

National Company Law Appellate Tribunal, New Delhi

Company Appeal (AT) No. 140 of 2019

[Arising out of Order dated 8th May, 2019 passed by National Company Law Tribunal, New Delhi Bench in Company Petition 210/213 (b) ii/ND/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Pramod Kumar
R/o B-16, Apoorva Apartments,
Plot No. 14, Sector 5 Dwarka-I,
New Delhi – 110075.

Applicant/Petitioner Appellant

Versus

1. Pawan Hans Ltd.
R/o C-14, Sector-1, Block-C
Noida (U.P.) 201301
(Through Chairman & M.D.)

Respondents
1 to 15

Respondent No.1

2. Krishan Kumar
Foreman (Painter)
B-506, Karor C.G.H.S. Ltd.
Plot -39C, Sec-6, Dwarka-I,
ND-75

Respondent No. 2

3. Satnam Singh
H.O.D (Engineering) Northern Region
3095, C-3 Block, Vasant Kunj,
New Delhi – 110070.

Respondent No. 3

4. Ashok Kumar Yadav
Joint General Manager (H.R. & R.D)
C-14, Sector-1, Block C
Noida (U.P.) 201301

Respondent No. 4

5. M. S. Boora
General Manager (Air-Safety) W.R
OSD to C.M.D.
Flat No. 1205, Sector C1
Vasant Kunj, New Delhi – 110070

Respondent No. 5

6. J. P. Srivastava
Aircraft Maintenance Engineer-II (Retd.)
G-203/S-I, Dilshad Colony,
Delhi -110095

Respondent No. 6

7. T. D. Thomas
Chief Aircraft Engineer
Juhu Aerodrome

Respondent No. 7

S. V. Road, Vile Parle (West)
Mumbai – 400056 (Maharashtra)

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| <p>8. Vijay Pathyan
Joint General Manager
C-31, Aimo Classic Apartments
Plot No. 11, Sector – 22, Dwarka
New Delhi – 110077</p> | <p>Respondent No. 8</p> |
| <p>9. V. C. Katoch
H.O.D(Maintenance Repair Organization)
CMC, 4-1801, Capetown
EC-74, Noida – 201301 (UP)</p> | <p>Respondent No. 9</p> |
| <p>10. C. Hari Kumar
Chief Aircraft Engineer (Retd.)
Flat No. E-501, Rangoli
Vasant Utsav Thakur Village
Kndivali (East), Mumbai.</p> | <p>Respondent No. 10</p> |
| <p>11. P. S. Das
Chief Aircraft Engineer
Flat No. 406, Naveen Kunj Aptts,
Pocket -6, Naseerpur
New Delhi – 110045</p> | <p>Respondent No. 11</p> |
| <p>12. Subroto Chandra
Chief Aircraft Engineer
A-702, Aditya Celebrity Homes Ltd.
Sector-76, Noida- 201301 (UP)</p> | <p>Respondent No. 12</p> |
| <p>13. K. B. Malhotra
Head of Finance
Sangam Apartments
B-33, Plot No. 23, Sector -9,
Rohini, Delhi – 110085</p> | <p>Respondent No. 13</p> |
| <p>14. Ashish Yadav
Head Internal Audit
C-14, Sector-1, Block-C
Noida – 201301 (UP)</p> | <p>Respondent No. 14</p> |
| <p>15. Ashok Kumar Dang
Joint General Manager(Quality Manager)
Sector-C, Pocket No.2,
Flat No. 2087, Vasant Kunj,
New Delhi.</p> | <p>Respondent No. 15</p> |

For Appellant: Mr. S. S. Sastry with Mr. Sunil Sachdeva, Advocates.
For Respondents: -

J U D G E M E N T

(12th March, 2020)

A.I.S. Cheema, J. :

1. The Appellant Original Petitioner, claims to be employee of the Respondent No. 1 Company “Pawan Hans Ltd.”. He filed petition before the Learned National Company Law Tribunal, New Delhi Bench (No. 210/213 (B) (ii)/ND/2018) initially against the Respondent No. 1 company and Respondent No. 2, another employee who is stated to be foreman (painter). As he had asked for various reliefs against several officers of the management of company, he amended the petition to add Respondent Nos. 3 to 15, senior officers of the company, including retired senior management officials.

2. The Appellant sought to invoke powers of the NCLT under Section 213 (b) (ii) of the Companies Act 2013 (Act in brief).

