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

Reserved on: 23.05.2019
Pronounced on: 01.08.2019

\+ W.P.(C) 9149/2017 & C.M.APPLN. 3798/2018

P SREE KRISHNA ..... Petitioner
Through Mr. Raj Singh Phogat, Adv.

versus

AIRPORTS AUTHORITY OF INDIA AND ORS ..... Respondents
Through Mr. K. K. Rai, Sr. Adv. with Mr. Dig Vijay Rai, Ms. Chetna Rai, Mr. Anshul Rai with Mr. Ram Krishana Veerendra, Advs. for AAI

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby quashing the impugned order No. C.14015/08/2012/-Disc/180 dated 10.05.2016 of punishments passed by the respondents by which the respondents had arbitrarily and illegally rejected the appeal of the petitioner against the assailed order dated 26-29.05.2015 passed by the Disciplinary Authority.

2. The petitioner initially joined on 20.02.1991, the erstwhile National

Airport Authority of India as Assistant Executive Engineer (Group A) which was later on re-designated as Manager Engineering (Civil). Thereafter, promotion of the petitioner reached at the level of Joint General Manager Engineering (Civil) on 20.10.2006 due to inter seniority merger between National Airports Division and International Airports Division which became single entity as Airports Authority of India/respondent No.1, notified on dated 01.04.1995 by the Union of India under review DPC {hereinafter being referred to as JGM Engg (Civil) from the post of DGM Engg (Civil) in the cadre post, but continued as the Airport Director at Srinagar Airport in the ex-cadre post till dated 30.03.2007. Thereafter, on 12.04.2007, the petitioner was transferred to the Hyderabad International Airport in the cadre post as JGM Engg (Civil) and continued at the Hyderabad International Airport till 07.10.2010. Thereafter, on 27.10.2010, the petitioner was posted at the Jaipur Airport from the Hyderabad Airport as JGM Engg (Civil) and continued till 17.07.2013. However, on 29.10.2012, the charge sheet was issued to the petitioner under Regulation 4(1) (a) (b) & (d) and 5 (i) (v) & (ix) of the Airports Authority of India Employees (Conduct, Discipline & Appeal) Regulations, 2003 for the misconduct and negligence attributable to other employees in spite of due prudent action of the petitioner. On 18.07.2013, the petitioner was posted at Hyderabad Airport and continuously remained posted at the Hyderabad Airport as JGM Engg (Civil) till dated 20.01.2015.

3. The further case of the petitioner is that after inquiry, the Inquiry Officer submitted its report dated 26.03.2014. The petitioner submitted representation to the Disciplinary Authority dated 25.07.2014, 26.08.2014 and 13.03.2015 against proving of the charges by the Inquiry Officer who without taking cognizance of the evidence on record, documentary exhibits and statements of witnesses ignored and submitted the arbitrary Inquiry report. Based on the representation dated 21.01.2015, the Disciplinary Authority observed that the Inquiry Officer has not correlated his findings based on statements/documents submitted during the Inquiry proceedings and hence directed to Inquiry Officer to revisit his findings based on the evidence on record.

4. On 09.02.2015, the Inquiry Officer refused to revisit the Inquiry report as he was retired and not under any obligation to do the same and submitted that Disciplinary Authority is not bound by the findings of the Inquiry Officer and the said authority can appoint another Inquiry Officer to conduct fresh inquiry. However, vide order dated 26.05.2015, the

Disciplinary Authority ordered to impose the penalty of *"Reduction of pay by one increment/stage in time scale of pay of the petitioner for a period of one year with effect from the date of issuance of order"*. Further, that petitioner will earn his normal increment of pay during the period of reduction and that on the expiry of this period; the reduction will not have effect of postponing the future increment of his pay. Being aggrieved, the petitioner submitted the appeal to the Appellate Authority on 24.06.2015. The same was rejected vide its order dated 10.05.2016.

