

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

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Date of decision: 19th April, 2012

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LPA No.516/2010

R.L. MORIA

..... Appellant

Through: Mr. M.N. Krishnamani, Sr. Adv.
with Mr. R.K. Singh, Ms. Deepa
Rai & Mr. V.M. Srivastava, Advs.

Versus

**CHAIRMAN CUM MANAGING DIRECTOR, NATIONAL
AVIATION COMPANY OF INDIA LTD. & ORS. Respondents**

Through: Mr. R. Kaul & Mr. Sandeep
Khatri, Advs. for R-1.
Mr. Lalit Bhasin with Ms. Shreya S.
Dabas & Ms. Bhawna Dhami, Advs.
for Air India Ltd.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, ACTING CHIEF JUSTICE

1. This intra-court appeal is preferred by the appellant challenging the judgment dated 14.05.2010 of the learned Single Judge in three writ petitions bearing W.P.(C) Nos.7284/1999, 151/2005 & 6576/2005. In these circumstances, the appellant was required to file three LPAs. However, on the oral request of learned counsel for the appellant, since the pleadings and challenge is common in all the petitions, these are

treated as three LPAs. The Registry is directed to assign proper numbers.

2. The particulars of three writ petitions which are decided by the learned Single Judge vide common judgment are as under:

- “(i) CWP No.7284/1999 filed by the appellant R.L.Moria challenging the order of his dismissal dated 11.8.1999. This writ petition was disposed of on the first date of listing i.e. on 6.12.1999 with direction to respondent to decide the statutory appeal of the appellant within eight weeks from the said date; liberty was granted to the appellant, if aggrieved with the outcome of the statutory appeal, to approach the Court for the revival of the petition. Statutory appeal of the appellant was dismissed on 13.1.2000. The writ petition was revived on his application.*
- (ii) CWP.151/2005 filed by appellant R.L. Moria challenging a part i.e. para no.9 of the order passed by the National Industrial Tribunal dated 20.8.2004 whereby on the application under Section 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as “the said Act”) filed by the employer, the National Industrial Tribunal set aside the finding of the Inquiry Officer dated 11.8.1999 and at the same time granted liberty to the employer Indian Airlines to lead additional evidence.*
- (iii) CWP No.6576/2005 filed by the respondent i.e. the Indian Airlines impugning the order passed by the National*

Industrial Tribunal dated 20.8.2004 whereby the findings of the Enquiry Officer and the Appellate Court had been set aside; thereby setting aside the order of dismissal of appellant on the ground that there has been a violation of principles of natural justice and the order is perverse. The contention of the respondent that the scope of enquiry by the Tribunal under the provisions of 33(2)(b) of the Act was limited and not as an Appellate Court was negated.”

3. The meat of the matter pertains to the departmental inquiry conducted against the appellant by the respondent on the allegations that his daughters-in-law Mrs. Anita Moria and Mrs. Rakhee Moria were apprehended along with his son and two other persons who were travelling on Interline Passage Facility of the respondent.

4. The charge was that such a facility is not available to the daughter-in-law. However, the said facility was availed by the appellant declaring Mrs. Anita Moria and Mrs. Rakhee Moria as the daughters of the appellant. The departmental inquiry was held against the appellant into the aforesaid charge which had different facets as well. The Inquiry Officer held that some of the aspects of charge were not proved while some others were established. The conclusions of the Inquiry Officer in this behalf are as under:

“Based on the foregoing, the following get clearly established:-

- 1. Shri R.L. Moria had asked for interline tickets in respect of self and his two daughters-in-law Mrs. Anita Moria and Mrs. Rakhi Moria declaring them as daughters and not a daughters-in-laws though he knew very well that Mrs. Anita Moria and Mrs. Rakhi Moria were his daughters-in-law and not daughters.*
- 2. Shri R.L. Moria was aware that his daughter-in-law Mrs. Anita Moria wife of Shri Sandeep Moria was travelling to Singapore on 10.03.1993 on the interline tickets which was issued along with the tickets of the defendant and Mrs. Rakhi Moria, his other daughter-in-law.*
- 3. Interline tickets in respect of Shri Sandeep Kumar, Shri Umesh Bhatia, Mrs. Anita Moria and Mrs. Sonu Shahskar were made on the basis of interline requests signed by Shri Baldev Kumar of IAL and approved by Mrs. G. Clair of Air India after their processing by Shri M.C. Sahdev of Air India.*
- 4. Shri Sandeep Kumar definitely gave some interline requests out of the four to Shri M.C. Sahdev for issuance of interline tickets.*
- 5. Shri M.C. Sahdev delivered some interline tickets which included tickets of Mrs. Anita Moria, Mrs. Rakhi Moria*

and Mr. R.L. Moria at the residence of Mr. R.L. Moria.

It could however not be established that

- 1. Shri R.L. Moria introduced his son Shri Sandeep Kumar to Shri M.C. Sahdev of Air India.*
- 2. Shri R.L. Moria accompanied Shri Sandeep Moria and Anita Moria to the airport on 10.03.1993.*
- 3. Shri R.L. Moria or Shri Sandeep Kumar arranged the tickets for Shri Umesh Bhatia and Mrs. Sonu Shahskar.*
- 4. Shri R.L. Moria was aware that the interline tickets were made on the basis of reciprocal list of which he was not entitled.*
- 5. Shri R.L. Moria was given some interline tickets at his residence by Sh. M.C. Sahdev of Air India*

5. Thus it stood established that the appellant had asked for interline tickets in respect of his two daughters-in-law declaring them as “daughters” and not as “daughters-in-law” and further that the appellant was aware of the fact that his daughters-in-law Mrs. Anita Moria & Mrs. Rakhee Moria were travelling to Singapore on the interline ticket. Even these tickets were issued by Sh. Sandeep Moria son of the appellant who was the approved travel agent of the respondent Indian Airlines. On the basis of these findings, the Disciplinary Authority imposed the

punishment of dismissal from service on 11.08.1999 on the appellant. Since there was an industrial dispute pending between the management of the respondent and the union before the National Industrial Tribunal, an application was filed by the respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval of the aforesaid dismissal of the appellant. This application was rejected by the Tribunal vide order dated 20.08.2004. The Tribunal set aside the inquiry proceedings holding that the charge against the appellant stood vitiated and could not be proved on the basis of evidence on record. Liberty was given to the respondent to produce the evidence before the Tribunal to prove the charge.

6. The respondent challenged the aforesaid order of the Tribunal by filing W.P.(C) No.6576/2005. Insofar as the appellant is concerned, as already mentioned above, the appellant filed one writ petition challenging the termination of his service vide order dated 11.08.1999 and other writ petition was filed challenging the order of the Tribunal insofar as it provided opportunity to the respondent to lead evidence before it to prove the charges against the appellant.

7. The learned Single Judge first took up the writ petition filed by the

respondent herein and has come to the conclusion that it was not open to the Tribunal to re-appreciate the findings of the Inquiry Officer and on that basis arrived at a conclusion different from that of the Inquiry Officer. To put it in nutshell, as per the learned Single Judge, it was not within the scope of powers of the Tribunal to sit as appellate forum over the findings of the Inquiry Officer. For coming to this conclusion, the learned Single Judge has referred to and relied upon various judgments of the Apex Court. The learned Single Judge analyzed the position on record in the following manner:

“On this touchstone, the report of the Enquiry Officer has to be viewed. Perusal of this report and order of the Tribunal shows that the Tribunal had in fact exceeded its jurisdiction while passing the impugned order dated 20.8.2004. The Enquiry Officer has after giving a brief about the deposition of the six prosecution witnesses and the three witnesses of the defence, gone on to examine their testimony in the light of the rival submissions made by the contending parties. No doubt the cross-examination of J.S.Emmanuel, Investigating Officer of the CBI and M.C.Sahdev, the Assistant Officer of Air India could not be concluded in spite of several dates of

examination. PW J.S.Emmanuel had produced the record wherein in the course of his investigation as the Investigating Officer of the CBI he had recorded the statements of various witnesses. Material brought out on record by him was unchallenged and not disputed by R.L.Moria which only to that extent had been read and relied upon by the Enquiry Officer. M.C.Sahdev had deposed before the Enquiry Officer that the disputed four interline requests had been brought to him by Sandeep Kumar (son of the petitioner); further Sandeep Moria was well known to him. The petitioner has also admitted that M.C.Sahdev was well known to him. This fact had been disclosed by the petitioner in his disclosure statement recorded on 15.4.1993 by PW S.L.Khanna, the Vigilance Officer. The Enquiry Officer had also relied upon the deposition of PW V.S.Nagar, PW Baldev Kumar to substantiate the allegation that the petitioner at the relevant time was not in Grade-17 or above entitling him to confirmed tickets on Air India. Relevancy of each witness had been examined in detail by the Enquiry Officer before he had given his concluded findings on the last but one page of his enquiry report. The boarding cards of flight A 1404 dated 10.3.1993 in respect of Sandeep Kumar, Anita Moria and two other person Umesh Bhatia and Sonu

Shaskar had been proved as also the interline register of Air India for the period 4.1.1993 to 12.3.1993. It was also never disputed by the petitioner that his son Sandeep Kumar and daughter-in-law Anita Moria were travelling on these interline request tickets on 10.3.1993 to Singapore when they were detained by the officers of the Enforcement Directorate at the IGI Airport. Enquiry Officer had concluded that Sandeep Kumar, Anita Moria, Umesh Bhatia and Sonu Shaskar had been issued tickets on the interline requests signed by Baldev Kumar. Baldev Kumar had been examined as PW-5. He had admitted his signatures on the four interline authorizations. His version had been relied upon by Enquiry Officer to that extent. Findings of the Enquiry Officer wherein the five circumstances detailed therein stood established were based on the evidence adduced before him both oral and documentary and which he had examined in intrinsic and deep detail.”

8. We are in agreement with the aforesaid conclusion of the learned Single Judge. We have already reproduced the conclusions of the Inquiry Officer and reading thereof would clearly indicate that on the basis of the evidence on record some aspects of the charge which were proved are stated and some of the aspects which could not be proved have also been

categorically recorded by the Inquiry Officer. It is not the case of the appellant that there was no evidence at all and the case is based on “no evidence”. The question of lack of evidence or there being insufficient evidence could not have been gone into by the Industrial Tribunal.

9. It is argued before us by the learned counsel for the appellant that there was a facility provided to the employees of Indian Airlines in respect of granting of passages and this facility could be utilized by family members. He further submits that vide Circular dated 18.05.1979 definition of “Family” was clarified and as per which Spouse, children, parents, brothers, sisters and dependent relatives or dependents in the household could avail this facility. It was argued that while brothers and sisters are included, the daughters-in-law or sons-in-law were not included in the definition of “Family”. It is argued that inspite of the Circular aforesaid, daughters-in-law and sons-in-law of the employees were availing this facility and to regularize the same, Circular dated 11.01.1997 was issued in supersession to the aforesaid Circular dated 18.05.1979 whereby sons-in-law and daughters-in-law were also included in the definition of Family for grant of Staff on Leave passage. It is further submitted that CBI inquiry was ordered and the CBI found many

employees had committed similar irregularities / illegalities but no action was taken against others whereas action was taken against the appellant which amounts to hostile discrimination. It is argued by learned counsel for the appellant that the Tribunal has held that no proper inquiry was conducted and inquiry stood vitiated on that ground and these findings are wrongly set aside by the learned Single Judge. At the end, it is submitted that the punishment imposed, in the aforesaid circumstances, is highly disproportionate and lenient view should be taken by imposing lesser punishment viz. that of compulsory retirement.