3. In short, the Appellant claimed before the NCLT that he had joined the Company in 1988 as helper (technical) and was now working as aircraft technician since his promotion on 01.07.2013. He claimed that he had been working diligently and in an exemplary manner. Appellant claimed that the Respondent No. 1 Company is Government Company registered under Section 617 of the Old Companies Act 1956 and was in business of providing helicopters and sea planes to the clients. Appellant pointed out that to fulfill the vision and mission of the company, the Respondent Company was maintaining full-fledged “maintenance and

operation” department and had employed staff for the in-house service and maintenance of helicopters and sea planes for which huge budget from the revenues was allocated every year. Appellant claimed before NCLT that the Company has operation manual (standard operating procedures) approved by Director General of Civil Aviation which is the guiding manual for upkeep of helicopters of the companies.

4. Appellant claimed that sometime in 2017, he came to know that there were lot of irregularities going on in the Company and the funds were being squandered by few officers and thus wrongful loss was being caused to the Company. He came to know that some of the officers in collusion with the Respondent No. 2 a foreman (painter) in the company were involved in siphoning-off funds of the company. He claimed that there were a modus operandi to deploy the Respondent No. 2 a painter in technical jobs involving “maintenance” of helicopters for which according to the Appellant Respondent No. 2 was not technically qualified or competent or authorized to be deployed, but still he was being wrongfully assigned such technical jobs which would put the life of company clients and crew flying the helicopters to great risks. Appellant claimed that the Respondent No. 2 was not qualified or licensed or authorized but he was being paid hefty amounts “overtime” and “additional benefits” besides hotel expenses & to/fro airfare etc. Appellant claimed that he started collecting pay slips of the Respondent No. 2 and other documents and collected evidence to highlight this scam and that he had reported the fact to senior officials in the company but nobody took any action. He claimed that he had sent representation to even the Minister of Civil Aviation and the Hon’ble

Minister had directed one Sh. B.C. Behra to conduct inspection/enquiry. Appellant claimed that even this inspection/ enquiry was just an eyewash and key elements of the scam were put under the carpet. According to him no action was taken and the said "Loot" of the funds of the company continued. According to him till he moved the NCLT there was estimated loss of Rs.50/- Lakhs and he could demonstrate overtime being paid to Respondent No. 2 to the extent of Rs.19,20,000/- excluding hotel stay to and fro airfare.

5. Copy of the Application (Annexure A) which was filled before the NCLT shows the Appellant giving various particulars of overtime paid to the Respondent No. 2 for periods starting from October, 2009 till May, 2018. The Appellant prayed that the affairs of the company should be investigated by an Inspector for misfeasance, misappropriation and mismanagement of Company's funds and sought punishment of every officer who may be in default or responsible for the mismanagement in a fraudulent manner.

6. The Learned NCLT took into consideration the case put up by the Appellant and considered the defense of the respondents and found that the petition was mala fide and total abuse of the process of law and holding the same to be frivolous petition dismissed the same with costs of Rs.50,000/- to be paid by the Appellant in Prime Minister's Relief Funds.

7. Aggrieved by such Impugned Order dated 08.05.2019, present Appeal has been filed.

8. When the Appeal came up before us we had raised question before the Appellant if an employee of the Respondent No. 1 - a Public Sector Undertakings is eligible to file application under Section 213 (b) (ii) of the Companies Act for the grounds as mentioned in the petition.

9. We have heard the Counsel for Appellant. The Learned Counsel for the Appellant referred to the facts emanating from Petition and documents and claimed that under Section 213 an application can be made by any "person" for requesting the NCLT to start an investigation.

10. We have gone through this Appeal and the case which was put up by the Appellant before the Learned NCLT and the defense which was taken by the Respondent. The Learned NCLT after going through the averments made in the pleadings and hearing the arguments advance by the Counsel, recorded reasons and findings as below:

"8., this Bench does not find any substance for allowing the prayer made by the petitioner. The entire petition reeks of a vendetta, with the ire and wrath of the petitioner channelized against respondent no.2. He appears to be a disgruntled employee and has filed this motivated petition. The ground raised to look into overtime payments made to respondent no.2 for deputing him on various outstation assignment cannot be alleged as a collusion between Respondent No.2 and other respondent who are senior officials. Deputing Respondent No.2 as a part of the maintenance team is an

administrative job which is best left to those in-charge of the operation of the company and cannot be questioned by this Tribunal. We do not find that inclusion of Respondent No.2 in the maintenance team in any way amounting to defrauding creditors, members or other persons. The payments towards overtime and other reimbursements are not in violation of the company's policies. The respondents have alleged that the petitioner himself has been a beneficiary of receiving overtime, a fact deliberately suppressed from this Court. It is also submitted that every maintenance team has helpers to assist the technicians and apart from the petitioner and Respondent No.2, there have been several other non-technical hands included in the maintenance team from time to time. Respondent no.2 is not an isolated exception to be sent on such assignments. The overtime or TA/DA is given to employees in accordance with the rules and regulations of the respondent no.1, a Government company, whose accounts are subjected to internal or external audits. There is no finding of any unauthorized payments in the Audit reports, which again is impugned by the petitioner.

