of the opposition from the IA's Unions and absorption of Vayudoot employees on the one hand and met with the direction*

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of the Government on the other." (Emphasis supplied) A

35. The minutes further go on to suggest that 1023 employees of SHOD started representing against the lack of gainful utilization of their services, maintenance of separate seniority-list from that of the Indian Airlines employees, lack of avenues for career progression, etc. The minutes also suggest that various cadres such as the Pilots, Engineers and the Technicians B as also the general category staff and officers repeatedly represented and held discussion with the management of Indian Airlines. It was, therefore, that the decisions were taken. True it is that the Appellant Union was not called for direct negotiations in this but firstly it cannot be said that the policy makers were not alive to the welfare of the Indian Airlines employees and C secondly we did not see any right in favour of the appellant Association so that their non participation in policy making would result in wiping out the said policy decision altogether. This is not the case where the principles of natural justice could be brought in so as to hold that if the appellant Association was not made a party to the discussions for policy making, such decision making the policy would be hit by the principles of natural justice. After-all D the number of SHOD employees was also substantial. They were in all 1023 employees. Therefore, once they were made the part of Indian Airlines family, their grievances were also liable to be considered and it is because of that that ultimately a decision was taken for their fusion with the Indian Airlines employees by way of a policy enumerating conditions therefore. Where it is E seen that the authorities were alive to the service conditions of the Indian Airlines employees and had their future in mind also, the authorities were not bound to negotiate with the Appellant Association before formulating the policy. Such policy which is framed without active negotiations with the Appellant Association would not (for that reason alone) be rendered non est and would suffer from the vice of arbitrariness. After-all in ultimate policy F which has been culled out, we do not see any arbitrariness, on the other hand we find the equities in between the Indian Airlines employees and SHOD employees to have been properly balanced and counter-balanced. The non participation of the appellant Association, in our opinion, under the peculiar facts and circumstances of this case would not be fatal to the policy decision. Where we have found the ultimate policy decision as also the principles on G the basis of which said decision is taken to be blemishless, we would not chose to annihilate that decision and the principles on the sole ground that the appellant union was not heard.

36. In *Balco Employees Union (Regd.)* v. *Union of India,* [2002] 2 SCC H

A 333 this Court opined that in case of policy, the employees may suffer to certain extent, but such sufferings should be taken to be incidence of service. Therein, the Court observed:

> "48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does
B not mean that the erstwhile sole shareholder viz., Government had to give the workers prior notice of hearing before deciding to disinvest. *There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government.* If the abolition of post
C pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana vs. Des Raj Sangar on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution." (Emphasis Supplied)

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This leaves us with the cases cited by Shri Rao. According to him the principles in *State of Maharashtra & Anr.* v. *Chandrakant Anant Kulkarni & Ors.*, [1981] 4 SCC 130 which were followed in the subsequent cases. The decision was relied upon pre-dominantly for the observations made in para 10 which are as under:

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> "The following principles had been formulated for being observed as far as may be, in the integration of government servants allotted to the services of the new States:
>
> In the matter of equation of posts:
>
F (i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but
>
> (ii) Where, however, there were no such similar cadres the following
G factors will be taken into consideration in determining the equation of posts –
>
> (a) nature and duties of a post;
>
> (b) powers exercised by the officers holding a post, the extent of territorial or other charges held or responsibilities discharged;

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(c) the minimum qualifications, if any, prescribed for recruitment to the post, and

(d) the salary of the post."

It is well settled that these principles have a statutory force."

37. The contention of Shri Rao was that these principles were ultimately followed in *Union of India & Ors.* v. *S.L. Dutta and Anr.*, [1991] 1 SCC 505 as also in *S.P. Shivprasad Pipal* v. *Union of India & Ors.*, [1998] 4 SCC 598. In our view in the peculiar facts and circumstances of the case these decisions cannot help the appellants. On the other hand some of the observations would run counter to the interest of the appellants. As regards Chandrakant Anant Kulkarni's case (supra), the contention of the learned Senior Counsel was that the learned Single Judge had correctly relied upon those principles to strike down the impugned notification dated 5.2.2001. Learned counsel very strongly urged that the cadres of Vayudoot employees was not comparable with the cadres of Indian Airlines and, therefore, before their fusion, or as the case may, merger was made, meticulous care was bound to be taken considering the different nature and duties of the post, powers exercised by the officers holding the post, minimum qualifications required for the post as also salary of the post. Learned counsel urges that all this was not done at all. Learned counsel also heavily relies on the impugned judgment of the learned Single Judge Pradeep Nandrajog, J. We are unable to accept these contentions as, prima facie, we do not find any evidence that there was no consideration of the factors A to D enumerated in sub-para II of para 10. In fact the long deliberations which went on perhaps as a sequel of demands made by the Vayudoot employees ought to have and did in fact include these factors. Shri Nageshwar Rao pointed out that the basic structure of the service in Vayudoot and Indian Airlines was comparable if not entirely identical with each other. He was at pains to point out that integration was made between the well constituted similar cadres in the two organizations in the same field of activity having similar structures and posts. Learned Senior Counsel pointed out that the duties of the managerial staff could not have been much different in Indian Airlines from the duties of the Vayudoot employees. Their activities were same, both being the domestic air carriers. Even the nomenclature of the cadres were more or the less similar. There was no specific evidence put before us that the managerial cadres in Indian Airlines had very high qualifications, responsibilities, duties and salaries and such high responsibilities, duties and salaries were not applicable to the employees of Vayudoot. Our attention was repeatedly drawn to the counter affidavit filed by Indian Airlines

