

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

Reserved on: 13.02.2020

Date of decision: 18.05.2020

+ **W.P.(C) 3215/2018 & CM Nos. 11594/2019 & 11595/2019**

CAPT. RAJESH SINGH SEHGAL Petitioner

Through Mr. Arvind Nigam, Sr. Adv. with
Ms.Amita Sehgal, Mr.S.S.Mathur,
Mr.S.Singh Malik, Mr.Sidhant,
Advs.

versus

MINISTRY OF CIVIL AVIATION AND ORS. Respondents

Through Ms.Anjana Gosain, Ms.Shalini
Nair, Ms.Himanshi, Advs. along
with Mr. Anand Pandey, ADRI,
DGCA and Mr.Shiv Tripathi,
DD(OPS), DGCA.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner challenging the order dated 27.03.2018 passed by the respondent no. 1 -Ministry of Civil Aviation, Government of India, dismissing the appeal filed by the petitioner challenging the order dated 07.11.2017 passed by the respondent no.2- Director General of Civil Aviation, cancelling petitioner's Airline Transport Pilot License (hereinafter referred to as "ATPL") as also debarring him from appearing in the Pilot License Examination for a period of three years.

2. The petitioner had appeared for October 2010 session of the Pilot License Examination conducted by the Directorate General of Civil

Aviation (DGCA) for subjects/courses – Air Navigation, Aviation Meteorology and Radio Aids and Instruments. The petitioner cleared the written as also the oral examination.

3. On a complaint dated 24.11.2011 received by the DGCA alleging that the petitioner had in fact not appeared in the said examination but had made someone else appear for him, an enquiry was initiated by the DGCA. The Central Examination Organisation of the DGCA was requested to check petitioner's examination sheets and submit a report.

4. The Central Examination Organisation, in its report dated 24.04.2012, opined that there was a mismatch of petitioner's signatures in the written examination attendance sheet and oral examination attendance sheet for the October 2010 examination. It was also reported that there was a mismatch in petitioner's signatures between January 2010 attendance sheet and October 2010 attendance sheet/OMR answer sheets, though his signatures in the January 2010 Written Examination Attendance Sheet were tallying with the October, 2010 Oral Examination Attendance Sheet.

5. Based on the above report, the signatures of the petitioner were referred to the Central Forensic Science Laboratory (CFSL), CBI, which by its report dated 24.07.2012 opined that the petitioner's initials/signatures in the OMR and the written examination attendance sheet compared with the petitioner's standard signature reveal that execution of the letters as well as model and design of letters comprising the initials are different from the standard signatures and hence are not comparable.

6. Armed with the above reports, a Show Cause Notice dated 07.08.2013 was issued to the petitioner as to why action be not taken against him in accordance with the Aircraft Rules, 1937.

7. As no reply to the show cause was received from the petitioner, respondent no. 2 passed the order dated 19.09.2013 finding the petitioner guilty of having adopted unfair means in the Pilot's License Examination conducted during October 2010 session and held the result of petitioner passing the said examination as invalid.

8. The petitioner claims that neither the Show Cause Notice nor this order was served on the petitioner.

9. On becoming aware of the same, the petitioner preferred an appeal challenging the said order before the respondent no. 1.

10. The respondent no. 1, vide order dated 31.12.2013, was pleased to set-aside the order dated 19.09.2013 finding that the Show Cause Notice had not been served on the petitioner. The enquiry was remanded back to the DGCA with a direction to grant an opportunity of hearing to the petitioner, while keeping the order dated 19.09.2013 in abeyance.

11. Instead of taking up the said proceedings on remand, the respondent no. 2 issued a fresh Show Cause Notice dated 05.02.2014 to the petitioner. The petitioner duly replied to the same.

12. During the course of the said proceedings, specimen signatures and initials of the petitioner were obtained by CFSL, Shimla for its report. CFSL by its report dated 16.08.2017 opined that the specimen signatures

and initials did not match with the initials that appeared on the attendance sheet and the OMR sheet of the petitioner for his written examination in the October 2010 session.