5. Learned counsel appearing on behalf of the petitioner submits that the terms and conditions of the service of petitioner are protecting the petitioner and the disciplinary proceedings are governed by the Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003. The petitioner was issued charge-sheet dated 29.10.2012 under Regulations, 2003 after lapse of more than 5 years of the incident for the misconduct attributable to the other employees and not to the petitioner. As per Article I, the petitioner being the Engineer-in-Charge, in connection with the work of *"Mechanized Painting of runway markings at Hyderabad Airport"* has been found to be responsible for violation of the terms and conditions of agreement executed on 28.02.2008 for the said work to favour the contractor

M/s. Innovative Reflectors. Allegation in Article II is that the petitioner in connection with the work of *"Painting of runway markings at Hyderabad Airport"* has been found to be responsible for manipulation of the records of the said work at site, resulting the payment was made to the contractor for over measurement.

6. Learned counsel for the petitioner submitted that the Inquiry Officer without discussing the evidence on record, statements of witnesses and correlation of exhibits proved the charges as per the charge-sheet in just one and half pages in violation of the rules of natural justice. The charge-sheet contains 10 pages, whereas the Inquiry Officer submitted its final report containing four pages out of which only one and half page is allotted to the analysis and co-relating of evidence for proving of the charges. Thus, there is no application of mind and Inquiry Report is sham and arbitrary without discussing the pleas and evidence on record.

7. Regarding Article I, the main allegation against the petitioner is that the agreement should have been executed on or before 17.11.2007, in accordance with the terms and conditions stipulated in the work order dated 08.11.2007. Meanwhile, RHQ Southern Region issued order dated 29.10.2007 attaching the then Senior Manager (E-C)- Shri Prakash N

Kanchagar to Calicut Airport with immediate effect. Memorandum to this effect has been issued by the O/o Director Hyderabad Airport dated 14.11.2007, enclosing a copy to DGM (E-C). Accordingly, Shri Prakash Kanchagar, SM (E-C) got relieved from Hyderabad Airport on 20.11.2007 A/N. Relieving of Shri. Prakash N Kanchagar from Hyderabad Airport by 20.11.2007 was well known to the petitioner. He should have either got the agreement signed by him or he himself should have signed and executed the prepared agreement since he was acting as Engineer-in-Charge. However, the agreement got executed by him only on 28.02.2008.

8. It is submitted that due to the above rejection of the deposition of the defense witnesses by the IO, the petitioner's natural justice was prejudiced and could not get the justice because material and relevant witnesses were not allowed to depose in the Enquiry proceedings and that too without issuing any order for the rejection of the defence.

9. Further submitted, the Prosecution witness Mr. Prakash Kanchagar, SM(Engg-Civil) was being investigated by the CBI as well as Vigilance department for his culpability and complicity in the case and hence as per the Regulation 29 of the Regulations, 2003, the Inquiry Officer and Presenting Officer should have been from the CBI or from the Vigilance

department. More so the fact remains that original files of this case were taken by the CBI as well as Vigilance department for the investigation. So, the Inquiry Officer proceeded to prove the unsubstantiated charge without any documents in possession of the department. The Inquiry Officer without substantiating the charge from the presenting officer directly asked from the petitioner for their defence. When all the defense documents and witnesses tendered for admission then he disallowed the defence witnesses without assigning any reasons thereof. Thereafter, the Disciplinary Authority directed the Inquiry Officer to revisit the findings of the Inquiry as IO has not correlated his findings based on statement/documents submitted during inquiry proceedings by the Charged Officer. The copy of the direction letter dated 21.01.2015 to the Inquiry Officer for revisiting on the finding is annexed and marked as Annexure P-12.

10. On the other hand, learned counsel appearing on behalf of the respondent No.1 submitted that there was a complaint regarding shortage of 820 litre of paint and fake bill of ₹2.96 lakhs paid in the work of *"painting of runway marking at Hyderabad Airport"*, accordingly, Vigilance Department of Airports Authority of India investigated the complaint and based on their investigation, the Disciplinary Authority i.e. Chairman, AAI

decided to initiate major penalty proceedings in accordance with Regulations, 2003 against the responsible officers i.e. Shri P. Ravisekhar and the petitioner.

