

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 479/2009

BALVINDER SINGH NIGAH Appellant
Through: Mr. P.P. Khurana, Senior Advocate with
Ms. Tamali Wad, Mrs. Seema Pandey and
Mr. Birander Singh, Advocates

versus

GENERAL MANAGER (OPERATIONS)
HOTEL CORPORATION OF INDIA LTD Respondent
Through: Ms. Padma Priya with Ms. Meenakshi
Sood, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether reporters of the local news papers
be allowed to see the order? | No |
| 2. To be referred to the Reporter or not ? | Yes |
| 3. Whether the order should be reported in the
Digest ? | Yes |

ORDER
22.10.2009

1. This appeal is directed against the impugned judgment dated 27th July 2009 passed by the learned Single Judge dismissing the Appellant's Writ Petition (C) No. 6641 of 2002.

2. The background to the filing of present appeal is that the Appellant

Balvinder Singh Nigah was working as Assistant Manager (Catering) with the Hotel Corporation of India, Ltd. ('HCIL') Delhi which was a wholly owned company of Air India. On 1st December 1991 at around 7 am one Bhupinder Singh, Senior Security Assistant at the Indira Gandhi International Airport in Delhi had gone to relieve the night staff of Flight No.AI-111 which had arrived from Madras. At around 7.50 am while the passengers were boarding the aircraft, Anil Bhise, the Aircraft Engineer called Bhupinder Singh and told him that some suspicious object was detected in the first class galley of the aircraft. Bhupinder Singh saw a polythene bag and near the bag one torch having a palliate attached with a battery wrapped in a *sutali* was found lying. The bag was opened and one bottle containing some liquid was found. Suspecting that this could be a bomb, Bhupinder Singh immediately asked the employees and the passengers to vacate the aircraft. At this time apart from Bhupinder Singh, one S.D. Thakur, Aircraft Technician and the Appellant who was the Duty Officer (HCIL) were present in the aircraft in the first class gallery.

3. FIR No. 548 of 1991 was registered on the suspicion that a bomb had been planted in the aircraft with intention of blowing it up. The FIR was registered on the statement of Bhupinder Singh. A bomb disposal squad was called to the spot. The said squad allegedly dismantled and defused the bomb and gave a detailed report of the components. The components of the explosive device as well as the polythene bag were seized.

4. The Appellant was arrested and remained in custody till 25th January 1997 when he was granted bail. He was charged under Sections 4 and 5 of the Explosive Substances Act as well as Sections 3(i), 4 and 5 of the Terrorist And Disruptive Activities (Prevention) Act, 1987 “for possessing the explosive substances and for planting the IED in the aircraft AI-111.”

5. In the trial that ensued Bhupinder Singh was examined as PW-1, N.K. Yadav as PW-2, Balraj Kumar as PW-3, A.K.Minocha as PW-4, Anil Bhise as PW-5, L.M.Suman as PW-6, A.K. Chauhan as PW-7 and Mr. Z.A.Khan as PW-8. There were 13 other prosecution witnesses including the police witnesses.

6. The criminal case against the Appellant was based on circumstantial evidence. The trial court by the judgment dated 4th February 2002 came to the following conclusions:

“1. The accused was on the aircraft with other catering employees when bomb like object was discovered.

2. He had informed his colleagues about his intention to go to aircraft before hand.

3. He made no attempt to run away or conceal himself.

4. P.W. 4, who was first to prepare the report of all the articles found in air draft and had diffused the IED, did not mention in his report that No. 054 was there on polythene bag.

5. No public witness has supported the theory that when polythene bag containing IED was seen, it was having No. 054.

6. The recoveries from the house of accused are normal things like pliers, tester, solder, iron, factory made fire crackers etc.

7. As per P.W. 4 of the bomb was yet to be planted. No bomb or any other article was recovered from accused when he was in the air craft. No bomb was recovered from air craft or surroundings.

8. The IED recovered in itself could not have ignited. It needed an external agent.

9. It could not have been exploded by remote control as there was no transmitter. No transmitter or any such other object was recovered from accused.”(emphasis supplied)

Ultimately the trial court held as follows:

“(1) That the accused duty was over between 7-7.30 am. He was found in the aircraft No. A1-III around 7.45 am along with other staff, at the time when this bomb like object was recovered. The circumstance of polythene bearing No. 054 in which IED was found has not been proved.

(2) The evidence of PW-4 shows that this number was not there on the polythene when he made report. The recoveries made from the home of the accused were of

fire- crackers and normal home appliance.”