13. Based on the CFSL report, the respondent no.2 passed the order dated 07.11.2017 debarring the petitioner for a period of three years from appearing in the Pilot License Examination as also invalidating the result of his October 2010 session examination. The Directorate of Training and Licensing was also directed to take necessary criminal action and for suspension/cancellation of petitioner's license. It is important to note here that the CFSL report relied upon by the respondent no. 2 was not supplied to the petitioner before the passing of the said order. It was supplied only thereafter.

14. The petitioner feeling aggrieved of the above order, filed an appeal, which has been dismissed by the respondent no.1 by the Impugned Order.

15. The learned senior counsel for the petitioner submits that the Impugned Order as also the order dated 07.11.2017 passed by the respondent no.2 are liable to be set aside as having been passed in violation of principles of natural justice. He submits that in matters such as the present one, the respondents are required to act justly and fairly and not arbitrarily or capriciously. Principles of natural justice have to be rigorously followed and complied with. Any order passed in breach thereof would be void. The order passed by the respondent no.2, being the first authority, in violation of principles of natural justice cannot be remedied by the Appellate Authority, that is the respondent no.1,

purportedly following the principles of natural justice. The illegality in the order passed by the respondent no.2 cannot be rectified or remedied by the respondent no.1. He relies upon the judgment of the Supreme Court in *Mohd Yunus Khan vs. State of UP*, (2011) 1 SCC (L&S) 180 and *Administrative Law by H.W.R. Wade (Sixth Edition)*, pg. 550.

16. The learned senior counsel for the petitioner submits that the respondent no.2 passed the order based solely on the report received from CFSL, Shimla. The CFSL report was, however, not shared with the petitioner prior to passing of the order dated 07.11.2017 thereby clearly violating the principles of natural justice. In this regard he places reliance on the judgments of the Supreme Court in *Natwar Singh vs. Director of Enforcement & Anr.* (2010) 13 SCC 255; *K. Vijaylakshmi vs. Union of India & Ors.* (1998) 4 SCC 37; and *S.N. Narula vs. Union of India & Ors.* (2011) 4 SCC 591; and of this Court in *B.S.N.L. & Ors. vs. Ram Pratap & Anr.*, 2018 (8) AD (Delhi) 120.

17. The learned senior counsel for the petitioner further submits that not only the report was not shared with the petitioner, no opportunity of cross-examination was granted either. Placing reliance on the judgments of the Supreme Court in *Sawai Singh vs. State of Rajasthan*, MANU/SC/0340/1986; and *Bhupinder Pal Singh vs. Director General of Civil Aviation & Ors.*, (2003) 3 SCC 633, he submits that in absence of an opportunity to cross examine the handwriting expert being granted to the petitioner, the report could not have been taken into consideration in passing the order dated 07.11.2017.

18. The learned senior counsel for the petitioner further submits that there was a violation of principles of natural justice not only at the stage of the decision taken by the respondent no.2, but also by the respondent no.1. He submits that the petitioner was not afforded a reasonable opportunity to prove his case. He submits that in case the respondent no.1 was not to rely upon the e-mail sent by the officers who had also given the examination along with the petitioner, on the ground that they had only stated that they had seen the petitioner outside the examination centre and not while giving the examination, the petitioner should have been granted an opportunity to either cross-examine such officers or to lead further evidence in form of their statements to prove his case. He submits that in absence of such an opportunity, the petitioner was clearly denied his right to a fair defence.

19. The learned senior counsel for the petitioner further submits that the Show Cause Notice issued to the petitioner was vague and, in fact, gave a final conclusion, thereby vitiating the entire proceedings. He places reliance on the judgment of the Supreme Court in ***Oryx Fisheries Pvt. Ltd. vs. Union of India***, (2010) 13 SCC 427.

