

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

+ **W.P (C) No. 2076/2011**

% *Judgment reserved on: 31st July, 2013*
Judgment delivered on: 9th September, 2013

SHRI HARBHAJAN SINGH Petitioner
Through: Mr.R.Venkataramani, Senior Advocate
with Mr. Vijay Kumar and Ms.Neelam
Singh, Advocates.

Versus

AIRPORTS AUTHORITY OF INDIA Respondent
Through: Mr. K.K. Rai, Senior Advocate with
Mr. Digvijay Rai, Advocate.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. This is the second round of litigation *inter se* the parties before this Court.
2. Vide the instant petition, the petitioner seeks quashing of the termination order dated 27.06.1997, inquiry report dated 09.08.2010 passed contrary to the directions passed vide order dated 26.03.2010 by the hon'ble Supreme Court of India and impugned order dated 27.01.2011 of the respondent/Airports Authority of India ('AAI'),

whereby the reply of the petitioner to second show cause notice in respect of the proposed punishment was rejected.

3. He is also seeking directions against the respondent/AAI to reinstate him with all consequential benefits and seniority in-line with batchmates selected from departmental candidates and with full back wages with interest considering erosion in the purchasing power of money due to inflation or considering current wages.

4. Brief facts of the case are that the petitioner was appointed as Junior Engineer on 13.05.1994 and got promoted as Assistant Engineer. Pursuant to appointment letter dated 16.05.1996, after relieving from the IGI Airport, Delhi, he joined as an Assistant Executive Engineer at Goa Airport Project on 05.08.1996. Thereafter, he was transferred to Srinagar Airport.

5. On 21.02.1997, Contractor, Mr. V.K. Gupta, Proprietor of M/s Aercomfort (an Airconditioning Contractor of AAI), whose bills were not cleared and being harassed for not obliging both the employees by giving bribe, lodged a complaint against the petitioner and one Mr. Asuthosh, Junior Engineer. On 22.02.1997, Executive Engineer, Mr. V.V.G. Raju wrote a letter to Contractor Mr. Gupta about the standard work being carried out at the Goa Project as well as non-compliance of technical and commercial instructions passed on to the Contractor to rectify the works at site. On 26.02.1997, Mr. A.K. Mishra, the then Superintending Engineer and Contractor Mr. Gupta travelled together from Delhi to Goa. On 27.02.1997, Investigating Officer-cum-SE Goa Project and Mr. V.V.G. Raju, Site Incharge, Goa Project were together

to conduct the so called inquiry. On 03.03.1997, Executive Engineer Mr. V.V.G. Raju informed the petitioner that he required to improve his performance. On 04.03.1997, Mr. A.K. Mishra submitted his preliminary inquiry report. On that date itself, the Chief Engineer issued the transfer order based on the aforesaid recommendation dated 04.03.1997 of Mr. A.K. Mishra.

6. On 06.03.1997, Additional Chief Engineer submitted his recommendations wherein he recorded that allegation against the petitioner was of serious nature. On 07.03.1997, the Chief Engineer sought an explanation from the petitioner as to why he should not be removed from service. Pursuant to transfer order dated 04.03.1997, the petitioner was relieved from Goa Airport to Srinagar Airport on 30.04.1997. The Chief Vigilance Officer vide his note dated 04.06.1997 recommended petitioner's termination with immediate effect. Accordingly, on 06.06.1997, the Chief Vigilance Officer got the approval of the Chairman on the note dated 04.06.1997.

7. Consequently, the petitioner was terminated from service vide order dated 27.06.1997, which is as under:-

“The Competent Authority has decided that the services of Shri Harbhajan Singh, AEE(E) (on probation) at Srinagar Airport be terminated with immediate effect as per para 4 and 5 of the terms and conditions of the offer of appointment.”

8. Being aggrieved, the petitioner filed W.P.(C) No. 2773/2000 before this Court, which was allowed vide judgment dated 13.02.2009. The relevant portion thereof reads as follows:-

“18. Here, it is respondents own case that the services of the petitioner were terminated with a view to punish him for professional misconduct, threats and demanding illegal gratification while holding a public office. Furthermore, admittedly, no opportunity was given to the petitioner to present his case and the enquiry, such as it was, was conducted behind his back. There appears to be no defence to this petition in the light of the settled law. This leaves me in no doubt that the entire object of the exercise was to remove the petitioner for something about which the respondents had convinced themselves, but did not think it advisable or necessary to give the petitioner any opportunity to clear his name. I have no doubt that serious misconduct formed the foundation of the petitioner’s dismissal order.

