

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

Date of Decision: January 17, 2018

+ **W.P.(C) 11793/2016 & CM 46497/2016**

DHARAM PAL Petitioner

Through: Ms. Kiran Singh, Advocate

versus

CHAIRMAN CUM MANAGING DIRECTOR AIR INDIA AND
ANR Respondents

Through: Ms. Suruchi Suri, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. Impugned order of 10th November, 2016 (*Annexure P-1 colly.*) directs holding of *de novo* inquiry against petitioner, who is Assistant Manager-Commercial with respondent-Air India while invoking Regulation 106 of *Air India Employees' Service Regulations*. Consequential order of 7th December, 2016 directing initiation of *de novo* inquiry is also under challenge.

2. The charge against petitioner was of reissuing a ticket on SIN-DEL-SIN Sector by misusing the sign-in code of *Ms. Tarminster Kaur*. On the said charge, petitioner was departmentally tried and was exonerated by Disciplinary Authority. Again on the same very charge, *de novo* inquiry has been ordered by Reviewing Authority while noting that the Investigating Officer from the vigilance department, material witness-

Ms. Tarwinder Kaur, log book entries showing petitioner using sign-in code of *Ms. Tarwinder Kaur* were not placed before Inquiry Officer and that witnesses i.e. MW-1, MW-2 & MW-3 had deposed during inquiry that their sign-in code was used by petitioner.

3. While entertaining this petition, vide order of 16th December, 2016, impugned order was stayed as it was hit by the doctrine of *double jeopardy*.

4. At the hearing, learned counsel for petitioner places reliance upon Supreme Court's decisions in *Union of India v. K.D. Pandey and Another* (2002) 10 SCC 471 and *Union of India and Anr. v. Purushottam*, rendered on 5th January, 2015 to submit that no one can be punished twice for the same misconduct and a departmental inquiry cannot be allowed to be initiated afresh as it would amount to abuse of the process of law.

5. Learned counsel for respondents supports impugned order and submits that on a vigilance report, *de novo* inquiry has been ordered and there are good reasons for doing so. It is submitted by learned counsel for respondents that petitioner's exoneration was never conveyed to petitioner and so, it would amount to continuation of the same inquiry and thus, impugned order would not be hit by principles of *double jeopardy* and the decisions cited by petitioner's counsel do not apply to the facts of instant case.

6. Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that the charge against petitioner was of re-issuing of ticket entailing some monetary loss and the witness whose sign-in code was allegedly misused by petitioner has not been produced in evidence. No reason for not producing the said material witness is

forthcoming. It is not the case of respondents that the said witness is now available. There is no explanation as to why Investigating Officer from vigilance department was not produced. Even the log book entries were not produced before the Inquiry Officer.

7. As regards the remaining witnesses i.e. MW-1, MW-2 and MW-3, I find that they have merely deposed that their sign-in code was used by petitioner either on the ground of guiding them or for issuance of an EMD for change of date. Even now respondents do not have clinching evidence to justify initiation of *de novo* inquiry, which is otherwise not permissible by recourse to Regulation 106 of *Air India Employees' Service Regulations*, which is reproduced hereunder for ready reference:-

“An authority higher than the Appellate Authority notified under Regulation 102 may review a case at any stage either on his own motion or on the application of the employee concerned on grounds of material irregularity and vary the punishment awarded in any manner within his competence. The Reviewing authority may also exercise his power to review a case upon production of new facts either by the Competent Authority or by the employee, provided these facts were not within the knowledge of the Competent Authority or the employee (as the case may be) during the enquiry proceedings). When the Reviewing Authority proposes to enhance the punishment, a show cause notice shall be issued asking the employee to show cause as to why the punishment should not be enhanced in the manner proposed. The employee shall be allowed a reasonable period within which his explanation should reach the Reviewing Authority. The explanation, if received within the specified period, shall be taken into consideration before final orders are passed by the Reviewing Authority.”

8. A bare reading of aforesaid Regulation reveals that by recourse to said Regulation, *de novo* inquiry cannot be ordered. Simply because the fact of petitioner's exoneration in the Inquiry earlier held was not conveyed to petitioner, would not mean that the same Inquiry is continuing. It would be perverse to opine so. Even otherwise, by no stretch of imagination, *de novo* inquiry can be justified by labeling it to be a further inquiry.

9. In the considered opinion of this Court, impugned *de novo* inquiry is hit by principles of *double jeopardy*. As a result thereof, impugned order cannot be sustained and it is accordingly set aside.

10. This petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 17, 2018

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