20. On merits of the decision, the learned senior counsel for the petitioner submits that the only material against the petitioner is the CFSL report. He submits that the same cannot be held to be sufficient to prove the case against the petitioner. He submits that for entering the examination center, candidates were to download their Admit Card from the website of the respondent no. 2 and thereafter paste their photograph on the same and have them verified from the DGCA Regional/ Sub-

Regional Offices prior to the examination. Candidates were not allowed to enter the examination centre without the duly authenticated admit cards. He further submits that in the examination centre, the invigilators were required to check the admit cards and compare the photographs thereon with the candidates appearing for the examination. He submits that in such strict atmosphere, the possibility of any candidate being impersonated by another was next to impossible. He submits that the respondent no.1 and respondent no.2 had failed to take into consideration these circumstances. Further, the invigilators were not examined by the respondent no.2 or the respondent no.1. On the other hand, the petitioner was able to produce witnesses who had at least vouched on petitioner's presence outside the examination centre. He submits that in such circumstances, the respondents had failed to prove their case against the petitioner and merely because of the mismatch in the signatures, it could not be assumed that someone had impersonated for the petitioner in the examination. Placing reliance on the judgments of the Supreme Court in *Hanumat Govind Nargundkar & Anr. vs. State of Madhya Pradesh*, AIR 1952 SC 343; *Sharad Birhichand Sarda vs. State of Maharashtra*, 1984 SCC (Cri.) 487; *Sachin Kumar Singhraha vs. State of Madhya Pradesh*, AIR 2019 SC 1416; and *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi & Ors.*, (1991) 2 SCC 716, he submits that the present case can at best be stated to be based on the circumstantial evidence of the mismatch in the signatures of the petitioner. In such cases it must be remembered that inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence

direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial, which infer the other fact which is sought to be established. The circumstances should be of a conclusive nature and tendency. They should exclude every possible hypothesis except the one to be proved. He submits that tested on the above standard, the finding against the petitioner is based on mere conjectures and surmises and only one circumstance of his signature not matching. The same certainly is not enough to visit the petitioner with the penalty which has an effect on his livelihood and reputation.

21. The learned senior counsel for the petitioner further submits that the respondent no.1, in its Impugned Order, has in fact put the burden of proof on the petitioner. He submits that merely because two of the officers named by the petitioner had not taken the examination along with the petitioner, an adverse inference could not have been drawn against the petitioner to hold him guilty of the charge. He submits that mere falsity of defence cannot prove the case of the prosecution. He places reliance on the judgment dated 05.03.2019 of the Supreme Court in Criminal Appeal Nos. 428-430 of 2019 titled ***Digamber Vaishnav & Anr. vs. State of Chhatisgarh.***

22. On the other hand, the learned counsel for the respondents submits that in the present case there was enough evidence against the petitioner showing that he had in fact not given the examination. Placing reliance on the CFSL report, she submits that the report was categorical that the person signing the attendance sheet and the OMR sheet was not the

petitioner. She has also produced before this Court copies of petitioner's signatures on the OMR sheet as also the Attendance Sheet for the written and oral examination of January 2010 and October 2010 sessions to show that the petitioner's signatures on the OMR sheet and the attendance sheet for the written examination of October 2010 session differ from the other signatures. Relying upon *Lalit Popli vs. Canara Bank*, (2003) 3 SCC 583, she submits that it is also open to this Court to compare the signatures to arrive at its own finding on this issue.

23. The learned counsel for the respondents further submits that on previous ten occasions the petitioner had given the ATPL examination from Delhi. This was the first occasion when the petitioner had chosen Mumbai as the examination centre. On all previous 10 occasions, the petitioner had failed to pass the examination. She submits that in this form there was enough evidence against the petitioner.

24. Further, placing reliance on the judgment of the Supreme Court in *K.S. Gandhi* (Supra) and *Union of India vs. Sardar Bahadur*, (1972) 4 SCC 61, she submits that the standard of proof in a disciplinary enquiry or departmental proceedings is not of proof beyond reasonable doubt but of preponderance of probabilities tending to draw an inference that the fact must be more probable. She submits that the test of a criminal trial cannot be applied to such proceedings.

25. As far as compliance with the principles of natural justice is concerned, she submits that the respondent no.2 had complied with the principles of natural justice in passing the order dated 07.11.2017. The petitioner was well aware of the allegations against him and submitted a

detailed reply to the second Show Cause Notice. The only objection raised by him was that there was no clear source of his standard signatures. In the reply, there was no request made by the petitioner seeking copy of the fact-finding report or any other report or document or that the allegations against him were unclear. Keeping in view the submissions made by the petitioner, specimen signatures of the petitioner were taken. CFSL, Shimla gave its report on such signatures. The respondent no.2 passed its order dated 07.11.2017 based on such report.