7. In the judgment dated 4th February 2002 the trial court concluded that the prosecution had not proved beyond reasonable doubt that it was the Appellant who had prepared the IED, smuggled it into the aircraft taking benefit of his being a Duty Officer. The Appellant was acquitted of the offences under TADA. Since the recovery was only of factory made fireworks, which were easily available in the market, it was held that the Appellant could not be convicted under the provisions of the Explosive Substances Act either.

8. It is not in dispute that no appeal has been filed against the aforementioned judgment dated 4th February 2002 of the trial court acquitting the Appellant. The said judgment has therefore attained finality. However as far as the HCIL is concerned, they were not prepared to accept the logical conclusion of the Appellant’s acquittal. It must be mentioned that soon after the Appellant’s arrest he was placed under suspension. Soon after the judgment, the Appellant submitted a certified copy of the judgment of the trial court and asked the suspension order to be revoked. However on 9th May 2002 he was issued the following notice by the HCIL:

“It is alleged against you as under:-

That on 01.12.1991 you reported for duty as scheduled.

Though you were not allocated the Flight No. AI-111,
you attended Flight No. AI-111 which had arrived from

Madras. Mr. Anil Bhise, Aircraft Engineer called you inside the Aircraft and shows you a suspicious object detected in the first class galley, which turned out to be a explosive device i.e. a Bomb. Which was planted to blow the Aircraft. Thereafter on the basis of your statement, an FIR was registered and investigation was taken up by S.I. Jallaluddin of PS IGI Airport immediately. The bomb squad was called for and the same was defused, who then gave a detailed report. On further investigation, you were interrogated by Inspector M.C. Katoch and was charged under Section 4 and 5 of Explosive Substance Act, with Sec.5 of TADA Act, and under Sec. 3(1) & 4 of TADA P Act. For possessing explosive substance and for planting that ED in the Aircraft AI-111.

The aforesaid act on your part amounts to misconduct under Hotel Corporation of India Employees' Service Regulations and the following charges are leveled against you.

1. You are acting in a manner prejudicial to the interest of the Corporation-Clause 60(5).
2. You have committed an act subversive of discipline or of good behaviour on an employee clause 60(20).
3. You have committed breach of law, rules, regulations and orders applicable to the Establishment-Clause 60(25).

You are hereby called upon to show cause within 7 days and to give your written explanation as to why domestic enquiry should not be initiated against you, failing which enquiry committee would be constituted to hold an

enquiry against you in the light of aforesaid charges.”

9. On 14th May 2002 the Appellant, in reply to the aforementioned notice stating that in view of his acquittal in the criminal case, the show cause notice was liable to be discharged. However by an office order dated 28th May 2002 the Appellant was informed that his reply was not found satisfactory. A Single Member Enquiry Committee was appointed to enquire into the charges levelled against the Appellant by charge sheet dated 9th May, 2002 (which is in fact the aforementioned notice dated 9th May 2002). In response to the aforementioned office order, the Appellant reiterated that the judgment of the trial court would have a binding effect on any departmental enquiry and therefore the enquiry initiated was without any basis. He further pointed out that the witnesses named in the disciplinary enquiry were all examined in the criminal trial as well.

10. The Enquiry Officer gave a report on 29th August 2002 holding that the Appellant “has acted in a manner prejudicial to the interest of the Corporation, committed an act subversive of discipline or of good behaviour on an employee and committed breach of law, rules, regulations and orders applicable to the Establishment. Therefore, he is guilty under Staff Regulation No. 60(5), 60(20) and 60(25) of the Hotel Corporation of India Limited Employees’ Service Regulations.”

11. A copy of the enquiry report was furnished to the Appellant by the letter

dated 17th September 2002. A detailed reply was given thereto by the Appellant on 16th and 21st October 2002.

12. The Appellant filed Writ Petition (C) No. 6641 of 2002 in this Court on 10th October 2002 challenging inter alia the show cause notice/charge sheet dated 9th May 2002 and all proceedings consequent thereto. By an order dated 11th October 2002 while directing notice to issue in the writ petition it was directed that the departmental proceedings may continue but any order adverse to the Petitioner would not be implemented. On 2nd September 2005 the disciplinary authority passed the following order:

“I, being the Disciplinary Authority in the present case, have gone through the records of the inquiry and other related documents and have come to the conclusion that the findings of the Single Member Inquiry Committee are acceptable for the reasons recorded in the Inquiry Report. The charges leveled against Shri Balvinder Singh Nigah are fully proved. Considering the gravity of the charges proved against the charge sheeted officer, I hold that ends of justice would be met if the penalty of dismissal from service is imposed on him with immediate effect under Regulation No. 78(g) of HCI LTD Employees’ Service Regulations under the powers vested in me under Regulation No. 79 of the above said Regulations.”

