Neutral Citation Number: [2007] EWHC 2988 (QB)

Case No: IHJ/07/1047

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/12/2007

Before :

MR JUSTICE TUGENDHAT

- -

Between :

Captain Ashvini Kumar Sharma	**Claimant**
- and -	
(1) Amar Singh (2) Associated Newspapers Ltd	**Defendants**

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- -

Miss Catrin Evans (instructed by **Taylor Wessing**) for the Defendants
Mr Andrew Monson (instructed by Christopher **Stewart-Moore**) for the Claimant

Hearing dates: 5th December 2007

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. This is a libel action in relation to an article published by the Defendants in the *Evening Standard* on 3rd August 2006 ("the words complained of"). At the material time the Claimant was employed by Air India at Heathrow Airport as Regional Director-UK and Europe, the most senior position in Air India for that region. The first defendant is a journalist and wrote the article complained of.

2. There are before the Court:

   i) An application by the Defendants for permission to amend the Defence made by notice issued on 23rd November 2007.

   ii) An application by the Claimant for a ruling on meaning and to strike out parts of the Defence made by notice issued on 28th November 2007.

3. The words complained of are as follows:

> "SEX SHAME OF AIRLINE CHIEF
>
> Director quits as four female workers claim harassment
>
> EXCLUSIVE
>
> Mover and shaker: Ashvini Sharma and wife Ajaya. He quit after sex claims by women at Heathrow" (Under photograph of Claimant and his wife accompanying article).
>
> "AN AIRLINE director has quit his six-figure salary job at Heathrow amid claims that he sexually molested four women.
>
> Ashvini Kumar Sharma resigned as head of Air India's UK and Europe operation.
>
> He is facing charges of sexual harassment after a woman employed as a contractor by the airline filed an official complaint with police.
>
> The 22 year old woman works for a fuelling and handling company contracted to several airlines including Air India.
>
> She is thought to be one of four employees who have made official complaints to Air India management at Heathrow. All are thought to be eastern European in their twenties.
>
> Sources in the company have told the Evening Standard that senior officials at the airline have called for an immediate internal investigation after ordering Mr Sharma to step down from his job.
>
> A Met spokesman confirmed that Heathrow CID is investigating an allegation of harassment.

Mr Sharma , who was a bodyguard to India's president Giani Zail Singh, joined Air India in 1984. He moved to London in 2001 where he lived in West Acton with his wife, Ajaya, and their daughter, Aditi, now 21.

He soon became a major mover and shaker in Britain's Asian business community circles. But his relationship with his staff in the UK was often troublesome and many claimed that they were being overworked and underpaid.

This is not the first time Mr Sharma has faced allegations of sexual harassment.

In 2004, Air India's investigation and fraud prevention team based in Mumbai sent a 'two- member delegation' to London.

They were sent to conduct an investigation into allegations that he had made advances on two teenage girls who worked for a firm contracted to clean offices at the airline's UK headquarters in Brentwood.

The Times of India, published the testimonies of the two women – both eastern European – who had accused the airline boss of constant harassment.

In the first case a woman from Prague spoke of how she quit the company after one week of cleaning Mr Sharma's office after 6.30 each evening.

She said: "Sharma would pester me for my phone number and would pass remarks. I was under severe stress as I dreaded each evening when I had to go there to clean the office. I came from a good and strict family and the incident shook me up, 'I couldn't hold on for long'.

A senior Air India employee based in the UK, who asked to remain anonymous, told the Standard: "This is not the first time these kind of accusations have come out about Mr Sharma. The problem is he has been protected in the past because of his political links with some of the most senior echelons of the Congress party".

"But the company have had enough now, and as the police have got involved the whole game has changed."

A Met police spokesman said: "We received an allegation of harassment made to Heathrow police on 12 July regarding an incident that is alleged to have taken place on 8 July at the Air India office at Heathrow Airport. A 22-year-old victim has

> made an allegation against a male suspect. It is being investigated by Heathrow CID and is being treated as harassment."