26. As far as the appellate stage is concerned, she submits that under Rule 3B of the Aircraft Rules, 1937, the Secretary, as an Appellate Authority, has not been conferred with the powers of a Civil Court. He therefore has no power to summon any witness. In spite of this, in due compliance with the principles of natural justice and to give a fair hearing to the petitioner, the respondent no.1 directed the DGCA to call upon the witnesses as submitted by the petitioner, to give their view. He further directed the DGCA to seek response from the invigilators/supervisors who were present in the examination. He also granted three personal hearings to the petitioner. As noted in the Impugned Order, the witnesses submitted by the petitioner could not corroborate his presence in the examination centre. Based on the evidence before the respondent no.1, the respondent no.1 passed the Impugned Order. She submits that this Court cannot act as a Court of appeal on such findings.

27. She further submits that the petitioner, in fact, does not deserve any relief from this Court. She submits that the petitioner before the respondent no.1 as also before this Court had placed reliance on an email

received from Capt Geetanjali Parelkar stating that she saw the petitioner outside the examination complex and that the petitioner had gone inside the premises to appear in the examination and after the examination was over, she and the petitioner discussed the question paper. However, this email was completely false as she had, in fact, not given the said examination at all. On this plea of the respondents, this Court, vide its order dated 27.09.2018, directed the respondent no.2 to file an affidavit stating its case. Such affidavit was duly filed by the respondent no.2. It is only thereafter that the petitioner filed an application, being CM no. 41521/2018, stating that he would not rely on the statement of Capt Geetanjali. The said application, however, was dismissed by this Court vide order dated 01.11.2018, observing as under:-

“It is apparent from the plain reading of this application that certain statements which are apparently untrue have been made. This court was inclined to refer the matter to the Registrar (Vigilance) for conducting an enquiry, however, Mr. Chandhiok, learned Senior Counsel appearing for the petitioner tenders an apology on behalf of the petitioner and seeks to withdraw this application to file an application after deleting certain statements (which are false).

4. The application is dismissed as withdrawn with the aforesaid liberty.”

28. The learned counsel for the respondents further submits that even the copy of the appeal filed by the petitioner before the respondent no.1 in this Court is not the true copy. In the appeal filed before the respondent no.1, the petitioner in Ground S had listed the names of the witnesses that the petitioner wished to rely on, including that of Ms. Geetanjali Parelkar.

However, in the copy of the appeal filed before this Court, the list of witnesses mentioned in Ground S have been omitted. Further, the petitioner has stated that he had produced the admit card at the examination centre before the Director, Air Worthiness, who stamped the same after comparing it with his photo ID card. This is also untrue as the Instructions for the October 2010 session required such attestation to take place prior to the examination at the DGCA Regional/Sub-Regional offices only. She submits that the petitioner having made false statements and filed false documents before this Court, is even otherwise not entitled to seek any relief from this Court.

29. I have considered the submissions made by the learned counsels for the parties.

30. At the outset, I would reiterate the scope of jurisdiction of the Court under Article 226 of the Constitution of India in dealing with a challenge to the order passed by the Disciplinary Authority. Under Article 226 of the Constitution of India, the High Court does not act as a Court of Appeal over the decision of the Authorities. The scope of inquiry before the High Court is restricted to considering whether the Authorities have followed the prescribed procedure and Principles of Natural Justice. As far as the evidence is concerned, the Court can only interfere in cases of “no evidence”. Where there is some evidence which the Authority entrusted with the duty to hold inquiry has accepted and where such evidence may reasonably support the conclusion arrived at by such Authority, the Court cannot re-evaluate such evidence to arrive at an independent finding on the same. The Authorities are the sole judge of

facts. The High Court in exercise of its power under Article 226 of the Constitution of India only exercises Supervisory Jurisdiction and not Appellate Jurisdiction over such Authorities. The findings of fact cannot be re-opened and questioned under Writ jurisdiction of the Court. A finding of fact recorded by the Tribunal cannot be challenged on grounds of evidence being insufficient or inadequate to sustain a finding. The issue of adequacy or sufficiency of evidence led on a particular point and the inference of what fact is to be drawn on the said finding are within the exclusive jurisdiction of the Tribunal. Reference in this regard may be drawn to the judgments of the Supreme Court in ***State of Andhra Pradesh and Ors. vs. Chitra Venkata Rao***, MANU/SC/0475/1975 and ***State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya***, (2011) 4 SCC 584.