11. The regular inquiry was instituted and the Inquiry Officer concluded his separate reports, i.e. in respect of the petitioner both the Articles I and II *"Proved"* and the sole Article *"Proved"* in respect of Shri P. Ravisekhar. The copy of the inquiry report was also provided to the petitioner for his response before placing the matter before the Disciplinary Authority for decision. He submitted his response to the inquiry report vide his letter dated 26.08.2014 in which the petitioner submitted that the IO has not analyzed defence on record and has submitted the findings without application of mind and without giving any reasons for his findings. The Disciplinary Authority vide letter dated 21.01.2015 remanded back the report to the IO for revisiting the findings and submitted his report again. The IO responded vide his letter dated 09.02.2015 in which he pointed out the following:

> *i) As Inquiry Officer in the above disciplinary proceedings, I have conducted myself strictly in the manner as specified in the disciplinary manual and as per the prevalent instructions and guidelines on the subject.*

ii) The entire course of enquiry proceedings was conducted by me as Inquiry Officer in a free, fair, just right, unbiased and impartial manner.

iii) Ample opportunities and sufficient time as provided in the guidelines were granted to both the Charged Officials for submission of additional documentary evidences, etc, so as to defend their cause effectively wherever permitted within the purview and ambit of the provisions as envisaged in the disciplinary manual and guidelines in vogue.

iv) Findings of the inquiry proceedings were recorded by Inquiry Officer after having thoroughly gone through all the material evidences, brought on record and correlating all the written submissions made by both the Charged Officials and that of the final report of Presenting Officer.

v) In nutshell, the findings of the inquiry proceedings were drawn by Inquiry Officer as per his inner conscience without compromising any of the facts, without any fear or favour and also strictly taking into cognizance all the documentary evidences and the entire arguments made by the charged officials during the course of the inquiry.

12. The Disciplinary Authority after considering all the facts and circumstances of the case passed a detailed order dated 29.05.2015 imposing the penalty of *"Reduction of pay by one increment/ stage in time scale of pay of the petitioner for a period of one-year w.e.f. the date of*

issuance of order". The petitioner preferred an appeal before the Appellate Authority and rejected the same without modification in the penalty order 29.05.2015 passed by the Disciplinary Authority.

13. In counter affidavit, it is admitted that to the extent of transfer of Shri Kanchagar from Hyderabad Airport and submitted that it was the responsibility of the petitioner to ensure that all the obligations in the said contract are complied with. The petitioner exercised the power of Engineer-in-Charge in the absence of Shri Kanchagar owing to latter's transfer but did not fulfil the obligation of signing/executing the agreement before exercising the powers of Engineer- in- Charge for release of the payment.

14. It is also admitted in the counter affidavit that Shri Kanchagar should have signed the agreement, but the Petitioner has not come with clean hands as on the one hand he has made elaborate submissions for justifying that the agreement should have been signed by Shri Prakash N. Kanchagar, but how come the Petitioner exercise the power of Engineer-in-Charge in the absence of Shri Prakash N. Kanchagar without getting the agreement signed and released the payment to the contractor.

15. Learned counsel appearing on behalf of respondent No.1 submitted that either the Petitioner should have refrained from exercising the power

of Engineer-in-Charge (EIC) for release of payment in the absence of agreement duly signed by the then EIC Shri Prakash N. Kanchagar or should have assumed the responsibility of releasing payment after signing agreement also. The petitioner cannot take the shelter of the circumstances that Shri Kanchagar got relieved without signing the agreement and the agreement remained unsigned and the Petitioner assumed the responsibility of EIC for release of payment only. The action by the Anti-Corruption Branch of the CBI has been initiated against Shri Kanchagar in a complaint and the prosecution sanction has also been issued for formal criminal proceedings against Shri Kanchagar.

16. It is also submitted that the Petitioner has given elaborate circumstantial details of releasing the payment to the contractor, but has not explained any reason that he being the higher officer agreed to and released the payment to the contractor assuming the responsibility of the EIC but has been making all justification for not assuming the responsibility of signing the contract which is the basic document for the execution of the work and payment thereof. The Petitioner cannot justify only discharging one responsibility and ignoring other one which is actually the prime. The Petitioner is a Senior Level Officer of the Engineering Department and,

therefore, his plea of taking shelter of work manual in contradiction to the terms and conditions of the agreement is not acceptable. The Inquiry Officer in his analysis has categorically mentioned that the date of measurement using yellow paint recorded in the measurement book on 25.03.2008 for 459.81 sqm (69.81+390) whereas from the entries made in the Paint Register a page No. 60, it is established that the yellow paint was received at site on 02.08.2008, 19.08.2008 and 16.09.2008 (totalling 400 litres). The Petitioner herein has not explained the consumption of paint as per the measurement book, prior to the supply date. The Inquiry Officer has established that the record has been manipulated at subsequent date.

