

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30008 of 2004

N.Seelan

... Petitioner

V.

1. The General Manager (Personnel),
AIR India Ltd.,
Southern Region,
Cehnnai - 1.

2. The Regional Director,
AIR India Ltd.,
Airlines House,
Meenambakkam,
Chennai.

.... Respondents

(R1 and R2 are amended as per order
dated 24/04/19 in WP No.30008/2004)

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India to pass an order of Writ of Certiorarified
Mandamus, calling for the records in Ref:MAA/DISC/1474 dated
25.04.1997 on the file of the 1st respondent and quash the same
and direct the 1st respondent to reinstate the petitioner with
back wages and continuity of service with all promotional
monetary benefits.

For Petitioner : Mr.R.Thenmozhi Shivaperumal

For Respondent-2 : Mr.K.Srinivasa murthy
for Mr.NGR.Prasad

R1 : (Dismissed vide order
dated 30/09/11)

O R D E R

The petitioner herein who had been levelled with the charges of theft, fraud, breach of standing orders etc., has been subjected to an enquiry and ultimately imposed with the punishment of removal from service through an order dated 25.04.1997 which is under challenge in the present writ petition.

2. Pending the writ petition, the name of the respondents has been changed from Indian Airlines Limited to Air India Limited. Hence Air India Limited shall be substituted in the place of Indian Air Lines Limited for respondents 1 and 2 herein.

3. The learned counsel for the petitioner submitted that the petitioner herein was not involved in the incident of theft and in the criminal case initiated against him in C.C.No.22638 of 1995, he was honourably acquitted by a judgement dated 03.10.2000. According to the learned counsel for the petitioner, in view of the acquittal, the order of punishment of removal from service itself is liable to be set aside.

4. The learned counsel for the respondents on the other hand submitted that the acquittal order of the Criminal Court will not be a bar for sustaining the departmental proceedings, as laid down in various decisions of the Hon'ble Apex Court, as well as this Court. It is his submission that the Criminal Court had acquitted the petitioner predominantly on the ground that the investigating officer, who was the prime witness in the case, was not examined and as such, the acquittal order cannot be put against the employer. The learned counsel further submitted that the enquiry was properly conducted, after giving due opportunity to the petitioner, in accordance with the principles of natural justice. Since the charges are grievous in nature, the consequent punishment of removal from service is proportionate to the charges and therefore there is no infirmity in the same.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is true that the acquittal of the petitioner in the criminal proceedings may not preclude the respondents herein from proceeding against him through departmental proceedings, which proposition has been well established in various decisions.

7. Nevertheless, in the present case, the Disciplinary Authority, in his enquiry report, has predominantly placed reliance on the criminal investigation as well as the consequent

criminal proceedings and thereby arrived at a conclusion. In the enquiry report, the enquiry officer in his findings has held that the deposition of MW2 reveals that the petitioner, who had been arrested by the Police and interrogated, had taken the Police to the place from where the stolen articles were recovered and thereby the Investigating officer had come to a conclusion that the petitioner was involved in the occurrence, since he knew where the stolen articles were sold. Based on the findings of the Investigating Officer, the Disciplinary Authority had also come to a similar conclusion that the charges against the petitioner herein have been properly established and the punishment of removal from service was proposed.

8. It is no doubt true that the acquittal of the delinquent employee from the criminal case will not preclude the Inquiry Officer to proceed with the departmental proceedings on the same set of charges nor will the Disciplinary Authority be debarred from imposing a punishment. The standard of proof required in a domestic inquiry is only a preponderance of probability and there need not be direct evidence. Circumstantial evidence satisfying the test of preponderance of probability will be sufficient.

9. In this background, the report of the Inquiry Officer leading to the imposition of the punishment by the Disciplinary Authority, was examined to test whether there was any perversity in the findings.