31. In ***General Manager (Operations), State Bank of India and Anr. vs. R.Periyasamy***, (2015) 3 SCC 101, the Supreme Court observed that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities.

32. Recently, in ***State of Bihar and Ors vs. Phulpari Kumari***, (2020) 2 SCC 130, the Supreme Court reiterated as under:

“6.1 It is settled law that interference with the orders passed pursuant to a departmental inquiry can be only in case of “no evidence”. Sufficiency of evidence is not within the realm of judicial review. The standard of proof as required in a criminal trial is not the same in a departmental inquiry. Strict rules of evidence are to be followed by the criminal court where the guilt of the accused has to be proved beyond reasonable doubt.

On the other hand, preponderance of probabilities is the test adopted in finding the delinquent guilty of the charge.”

33. In **Collector of Customs, Madras and Ors. v. D.Bhoormall**, MANU/SC/0237/1974, the Supreme Court observed as under:

“31. It cannot be disputed that in proceeding for imposing penalties under Clause (8) of Section 167 to which Section 178-A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it "all exactness is a fake". El Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case.

*32. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in **Batch v. Archer** (1774) 1 Cowp. 63 "according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as parts of its primary burden.*

33. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in 'Law of Evidence', (12th Edn. Article 320, page 291), the "presumption of innocence is, no doubt, presumption juris; but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property", though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to incharge which very slight evidence may suffice.

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38. Even if the Division Bench of the High Court felt that this circumstantial evidence was not adequate enough to establish the smuggled character of the goods, beyond doubt, then also, in our opinion, that was not a good ground to justify interference, with the Collector's order in the exercise of the writ jurisdiction under Article 226 of the Constitution. The function of weighing the evidence or considering its sufficiency was the business of the Collector or the appellate authority which was the final tribunal of fact. "For weighing evidence and drawing inferences from it", said Birch J. in R. Madhub

Chander (1874) 21 W.R. Cr. 13 "there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited." It follows from this observation that so long as the Collector's appreciation of the circumstantial evidence before him was not illegal, perverse or devoid of common sense, or contrary to rules of natural justice there would be no warrant for disturbing his finding under Article 226. The collector's order was not of this kind."

34. In **Lalit Popli** (Supra), the Supreme Court reiterated that:-

"16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena.) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority."

35. Even though the principles of criminal law are not applicable to Departmental Inquiries and to the order impugned herein, even in criminal law, the guilt of an accused can be established through circumstantial evidence.

36. As far as the affect and sufficiency of circumstantial evidence, the Supreme Court in ***State of Andhra Pradesh vs. IBS Prasada Rao and Others***, (1969) 3 SCC 896, held as under:-

“7. In regard to the question of the effect and sufficiency of circumstantial evidence for the purpose of conviction, it is now settled law that before conviction based solely on such evidence can be sustained, it must be such as to be conclusive of the guilt of the accused and must be incapable of explanation on any hypothesis consistent with the innocence of the accused. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must meet any and every hypothesis suggested by the accused, however extravagant and fanciful it might be. Before an accused can contend that a particular hypothesis pointing to his innocence has remained unexcluded by the facts proved against him, the Court must be satisfied that the suggested hypothesis is reasonable and not farfetched. Further, it is not necessary that every one of the proved facts must in itself be decisive of the complicity of the accused or point conclusively to his guilt. It may be that a particular fact relied upon by the prosecution may not be decisive in itself, and yet if that fact, along with other facts which have been proved, tends to strengthen the conclusion of his guilt, it is relevant and has to be considered. In other words, when deciding the question of sufficiency, what the Court has to consider is the total cumulative effect of all the proved facts each one of which reinforces the conclusion of guilt, and if the combined effect of all those facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that any one or more of those facts by itself is not decisive.”