17. It is further submitted that during the investigation, the role and responsibility of Shri Ravisekhar was established as related to manipulation of record whereas the measurement book was recorded by another officer Shri Jahangir Alam, an action could not be initiated against Mr Alam as he resigned from the services of the Airports Authority of India w.e.f. 01.09.2008. The Petitioner has deliberately withheld this fact from this Court and has wrongly submitted on affidavit that the charge of measurement book has been dropped against Shri Ravisekhar during the

common proceedings, whereas the fact remains that there was no charge levied against Shri Ravisekhar in this issue.

18. Learned counsel for the respondent submitted that the petitioner has not produced the receipt of payment or the challan or other details by the Company who supplied the paint on the date of delivery. The company which has supplied the paint is mentioning only number of drums but description of drums and the quantity therein is not established from the documents annexed as Annexure P-10 (Colly). The bone of contention during the proceedings remained that the petitioner is a Senior Level Officer who has been continuously defending his lapses by way of manipulations/misrepresentations. The petitioner has referred documents which were not available on the date of inspection of the work but have been produced by the Officer during the process of inquiry at a later date. The petitioner is a senior officer and is well aware of the procedure of receiving material at site to ascertain quantity, quality and other details of the product in accordance with the tender documents. The petitioner is wrong in suggesting that documents/evidence has not been analyzed properly. The petitioner has at no stage justified the procuring of these documents at the time of inquiry with the relevant clause of the

agreement/tender documents/awarded letter which is the base documents for executing the particular work. When the specific clause is available in the agreement for these documents/details at the time of supply of material, then what is the relevance of obtaining these documents when the inquiry is in progress.

19. I have heard learned counsel for the parties at length and perused the material available on record.

20. It is further submitted that though there was no cross complaint but during the vigilance investigation, roles and responsibilities of the petitioner and other officers, were identified and the Regulations applicable on the petitioner have a provision of common proceedings in a case where more than two officers are involved. In this case, the officer of the highest level and his corresponding Disciplinary Authority exercised the power of Disciplinary Authority in respect of the involved officers. In this case also, the proceedings took place in respect of two officers but for different roles and responsibilities with different set of documents and the Inquiry Officer submitted different reports.

21. On the issue raised by the petitioner that the appellant Authority has not passed the detailed and reasoned order, counsel appearing on behalf of

respondent No.1 has relied on the full bench Judgment of this Court in case of ***Director of Postal Services vs. Daya Nand: (1972) 8 DLT 485*** whereby it is held that the order of the appellate authority in dismissing the appeal need not contain more reasons than its agreement with the order of the punishing authority.

22. In case of ***State Bank of India, Bhopal vs. S.S. Koshal: 1994 Supp (2) Supreme Court Cases 468*** whereby the Supreme Court has held that it was not obligatory on the part of the appellate authority to say more than this as the order as it is, shows application of mind. The order cannot be characterised as a non-speaking order.

23. Similar view was taken in ***Narinder Mohan Arya vs. United India Insurance Co. Ltd. and Others: (2006) 4 SCC 713*** that an appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part.

24. The Inquiry Officer submitted its report dated 26.03.2014, accordingly, the petitioner submitted representation to the Disciplinary Authority dated 25.07.2014, 26.08.2014 and 13.03.2015 against proving of the charges by the Inquiry Officer who without taking cognizance of the

evidence on record, documentary exhibits and statements of witnesses ignored and submitted the arbitrary Inquiry report. Based on the representation dated 21.01.2015, the Disciplinary Authority observed that the Inquiry Officer has not correlated his findings based on statements/documents submitted during the Inquiry proceedings and hence directed to Inquiry Officer to revisit his findings based on the evidence on record.