19. Under the circumstances, the impugned order dated 27th June, 1997 discharging the petitioner is quashed and set aside. The respondents are directed to reinstate the petitioner along with all consequential seniority and benefits within one month from today. It is open to the respondents to initiate any fresh proceedings against the petitioner if they are so inclined in accordance with law within three months from today.”

9. The respondent/AAI has challenged the same vide LPA No. 230/2009, which was dismissed by the Division Bench of this Court vide judgment dated 20.07.2009. The same reads as under:-

“ In fact, the learned Single Judge has in the impugned order quoted the appellant Chairman’s approval of the decision to terminate respondent’s services which reads as under:-

“The Chairman, AAI (NAD) has approved termination of the probation of Shri Harbhajan Singh Bhatti, AEE (E) and Shri Ashutosh Sawarkar, JE(E) of CA, Goa with immediate effect for the

misconducts mentioned in the report of Sh. A.K. Mishra SE (E)”.

Accordingly, in our view, the learned Single Judge has rightly concluded that as the appellate authority had come to a definite conclusion with regard to respondent’s misconduct before issuing the termination letter, the misconduct was the foundation and not the motive of the termination order.

Furthermore, as admittedly the termination order had been issued without proper inquiry and without giving opportunity to respondent to present his case, the termination order is liable to be set aside.

*In fact, the Supreme Court in **Nehru Yuva Kendra Sangathan v. Mehtab Alam Laskar** reported in (2008) 2 SCC 479 has held as under:-*

“16. It is, however, well-known that when the foundation for such an order is not the unsatisfactory performance on the part of the employee but overt acts amounting to misconduct, an opportunity of hearing to the concerned employee is imperative. In other words, if the employee is found to have committed a misconduct, although an order terminating probation would appear to be innocuous on its face, the same would be vitiated, if in effect and substance it is found to be stigmatic in nature.

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19. When the report submitted by a competent authority in a disciplinary proceeding forms the foundation therefore, it would be stigmatic in nature as such an order will have civil consequences.”

10. The respondent/AAI being aggrieved with the aforesaid two judgments passed by this Court challenged the same by way of SLP (C) No(s).35309/2009 before the Apex Court. The Division Bench of

the Hon'ble Supreme Court passed the order dated 26.03.2010, which reads as under:-

*“ Stand over for three months.
In the meantime, we are granting permission to the Management to hold an enquiry into the alleged misconduct.
We will pass further orders depending upon the result of the enquiry.”*

11. Thereafter, while disposing of Civil Appeal No. 8228/2010 arising out of said SLP No. 35309/2009, the Apex Court has passed the following order on 20.09.2010:-

“Leave granted.

Mr. Gopal Subramaniam, learned Solicitor General, states that in pursuance of the order dated March 26, 2010, a Committee was constituted for holding an inquiry into the alleged misconduct of the respondent. He further states that the Committee has concluded the inquiry and submitted its report.

Counsel for the respondent tried to submit that the inquiry said to have been held by the Committee was not proper, fair or in accordance with the permission granted by the Court.

At this stage we are not inclined to go into that question at all.

As stated by the Solicitor General, a report is submitted after holding enquiry into the alleged misconduct by the respondent. The proceeding must, therefore, be allowed to reach its logical conclusion. The appellant may proceed on that basis of the enquiry report, in accordance with law, and pass final orders after giving the respondent the second show cause

notice along with a copy of the enquiry report. If the respondent is aggrieved by the final order passed by the Authority, it will be open to him to seek his remedy in accordance with law.

This order passed by us shall substitute the operative order of the High Court.

The appeal stands disposed of with the above observations and directions.”

12. Subsequently, the respondent/AAI issued show cause notice dated 11.06.2010 against the petitioner, which reads as under:-

*“**WHEREAS**, Shri Harbhajan Singh, Ex-Asstt. Executive (Engg. (Elect.)), joined Airports Authority of India as Asstt. Executive Engg. (Elect.) on 05.08.1996 and was posted to Goa Airport. During his posting at Goa, a complaint was received from a contractor in respect of Shri Harbhajan Singh.*

***AND, WHEREAS**, an officer was deputed to investigate the complaint. The Preliminary Investigating Officer found that the complaints made by the contractor were correct and Shri Harbhajan is accountable for demanding commission from the contractor, drunken threatening over telephone and delaying in passing the bills of the contractor. Consequently, the services of Shri Harbhajan Singh was terminated by giving one month's pay in lieu of notice period w.e.f. 27.06.1997 under clause IV & V of the offer of appointment, according to which “the services of an officer on probation are liable to be terminated without assigning any reason by giving one month's notice or payment of one months salary in lieu thereof.” As he was under probation, no charge sheet was required to be issued to him.”*

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As directed by the Hon'ble Supreme Court, a Committee is being constituted for holding the enquiry.