37. In *G.Parshwanath vs. State of Karnataka*, (2010) 8 SCC 593, the Supreme Court reiterated that:-

“....In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive”.

38. In the present case, the finding of the CFSL and report is of prime consideration and relevant excerpts thereof are reproduced herein below:

“RESULT OF EXAMINATION OPINION/REPORT

The documents of this case have been carefully and thoroughly examined in the Govt. of India laboratory at Shimla with the available scientific aids such as: Angle poise lamp, Stereo-Zoom Microscope, Hand Magnifier, Lenses of different magnifications etc.

- 1. The person who wrote the signatures in the enclosed portions stamped and marked S1 to S4 and B1 to B9 did not write the signatures in the enclosed portions similarly stamped and marked A1 to A6.*

REASONS FOR OPINION NO. CX-167/2017, DATED: 16.08.2017.

I have carefully and thoroughly examined the documents of this case in all aspects of handwriting identification and forgery detection with scientific aids in the Government of India Laboratory at Shimla.

REASONS FOR OPINION AS IN PARA 1:

My opinion that “The person who wrote the signatures in the enclosed portions stamped and marked S1 to S4 and B1 to B9 did not write the signatures in the enclosed portions similarly stamped and marked A1 to A6”, is based upon the following considerations:-

Inter-se comparison of the standard signatures- short signatures as well as full signatures marked S1 to S4 and B1 to B9 although executed on different dates during the period 2007, 2010 and 2016 reveals characteristic similarities in writing habits; as such they constitute suitable & sufficient standards for the purpose of comparison. On the other hand, the disputed signatures marked A1 to A6 when compared with standard signatures similarly marked S1 to S4 and B1 to B9 show differences in general writing habits, such as: movement, skill, speed, slant, spacing, alignment, relative size, proportion of strokes and their combination etc.

In addition to above, the questioned signatures also show differences in individual writing habits with the standard signatures. Some of such differences observed in the signatures are: different manner of execution of first character ‘R’ nature and location of its start, its execution in multi pen operations in disputed signatures marked A1, A3, A4 and A5, nature of curvature of the curved stroke in its upper body part, nature of angularity at the junction of aforesaid curved stroke and succeeding rightward stroke, nature and location of its staff and finish as observed in one variety, its other variety as observed in disputed signature marked A2 and A6 is also found to be different in the formation of its upper curved body part, nature of angularity in its medial part together with nature and direction of its finish; different manner of execution of succeeding character appearing as letter ‘a’ in the disputed signatures marked A1, A3, A4 and A5 its execution in multi pen operations in A1, A3 etc. nature of its oval, formation of additional horizontal stroke at the base of its oval and finish as observed in one variety of signatures, its other variety with its execution as letter appearing as ‘u’ as observed in disputed signatures marked A2 and A6 is also found to be different w.r.t.

nature and location of its start, nature of curvature of its curved body part, nature of its bifurcation and finish; different manner of execution of the letter appearing as 'e'. In the disputed signatures marked A2 and A6 completely different nature of its eyelet, nature of curvature of its body curve and finish; different nature, location and extent of the sign of under scoring in the disputed signatures marked A1 to A5.

The above mentioned differences are fundamental in nature and are beyond the range of natural variations and intended disguise and when considered collectively lead me to the aforesaid opinion of different authorship.

39. The report of the CFSL conclusively holds that the signatures on the attendance sheet and the OMR sheet for the written examination in October 2010 session were not that of the petitioner. I have also compared the said signatures/initials with the signatures of the petitioner in the oral examination for October 2010 session as also for the January 2010 session. They appear to be totally different.

40. The submission of the petitioner that he was not provided with the report of the CFSL or an opportunity to cross-examine the author of the said report prior to the passing of the order dated 07.11.2017 by the respondent no.2, though extremely relevant and would in normal circumstances have led me to conclude that such order, being in violation of principles of natural justice, cannot be sustained, in the present case, cannot come to the aid of the petitioner. It is relevant to note that in spite of supply of a copy of the said report, though belatedly, the petitioner did not lead any evidence to show that the said report was incorrect. No independent handwriting report was produced by the petitioner. He did

not seek a right to such cross examination before the Appellate Authority. In fact, there seems to be a tacit admission to the fact that the signatures do not match.