4. The meanings pleaded by the Claimant are:

> "(a) the Claimant has been ordered to step down from his job at Air India as a result of an accumulation of official complaints by female workers that he has sexually harassed and molested them; and
>
> (b) the Claimant is probably guilty of of a succession of criminal offences against female workers, or at least of multiple acts of sexual misconduct giving rise to valid civil claims of harassment, but until now he has got away with his wrongdong because he has used his politcal links with some of the most senior echelons of the Congress party in India to gain protection".

5. The Defendants plead justification and set out the meanings to be justified as follows (in the form of the draft amended Defence):

> (1) That the Claimant was ~~probably~~ a serial sex pest who exploited his senior position at Air India to prey on, harass, sexually molest and make wholly inappropriate and unwelcome advances to vulnerable females, particularly foreign female workers, thereby causing them serious distress or embarrassment;
>
> (2) That the Claimant was ~~therefore~~ wholly unfit to hold the senior management position which he did; and should have been removed earlier from his position at Air India and/or suspended and/or disciplined by them in consequence, but was not because his political connections with some of the most senior echelons of the Congress party meant he occupied a protected position within Air India;
>
> (3) That the Claimant's conduct resulted in formal complaints being made about him to Air India, and in Air India instigating investigations into his conduct;
>
> (4) That as a result of a police investigation into one of the complaint's made against him, the police were treating the matter as harassment ~~Claimant received a first instance harassment warning from the police~~.

6. The particulars of justification as originally pleaded are derived from the complaints of a number of young women. When the Defence was served the parties agreed, in the light of CPR 5.4C, that the women would be referred to by pseudonyms so as to protect their identities and limit the distress caused by their being involved in these proceedings. This applies in relation to how the case is dealt with at any hearings in

open court, including skeleton arguments. The Claimant and his lawyers know the identity of the women.

7. The particulars of justification are in summary as follows:

   i) Ms Z, a 22 year old employee of Servisair at Heathrow. She alleges that in May 2006 the Claimant sexually harassed her in the Air India area of Terminal 3 (including an allegation in effect of sexual assault). She was the first woman to make a complaint to the police and reported it to her employer who complained to Air India. See paras 6.2 to 6.22 of the Defence.

   ii) Ms B, a 32 year old employee of Aviance Limited ("Aviance") at Heathrow. She alleges that C sexually harassed her over a number of years from 2003 to 2005, including two occasions when she alleges that he sexually assaulted her. She also reported his behaviour to her employer, who registered a complaint with Air India, and to the police, although she did not make a formal police complaint. See paras 6.23 to 6.51.

   iii) Ms C was also a young woman who was employed at Heathrow by Servisair. She claims that C sexually harassed her in about June 2006 in the Air India area of Terminal 3. She reported the incident to her employer who in turn complained to Air India. See paras 6.52 to 6.57.

   iv) Ms J worked for Aviance and Servisair at Heathrow at different times. In about May 2004 and autumn 2005 she claimed she was sexually harassed by C in the Air India part of the airport. As a result she asked to be transferred to other duties. She subsequently informed her employer about his conduct and it was passed on as a complaint to Air India. See paras 6.58 to 6.6.60.

   v) Ms G was a teenage foreign worker employed to clean Air India's offices. She claimed that in about November 2001 she was sexually harassed by C whilst she cleaned the offices and that she left her job as a result. See para 6.61.

   vi) Ms M was a young worker who also cleaned the Air India offices. She claimed that in about December 2001 C sexually harassed her at work. She also left her job in consequence. See paras 6.62 to 6.63.

8. The Claimant denies all the allegations of harassment.

The legal principles to be applied to the two applications

9. The applicable legal principles are well known and not in dispute. In relation to the application to amend Miss Evans for the Defendant has taken them from the judgment of Peter Gibson LJ (with Sedley LJ concurring) in *Cobbold v Greenwich LBC*, August 9 1999, unrep., CA (referred to in the notes to CPR Part 17 at 17.3.5 at White Book p420):

> "The overriding objective (of the CPR) is that the court should deal with cases justly. That includes, so far as is practicable, ensuring that each case is dealt with not only expeditiously but

> also fairly. Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party caused by the amendment can be compensated for in costs, and the public interest in the administration of justice is not significantly harmed".

10. The Practice Direction to CPR Part 53 includes:

> "4.1 At any time the court may decide –
>
> (1) whether a statement complained of is capable of having any meaning attributed to it in a statement of case;
>
> (2) whether the statement is capable of being defamatory of the claimant;
>
> (3) whether the statement is capable of bearing any other meaning defamatory of the claimant".

