

*** HIGH COURT OF DELHI : NEW DELHI**

**Judgment reserved on: July 21, 2009
Judgment pronounced on: July 27, 2009**

+ W.P. (C) No. 6641 of 2002

% Balvinder Singh Nigah ... Petitioner
Through: P.P. Khurana, Senior Advocate,
with Ms. Tamali Wad, Mr.
Birender Singh and Ms. Seema
Pandey, Advocates

versus

General Manager (Operations)
Hotel Corporation of India Limited ... Respondent
Through: Mr. Sandeep Sethi, Senior
Advocate with Mr. Sumit Gahlot,
Advocate.

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. On 1st December, 1991, petitioner - Balvinder Singh Nigah, was working as Assistant Manager (Catering) with respondent – Hotel Corporation of India, Delhi, a wholly owned company of Air India and he had attended Flight No. AI-III, which had arrived from Chennai (Madras) at Delhi Airport (Domestic) and Mr. Anil Bhise, Aircraft

Engineer called the petitioner inside the Aircraft and showed a suspicious object to the petitioner, which was found inside the First Class Gallery of the Aircraft and it turned out to be an explosive device i.e. a bomb which was planted to blow up the Aircraft.

2. In respect of the aforesaid incident, criminal proceedings were launched against the petitioner and the petitioner was interrogated and was charged with commission of offence under the Explosive Substance Act, read with provisions of TADA Act. It is a matter of record that the criminal proceedings, against the petitioner, ended in his acquittal on 4th February, 2002, as the prosecution was not able to prove its case beyond reasonable doubt. However, respondent had served a Charge-sheet, Annexure P-15, on the petitioner, on 9th May, 2002, regarding the aforesaid incident and in substance, the charge against the petitioner was that he was not allocated Flight No. A1- III, but still the petitioner was found on the aforesaid Flight and this amounted to misconduct under the Hotel Corporation of India Employees' Service Regulations (herein after referred to as the "Regulations"). In pursuance to the charge-sheet, Annexure P-15, domestic inquiry commenced.

3. The main relief sought in this petition is to quash the charge-sheet, Annexure P-15, as on the subject matter of this charge-sheet, the petitioner was tried by a criminal court and was acquitted. According to the petitioner, serving of the charge-sheet, Annexure P-15, upon the petitioner is an abuse of the powers by the respondent and is *mala-fide*. The other reliefs sought in this petition are of striking down Regulation- 76(3) of the Regulations in question, being *ultra vires* the Constitution of India. Subsistence allowance was also claimed for the period petitioner had remained behind bars in the criminal case.

4. Learned Senior Counsel for the petitioner points out that in view of the order of 14th February, 2007, the challenge to the constitutional validity of Regulation-76(3) of the Regulations in question had become entirely academic and he presses this petition only in respect of the validity of the charge-sheet, Annexure P-15, in the face of the verdict of acquittal returned by the criminal court in favour of the petitioner.

5. By virtue of the interim orders passed by this Court in this petition, departmental proceedings against the petitioner continued and culminated into an Inquiry Report in August, 2002, but the same could not be acted upon by the respondent, as this court had restrained the

respondent from implementing it, in case it was adverse to the petitioner. However, the Disciplinary Authority was allowed to proceed to pass an order on the Inquiry Report and this was done by this Court on 25th July, 2006. However, learned Senior Counsel for the respondent states that respondent has not passed any order based upon the Inquiry Report. Copy of Inquiry Report has been placed on record by the respondent.

6. In short, the case of the petitioner is that the charge-sheet, Annexure P-15, is not only vague but also does not constitute misconduct within the meaning of Regulation-60 of the Regulations in question and the charges have to be definite as per Regulation-80 of the aforesaid Regulations. According to the learned Senior Counsel for the petitioner, after acquittal of the petitioner in the criminal case, what remains in the charge-sheet is that petitioner had attended Flight No. A1-III, though he was not allocated the said Flight and nothing further is stated as to what was the misconduct or adverse consequence of petitioner's attending the aforesaid Flight. Furthermore, it has been vehemently argued by learned Senior Counsel for the petitioner that the Show Cause Notice/ charge-sheet, Annexure P-15, is vitiated by long, inordinate unexplained delay as the alleged incident is of December,