NOW, THEREFORE, in view of the above Shri Harbhajan Singh is directed to make his submission/representation, if any, to plead his case. His explanation supported by documents, if any, must be submitted within 15 days of the receipt of this 'Show Cause Notice', failing which it will be presumed that despite affording him an opportunity, he has no submissions to make in his defence. It is also informed that the submission/representation made by him in response to the 'Show Cause Notice' shall be placed before the Inquiry Committee constituted on the directions of the Hon'ble Supreme Court order dated 26.03.2010. The Committee after perusing his submission and all other available record, may afford Shri Harbhajan Singh an opportunity to make submissions he may like to and also to be heard in person.

The copies of the following documents are also enclosed herewith:-

- 1. Complaint dated 21.02.97 received from M/s AERCOMFORT.*
- 2. Preliminary investigation report dated 04.03.97.*
- 3. Directions of Supreme Court dated 26.03.2010.*

13. Consequently, vide office order dated 11.06.2010, the competent authority has constituted an Inquiry Committee consisting of Shri G.K. Chaukya1, ED(ENGG) as Chairman, Shri S.S. Sandhu, GM (Vig), Shri Shekhar Khanna, GM(Fin) and Shri Vilas Bhujang, GM (Pers) as Members and Shri M. Natarajan, SM (Pers) as Member Secy. of the said Committee.

14. The petitioner filed reply to the show cause notice mentioned above. In its reply he has prayed as under:-

“Very humbly I would like to submit here before Hon’ble Enquiry Committee of AAI constituted under the directions of Hon’ble Chief Justice of India, Hon’ble S H Kapadia & Hon’ble Justice Swatantar Kumar of the Hon’ble Supreme Court of India.

That, there is no basis of allegations leveled by CVO which was duly approved by the then CHAIRMAN, AAI. The CVO least bothered to ask the SE (e)-II Sh. A.K. MISHRA to substantiate the allegations with documentary evidence/proof. It is humbly submitted that no one should simply jump to the conclusions when the career of an employee is at stake.”

15. It is pertinent to mention here that the proceedings of the Inquiry Committee are as under:-

*“Committee - Please introduce yourself.
Harbhajan Singh- I, Harbhajan Singh, joined IAAI on 13.05.1994 as JE at IGIA Terminal I. Then I was promoted as AE w.e.f.11.12.1995 at IGIA Terminal I. On 05.08.1996, I joined in AAI (NAD) as Astt. EE at Goa Airport against open advertisement for the post of AEE reserved for SC/ST under special recruitment drive in 1995. I was there as AEE at Goa on probation under Executive Engineer, Shri VVG Raju. I was looking after the project work including building internal electrical sub-station works, and air conditioning work etc. On 11.04.1997, I was transferred to Srinagar Airport as per the order of Airport Director, Goa and joined Srinagar Airport. On 27.06.1997, my services were terminated vide letter dated*

SR/AAI/CONF/ 25/dated 27.06.1997, while I was on leave.

Committee - Can you please submit any identification proof?

Harbhajan Singh - I am submitting the original letter issued by Airport Authority of India dated 20.07.2010 towards the proof.

Committee - Whether the documents submitted by you, vide letter dated 26.06.2010, in response to the Show Cause Notice dated 11.06.2010 are the final documents or would you like to make additional submissions, if any?

Harbhajan Singh - I have given my submission dated 26.06.2010 in response to the AAI Show Cause Notice dated 11.06.2010. Further, I would like to submit additional 5 documents (5 sets) as follows, vide my letter dated 29.07.10:

- (i) Letter of OSD ED(P) dated 06.10.1997 to NCSC/ST*
- (ii) ED(P) letter dated 04.12.1997 to NCSC/ST as per directions of former AAI's Chairman Shri SK Narula*
- (iii) Order of Hon'ble National Commission of SC/ST No. H-4/T & CAS-SSW-IV dated 09.06.1998*
- (iv) Order of Hon'ble Single Bench of Delhi High Court dated 13.02.2009.*
- (v) Order of Hon'ble Chief Justice (Double Bench) of Delhi High Court dated 20.07.2009*

In addition to the above, I further submit two pages of addendum at page 2 & 3 of my letter dated 29.07.2010 submitted today before the Committee.