11. In relation to an application on meaning, Miss Evans has summarised the principles as follows. The Court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader of the *Evening Standard* reading the words once in the context of the article as a whole. It is cautioned against over-elaborate analysis of meaning because the ordinary reader would not analyse the article as a lawyer would analyse documents; the Court should not take a too literal approach to its task in delimiting the range of available meanings (see generally *Skuse v Granada* [1996] EMLR 278 at 285-7 and *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263 at [7], where Lord Phillips MR (as he then was) approved the synthesis of Eady J below). The Court of Appeal stressed the high threshold of exclusion in the judgment of Simon Brown LJ (as he then was) in *Jameel v WSJE* [2004] EMLR 6 at [14]:

> "every time a meaning is shut out (including any holding that the words…either are, or are not, capable of bearing a defamatory meaning) it must be remembered that the judge is taking it upon himself to rule in effect that any jury would be perverse to take a different view on the question. It is a high threshold of exclusion. Ever since Fox's Act 1792 the meaning of words in civil as well as criminal libel proceedings has been constitutionally a matter for the jury. The judge's function is no more and no less than to pre-empt perversity."

12. CPR Part 3.4(2) reads:

> "The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for … defending the claim;

> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;..."

Defendant's meaning 6(1)

13. There is no dispute that the words complained of are capable of meaning that the claimant is guilty of certain misconduct (a level 1 meaning as it is now commonly referred to). There is a dispute as to what the words complained of are capable of meaning as to what the claimant is guilty of. Is it misconduct which may fall short of what would amount to either a criminal offence of, or would give rise to a civil claim for, harassment (as the defendant submits)? Or is it only misconduct which fulfils the conditions for such an offence or civil liability (as the claimant submits).

14. Mr Monson for the Claimant points out that the words complained of refer to a police investigation of an allegation of harassment, and submits that that can only refer to an allegation of harassment under the Protection from Harassment Act 1997 ("the 1997 Act"). Mr Monson submits that the significance of the 1997 Act is that conduct caught by that Act must be of a certain level of gravity which he submits should be more than worry, trouble, discomfort or unease, and should be physical or psychological injury. The source he cites for that suggestion is Gatley on Libel and Slander 10th ed para 22.17 p686 and p687 text to note 53. Mr Monson also submits that the 1997 Act is significant in that it requires a course of conduct (s.7), and so that any misconduct which is an isolated incident, or any two incidents of misconduct which are too far apart in time to be a course of conduct, cannot be misconduct which the words complained of are capable of alleging.

15. Mr Monson further submits that an allegation of molestation must mean an act not less than would amount to an offence under the Sexual Offences Act 2003 ("the 2003 Act") s.3 (sexual assault), in short, sexual touching of the victim without her consent and without a reasonable belief that she was consenting.

16. Mr Monson further submits that if what the defendants are alleging the meaning to be is harassment, then that is the only word that should appear in the pleaded meaning, and that the other words are either otiose synonyms or embarrassing.

17. Ms Evans points out that the words complained of include not only the word "harassment" but also the words "sexually molested", "made advances on two teenage girls", "would pester me for my phone number and would pass remarks". She submits that the misconduct guilt of which the words complained of are capable of alleging includes any misconduct to which any of the words quoted applies. She submits in particular, that the meaning of harassment and molestation is a matter for the jury, unconfined by any direction as to what the 1997 Act means by harassment, or what the 2003 Act means. By way of illustration she refers to definitions in Chambers Dictionary of harassment as "beset or trouble constantly; to annoy, pester", and of molestation as "to interfere with in a troublesome or hostile way; to annoy or vex". She submits that none of the expressions used in the words complained of import misconduct falling below what she submits can be meant by sexual harassment.