13. The Appellant was furnished with a copy of the aforementioned order on 6th October 2008 and further informed that in view of the stay order passed by the High Court the order was not being implemented. On 8th November 2008 the Appellant submitted an appeal under Regulation 87 of the HCIL

Employees Service Regulations against the said order dated 2nd September 2005 passed by the disciplinary authority.

14. By the impugned judgment dated 27th July 2009, the learned Single Judge has while dismissing the writ petition held that the charge sheet was not vague and was not hit by Regulation 80 which required the Respondent to frame a definite charge against the employee. It was directed that the disciplinary authority should expeditiously pass an appropriate order on the enquiry report dated 29th August 2002 and thereafter in terms of Regulation 87, the Appellant would have the remedy by way of an appeal against the said order of the disciplinary authority.

15. We have heard the submissions of Mr. P.P. Khurana, learned Senior counsel appearing for the Appellant and Ms. Padma Priya, learned counsel appearing for the Respondent HCIL.

16. It was first submitted on behalf of the Appellant that the charge sheet served upon the Appellant was vague and no definite charges have in fact been framed against the Appellant. It is pointed out that apart from stating that the Appellant had acted in a manner prejudicial to the interest of the Corporation in terms of Clause 60(5) of the Regulation and that he had committed an act subversive of discipline or good behaviour in terms of Clause 60(20) and that he had committed breach of law, rules, regulations and orders applicable to the establishment in terms of Clause 60(25), no

specific acts answering the above acts of misconduct were pointed out in the notice. Learned counsel for the Respondent, on the other hand, contended that the specific charge against the Appellant was that he had been found present in aircraft beyond duty hours and that too when he was instructed to remain in the aircraft.

17. The above submission of the learned Senior counsel for the Appellant merits acceptance. In the first place it requires to be noticed that the communication dated 9th May 2002, which has been extracted hereinbefore, is in fact only a show cause notice and not in itself a charge sheet. However from the office memorandum dated 25th May 2002 it appears that the Respondent termed the above show cause notice itself as the charge sheet. Even if it is presumed to be a charge sheet, then in terms of Regulations 80, it was required to specify the precise acts of the Appellant which attracted the types of misconduct specified in Clauses 60(5), 60(20) and 60(25) of the service Regulations. However a perusal of the aforementioned charge sheet shows that it refers to “the aforesaid act” which is about the Appellant having been called by Anil Bhise inside the aircraft and being shown a suspicious bag which turned out to be “explosive device i.e. a bomb” which was planted to blow the aircraft. It further goes on to state that “based on your statement an FIR was registered and investigation taken up...” It further states that the Appellant was interrogated and charged under the Explosive Substances Act and TADA for possessing the explosive substance. What the charge sheet does not refer to is the fact that, based on

those very allegations, the FIR registered led to a full-fledged trial in which the Appellant stood acquitted by the judgment dated 4th February 2002 of the trial court. If, in fact, after a full-fledged trial the Appellant was acquitted of criminal charges on the basis of the aforementioned allegations, then it was necessary for the Respondent HCIL to indicate in the charge sheet whether there was any other act for which the Appellant had to be proceeded against disciplinarily. The charge sheet is indeed vague and does not satisfy the mandatory requirement of Regulation 80 of the service Regulations.

18. It is not possible to accept the contention of the learned counsel for the Respondent that the alleged misconduct against the Appellant was that he was found in the aircraft beyond duty hours and remained there even when asked not to. There is no such allegation made in the charge sheet. No such charge was framed against the Appellant.

19. The aforementioned show cause notice/charge sheet dated 9th May 2002 also contains erroneous statements as is apparent from the report dated 29th August 2002 of the Enquiry Officer. The Enquiry Officer noticed that “Mr. Anil Bhise has called Mr. Bhupinder Singh, the then Senior Security Assistant inside the aircraft and told him that some suspicious object had been detected in the first class galley and not the chargesheeted officer as has been alleged/mentioned in the charge sheet No.CFCD/PER/ST-81054/0500 dated 9th May 2002 as the chargesheeted officer was already inside the aircraft.”(emphasis supplied) The Enquiry Officer further noted