25. On 09.02.2015, the Inquiry Officer refused to revisit the Inquiry report as he was retired and not under any obligation to revisit the Inquiry proceedings and submitted the report that Disciplinary Authority is not bound by the findings of the Inquiry Officer and the said authority can appoint another Inquiry Officer to conduct fresh inquiry. However, vide order dated 26.05.2015, the Disciplinary Authority ordered to impose the penalty of *"Reduction of pay by one increment/stage in time scale of pay of the petitioner for a period of one year with effect from the date of issuance of order"*. It is further held that the petitioner will earn his normal increment of pay during the period of reduction and that on the expiry of this period; the reduction will not have effect of postponing the future increment of his pay. Being aggrieved, the petitioner submitted the appeal

to the Appellate Authority on 24.06.2015 and the same was rejected vide its order dated 10.05.2016.

26. It is not in dispute that the terms and conditions of the service of petitioner are protecting the petitioner and the disciplinary proceedings are governed by the Airports Authority of India Employees (Conduct, Discipline and Appeal) Regulations, 2003. The petitioner was issued charge-sheet dated 29.10.2012 under Regulations, 2003 after lapse of more than 5 years of the incident for the misconduct attributable to the other employees and not to the petitioner. As per Article I, the petitioner being the Engineer-in-Charge, in connection with the work of *"Mechanized Painting of runway markings at Hyderabad Airport"* has been found to be responsible for violation of the terms and conditions of agreement executed on 28.02.2008 for the said work to favour the contractor M/s Innovative Reflectors. Allegation in Article II is that the petitioner in connection with the work of *"Painting of runway markings at Hyderabad Airport"* has been found to be responsible for manipulation of the records of the said work at site, resulting the payment was made to the contractor for over measurement. From the record, it is revealed that the Inquiry Officer without discussing the evidence on record, statements of witnesses and

correlation of exhibits proved the charges as per the charge-sheet in just one and half pages in violation of the rules of natural justice. Thus, there is no application of mind and Inquiry Report is sham and arbitrary without discussing the pleas and evidence on record.

27. Regarding Article I, the main allegation against the petitioner is that the agreement should have been executed on or before 17.11.2007, in accordance with the terms and conditions stipulated in the work order dated 08.11.2007. Meanwhile, RHQ Southern Region issued order dated 29.10.2007 attaching the then Senior Manager (E-C)- Shri Prakash N Kanchagar to Calicut Airport with immediate effect. Memorandum to this effect has been issued by the O/o Director Hyderabad Airport dated 14.11.2007, enclosing a copy to DGM (E-C). Accordingly, Shri Prakash Kanchagar, SM (E-C) got relieved from Hyderabad Airport on 20.11.2007 A/N. Relieving of Shri. Prakash N Kanchagar from Hyderabad Airport by 20.11.2007 was well known.

28. The charges against the petitioner is that since relieving of Shri Prakash N Kanchagar from Hyderabad Airport by 20.11.2007 was well known to the petitioner, therefore, he should have either got the agreement signed by him or he himself should have signed and executed the prepared

agreement since he was acting as Engineer-in-Charge. However, the agreement got executed by him only on 28.02.2008.

29. However, the fact remains that the work order was issued by the Shri Prakash Kanchagar and he was available at the Hyderabad Airport on duty till dated 20.11.2007 which is not in dispute. Accordingly, the agreement was to be signed by dated 17.11.2007 and it was the duty of Shri Kanchagar to sign the agreement before leaving for Calicut Airport.

30. It was deposed and recorded in the Inquiry Proceeding that the Contractor signed the Agreement on dated 14.11.2007 but still the Engineer-in-Charge did not sign it in spite of reminding him of the signing it. It was also evident that the contractor visited Shri. Kanchagar for signing of the agreement, for obtaining entry passes for his authorized personnel and for temporary allotment of Quarter (C-10). Whereas, Shri. Prakash Kanchagar did not sign the Agreement, but he recommended for entry passes and allotment of temporary Quarter to the contractor. So, negligence was evident on record attributable to the Engineer-in-Charge, Shri. Prakash Kanchagar and not to the petitioner. Besides, Shri. Prakash Kanchagar deposed falsely that the contractor did not turn up for signing the Agreement before he was proceeding to Calicut Airport on temporary attachment i.e. on or before

20.11.2007.

