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

\+ **W.P.(C) No.2662/2000**

% **6th May, 2015**

VINOD GAHLOT ….Petitioner

Through: None.

Versus

AIR-INDIA LTD. AND ANR. ….Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 9.3.2015. No one appears for the petitioner when the matter is called out in the regular matters. No one appeared for the petitioner even yesterday i.e on 5.5.2015.

2. By the writ petition filed under Article 226 of the Constitution of India, the petitioner questions the actions of the employer/respondent no. 1 in passing the order dated 4.4.2000 and an earlier penalty order dated 22.9.1998, the conjoint effect of which was that petitioner was not promoted to the post of Manager and he was not given ZZ category allowance w.e.f 1.1.2000.

3.(i) The petitioner was working as a Senior Check Flight Purser and on 11.3.1998 petitioner was found to have brought with him cosmetic items on flight AI-413 from Singapore. Petitioner was charged with custom duty of Rs.8,525/- alongwith a personal penalty of Rs.3,000/- and a redemption fine of Rs.4,500/-. Respondent no.1/employer accordingly acting in accordance with Standing Order 23 imposed penalty upon the petitioner of reduction of one increment. As per Standing Order 23 once against an employee penal action is brought by the custom authorities under the Sea Customs Act, 1878 and such a person is held guilty, punishment can be imposed after issuing of a show cause notice to the employee.

(ii). Petitioner was issued a show cause notice dated 8/15.6.1998 and to which petitioner sent a reply on 27.6.1998. A penalty order dated 22.9.1998 was thereafter imposed upon the petitioner stopping one increment falling due on 1.7.1998. Petitioner questions this penalty order as also the subsequent order dated 4.4.2000 denying him promotion and which stand/claim is countered by the respondent no.1/employer by making reference to the penalty order dated 22.9.1998 and hence disentitlement of the petitioner for promotion in accordance with the appraisal conducted.

4. The petitioner in para 6 of the writ petition has sought to plead

that against the imposition of fine, he had filed an appeal which was not successful and then he filed a revision petition and which was successful and which order of revision petition is dated 6.1.1999. This revisional order has been filed as Annexure-VI to the writ petition and which reads as under:-

> " **ORDER**
>
> Shri Vinod Gahlot, applicant was heard on 21.10.98. He reiterated his submissions. He also produced the original computer generated receipt towards the items showing the total cost as 176 S. He pleaded for leniency as he had declared the goods as "provisions, cosmetics and toiletries" valued at Rs.4500/-.
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> 2. Briefly stated the facts of the case are that the Asstt. Commissioner ordered confiscation of goods totally avalued at Rs.15,500/- for alleged nondeclaration and for being in commercial quantities thus not constituting bonafide baggage of a crew member. Option to redeem the goods on a fine of Rs.4,500/- in lieu of confiscation was offered. Penalty of Rs.3,000/- was also imposed. The Commissioner (Appeals) rejected the appeal.
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> 3. Government after going through the oral and written submissions felt that the preliminary point that required examination was whether any truthful declaration by the crew was made upon arrival. While the SAO No.1356 dt. 11.3.98 records that upon surprise checking of the baggage the impugned goods were invesntorised, the applicant claims that the goods were declared as provisions, cosmetics and toiletries. In order to verify the veracity of the applicant's claim the Crew Declaration Form (CDF) upon arrival was called for from the Air Customs vide telex of even no. dt. 29.10.98 reminder dt. 26.11.98, 16.12.98 and 23.12.98. There has been no response from the department till dates. Perhaps, either there is no such CDF upon arrival for flight AI 413 dt. 11.3.98 or the Customs authorities do not want to reveal the true contents therein. However, since the CDF is not furnished for perusal, granting benefit of doubt to the applicant regarding alleged nondeclaration, Government would accept the value of the goods to be Rs.4,500/-. <u>Consequently the redemption fine is reduced to Rs.2,500/- (Rupees Two Thousand Five</u>

Hundred Only).