18. The submissions of Miss Evans are to be preferred. There is nothing explicit to support the views expressed in Gatley (referred to in paragraph 14 above) to be found

in the Act itself, or in any judgment of a court. If a jury were to find that the meaning of the words complained of alleged sexual misconduct that amounted in their view to harassment, in the sense of some sexual misconduct within the meanings of the words used in the words complained of, but short of what would be required for criminal liability, or civil liability under the 1997 Act, they would not, in my judgment be perverse. I also observe that the 1997 Act provides very little assistance as to the meaning of harassment. It requires a course of conduct on at least two occasions (s.1 (1), s.7(3)) and it states that harassment may "include alarming the person or causing the person distress" (s.7(2)). But it also provides that "the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amount harassment of the other" (s.1(2)). There is nothing explicit to support the views expressed in Gatley to be found in the Act itself, or in any judgment of a court. The scope of that is something very suitable for a jury to determine. The defendants' formulation of their pleaded meaning is not in my judgment embarrassing.

19. Subject to these submissions, there is no issue between the parties on the proposed amendment.

20. It follows that in my judgment the words complained of are capable of bearing the meaning pleaded in para 6(1) of the draft amended Defence, and I give permission to make the amendment.

Defendant's meaning 6(2)

21. This requires to be considered in two parts. The first part is the words originally pleaded together with the draft additions of "earlier" and "suspended and/or", and the second part is the remainder ("but was not …within Air India").

22. As to the first part, Mr Monson submits that the Defendants implicitly accept that the claimant was not required to leave his job (it is implicit from the absence of a plea that it accepted that he was not), and what they are now seeking to allege is that the words complained of mean that he ought to have been so required, and that that is comment, and a meaning which the words complained of are incapable of bearing.

23. Miss Evans submits that the meaning alleged in the first part of para 6(2) is implicit in the words complained of. She refers to the paragraph "Sources in the company have told the Evening Standard…" and the paragraphs from "A senior Air India employee based in the UK…" to "But the company have had enough now, and as the police have got involved the whole game has changed." She submits that this is an allegation of fact not comment. She accepts that the Defendants do not seek to justify the suggestion that the claimant actually quit his job after the allegations were made but submits that this does not prevent the meaning in 6(2) from being advanced at trial.

24. Comment may include inferences or statements of fact, and it may be defended in either of two ways. Comment may be defended as honest opinion, or it may be defended as the truth. The fact that words complained of are comment does not preclude their being defended as true.

25. In my judgment the words complained of are capable of meaning not only that the claimant left his job (which is not to be justified), but also that he was unfit to hold it (and the other allegations in the first part of para 6(2) of the draft amended Defence).

26. As to the second part of para 6(2), Mr Monson submits that this meaning: (a) adds nothing to the meaning in para 6(1); (b) is not defamatory in that it does not allege that the claimant did anything, rather than passively benefiting from the acts or omissions of others; and (c) the particulars pleaded in support of this meaning appear to import a further (unpleaded) part of this meaning, namely that he committed other (non sexual) irregularities and hampered an investigation.

27. As to (b), Miss Evans stated that active use by the claimant of his connections is what she intended to allege, and would allege, if leave were given to do so. I shall address point (c) when I come to consider the particulars.

28. As to point (a) Miss Evans submits that in principle a defendant is entitled to justify any defamatory meaning which words complained of are capable of bearing, whether or not that can be said to add anything. She refers to the opening words to that effect in Gatley para 27.7 and to the cases there cited.

29. In my judgment the meaning pleaded in the second part of para 6(2) of the draft amended is one which the words complained of are capable of bearing. I refer in particular to the sentence "The problem is he has been protected in the past because of his political links …" But whether this amendment should be allowed depends not just on this conclusion, but also upon a consideration of the particulars proposed to be advanced in support of it. I shall return to this point below.

Defendant's meaning 6(3) and (4)

30. Mr Monson submits that (a) if the Claimant is guilty as charged, it is nothing to the point that his guilty conduct resulted in formal complaints and an Air India investigation; that is a matter of history which is completely irrelevant to the issue of guilt which the Defendants seek to establish under Paragraph 6(1); (b) this meaning is just a device to get round the repetition rule, and it is impermissible because it breaches the repetition rule and it is embarrassing; (c) the libel cannot be defended by repeating the fact that complaints were made, or by stating that Air India investigated the complaints; and (d) the words complained of are not capable of bearing only a Level 3 meaning that there was an Air India investigation, or that there were sufficient grounds for an Air India investigation into the Claimant.