31. It was evident on record that documents relating to the Agreement were handed over to the CBI through Airport Director on dated 20.11.2007 due to complaint against the Engineer-in-charge Shri Prakash Kanchagar. Some documents related to the work order were handed over to Shri. G.M.S. Rao, the then Vigilance Officer on 20.12.2007 due to complaint against Shri Prakash Kanchagar and he was charge-sheeted subsequently. The fact of un-signing of the agreement by Shri Prakash Kanchagar was known to Shri Ravi Shekhar, Manager (C) and the petitioner only on 07.01.2008 when Shri G.M.S. Rao had asked for agreement of the work. The unsigned agreement was handed over to Shri G.M.S. Rao on 07.01.2008 due to complaint against Shri Prakash Kanchagar. In regard to signing of agreement and handling over of files etc, by Shri Prakash Kanchagar, a meeting was held in the chamber of DGM (E-C) with Shri Prakash Kanchagar while he was on personal leave in Hyderabad in the presence of Shri Ravi Shekhar and Shri A V Rama Krishna on 07.01.2008. Despite the said meeting, Shri Prakash Kanchagar did not sign the agreement. For non-availability of the contractor, the Agreement could only be signed on dated 28.02.2008 by the petitioner.

32. The Inquiry Officer has recorded that the petitioner has passed and

forwarded the payment of I[st] Running bill dated 11.01.2008 and II[nd] Running Bill dated 05.02.2008 for an amount of ₹3,01,020.00 and ₹2,34,203.00 respectively vide measurement Book Page No. 9 and 15. Thus, these two Running Account Bills were paid to the contractor without execution of the Contract agreement thereby indulged in violation of Contract Agreement.

33. In regard to un-signing of the agreement by Shri Kanchagar was brought to the notice of the then Airport Director and also to the notice of DGM(Finance) vide order dated 10.01.2008. Besides, Airport Director Shri R K Singla directed, in a meeting held in the presence of the then DGM (Finance) Shri Bhavani Singh for releasing the payment to the contractor immediately as the work done by him was operationally important and as per the tender condition no. 51 of page no. 21, serial No. 28 (Document furnished by IO vide DD/I,5/Pg-26) monthly interim bills were to be paid to the contractor for the work done. The decision was taken in the aforesaid meeting that payment should be made to the contractor immediately and agreement could be executed by Shri Kanchagar after his joining back at Hyderabad. The copy of the office note dated 10.01.2008 is annexed and marked as Annexure P-8.

34. Further, Contract Agreement Clause no. 3.10 on page No. 113

provides that before start of the work, the contractor shall deposit the paint in sealed drums of 20 litres of capacity duly marked with the name of manufacturer, batch numbers, date of manufacture, manufacture's test certificate and labelled for *'AAI USE ONLY'*. The paint supplied by the M/s Jenson & Nicholson was without batch number and date manufacture, which is a violation of the agreement conditions. Whereas, it is observed from the Paint Register that the above details are not mentioned. During the enquiry proceedings, the other charged officer Shri Ravisekhar Manager (E-C) vide his letter dated 18.09.2013 approached the concerned paint companies and obtained certificate from the paint companies for the date of manufacture, batch number, etc. which should have been done during the course of execution of the work. At this juncture, obtaining certificate has got no relevance to establish its genuineness. This proves the negligence in performing the duties on the part of the charged officer.

35. As per the works manual, there is no standard proforma for paint register. The proforma of Cement Register only is being followed by all engineers at all Airports. The said proforma doesn't contain columns for making entries such as batch number, date of manufacture, test certificate, expiry date, invoice, DC etc., therefore, the aforesaid details are not

mentioned in any register of any airport for making entries. However, invoice copies, DC challans are being maintained separately in the file. The above said facts were also confirmed by defense witness namely Shri A V Rama Krishna.

36. The Disciplinary Authority has admitted the record pertaining to supply of paint by the supplier for runway painting work at Hyderabad, despite these records were obtained for confirmation during the vigilance enquiry. Similarly, the IO has also admitted the record in respect of batch number, manufacturer test certificate, expiry date etc., during the proceedings as defence documents. Despite admissibility of the aforesaid records by IO, he has remarked that such certificates have no relevance as the genuineness cannot be ascertained at this juncture. The enquiry proceedings were authorized by disciplinary authority meant for ascertaining the truth in the matter, therefore, the onus of proof or burden lies with prosecution.