10. The Inquiry Officer had examined two witnesses on behalf of the Management namely, M.W.1 and M.W.2. The Office Assistant (M.W.1) spoke only about the presence of the petitioner in the night shift on the alleged date of theft. The Inquiry Officer had not placed reliance on the evidence of M.W.1. M.W.2 is the Circle Inspector, who had conducted the criminal investigation and recovered the alleged stolen articles during the course of his criminal investigation. The only finding of the Inquiry Officer is based on the deposition of M.W.2. As per the findings, the Inquiry Officer was of the view that the petitioner was guilty of the charges levelled against him based on the deposition of M.W.2 that the petitioner was arrested by the police and during the interrogation, he had taken the police to the places where the stolen articles came to be recovered. With such appreciation of the deposition of M.W.2, the Inquiry Officer found that there was a probability of the involvement of the petitioner in the theft since he knew the places where the stolen articles were sold. Therefore, the substance of the entire report is based on the deposition of M.W.2 and the recovery made during the course of the criminal investigation. When the investigation was put to test before the Criminal Courts, the petitioner came to be acquitted of the

criminal charges. When the inquiry report itself is based on the evidence of the Investigating Officer, who had recovered the stolen articles, the acquittal order gains importance. This is not the case where the Inquiry Officer had rendered a finding on an independent preponderance of probability. There were no other findings satisfying the test of preponderance of probability, to hold the petitioner guilty of the charges. The failure of the Inquiry Officer to record his findings and conclusions other than the statement of the Investigating Officer, would constitute a serious infirmity in the inquiry and thereby render the inquiry invalid.

11. The basic foundation on which the disciplinary proceedings has proceeded is on the recovery made. If not for the recovery, I am unable to comprehend as to how the Disciplinary Authority would have imposed the major punishment of removal from service, taking into the subsequent development whereby the petitioner was acquitted of the charges. In the light of the reliance placed by the Disciplinary Authority on the criminal investigation also, I am of the view that the report of the inquiry officer is perverse and the consequent punishment of removal from service would be illegal.

12. The Hon'ble Apex Court in the decision reported in (2011) 4 Supreme Court Cases 584 in State Bank of Bikaner and Jaipur Versus Nemi Chand Nalwaya had held that in circumstances where the criminal Court had subsequently acquitted the delinquent, the punishment of dismissal could be substituted with one of compulsory retirement. The relevant portion of the order reads as follows:

"10. The fact that the criminal Court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilty in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal Court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the

decision on the ground that subsequently, the Criminal Court has acquitted him.

11. We, are therefore, of the view that the High Court was not justified in quashing the punishment and directing reinstatement with back wages and consequential benefits. In fact, the order of the High Court directing back wages amounts to rewarding a person who has been found guilty of a misconduct. However, having regard to the fact that the proven charge did not involve either misappropriation or fraudulent conduct and the other circumstances of the case, we are of the view that the punishment of dismissal should be substituted by compulsory retirement, which does not involve reinstatement."

13. In the light of the observations of this Court on the perversity of the report by the inquiry officer and also by applying the ratio in the aforesaid decision of the Hon'ble Supreme Court, this Court is also of the view that the petitioner's punishment could be modified into one of compulsory retirement, to enable him to receive the terminal benefits.

14. For all the reasons stated above, the impugned order dated 25.04.1997 is modified from removal from service into one of "compulsory retirement" of the petitioner. Consequently, the petitioner herein shall be entitled to the gratuity amount and the provident fund, if not already received by him. The respondents shall endeavour to disburse the aforesaid terminal / monetary benefits as expeditiously as possible, in any event, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above observations and direction, this writ petition stands ordered accordingly. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vum/DP

To

1. The General Manager (Personnel),
AIR India Ltd.,
Southern Region,
Cehnnai - 1.

2. The Regional Director,
AIR India Ltd.,
Airlines House,
Meenambakkam,
Chennai.

+1cc to Mr.NGR.Prasad, Advocate SR.No.40534

W.P.No.30008 of 2004

CP(CO)
GMY(12/09/2019)



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