Committee - Do you have further submission if any, in additional to the submissions made so far.
Harbhajan Singh - No Sir, These are my final written submissions."

16. The core issue involved in the instant case is whether the departmental inquiry conducted against the petitioner was in consonance with the principles of natural justice.

17. The Hon'ble Supreme Court granted liberty to the respondent/AAI to conduct the departmental inquiry against the petitioner, which means not only full-fledged and regular departmental inquiry but also a departmental inquiry with all the trappings of principles of natural justice. Such a full-fledged inquiry was necessary in view of the fact, the Hon'ble Supreme Court did not overturn the concurrent findings of this Court that the alleged instance of misconducts were the foundation of the order of termination and that mere assessment of performance was not the basis.

18. Mr. R. Venkataramani, learned senior counsel for the petitioner has submitted that on 29.07.2010, the petitioner was called by the respondent/AAI, however, none of the questions put to him pertained to alleged misconduct in respect of which the departmental inquiry was mandated to be conducted.

19. He submitted that the petitioner was denied the opportunity to inspect/test the documents relied upon by the inquiry officer. Similarly, the petitioner was denied the right to cross-examine the complainant to test his version/complaint as well as the then

Superintendent Engineer, Mr. A.K. Mishra, whose report dated 04.03.1997 constituted the foundation for imputing misconduct against the petitioner and the author of the letter dated 03.03.1997 which was never been part of the judicial record till 09.08.2010. Even this document was not supplied to the petitioner along with the show cause notice issued prior to the report of alleged fresh inquiry.

20. Learned senior counsel submitted, the charges remained in the realm of allegations and there was no occasion for testing the charges as well as the aforementioned documents through the right to cross-examination. The said right was more valuable when on the basis of a false complaint the career of the petitioner had been ruined. Therefore, the veracity of the charges remained in the realm of allegation and did not get translated into credible evidence.

21. Also submitted that mere presumption cannot be a ground to terminate the services of an employee despite being the fact that he was a probationer. Thus, the principles of natural justice were flagrantly discharged resulting in the fairness in conducting inquiry becoming a casualty.

22. The inquiry report dated 09.08.2010 is grounded on the then Superintendent Engineer Mr. A.K. Mishra's report dated 04.03.1997, which was concurrently rejected by the learned Single Judge and Division Bench of this Court. Reliance on the then Superintendent Engineer, Mr. A.K. Mishra's report made almost 13 years ago at the back of the petitioner cannot be the basis for bringing home the charges against him.

23. He further submitted that the respondent/AAI failed to prove the charges while admitting that there were inconsistencies in telephone calls. The telephone was the only media of communication between the complainant and the petitioner as both being stationed at different locations and also having not met even before this complaint when the complainant and Mr. A.K. Mishra, Preliminary Investigating Officer travelled and came together at Goa Project from Delhi on 26.02.1997, the petitioner met them for the first time.

24. Learned senior counsel submitted that the two major allegations, out of total three allegations of misconduct, are based on telephonic calls and third allegation is simply concerned with not favouring the Contractor in approving his bad work, so no question of any allegation as alleged with respect to misconduct and bad performance of the petitioner arose and thereby the controversial Mr. A.K. Mishra's report and Contractor's complaint loses its stand.

25. Learned senior counsel further submitted that the previous statement recorded in the year 1997 ought to have been ignored and fresh inquiry ought to have been conducted strictly in consonance with the principles of fairness and natural justice.

26. It is further submitted that it is an admitted case of the respondent/AAI that they had conducted a preliminary inquiry in the year 1997 against the petitioner, which was quashed/set aside by this Court and even the Hon'ble Supreme Court has not disturbed the same, therefore, how the respondent/AAI can again conduct another

preliminary inquiry that too in the complete violation of the principles of natural justice.

27. Mr. Venkataramani submitted that mere lip service and asking four questions from the petitioner irrelevant to the issue involved cannot be termed as 'inquiry' in the eyes of law and the committee did only a job of compiling the untested old documents.

28. He submitted that since the alleged fresh inquiry was not done with fairness and in compliance of the principles of natural justice, all the consequential steps like issuance of second show cause notice and imposition of penalty after rejecting the petitioner's representation against the second show cause notice became *ipso facto* illegal.

29. Learned senior counsel for the petitioner has submitted that the main contentions of the respondent/AAI were two fold; petitioner was a probationer and he willingly participated in the alleged fresh departmental proceeding/inquiry and never raised any objections.