A before Justice Ramamoorthy where it was said that the two cadres were not comparable. However, one must bear in mind that at that time the only question was as to whether the erstwhile Vayudoot employees could be allowed to compete for the higher posts in Indian Airlines when there was a complete compartmentalization between the employees of Vayudoot and Indian Airlines in the sense that the Indian Airlines employees could not be B transferred to Vayudoot and vice-a-versa and further the SHOD employees were to be maintained as a separate and distinct Department from the Indian Airlines. The defence raised in that case, at that time, could not be said to be a be all and end all of the matter so as to hold that the two cadres even at the later point of time were wholly incomparable so that they could not be C integrated at all. We have already clarified above that the matter of integration or as the case may be, fusion of these employees was a matter of policy which had become necessary in order to contain the grievances of substantial number of Vayudoot employees. Any such policy decision, unless the said decision was arbitrary, unreasonable or capricious, could not have been challenged by the employees as rightly held by the Division Bench of the D Delhi High Court, which judgment is impugned before us. There is a specific observation in *S.L. Dutta's* case, more particularly in para 18 thereof to the following effect:

> "....The court should rarely interfere where the question of validity of E a particular policy is in question and all the more so where considerable material in fixing of policy are of a highly technical or scientific nature. A consideration of a policy followed in the Indian Air Force regarding the promotional chances of officers in the Navigation Stream of the Flying Branch in the Air Force qua the other branches would necessarily involve scrutiny of the desirability of such a change which would F require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and lawyers of courts can hardly be expected to have much knowledge by reasons of their training and experience. In the present case there is no question of G arbitrary departure from the policy duly adopted because before the decision not to promote respondent 1 was taken, the policy had already been changed. There was no question mala fides moreover the change in policy in this case cannot be said to be unwarranted by the circumstances prevailing as the matter was considered at some length H by as many as 12 Air Marshals and the Chief of Air Staff of Indian

Air Force....."

These observations would make us slow in interfering with the policy decision. Even the managerial duties in the Indian Airlines as well as Vayudoot would involve the technical questions as to the nature of duties, training required and desirable qualifications. Again we cannot ignore the lengthy deliberations in various meetings to arrive at a proper decision taken by the responsible persons like Senior officers of Ministry of Civil Aviation, Senior Officers including the CMD of Indian Airlines as also the Ex-Director of SHOD and the Director (HRD) of Indian Airlines. In the wake of these personalities spending their valuable time to frame the policy regarding the fusion, we would be slow to interfere with such policy.

38. In *S.P. Shivprasad Pipal* v. *Union of India & Ors.*, [1998] 4 SCC 598 Mrs.Sujata Manohar, J. took into consideration that prior to the merger of the three cadres, the Cadre Review Committee recommended the merger of three cadres/services which Committee was headed by Cabinet Secretary and had members of various other Ministries such as Secretary Labour, Finance, Department of Personnel, Law and Defence. These recommendations were approved by the Cabinet and it is thereafter that the Rules were framed which Rules were approved by the Department of Personnel and Law Ministry as also the Union Public Service Commission. The learned Judge noted that a detailed exercise was done to ensure that no injustice takes place to any of the merging cadres. The learned Judge then went on to note that the salary structure was similar in three cadres by 1987. The qualifications were also almost the same in all the three merging cadres. The learned Judge also further noted that the constitution of a unified cadre was in public interest and hence the merger could take place. The learned Judge went on to say:

> "Hence the merger took place. Since this is essentially a matter of policy, the scope of review by the Court is limited. We can, however, examine the grievance of the appellant relating to unequals being treated as equals and the grievance relating to losing promotional avenues."

Learned Judge found no fault with the policy decision and in fact went on to hold in para 19 of the judgment as under:

> "However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground

A for setting aside the merger which is essentially a policy decision. This Court in *Union of India* v. *S.L. Dutta* examined this contention. In SL Dutta a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the State of Maharashtra vs. Chandrakant Anant Kulkarni this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service."

C We do not think anything more is required to be said as regards the three decisions relied upon by the learned counsel.

39. That the policy decision should not be lightly interfered with has been observed by this Court in *Union of India & Anr.* v. *International Trading Co. & Anr.*, [2003] 5 SCC 437.

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40. In our view, therefore, the Division Bench of the High Court was right in upsetting the judgment of the learned Single Judge Pradeep Nandrajog, J.

E 41. For the reasons stated above, we do not find any merits in all the Civil Appeal Nos.1269, 1270, 1271 and 1272 of 2007. All the appeals are dismissed with costs.

S.K.S. Appeal dismissed.