

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 2248/2006

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Date of decision: 19th April, 2010

ASHOK KUMAR ARYA

..... Petitioner

Through: Mr. N. Prabhakar, Advocate

Versus

AIRPORT AUTHORITY OF INDIA

..... Respondent

Through: Mr. Raj Birbal, Sr. Advocate with Ms
Raavi Birbal and Mr. Prateek Garg,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The petitioner was on 21st October, 1980 appointed as an Airport Officer (Operations) with the respondent Airport Authority of India. However, owing to an incident in the night between 7th and 8th June, 1987, the petitioner on 8th June, 1987 was put under suspension and served with a charge sheet. The Disciplinary Authority of the respondent Airport Authority on 26th September, 1989 passed an order of termination of the petitioner. The petitioner preferred W.P.(C)917/1990 in this court against the order of the Disciplinary Authority. During the pendency of the said writ petition, the departmental appeal of the petitioner was also turned down on 20th August, 1990. The said writ petition was allowed by a Single Judge of this court on 9th July, 1998 holding that there was absolutely no evidence against the petitioner and the order passed by the Disciplinary

Authority was perverse. The respondent Airport Authority preferred LPA 400/1998. The Division Bench vide judgment dated 30th August, 2005, upheld the order of the Single Judge of setting aside of the order of the Disciplinary Authority, but only on the ground of non-furnishing of tentative reasons by the Disciplinary Authority for disagreeing with the report of the Inquiry Officer and non furnishing of the copy of the inquiry report to the petitioner. Accordingly, the matter was remanded to the Disciplinary Authority for decision afresh. While ordering so it was observed *“It is also expected that since the matter is very old, the Disciplinary Authority shall make all endeavour to complete the proceedings as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order”*.

2. The petitioner preferred SLP Civil 25994/2005 to the Supreme Court against the judgment aforesaid of the Division Bench. The respondent Airport Authority of India was admittedly unrepresented before the Supreme Court. The said SLP was disposed of vide order dated 16th January, 2006 without issuance of notice to the respondent Airport Authority with the following order:

“If no steps are taken within three months’ time as granted by the High Court to comply with the High Court’s order, liberty granted to the petitioner to ask the High Court for quashing of the proceedings altogether. The Special Leave Petition is disposed of.”

It was thereafter that the present writ petition was filed on or about 15th February, 2006. It is the contention of the petitioner that the Disciplinary Authority of Airport Authority of India having failed to initiate any steps within three months of the order of the Division Bench in LPA No.400/1998, he has become entitled

to have the disciplinary proceedings against him quashed. Notice of this petition was issued on 17th February, 2006. On 17th March, 2006 the counsel for the petitioner contended that the show cause notice given by the Disciplinary Authority to him on 8th March, 2006 was not in compliance with the directions of the Division Bench and beyond the time granted by the Supreme Court. After hearing the counsel for the parties, this court permitted the Disciplinary Authority to pass an appropriate reasoned order within four weeks from then without prejudice to the petitioner's right to maintain the present proceedings and submit that the proceedings before the Disciplinary Authority were initiated beyond the time granted by the Division Bench. The petitioner was also directed to present himself before the Disciplinary Authority on 24th March, 2006.

3. It is the admitted position that the Disciplinary Authority again passed an order on 28th April, 2006 of dismissal of the petitioner. On enquiry it is informed that the petitioner again preferred a departmental appeal on 30th October, 2006. The said appeal is informed to have been dismissed on 27th February, 2007. The counsel for the petitioner also confirms that the petitioner has not preferred any remedy against the order dated 28th April, 2006 of the Disciplinary Authority or the order dated 27th February, 2007 of the Departmental Appellate Authority. The counsel for the respondent Airport Authority on 16th May, 2007 contended before this court that the petitioner having not challenged the fresh order of Disciplinary Authority and the Appellate Authority, this writ petition has become infructuous.

4. The counsel for the petitioner has contended that the present petition has not become infructuous since the fresh proceedings before the Disciplinary Authority and the Departmental Appellate Authority were in terms of the order dated 17th March, 2006 in this petition i.e. without prejudice to the rights of the petitioner to press the present petition.