30. So far as the objection pertaining to petitioner's being a probationer is concerned, once the order of the Hon'ble Supreme Court directing the respondent/AAI to conduct inquiry and take it to its logical corollary, it was incumbent upon the respondent/AAI to conduct fresh inquiry consistent with the principles of fairness and natural justice, regardless of the fact that petitioner was a probationer or a regular employee. Even otherwise, it is well settled law that the probationer's services cannot be terminated on the ground of misconduct without holding proper departmental inquiry.

31. So far as the second contention that the petitioner never raised any objection regarding fairness of the inquiry is concerned, the same is belied by the records of the case. It is reiterated that the said *ex parte* report of the year 1997, did not become evident and no reliance could have been placed upon it. Therefore, keeping in view the aforesaid, alleged fresh inquiry proceeding as well as the termination order dated 27.01.2011, whereby the respondent/AAI contended that termination of the services of the petitioner was in order, is liable to be quashed and the petitioner is entitled for all consequential benefits including reinstatement and full back wages, as directed by the learned Single Judge in its judgment dated 13.02.2009. The Division Bench had modified the order of the learned Single Judge keeping in view that no inquiry was conducted; however, since the respondent/AAI did not conduct the inquiry, as required under law, therefore, he is entitled for complete back wages.

32. The petitioner has relied upon a case of ***Meenglas Tea Estate Vs. The Workmen, AIR 1963 SC 1719 (V 50 C 256)***, wherein the Apex Court has observed as under:

“(4) The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was, questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported.

He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and these requirements must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statement made by any witness tendered in evidence. The enquiry, such as it was, was made by Mr. Marshall or Mr. Nichols who were not only in the position of judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the Company to prove the allegation against each workman de novo before it.”

33. Also relied upon a case of ***Kuldeep Singh Vs. Commissioner of Police & Ors. (1999) 2 SCC 10***, wherein it is observed as under:

“[In State of Mysore v. Shivabasappa](#) Shivappa Makapur AIR 1963 SC 375, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since

the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.

In Kasoram Cotton Mills Ltd. v. Gangadhar State of U.P. AIR 1964 SC 708 and State of UP vs. Om Prakash Gupta 1969 3 SCC 775, the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent.

Having regard to the law as set out above, and also having regard to the fact that the factors set out in Rule 16(3) of the Delhi Police (F&A) Rules, 1980, did not exist with the result that Rule 16(3) itself could not be invoked, we are of the opinion that the Enquiry Officer was not right in bringing on record the so-called previous statement of witnesses Radhey Shyam and Rajpal Singh.”

34. In the case of ***Bishan Lal Gupta Vs. The State of Haryana & Ors. 1978 1 SCC 202***, the Apex Court has observed as under:

“13. In *Shamsher Singh's case (supra)* this Court said:

No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for a similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given

case amount to removal from service within the meaning of Article 311(2) of the Constitution.

14. These observations must, we think, be meant to cover those cases, where, even though the probationer may have no right to continue in service, yet, the order terminating his services casts a stigma on his name. This means that the individual concerned must suffer a substantial loss of reputation which may affect his future prospects. In that case, Justice requires a fuller hearing. If, however, after going into the particular facts and circumstances of a case the Court finds, as seems to be the position in the case before us, that the enquiry conducted and notices given were intended only to arrive at a finding on the desirability of continuing a person in service, and more serious action was not contemplated, it means that no stigma was intended to be cast. It may be that, in some cases, the mere form does not indicate the exact nature and result of the proceeding judged by its nature and its effects upon a probationer. To some extent the courts are bound to take into account what the incontrovertible- evidence disclosed. It may conclude that, even if the reputation of a probationer was to some degree affected by what took place, yet, if those facts could not reasonably be disputed by him, it provided a sufficient ground for termination his services. There is, in such cases, no injustice.”

35. Learned counsel for the petitioner also relied upon a case of ***Dipti Prakash Banerjee Vs. Satyendra Nath Bose, National Centre for Basic Sciences, Calcutta and Ors. 1999 3 SCC 60***, wherein it is held as under:-

“If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as ‘founded’ on the allegations and will be

bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

As pointed out in [Bishan Lal Gupta vs. State of Haryana](#) [1978 (1) SCC 202], an ordinary inquiry by a show cause might be sufficient for the purpose of deciding whether the probationer could be continued. But where the findings regarding misconduct are arrived at without conducting a regular departmental inquiry, then the termination order will be vitiated. The learned senior counsel for the respondent relied upon [Hindustan Paper Corporation vs. Purnendu Chakraborty](#) [1996 (11) 404] where it was held that for termination of 'lien', no detailed inquiry was necessary and that if that be the position, termination of probation stands on a lesser footing. But the case turned upon a special Rule in that case which specifically provided that for 'termination of lien' a regular inquiry was not necessary. That case cannot therefore be of any assistance to the respondents."