37. Regarding Article II, the charges against the petitioner is that he, himself, has made a statement on 25.06.2010 and 26.06.2010 after collecting data from the paint companies that the total white paint and yellow paint supplied to the site are 8580 litres and 400 litres respectively. Whereas, as

per the entries made in the paint register from 24.11.2007 to 16.11.2008 is 6700 litres of white paint and 400 litres of yellow paint. Thus, shortage of 120 litres of white paint is observed. Instead of effecting discount false measurement has been recorded and excess payment released to the contractor. On the aforesaid issue, the defense witness Shri A.V. Rama Krishna the then Asst. Manager (C) has associated with the work for 2 days on 25 & 26/12/2007 when Shri Ravi Sekhar the then Manager (c) and Shri Md. Jahangir Alam, JET(C) were on leave. He has confirmed that he received 120 litres of white paint on 26.12.2007 from the agency and he has entered the same in the paint register in presence of the contractor's representative (Shri C. Sethurajan) and both of them signed in the paint register. He has also confirmed the paint drums received by him were having the logo *"For AAI use only"* and the colour of the logo is black, batch no., expiry date. The paints did not expire. He also deposed that the DC/invoice of 120 litres of white paint was signed by him and contractor's representative. Whereas, the defense witness Shri A.V. Rama Krishna the then Assistant Manager (c) took the measurement on dated 25.12.2007 for the work executed on that particular date. The white paint (120 litres) received by him is of M/s. Jenson & Nicholson and to confirm the supply of

120 litres of white paint, reference was given vide DD-II/19, supplied by IO shows the DC's bearing no. 00973 dated 20.12.2007 along with batch no. BT 185 dated 10/2007 issued by M/s. J&N, Coimbatore. The copy of the certificate dated 20.12.2007 is annexed and marked as Annexure P-9.

38. It is pertinent to mention that in the common proceedings conducted by the Inquiry Officer, the charge in regard to false measurement paid against the 120 litres of white paint was dropped against co-charged officer namely Shri. Ravisekhar, the then Manager (Civil) who was the in-charge for the maintenance of the record and was associated with the entire work and was fully responsible for the measurement but charge was not dropped against the petitioner. Thus, it is clear that the Inquiry Officer has incorrectly recorded total quantity of white paint supplied by the manufacturers is 8580 litres instead of 6580 litres.

39. As submitted by the counsel for the petitioner that the Inquiry Officer refused to allow three material defense witnesses of the petitioner which are as follows: -

> *1. Shri R. K Singla: - Then Airport Director who directed to order for the part payment as per the clauses of the tender.*

> *2. Shri Bhavani Singh: - Then DGM(F) who approved the payment and who was the member of the meeting chaired by the Airport Director.*
>
> *3. Shri Abhayaram: - Then SM Engg. (c) who took all the files from his predecessors and was in the possession of the all relevant files.*

40. Thus, the petitioner's natural justice was prejudiced and could not get the justice because material and relevant witnesses were not allowed to depose in the Enquiry proceedings and that too without issuing any order for the rejection of the defence.

41. In case of ***Anil Kumar vs. Presiding Officer and others: AIR 1985 SC 1121*** held that where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court, then, may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order-sheet and no correlation is established between the two showing application of mind, it is not an enquiry report at all. In the case in hand, there was no proper enquiry, therefore, the order of termination based on such proceeding with non-application of mind is unsustainable.

42. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an *ipse dixit* of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In case of ***Madhya Pradesh Industries Ltd. vs. Union of India: AIR (1966) SC 671,*** the Hon'ble Supreme Court observed that a speaking order should be reasonable and at least a plausible one. The public should not be deprived of this safeguard. Similarly, in ***Mahabir Prasad vs. State of Uttar Pradesh: AIR (1970) SC 1302*** whereby it is reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character.

43. In view of above discussion and settled legal position of law, I hereby quash and set aside the impugned orders dated 26-29.05.2015 passed by the disciplinary authority and 10.05.2016 by the appellate authority.

44. It is made clear that if the petitioner suffered any promotion/seniority or other benefits, the same shall be restored, if the petitioner is otherwise eligible for the same.

45. The petition is, accordingly, allowed.

CM APPL. No. 3798/2018

46. In view of the order passed in the present writ petition, this application has been rendered infructuous and is accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 01, 2019
rhc/ab