that “on the basis of statement of Mr. Bhupinder Singh, Senior Security Assistant, Air India (not on the basis of Chargesheeted Officer as has been alleged/mentioned in the letter of Chargesheet No.CFCD/PER/ST-81054/0500 dated 9th May 2002.) an FIR No. 548 of 1991 (D.Ex.-3) was registered in the Police Station IGI Airport, New Delhi.” It is plain therefore that the statements in the show cause notice/charge sheet are itself erroneous. Further the show cause notice/charge sheet states that the suspicious object detected in the first class galley was a bomb which was planted to blow the aircraft. This is contrary to the specific findings of the trial court that “as per PW-4 the bomb was yet to be planted. No bomb or any other article was recovered from accused when he was in the aircraft. No bomb was recovered from aircraft or surroundings.” The trial court further observed that: the report of PW-4, the head of the Bomb Disposal Squad, showed that “the device found in Air India flight AI-111 (was a) sophisticated improvised explosive device (IED) which could have caused serious fire hazards. It appears that (the) perpetrator had not done the final operation of this placement of bomb...The bomber had designed the device with multiple initiating mechanism to ensure the activation of IED.” Therefore the statements in the show cause notice/charge sheet were incorrect and contrary to the record.

20. It was submitted by learned counsel for the Respondent that a perusal of the Enquiry Officer’s report would indicate the precise type of misconduct for which the Appellant was proceeded against disciplinarily. It was

submitted that the punishment of dismissal awarded to the Appellant was consistent with the said findings.

21. The above submission appears to be entirely without merit. A perusal of the report dated 29th August 2002 of the Enquiry Officer shows that the witnesses examined during the enquiry did not in fact support the case of the Respondent HCIL at all. The Enquiry Officer noticed that MW-6 Mr. Z.A. Khan confirmed the statements given by him to the police. He confirmed that “there was shortage of presetting staff in the night shift of 30th November 1991.” Although there was no circular from the unit head imposing restrictions for not detaining the presetting staff for three consequent shifts, in an emergency the Duty Officer had to manage the shift with the available manpower of presetters. MW-6 agreed that “on the night shift of 30th November 1991 there was heaviest flight schedule of the week.” MW-5, Mr. Naresh Kumar Yadav confirmed that he had been allocated the night shift of 30th November 1991 by the Appellant, one of the Duty Officers. Beside him Mr. Ashok Kumar Chauhan, MW-4 was also allocated that flight. He confirmed that the arrival of the flight AI-111 was behind schedule by 10 minutes and that on 1st December 1991 he along with Mr. Chauhan went to the parking area and saw the Appellant already sitting in the Matador Van and when asked he stated that since there was sufficient time available, he (the Appellant) would also accompany Mr. Yadav to the flight AI-111 “as it will be easier to handover the meals on AI-111.” Mr. Yadav admitted that “the Duty Officer may visit the daily flight on ground

subject to necessity.” He admitted that the orders were issued from the Unit Head to this effect from time to time. Likewise, Mr. A.K.Chauhan MW-4 also stood by his earlier statement given to the police.

22. These three witnesses i.e. MW-4 Mr. A.K.Chauhan, MW-5 Mr. Anil Bhise and MW-6 Z.A. Khan were also prosecution witnesses at the criminal trial. During the trial Mr. N.K. Yadav stated that “the accused Balvinder was not having anything nor even the papers were with him when they went to the aircraft.” These witnesses told the criminal court that the Appellant, Mr. A.K.Chauhan and the witnesses Mr. N.K.Yadav “all were authorised to go to aircraft and inside it because they have been issued tarmac passes which were issued to the catering staff.” These witnesses further stated that “ordinarily one officer and one supervisor goes inside the aircraft for supervising the work of distribution of food carts but on that day due to shortage of staff and delay of flight and because of arrival of a VVIP aircraft accused Balvinder Singh who was a duty officer, also had to go into the aircraft.” (emphasis supplied)

23. In the trial PW-7 Shri A.K. Chauhan “denied that he had stated in his statement to the police that it was very unusual for an officer of the tank of accused, who had independent allocated flight, to accompany him to attend the same.” He also denied that “he had told that this flight was not allocated to the accused and he could not have accompanied them to the flight.” PW-

8 was Z.A.Khan. The trial court recorded that this witness stated that he did not remember if the accused had told him that he was going to flight No. AI-111 or that he told the accused that he was not required to go to that flight as it had already been allocated to junior catering staff. He also stated that he did not remember if he had told in his statement to the police that the accused was working as IIInd officer in the night shift and told him that he was going to flight AI-111 or that he told police that accused was not required to go there since he was already allocated duties.