36. On the other hand, Mr.K.K.Rai, learned Senior counsel appearing on behalf of the respondent/AAI has submitted that pursuant to order dated 26.03.2010 of the Apex Court, the respondent/AAI constituted an inquiry committee and a show cause notice was issued to the petitioner vide order dated 11.06.2010 directing him to make a submission/representation and to plead his case with supporting

documents. The petitioner filed his representation dated 26.06.2010 accordingly. He also appeared before the inquiry committee on 29.07.2010 and sought permission to submit five additional documents. The inquiry committee submitted its report dated 09.08.2010, wherein it held that the termination of the services of the petitioner, a probationer, was in order.

37. Further submitted that the Hon'ble Supreme Court had granted liberty to the respondent/AAI to proceed on the basis of the inquiry report in accordance with law and pass final order after giving the petitioner the second show cause notice along with a copy of the inquiry report and if the petitioner is aggrieved by the final order passed by the respondent/AAI, he could seek his remedy in accordance with law.

38. Accordingly, a show cause notice dated 26.10.2010 was issued to the petitioner along with a copy of the report dated 09.08.2010 and after taking into consideration all the facts and circumstances of the case and keeping in view the principles of natural justice, the competent authority took a view similar to that of the committee and the disciplinary/appointing authority held that termination of services of the petitioner was in order.

39. Learned counsel further submitted that as the petitioner was a probationer, therefore, the respondent/AAI was not bound to hold a full-fledged inquiry. On this issue, the Apex Court has explained the principles of natural justice in *Om Prakash Mann Vs. Director of*

Education (Basic) & Ors., 2006 (7) SCC 558, wherein it is held as under;-

“10. Admittedly, the enquiry was also initiated against the appellant when he was on probation. It is well settled principle of law that if the probationer is dismissed/terminated during the period of probation no opportunity is required to be given and, therefore, the question of violation of principle of natural justice does not arise in the given facts of this case.”

40. Also relied upon the case of **Bishan Lal Gupta** (*supra*), wherein it is held as under:

“16. It is impossible to lay down propositions which are so clear cut as to cover every conceivable case. Indeed, an attempt to do so may make the law too rigid. It is only if patent facts disclose a serious enough infringement of law as well as indubitably damaging and undeserved consequences upon a petitioner that the Court's conscience could be so moved as to induce it to interfere under Article 136 of the Constitution. We are quite certain that this is not one of those cases. On this ground alone this case could not be one in which we could grant special leave to appeal.

17. There is, however, another point of view also, already indicated above, from which the case could be considered. It is that the High Court held that this was not really a case of punishment. On this aspect of the case, the High Court rightly seems to us to have proceeded on the view that there should be at least some difference, as to the nature of or the depth of the inquiry to be held, as between a probationer whose services can be terminated by a notice and a confirmed Govt. servant who has a right to continue in service until he reaches a certain age. It is true that neither can be "punished" without a formal

charge and inquiry. But, a less formal inquiry may be sufficient, as it was here, to determine whether a probationer, who has no fixed or fully formed right to continue in service (treated in the eye of law as a case of "no right" to continue in service), should be continued. A confirmed Govt. servant's dismissal or removal is a more serious matter. This difference must necessarily be reflected in the nature of the inquiries for the two different purposes. We are satisfied that, on facts found, the findings on petitioner's suitability to continue in service were rightly 'not interfered with, It was, in the eye of law, not a case of punishment but of termination of service simpliciter. The petitioner should be thankful that a more serious view was not taken of his shortcomings.'"

41. Learned counsel for the respondent/AAI also relied upon a case of ***Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759***, wherein it is held as under:

"16. The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court

cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, observed:

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court.”

42. Learned Senior counsel submitted that the inquiry committee did take into consideration all the objections of the petitioner and passed a valid order. The objection of telephonic conversation has been duly noted by the committee as would be apparent from paragraph 14.6 of

the report dated 09.08.2010 of the committee, which is at page 36 and reads as under:-

“14.6 The Committee observed that on the issue of telephonic call, there are inconsistencies.”