1991, whereas the impugned charge is of May, 2002. It has been pointed out by learned Senior Counsel for the petitioner that it was open to the respondent to have initiated departmental action against the petitioner after the incident in question but the respondent awaited the outcome of the criminal trial and has thereafter, now, belatedly instituted departmental proceedings against the petitioner, which smacks of blatant arbitrariness and ought not to be, allowed to continue. Reference has been made to the decisions reported in AIR 1984 SC 1361; 1994 (4) SLR 397; (1986) 3 SCC 454; 1967 (2) SLR 476; AIR 1957 SC 51 and 1990 (supl) SCC 738 to assert that there has to be a valid charge-sheet, upon which domestic inquiry can proceed and a fair hearing presupposes a precise and a definite charge, which can be understood and effectively met during the inquiry proceedings and if the charges are vague, it is a fatal defect, which vitiates the entire proceedings.

7. There can be possibly no dispute with above referred legal position. However, respondent refutes the aforesaid factual stand of the petitioner and learned Senior Counsel for the respondent points out that the essence of the charge against the petitioner was that he unauthorizedly handled Flight No. A1-III, which was not allocated to him

and thereby, the petitioner has contravened Clauses-60(5), 60 (20) and 60(25) of the Regulations of the respondent. Thus, it is argued on behalf of the respondent that there is no vagueness or ambiguity in the charge-sheet, Annexure P-15, and the present petition is premature. Reliance has been placed upon the decisions of the Apex Court reported in JT 2005 (8) SC 425; JT 2006 1 SC 444; 2007 (II) AD (SC) 930; 1994 (1) SCALE 631; AIR 2005 SC 3417 and JT 2005 (8) SC 425 to contend that acquittal of the delinquent employee by a criminal court cannot preclude the respondent-Corporation from taking action against the delinquent, as it is permissible under the Rules. In the last, it has been urged on behalf of the respondent that the petitioner has not assailed the Inquiry Report in these proceedings and as per the Regulation-79, it is the Disciplinary Authority which is required to take the decision on the Inquiry Report and if the petitioner is aggrieved by the decision of the Disciplinary Authority, he has a remedy of appeal under Regulation-87 in question.

8. After having heard both the sides and upon perusal of the material on record and the decisions cited, I would like to state at the very outset that the scope of the disciplinary proceedings and the criminal proceedings is distinct and independent of each other. While considering

the correctness of the decision of the Disciplinary Authority, the court is not to be influenced by the outcome of criminal proceedings. Apex Court in the case of *"Ajit Kumar Nag vs. General Manager (PJ) Indian Oil Corporation Ltd. and others"* **2005 SCC (L & S) 1020** on this aspect has observed as under:-

"The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused, "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".

9. In any case, what this court is required to examine at this stage is not the merits of the charge which has been found to be proved against the petitioner vide Inquiry Report of 29th August, 2002, but is required to see if the charge-sheet, Annexure P-15, is vague and is hit by Regulation-80, which requires the charges to be definite

one. The relevant Clause- 3 of Regulation-80 in question reads as under:-

“Where it is proposed to hold an inquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employees. The charges together with a statement of the allegations, on which they are based, a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 7 days) a written statement whether he admits or denies any of or all the Articles of Charge”.

10. A bare perusal of the charge-sheet, Annexure P-15, spells out that the petitioner was not allocated Flight No.1A-III, but he had attended the said Flight. Whether the aforesaid conduct of the petitioner results into breach of any Regulation or not, is a matter which is required to be gone into in the domestic inquiry and it would be premature to conclude at this stage whether the aforesaid conduct of the petitioner would amount to a misconduct or not? I am of the considered view that the charge-sheet, Annexure P-15, is not vague and is not hit by Regulation-80, which requires the respondent-Department to frame a definite charge against the delinquent employee/petitioner. In any case, since the petitioner has already faced the inquiry and the copy of the Inquiry Report is on record, therefore, the petitioner ought to avail of remedy

of appeal against it after the Disciplinary Authority passes an order on the basis of the Inquiry Report in question.

11. In the light of the aforesaid, this petition is dismissed and the Disciplinary Authority of the respondent is directed to expeditiously pass an appropriate order in accordance with law on the Inquiry Report of 29th August, 2002, and thereafter, in terms of Regulation-87, the petitioner would have the remedy of appeal against the order passed on the basis of the Inquiry Report.

12. This petition is accordingly disposed of while making it clear that this Court in the present proceedings has not gone into the merits of the charge-sheet, which is required to be looked into by the Disciplinary Authority and the Appellate Authority concerned, if needed.

13. No costs.

Sunil Gaur, J.

July 27, 2009
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