10. Insofar as the plea of discrimination is concerned, we cannot accept the same. Even if it is presumed that some other employees had also availed the benefits for daughter-in-law etc. and no action was taken against them that would not mean that the action should not have been taken against the appellant as well. Doctrine of equality cannot operate in negative; it may call for taking action against other erring officials as well but that would not mean that if departmental action is taken against the appellant that should be nullified on the aforesaid ground once it is found that the action of the appellant amounted to misconduct and on the basis it was presumably for the employer to initiate an inquiry. That apart no

special instances are given of those persons who had allegedly indulged in similar malpractices and against whom action is not taken. We may record the submission of Mr. Lalit Bhasin that action has been taken against other persons and in respect of some persons even the criminal cases are pending on the basis of CBI report which is relied upon by the appellant himself.

11. The charge is not that the appellant utilized the interline passage for his daughter-in-law while she was not entitled thereto, the charge is graver in nature viz. it was sought to be utilized by declaring her as daughter instead of daughter-in-law and therefore it becomes a case of mis-declaration. When the matter is examined in this view, it also cannot be said that the punishment imposed is disproportionate.

12. Coming to the argument that inquiry was vitiated as it was in violation of principles of natural justice, we find that the learned Single Judge has dealt with this aspect also in great details and this can be seen from the following discussion contained in the order of the learned Single Judge which is as under:

“The National Industrial Tribunal has also recorded a clear finding that the workman had admittedly been

given full opportunity to cross-examine his witnesses before the Enquiry Officer. The Tribunal had upset the findings of the Enquiry Officer primarily premised on the ground that since the cross-examination of J.S.Emmanuel had not been concluded it could not be relied upon. The Apex Court has time and again held that the strict rules of evidence are not applicable to enquiry proceedings. Reliance by Enquiry Officer on the material produced by PW J.S.Emmanuel was fair as it was not the case of R.L.Moria that the materials on which the Enquiry Officer had placed reliance were not genuine documents; his only grievance being that only certified copies of the same had been produced and not the originals. Certified copies of documents are also admissible under the Evidence Act; merely because an application for leading secondary evidence to prove certified copies was not filed would not take away the genuineness of the documents especially in view of the fact these documents were in fact admitted documents and never disputed by the petitioner. In these circumstances, the findings of the Tribunal that since the original documents were not produced it amounted to a violation of principles of natural justice is an illegality and was an unwarranted and unjustifiable

inference in the findings of the Enquiry Officer. That apart the Enquiry Officer had based his findings not only on the version of J.S.Emmanuel but five other PWs who had also been examined and cross-examined in depth and detail. In arriving at his conclusion Enquiry Officer had relied upon the un rebutted version of M.C.Sahdev which was to the effect that both the petitioner namely R.L.Moria and his son Sandeep Moria were well known to him. After processing the four interline letters on the telephonic requests of R.L.Moria, these tickets were handed over by him to R.L.Moria at his residence. The processing of these tickets at the Air India level were done by PW Baldev Kumar. Version of Baldev Kumar has also been relied upon by Enquiry Officer to this extent. He had admitted his signature on the interline request in respect of Sandeep Moria. It was also an undisputed fact that Anita Moria was the daughter-inlaw of the petitioner and did not fit into the definition of “family” entitling her to free ticket; she had been described s a daughter. She had admittedly been stopped on 10.3.1993 at the IGI Airport by Enforcement Directorate when she along her husband Sandeep Moria were boarding the flight from Delhi to Singapore on the free interline requests. Baldev

Kumar and M.C. Sahdev working in the Air India and Indian Airlines were colleagues of R.L.Moria; they had direct linkage of relationship with Sandeep Moria. Who was the ultimate beneficiary of these interline request tickets which had been issued to Sandeep Moria and Anita Moria on which they had proceeded to travel on 10.3.1993? It was R.L.Moria and his “family” .

13. We thus do not find any merit in these appeals which are accordingly dismissed.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

APRIL 19, 2012

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