24. What is plain from the reading of the above evidence in the trial court of the same three witnesses who also appeared in the domestic enquiry is that they did not support the theory that the Appellant was found in the aircraft on the given day without any authorisation. Each of these witnesses on the contrary said that there was nothing unusual about the Appellant being found in the aircraft as on that particular day there was shortage of staff. It is surprising that the Enquiry Officer has not adverted to the judgment of the trial court which discusses the evidence of these very witnesses who also appeared in the domestic enquiry. What is even more surprising is that in the domestic enquiry each of these witnesses adverted to the statements made by them to the police and to the fact of having appeared as prosecution witnesses in the criminal trial. Therefore it was incumbent on the Enquiry Officer to assess the evidence of these witnesses with reference to their depositions in the criminal court with regard to same matter which was being enquired into disciplinarily.

25. A perusal of the enquiry report dated 29th August 2002 shows that the enquiry officer merely refers to the trial court having given a judgment of acquittal and does not at all discuss the various findings arrived at by the trial court after a detailed discussion and analysis of the evidence. This is a fatal flaw in the enquiry report. In the considered view of this Court the following findings of the enquiry officer are totally without evidence:

“Since, the Chargesheeted Officer Mr. Balvinder Singh Nigah looked after the complete presetting and checking of meals carts personally and also went to the Aircraft AI-111 to handover the meals despite of the fact that he was advised by the Senior Duty Officer Mr. Z.A. Khan (MW-6) that he is not required to go on this flight, where he was arrested by the Police in connection with the recovery of a suspicious object (ED) in the First Class Galley, he is guilty of not handling the Flight properly. On account of the arrest of the Chargesheeted Officer Mr. Balvinder Singh Nigah by the Police on 1/12/1991 in connection with the recovery of the suspicious object and his remaining continuously under detention in the custody under TADA Act till January, 1997, he had involved himself in a crime though he was later acquitted.”

26. A reading of the above paragraph would appear that in the view of the enquiry officer the Appellant had gone to the aircraft although he was advised by Z.A.Khan (MW-6) that he was not required to do so. As already seen hereinbefore Z.A. Khan has denied in the trial court of having made

such a statement to the Appellant. This finding is therefore clearly perverse. Further it would appear that by being tortured by the police, or being arrested, the Appellant “involved himself in a criminal case” and therefore was guilty of misconduct although he was later acquitted. This conclusion is perhaps most perverse considering the fact that for no fault of his the Appellant had to undergo the ordeal of a criminal trial for 11 years and had to suffer a wholly unjustified incarceration for about 6 years. It is indeed unfortunate that the Respondent had chosen to persecute the Appellant despite his clean acquittal by the trial court.

27. It was submitted by learned Senior counsel for the Appellant that the impugned show cause notice/charge sheet was hit by laches and delay and therefore the proceedings consequent thereto were unsustainable in law. Reliance was placed on the judgment of the Supreme Court in ***P.V. Mahadevan v. MD. T.N. Housing Board (2005) 6 SCC 636*** which decision in turn refers to an earlier decision ***State of A.P. v. N. Radhakishan (1998) 4 SCC 154***. We find considerable merit in the submission. In the instant case. after waiting for 11 years disciplinary action was initiated against the Appellant for being present in aircraft beyond his duty hours. There is absolutely no explanation why the Respondent had to wait for 11 years to do this. In any event as has been noticed here earlier, this was not even the specific charge for which the Appellant was sought to be proceeded against disciplinarily.

28. For all of the aforementioned reasons we find that the impugned show cause notice/charge sheet dated 9th May 2002 and all proceedings consequent thereto including the order dated 2nd September 2005 of the disciplinary authority are wholly unsustainable in law. They are accordingly quashed. In the circumstances, the impugned judgment of the learned Single Judge is hereby set aside. Since on account of the stay order of the High Court the order dated 2nd September 2005 of the disciplinary authority was not given effect to, and it has been set aside by this judgment, the Appellant will be treated as having continued in service throughout with all consequential benefits. The arrears of wages, after accounting for the suspension allowance already paid to the Appellant, and other consequential dues will be paid to the Appellant by the HCIL within a period of four weeks from today. In addition, the Respondent HCIL will also pay to the Appellant costs of Rs.30,000/- within four weeks.

29. The appeal is allowed with the above directions.

CHIEF JUSTICE

S. MURALIDHAR, J

**OCTOBER 22, 2009
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