

Air India Cabin Crew Association v Yeshawinee Merchant and others Case no. Appeal (civil) 4570, 4581, 4584-92, 4571-78, 4579-80 and 4582-83

1) Reference Details

Jurisdiction: Supreme Court of India

Date of Decision: 11 July 2003

Case status: Concluded

Link to case: <http://www.rishabhdara.com/sc/view.php?case=18695>

2) Facts

The case involved an appeal to the Supreme Court of India following a successful petition filed at the High Court by the Air India Cabin Crew Association (the Association). The petitions argued that the required retirement 'from flights' at an age of 50 years for an Air India Air Hostess was discrimination based on sex and violated Articles 14, 15 and 16 of the Constitution of India. It was argued that this policy further contradicted the directions issued under the Central Government under section 34 of the Air Corporations Act 1953. The policy, which specifically related to female workers, was deemed discriminatory when compared to their male counterparts who worked on Air India airlines.

The Bombay High Court held that the age of retirement for air hostesses constituted sex discrimination. It directed Air India implement the directive dated 16 October 1989 issued by the Union of India by permitting the petitioners to perform flying duties until they attain the retirement age of 58 years subject to medical fitness, weight check and further checks subject to the measures suggested by Air India.

Air India were ordered to pay to the petitioners the differential amount of salary from the date of grounding of hostesses until the date of resumption of flight duties and 50% of the compensatory allowances in arrear payments. However, the Bombay High Court imposed further seniority rules applicable to all Air India flying staff including:

- A. The seniority of male and female cabin crew will be in accordance with their date of joining;
- B. If a male cabin crew is in a lower grade than a female cabin crew despite the male cabin crew having joined Air India at an earlier date, the grade and basic salary of the female cabin crew will be frozen till such time as the male cabin crew is promoted and becomes senior to the female cabin crew as per his date of joining;
- C. If a male cabin crew is in a lower grade than a female cabin crew despite the male cabin crew having joined Air India at an earlier date, the grade and basic salary of the female cabin crew will be frozen till such time as the male cabin crew is promoted and becomes senior to the female cabin crew as per his date of joining;
- D. The hierarchy on board the air craft will be based on seniority irrespective of sex;
- E. Special benefits which are being given to air hostesses at present, like early retirement and all benefits arising out of early retirement, shall no longer be continued;
- F. All cabin crew (both workmen and executive) shall have to undergo annual medical examination after the age of 35 years and shall also be subject to weight checks at all times irrespective of sex.

3) Law

- Section 34 of the Air Corporations Act 1953
- Articles 14, 15 and 16 of the Constitution of India

4) Legal Arguments

Air India Officers Association

Following the above judgments by the High Court of Bombay, the Air India Officers Association sought leave to appeal against the rulings adversely affecting seniority and promotional policies of Air India.

5) Decision

The Supreme Court was heavily critical of the impositions and regulations put forward by the High Court in Bombay concluding that the High Court had adopted “*a hazardous course of fixing the terms and conditions of employees of Air India of various categories of males and females*”.

The Supreme Court determined that the judgment of the High Court was “unsustainable” in respect of the direction it provided for seniority rules. However, it stated that this part of the High Court decision was severable from the ruling regarding the retirement age of air hostesses. Therefore, the decision to permit the retirement age of flight duty air hostesses to be 58 was upheld.