31. Mr Monson's formulation of the repetition rule is that it is impermissible to plead as a primary fact the proposition that some person or persons (e.g. law enforcement authorities) announced, suspected or believed the claimant to be guilty (see *Musa King v Telegraph Group Ltd* [2004] EWCA (Civ) 613 [22](3)). What the police did or thought is of no assistance: *Chase v News Group Ltd* [2002] EWCA Civ 1772 [58]. The repetition rule applies to all levels of meaning: *Jameel v Times Newspapers Ltd* [2004] EWCA Civ 983 [28]-[30].

32. Further, Mr Monson submits that as a matter of policy a defendant cannot be permitted to plead a defence which amounts to simply throwing mud at the claimant in the hope that some of it will stick (cf *Fallon v MGN Ltd*)[2006] EWHC 783 (QB)

[17]. Paras 6(3) and (4) are lesser meanings which, in the circumstances, the Defendants cannot be allowed to rely on. He refers to *Berezovsky v Forbes Inc* [2001] EWCA Civ 1251 [5]-[6], [12], [14]-[18] and [20].

33. Miss Evans submits that the words complained of expressly state that the Claimant's conduct led to formal complaints to Air India and are also plainly capable of conveying the sense that the conduct led to Air India instigating investigations. She submits that the Claimant's objection is misconceived, on the ground that the repetition rule (the principle cited above from *Musa King v Telegraph Group Ltd* [2004] EWCA (Civ) 613 [22](3)) only applies to *Chase* level 2 meanings, not level 1 meanings. The fact the police were treating it as harassment is relevant to the severity of the allegation against the Claimant which is plainly permitted. These are quintessential questions for determination at a pre-trial review when the admissibility of either side's evidence may be in issue. In her oral submissions Miss Evans made clear that she was not relying on meanings 6(3) and (4) as level 2 or level 3 meanings. She said that was not necessary: she was advancing a level 1 meaning. She said meanings 6(3) and (4) go to the seriousness point.

34. In my judgment the principle relied on by Mr Monson applies to level 1 meanings (*Chase* and *Musa King* happen to have been cases where level 1 defences were not being considered). I also reject Miss Evans' submission that the fact the police were treating the complaint as harassment is relevant to the severity of the allegation. In considering a defence of justification, the severity of the allegation is to be determined by the evidence which supports the allegation, not by the opinion or response of the police, or anyone else, to the allegation.

35. Miss Evans submits that it is not said against her that the words complained of are incapable of bearing these meanings. What is said against her is that the words complained of are incapable of bearing only these meanings, and that the defendants must be confined to their level 1 meaning.

36. It is not clear what, if anything, in terms of evidence turns on whether meanings 6(3) and (4) are allowed to remain (or be amended) or are struck out. These meanings are in my judgment capable of being defamatory of the claimant. But the facts that the police have been investigating the complaint of Miss Z, and that there was an investigation by Air India in 2004 are referred to expressly in the words complained of. They will form part of what is sometimes called the narrative. So this is not a case of a meaning being pleaded in an attempt by a defendant to put before the court at trial information to the discredit of the claimant which the court would not otherwise be told about.

37. In summary, these meanings are not advanced as level 2 or level 3 meanings, but only on the basis that they are said to be relevant to the severity of the allegation, a basis which I have rejected. In my judgment they should not be allowed to remain, whether in the original form, or as in the draft amendment. It is important to limit pleadings to what is legally relevant. I strike them out under CPR Part 3.4(2).

Particulars relating to Miss Z and Miss B

38. There is not before me an application to strike out any of the original pleading, and no objection is made to the proposed amendments. In his skeleton argument Mr Monson

refers to paras 6.18 and 6.19 as being objectionable on grounds of infringement of the repetition rule, but any application on the basis of that objection has been left for consideration at a later stage. Accordingly I grant leave to amend paras 6.2, 6.3, 6.5, 6.11, 6.17, 6.23, 6.33, 6.34, 6.39 and 6.47 in the form sought.

Particulars relating to Miss C and Miss J

39. The application to strike out the whole of the particulars in relation to these two complainants is on the basis that the particulars pleaded are of conduct which is insufficiently serious to amount to sexual harassment or molestation. The point is tied to the issue of in meaning 6(1) which I have decided above. Since I have decided it against the claimant, the force of this objection is largely removed.