43. Upon hearing learned counsel for the parties, it is emerged that the petitioner was initially terminated vide order dated 27.06.1997, which was challenged by the petitioner vide W.P.(C) No. 2773/2000. The same was allowed by the Coordinate Bench of this Court vide judgment dated 13.02.2009 in favour of the petitioner. The respondent/AAI challenged the same vide LPA No. 230/2009, however, the said LPA was dismissed by the Division Bench of this Court vide judgment dated 20.07.2009.

44. Being aggrieved, the respondent/AAI filed SLP No. 35309/2009, which was converted into Civil Appeal No. 8228/2010. Vide order dated 20.09.2010, the same was disposed of by the Apex Court on the statement of learned Solicitor General that in pursuance of order dated 26.03.2010, a committee was constituted for holding an inquiry into the alleged misconduct of the petitioner.

45. As the learned Solicitor General requested the Apex Court that the proceedings may be allowed to reach its logical conclusion, therefore, while granting permission to the respondent/AAI to proceed in accordance with law and pass final orders after giving second show cause notice to the petitioner along with a copy of the inquiry report. The petitioner was given liberty, if aggrieved by the final order passed by the Authority, to seek his remedy in accordance with law.

46. Accordingly, the respondent/AAI issued show cause notice dated 11.06.2010 against the petitioner and reply to the same was filed by him. Admittedly, Contractor Mr. V.K.Gupta, Proprietor of M/s Aercomfort (an Airconditioning Contractor of AAI) made a complaint dated 21.02.1997 against the petitioner and one Mr.Ashutosh, Junior Engineer for not clearing his bills and being harassed for not obliging both the employees by giving bribe. It is also not in dispute that on 22.02.1997, Executive Engineer, Mr.V.V.G. Raju wrote a letter to the Contractor Mr. Gupta about the standard work being carried out at the Goa Project as well as non-compliances of technical and commercial instructions passed on to the Contractor to rectify the works at site. It is also an admitted fact that on 26.02.1997, Mr. A.K. Mishra, the then Superintendent Engineer and Contractor/Complainant, Mr. Gupta travelled together from Delhi to Goa. On 27.02.1997, Investigating Officer-cum-SE Goa Project and Mr. V.V.G. Raju, Site Incharge, Goa Project were together to conduct an inquiry on the complaint made by Mr. V.K. Gupta. On 04.03.1997, Mr. A.K. Mishra submitted his preliminary inquiry report on the complaint made by Contractor named above against the petitioner. On that date itself, the Chief Engineer had issued the transfer order based on the aforesaid recommendation dated 04.03.1997 of Mr. A.K. Mishra, the then Superintending Engineer.

47. On the report submitted by the Additional Chief Engineer on 06.03.1997, the Chief Engineer sought an explanation from the petitioner on 07.03.1997 as to why he should not be removed from the service. The Chief Vigilance Officer vide his note dated 04.06.1997

recommended petitioner's termination with immediate effect. Consequently, he was terminated from service vide order dated 27.06.1997.

48. As discussed above, the said termination order was set aside by the Coordinate Bench of this Court vide its judgment dated 13.02.2009 passed in W.P.(C) No.2773/2000 and upheld by the Division Bench vide its judgment dated 20.07.2009 passed in LPA No. 230/2009.

49. It is worth noting that after taking the liberty from the Supreme Court, show cause notice dated 11.06.2010 was issued by the respondent/AAI to the petitioner stating therein that during his posting at Goa, a complaint was received against him from the Contractor. The Preliminary Investigating Officer found that the complaints made by the Contractor were correct and the petitioner was accountable for demanding commission from the Contractor, drunken threatening over telephone and delaying in passing his bills. Accordingly, the petitioner was directed to make his submission/representation, if any, to plead his case. Accordingly, the petitioner filed reply to the same.

50. Consequently, vide office order dated 11.06.2010, the Competent Authority had constituted an inquiry committee.

51. The core issue involved in the instant petition is that whether the departmental inquiry conducted against the petitioner was in consonance with the principles of natural justice. The Apex Court granted liberty to the respondent/AAI to conduct the departmental inquiry against the petitioner, which means a departmental inquiry with

all the trappings of principles of natural justice. A full-fledged inquiry was necessary in view of the fact that the Apex Court did not overturn the concurrent findings of this Court that the alleged instance of misconducts were the foundation of the order of termination. Assessment of performance of petitioner was not the basis of termination.