4. As regards the imposition of penalty the same cannot be set aside since Baggage Rules, 1994 does not permit free allowance to the members of the Crew except at the time of final pay off on termination of their engagement (Rule 18 refers). It therefore follows that Crew members cannot import under the rules goods more than worth Rs.300/- CIF permitted vide F. No.495/36/93-Cus VI dated 25.8.94, for petty items like chocolate, cosmetics, cheese etc. Whether import of 30 pcs Shampoo, 30 pcs Ice Tea packets, 60 pcs Facial tubes, 20 doz Cotton buds, 3 Tang cold be termed as petty items of imports is to be answered in the negative because of the value limit. Hence, adjudication proceedings for goods beyond value of Rs.300/- cannot be assailed. Therefore imposition of penalty imposed appears harsh in the facts and circumstances of the case. It is consequently reduced to Rs.450/- (Rupees Four Hundred Fifty Only).

5. It is ordered accordingly.

Sd/-
(B.N. DAS)
JOINT SECRETARY TO THE GOVT. OF INDIA"
(underlining added)

5. A reference to this order dated 6.1.1999 shows that petitioner is not correct when he pleads as per para 6 of the writ petition that the petitioner has been exonerated. By the order of the revisional authority dated 6.1.1999 the redemption fine was reduced to Rs. 2,500/- and the penalty order was reduced to Rs. 450/-, however, petitioner was found guilty and hence penalty was imposed. The contention of the petitioner that the departmental proceedings should have been held and the order dated 22.9.1998 has been passed without following the principles of natural justice is incorrect because

petitioner was issued a show cause notice dated 8/15.6.1998 in terms of the Standing Order 23 and petitioner did give his reply dated 27.6.1998 and thereafter an order was passed. In a case where a person has been proceeded against and held guilty under the Sea Customs Act, penalty can be imposed upon such a person after issuance of a show cause notice only in accordance with the Standing Order 23 which is reproduced in para 4 of the counter affidavit of the respondent no.1. There is no need for holding of a departmental enquiry once in the facts Standing Order 23 applies. This Standing Order 23 reads as under:-

> "i. No punishment under Standing Order 20 shall be awarded to a workman unless he has been informed in writing of the alleged misconduct and has been afforded as adequate opportunity of defending himself in accordance with the procedure laid down in this behalf in Annexure 'F'.
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> ii. "Notwithstanding anything contained in these Standing Orders, it shall not be incumbent upon the authority competent to impose a punishment to follow the procedure herein prescribed before imposing any of the penalties enumerated in Standing Order 20 on a workman, when such workman has been convicted by any Court or Tribunal on a criminal charge involving moral turpitude or any penal action has been brought against him by the Customs Authorities under the Sea Customs Act or Rules made thereunder of by the appropriate authorities under the Foreign Exchange Regulations Act, 1947 or Rules made thereunder or by the appropriate under the Foreign Exchange Regulations Act, 1947 or Rules made thereunder for activities amounting to 'misconduct' within the meaning of sub-clause (xxv) of Clause 19(2)." "

6. It is therefore clear that employer/respondent no.1 has followed

the principles of natural justice and that the petitioner was not exonerated but in fact held guilty by the order under the Sea Customs Act on 6.1.1999 and therefore following the appraisal done, petitioner was not entitled to promotion to the higher post of Manager.

7. In view of the above, principles of natural justice have been complied with and thus the petitioner cannot question the penalty order dated 22.9.1998 in view of Standing Order 23 once petitioner has been imposed the penalty by the order dated 6.1.1999 passed under the Sea Customs Act holding the petitioner guilty. Respondent no.1/employer was hence justified in holding the petitioner unfit for promotion and denying him the grant of other consequential benefits.

8. Dismissed.

MAY 06, 2015 **VALMIKI J. MEHTA, J.**

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