40. Nevertheless, I have considered the particulars in the light of the meaning that I have allowed to go forward, and in my judgment the facts alleged are in general such as ought not to be withdrawn at this stage (subject to any subsequent ruling before or at the trial).

41. In addition Mr Monson takes two specific points on the pleading. The first point is on the plea at paragraph 6.57. It is as follows:

> "in the light of the Claimant's conduct towards Ms Z and Ms B, it is properly to be inferred that his approach to Ms C was a mere pretext to force his attentions on her, and that the Claimant *would have behaved* (Mr Monson's emphasis) in the same way toward Ms C as he did towards Ms Z and Ms B had he not been interviewed by the police as a result of their aforesaid complaint".

42. The second specific point made by Mr Monson is in relation to the proposed amendment to para 6.54. He submits that the subjective belief of the complainant is irrelevant. The words sought to be added by amendment are:

> "By that stage it was obvious to Ms C that the Claimant wanted to have a sexual relationship with her".

43. Mr Monson submits that on the case pleaded in para 6.57 the Claimant's conduct towards Ms C is not harassment or molestation. He submits that the case pleaded is that he was going to harass and molest Ms C in the future, but abandoned his plan when he became the subject of a police investigation. Further, since it is not alleged that the Claimant tried to contact Ms C after the pleaded encounter on 21 June 2006 and the police inquiry did not begin until sometime after 12 July 2006 – over three weeks later – the inference sought to be drawn by the Defendants is neither proper nor reasonable. It is also an inference which falls outside the legitimate scope of the plea of justification. The issue is whether the Claimant is guilty of harassment and molestation of identified victims, not whether it is to be inferred that but for the police inquiry he would have harassed and molested another woman – but did not.

44. The particulars as proposed in the draft amendment (to which no specific objection is taken) include an allegation (para 6.52) that the claimant put his arm round Miss C while purporting to show her how to perform some task on her computer, and the

original pleading includes allegations (paras 6.52 and 6.53) that he suggested he might offer her a job, and (para 6.54) that he invited her to meet him off duty. These are actions which could be either sexual or not. Whether they were sexual may depend partly on the perception of the complainant, and partly on the intention of the claimant. If they were not perceived as sexual at the time by a complainant who was alert, they are less likely to amount to sexual harassment or molestation. In the original paras 6.55 and 6.56 it is pleaded that Ms C felt shocked and intimidated, and that she complained to her manager.

45. If these acts were perceived as sexual by the complainant, then the intentions of the claimant will be relevant. Para 6.57 sets out matters from which the trial court will be invited to infer the intentions of the claimant at the time he did the acts pleaded in paras 6.52 to 6.54. On this basis the plea is a proper one in my judgment.

46. There is no specific objection to the particulars in relation to Miss J.

Particulars in relation to the 2004 Air India investigation

47. The draft amended pleading reads as follows:

> "6.64 In about March ~~April~~ 2004 Air India sent a ~~two man~~ team of officials to England, from the investigation and fraud prevention cell of Air India's security department in Mumbai to investigate allegations of serious misconduct against the Claimant. A further team of officials from the security department came to London to continue the investigation in August 2004. The second visit was approved by the Chairman and Managing Director of Air India. ~~a~~Amongst other matters investigated were the complaints of sexual harassment by Ms G and Ms M. The Defendants will rely on a report by Air India's Director of Security, Hasan Gafoor, dated 20 September 2004 relating to the ongoing investigation, to the whole of which they will refer. That report referred to a substantial number of irregularities by the Claimant in his position as Regional Director–UK & Europe which the investigations had found, including the sexual harassment of Ms G and Ms M, and criticised the Claimant for hampering the investigation in August 2004 of which he was aware. In all the premises the denial by the Claimant in paragraph 42 of the Reply that there was any such investigation or that he was aware of any such investigation is false and should be withdrawn."
>
> 6.65 In spite of the seriousness of these matters, they did not lead to the Claimant being suspended so that further investigations could take place, or to his being disciplined or dismissed. It is to be inferred that this was (a) because of the immense power the Claimant wielded within Air India and/or (b) because his political connections with some of the most senior echelons of the Congress party meant he occupied a protected position within Air India.