52. In the inquiry, the petitioner was called by the respondent/AAI, however, none of the questions put to him pertained to alleged misconduct in respect of which the departmental inquiry was mandated to be conducted. Moreover, no opportunity was granted to the petitioner to inspect/test the documents relied upon by the inquiry officer. Similarly, the petitioner was denied the right to cross-examine the complainant to test his version/complaint as well as the then Superintending Engineer, Mr. A.K. Mishra, whose report dated 04.03.1997 constituted the foundation for imputing misconduct against the petitioner and the author of the letter dated 03.03.1997, which has never been part of the judicial record till 09.08.2010. Even this document was not supplied to the petitioner along with the show cause notice issued prior to the report of alleged fresh inquiry.

53. Accordingly, the charges remained in the realm of allegations and there was no occasion for testing the charges as well as the aforementioned documents through the right to cross-examination. The said right was more valuable when on the basis of a complaint; the career of the petitioner had been ruined. Therefore, the veracity of the

charges remained in the realm of allegation and did not get translated into credible evidence.

54. The inquiry report dated 09.08.2010 is grounded on the then Superintending Engineer Mr. A.K. Mishra's report dated 04.03.1997, which was concurrently rejected by the Coordinate Bench as well as by the Division Bench of this Court. Therefore, reliance on the then Superintendent Engineer, Mr. A.K. Mishra's report, which was almost 13 years old and being conducted at the back of the petitioner cannot be made the basis for bringing home the charges against him.

55. It is not in dispute that the respondent/AAI admitted that there were inconsistencies in telephone calls. Whereas the telephone was the only media of communication between the complainant and the petitioner as both being stationed at different locations and also having not met even before this complaint when the complainant and Mr. A.K. Mishra, Preliminary Investigating Officer travelled and came together at Goa Project from Delhi on 26.02.1997.

56. Two major allegations, out of total three allegations of misconduct, are based on telephonic calls and third allegation is simply concerned to not favouring the Contractor in approving his bad work, so no question of any allegation as alleged with respect to misconduct and bad performance of the petitioner arose and thereby the controversial Mr. A.K. Mishra's report dated 04.03.1997 and Contractor's complaint dated 21.02.1997 loses its stand. The respondent/AAI ought to have ignored the previous report dated

04.03.1997 and should have held fresh inquiry strictly in consonance with the principles of fairness and natural justice.

57. Admitted fact of the respondent/AAI is that they had conducted a preliminary inquiry in the year 1997 against the petitioner, which was quashed/set aside by this Court and even the Hon'ble Supreme Court has not disturbed the same. Consequently, the respondent/AAI was at fault to base its decision of removal of the petitioner from service on the previous preliminary inquiry report, which is in complete violation of the principles of natural justice.

58. As was held in ***Bishan Lal Gupta***'s case (*supra*) and as relied upon by the respondent/AAI, no doubt, there is a difference in conducting an inquiry between a probationer, whose services can be terminated by a notice, and a confirmed Govt. servant. Latter has a right to continue in service until he reaches to a certain age. However, it is true that neither can be punished without a formal charge and inquiry. A less formal inquiry may be sufficient as to whether the probationer is fit to continue in service.

59. But it is also settled law that the probationer's services cannot be terminated on the ground of misconduct without holding a proper departmental inquiry. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires.

Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an inquiry of this kind and these requirements must be substantially fulfilled before the result of the inquiry is accepted.

60. In the present case, neither any witness was examined nor any statement made by any witness was tendered in evidence. Therefore, there was no opportunity to the person charged, i.e., the petitioner to cross-examine them and indeed the respondent/AAI drew their own knowledge of incident instead of bringing the evidence on record.

61. So far as the objections pertaining to the petitioner being a probationer is concerned, once the order of the Hon'ble Supreme Court directing the respondent/AAI to conduct an inquiry and take it to the logical corollary, it was incumbent upon the respondent/AAI to conduct a fresh inquiry consistent with the principles of fairness and natural justice; regardless of the fact that petitioner was a probationer or a regular employee. Even otherwise, it is well settled law that the probationer's services cannot be terminated on the ground of misconduct without holding proper departmental inquiry.

62. Keeping in view the aforesaid discussion, alleged fresh inquiry proceedings as well as the termination order dated 27.01.2011, whereby the respondent/AAI contended that the termination of the services of the petitioner was in order, is liable to be quashed.

63. Accordingly, the termination order dated 27.06.1997, inquiry report dated 09.08.2010 and the impugned order dated 27.01.2011 are set aside.

64. Consequently, the petitioner be reinstated in service and he shall be entitled to all consequential benefits, but with 50% back wages.

65. In view of the above, the instant petition is allowed with no order as to costs.

SURESH KAIT, J.

SEPTEMBER 09, 2013

Sb/jg/RS