5. Thus, the only point for consideration before this court is, whether in view of the order dated 30th August, 2005 of the Division Bench of this court directing the Disciplinary Authority to complete the remanded disciplinary proceedings “preferably” within three months “from the date of receipt of copy of that order” and / or on the basis of the order dated 16th January, 2006 (supra) of the Supreme Court, the disciplinary proceedings (even though since concluded and having attained finality as far back as on 28th April, 2006 and 27th February, 2007) are liable to be quashed for the reasons of the remanded proceedings having not been completed/initiated within three months. Though neither party has pointed out the date on which the copy of the order dated 30th August, 2005 was received by the Disciplinary Authority of the respondent and from which date only the period of three months was to commence, but even if the said three months is to be counted from the date of the order of the Division Bench, the same would expire in end November, 2005. The decision dated 28th April, 2006 of the Disciplinary authority is thus delayed by about five months. The effect thereof is to be seen.

6. As far as the order of the Division Bench is concerned, the same did not make it mandatory for the Disciplinary Authority to complete the remanded proceedings within three months. The said order was also not conditional. The Supreme Court only gave liberty to the petitioner to apply to this court for quashing of the proceedings “if no steps were taken within three months”. The Supreme Court also did not direct that the proceedings “be quashed” if no steps were taken within three months.

7. I have inquired from the counsel for the petitioner whether the order dated 16th January, 2006 (supra) of the Supreme Court was communicated to the respondent or to the Disciplinary Authority. The answer is in the negative. On the contrary, it is the contention of the counsel for the respondent that the petitioner intentionally concealed the said order so as to take undue advantage therefor.

8. I have also inquired from the counsel for the petitioner whether the petitioner, after the order dated 30th August, 2005 of the Division Bench, approached the Disciplinary Authority for expediting the proceedings and/or completing the same within the time of three months as directed by the Division Bench. The answer is again in the negative. I have also inquired from the counsel for the petitioner as to what prejudice, if any, has been suffered by the petitioner by the delay of about five months in conclusion of the remanded disciplinary proceedings. Except for contending that the petitioner has been suspended since 1987, no other prejudice has been disclosed. I have also

inquired from the counsel for the petitioner as to what inference is to be drawn from the petitioner not challenging the fresh decision of the Disciplinary Authority and the Appellate Authority and allowing it to attain finality. The counsel states that since the decision was required to be within three months and there was no order of the Disciplinary Authority within three months he was not required to challenge the decision rendered after the said period. I have also inquired whether any time limit is prescribed in any statute or rules and regulations for conclusion of the disciplinary proceedings. The answer is again in the negative.

9. I am reluctant to quash the disciplinary proceedings in which the petitioner has been found guilty, on the mere ground of delay particularly when delay is not shown to have occasioned any prejudice to the petitioner. It is significant that the direction of the Division Bench desiring the remanded disciplinary proceedings to be concluded within three months was of its own initiative and not at the asking of the petitioner. The petitioner also did not show any anxiety to enforce the said direction. In fact, the delay by the petitioner of about six months in preferring the departmental appeal shows that the petitioner also was not treating time to be of any concern to him. The appeal was preferred by the petitioner of his own volition and to take a chance therein. The counsel for the respondent has also contended that the Disciplinary Authority had well prior to the expiry of three months, even if counted from 30th August, 2005, issued a show cause notice dated 28th November, 2005 to the petitioner. It is significant that the Supreme Court also did not direct the disciplinary proceedings “to be

completed” within three months and only permitted the petitioner to apply for quashing “if no step even in that direction” was taken within the said time of 3 months. Though there is some controversy about the issuance and service of the said notice dated 28th November, 2005 with the respondent contending that the petitioner has elsewhere admitted the same and has now falsely denied the issuance thereof, but in the entirety of the facts aforesaid I do not deem it appropriate to entertain the said controversy. Any person who is anxious for expeditious disposal in ordinary course of human behaviour, is expected to bring the direction of the court to the notice of the Disciplinary Authority for compliance. The conduct of the petitioner of not communicating the order of the Supreme Court is found to be intended to steal a march and which cannot be permitted.

10. Else, it is the right of the employer to, in accordance with rules and principles of natural justice, proceed against and punish the employee for misconduct. The facts aforesaid do not make out a case for interfering with such right of the respondent employer.

11. There is no merit in the petition. The same is dismissed. However no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

19th April, 2010
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