> 6.66 In support of (b) above, the Defendants will rely on the following facts and matters. Following 14 years in the Indian army, the Claimant became the aide de camp to the President of India in 1980, and his senior aide de camp in 1981. Despite having no experience within the airline industry, the Claimant was then appointed to a post at Air India in 1984 in flagrant breach of Air India's recruitment policies and procedures. In response to a protest about the manner of his appointment by the Air India Officers' Association (including litigation by them in the Bombay High Court) the Claimant appealed over the head of the Chairman and Managing Director of Air India directly to the Indian Prime Minister by letter dated 15 February 1985, relying on his connections with the President. Notwithstanding the decision of the Chairman and Managing Director of India that the Claimant should accept a contractual position at Air India (an inferior position to the permanent post which the Claimant wanted) or face the consequences of termination, the Claimant was given a permanent post at Air India and subsequently promoted to "plum" foreign postings in Japan and London. The overwhelming inference is that the Prime Minister's office and the Ministry of Aviation intervened on the Claimant's behalf and ensured that that happened.

48. These are particulars which would go to the Defendants' meaning 6(2) and to the Claimant's meaning (ii).

49. Mr Monson submits that in paragraph 6.64 the Defendants breach the repetition rule by repeating (but not apparently adopting) various allegations contained in the report by Hasan Gafoor, although it is not pleaded that the report was sent to the Claimant, or seen by him. The Defendants plead that they intend to refer to the whole of the report, without making it clear for what purpose. On inspection it emerges that it is a secret interim report with a highly restricted circulation, which does not include the Claimant. As pleaded in paragraph 6.64, Mr Gafoor accuses the Claimant of hampering his investigation. But the report is ambiguous on the question whether Mr Gafoor accused the Claimant of hampering an investigation into the cleaners' harassment complaints, which only emerged at a later stage, as distinct from the other matters which were originally part of his brief. If the pleading is taken at its face value, the Defendants are relying on the secret report: (a) to introduce into the action allegations concerning irregularities by the Claimant which have nothing to do with sexual harassment; (b) to rely on Mr Gafoor's belief in the veracity of the sexual harassment complaints made by the two cleaners (Mr Monson notes that Mr Gafoor advances the proposition that their allegations are "corroborated" by the fact that the same complaints were published in the Times of India); (c) to accuse the Claimant of hampering "the investigation in August 2004 of which he was aware".

50. The relevance of this plea was explored in correspondence. The position of the defendants as it now is was set out by Miss Evans as follows. The defendants' purpose is to demonstrate that there was an investigation into the claimant and that, despite it being clear from the report that Air India expected the investigation to be taken further at that stage, nothing more appeared to have happened so far as any

charges against the claimant was concerned. The inference to be drawn is that this was because of (a) the immense power wielded by the claimant within Air India and/or (b) his political connections with some of the most senior echelons of the Congress Party in India meant he occupied a protected position; and that he used those connections to obtain this. Further, in his Reply the Claimant denied that the investigation had taken place or that he was even aware of it and the report showed that this was self-evidently untrue.

51. The report refers to matters wholly separate from, and irrelevant to, the allegations of sexual harassment. It would plainly be wrong to put the whole report before the trial court. The allegation of hampering the investigation made in the report is not supported by particulars pleaded by the defendant, and the proposed pleading is in this respect plainly an infringement of the repetition rule. There is nothing pleaded to demonstrate how the claimant was aware of the investigation or the report. On the basis solely of the matters pleaded (and, for that matter the report itself, which I have seen) no reasonable court properly directed could draw the inference that is sought to be drawn in relation to the allegations of sexual harassment. There is simply nothing pleaded as to why there are said to be no other possible explanations for why the investigation into that matter went no further than it did. Even if I were wrong about that, in my judgment a consideration of the whole report with a view to seeking to establish an inference to be drawn from it as whole would take the trial far outside the limits of what is necessary and proportionate to determine the issues between the parties, and would not be in the interests of justice.

52. It follows that I refuse leave to amend the Defence to include paras 6.64 to 6.66 of the draft. In consequence, there being no other particulars in support, I also refuse permission to amend para 6(2) to add the words “but was not … position within Air India”.