9. We find the allegations made by the petitioner against the respondent are without any foundation and are totally motivated and mala fide. We are also of the

opinion that inclusion of helper in a maintenance team is an administrative decision, the work of which is totally controlled and supervised by the AME/Engineer in-charge. The management appears to be satisfied with the work of Respondent No.2 and no complaint in respect of any dereliction of duty has been brought to our notice, neither has pendency of any complaint been averred against Respondent No.2 by the petitioner to corroborate his submissions. The administration of a company cannot be questioned by the courts on mere allegations of a disgruntled employee. Payment of overtime does not tantamount to a scam or siphoning off funds or mismanagement as alleged. Neither does it tantamount to causing a wrongful loss to the company or a wrongful gain to Respondent No.2. Further, payment of remuneration in the course of normal working of a company also does not amount to causing a loss to the members or creditors of Respondent no.1.

10. *The present petition, being mala fide, is a total abuse of the process of law. We note that under the garb of a concerned employee trying to play the whistle blower, the petitioner has actually filed the present petition with ulterior motives, thereby wasting the precious time of the Bench by engaging in frivolous litigation. Accordingly, we dismiss this petition with*

costs of Rs.50,000/- to be paid by the petitioner to the Prime Minister's Relief Fund."

11. Relevant part of Section 213 is as under for the purpose of this Appeal:-

"Investigation into company's affairs in other cases. –

The Tribunal may,

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or ---

order --- the affairs of the Company to be investigated---"

12. Perusal of the relevant portions of Section 213 show that what is material is the "satisfaction" of the NCLT that there are circumstances suggesting that the persons concerned in the management of the affairs of the company are guilty of misfeasance or other misconducts towards the company which Appellant claims is fraudulent mismanagement. In the context of the present matter this is the only relevant aspect. Thus

important is the satisfaction of the Learned NCLT. We find that NCLT has given reasons for its non-satisfaction, which cannot be said to be baseless.

13. We have also gone through the memo of the Appeal and Petition/Application which was filed before the NCLT and annexures and the defense which was up. Going through the material, it appears to us also that the Appellant has grudge against the Respondent No. 2 employee regarding overtime and other benefits Respondent No. 2 received in performing his job over number of years. The allegations made by the Appellant are quite sweeping in nature. The case put up by the respondents before Learned NCLT shows that the Appellant was also part of maintenance team on several occasions and although he is only 8th standard pass and was appointed as an unskilled worker he had also received similar benefits. The respondents put up the case before the Learned NCLT that the teams deployed for carrying out the maintenance jobs were under the direct supervision of AME/Engineer-in-chief who alone was incharge and responsible for the job. For such “maintenance and inspection” the team used to include even non-technical employees for assistance. Apart from the Appellant and Respondent No. 2 several other technical personnel and also helpers are included in the maintenance team deputed for outstation and maintenance assignment and Respondent No. 2 was not an exception. The operation teams required inclusion of helpers for which they were receiving overtime. Respondents pointed out to Ld. NCLT that compared with the Appellant, the Respondent No. 2 was rather more qualified. While the Appellant was only 8th class pass and was appointed as unskilled worker the Respondent No. 2 was qualified, being a matriculate

with ITI certification with specialization in painting which was ancillary job and was required to be included in general maintenance team. Respondents also pointed out that when Respondent No. 2 would be free from painting work he was also deputed as helper to fully utilize his services. This is rather required to be appreciated.

14. Considering these factors, it does not appear that the Appellant has made out any case for investigation. It is not that without utilizing services overtime benefits were being given. The effort of Appellant to sit in Judgment over the confidence reposed in Respondent No. 2 by senior officers cannot be ground to start investigations. We are not ready to believe that so many senior officers would go out of the way & collude with Respondent No. 2 not to benefit themselves, but to benefit the foreman. Nothing is shown in the form of any audit finding fault with the overtime paid. The Appellant appears to be unhappy with the work of Respondent No. 2 and the overtime he received. It is not the case that overtime was paid without doing job. Appellant is unhappy with the action initiated by the Minister of Civil Aviation and the inspection/enquiry conducted by Sh. B.C. Behra also.

15. It appears to us that the Appellant failed to bring material which could invoke satisfaction of existence of circumstances to initiate action under Section 213 of the Act. The Learned NCLT rightly dismissed the Application with costs.

16. Going through the Appeal and record put up we do not find that case is made out to entertain the Appeal. The Appeal is dismissed on the stage of admission. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member Judicial

[Kanthi Narahari]
Member (Technical)

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