41. In ***K.L. Tripathi Vs. State Bank of India and Ors***, **MANU/SC/0334/1983**, the Supreme Court held that:

“33. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

34. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached an disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

35. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set

out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the informations given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity or personal hearing His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty. Indeed it may be mentioned that he was really consulted at every stage of preliminary investigation upon which the charges were based and upon which proposed action against him has been taken, In that view of the matter, we are of the opinion, that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because the evidence was not recorded in his presence or that the materials, the gist of which was communicated to him, were not gathered in his presence. As we have set out hereinbefore, indeed he had accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness of the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given explanation namely, he was over-worked, he had consulted his superiors and sought their guidance, his conduct has not actually, according to him caused any financial risk or damage to the Bank concerned. therefore, in our opinion, in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation

of the principles of natural justice. Had he, however, denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore.

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42. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed. See in this connection the observations of this Court in the case of Jankinath Sarangi v. State of Orissa. MANU/SC/0502/1969 : (1970)ILLJ356SC Hidayatullah, C J.", observed there at page 394 of the report "there is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right." Judged by this principle, in the background of the facts and circumstances mentioned before, we are of the opinion that there has been no real prejudice caused by infraction of any particular rule of natural justice of which

appellant before us complained in this case. See in this connection observations of this Court in the case of Union of India and Anr. v. P.K. Roy and Ors. MANU/SC/0049/1967 : (1970)ILLJ633SC where this Court reiterated that "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and Ors. relevant circumstances disclosed in a particular case". See also in this connection the observations of Hidayatullah, C.J., in the case of Channabasappa Basappa Happali v. State of Mysore. MANU/SC/0476/1970 : [1971]2SCR645 In our opinion, in the background of facts and circumstances of this case, the nature of investigation conducted in which the appellant was associated, there has been no infraction of that principle. In the premises, for the reasons aforesaid, there has been in the facts and circumstances of the case, no infraction of any principle of natural justice by the absence of a formal opportunity of cross-examination Neither cross examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi judicial adjudications."

42. In ***State Bank of Patiala & Ors. vs. S.K. Sharma***, (1996) 3 SCC 364, the Supreme Court summarized the principles applicable to a domestic inquiry as under:-

"33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a

substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To

repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice

— or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no adequate opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may

have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

43. Tested on the above principles, the Impugned Order cannot be set-aside merely because the petitioner was not supplied a copy of the CFSL report or a right to cross-examine the author thereof prior to the passing of the order. It is important to note here that the Show Cause Notice itself alleges that petitioner's signatures were not matching and therefore, the petitioner was aware of the precise nature of allegation against him. The petitioner made no endeavor to dispel such allegation by producing or seeking to produce any evidence to the contrary even before the respondent no.1, that is, at the appellate stage as well.

44. As far as the appellate stage is concerned, though this Court again would normally not agree to the procedure followed by the respondent no. 1 in considering the appeal of the petitioner, the fact remains that on the asking of the petitioner (petitioner filed a list of witnesses before the respondent no.1), the respondent no.1 by a letter dated 07.02.2018 directed the respondent no.2 to check with the six other candidates who were mentioned by the petitioner as his co-examinees as to whether they had indeed appeared in the same examination alongwith him and whether they were willing to testify the factual position in this regard. It was further directed that the invigilator and/other staff of DGCA who were present or had conducted the examination may also be asked to appear before the Appellate Authority. DGCA, in turn, vide email dated 08.02.2018 addressed to the witnesses mentioned by the petitioner, sought willingness of such witnesses to testify on behalf of the petitioner.

45. In response thereto, DGCA received an email from Mr. Sandeep Shetty, one of the witness cited by the petitioner, stating as under:

“I would like to Quote that I have seen Capt Rajesh at the venue where we used to gather before entering the exam hall and there is no way for me to verify or testify his presence inside the exam hall and whether he has actually taken the exam which I am sure your good office would be able to easily verify with the attendant sheet or other means.”

46. Mr. Neeraj Sahae, another witness cited by the petitioner, stated in his email dated 08.02.2018 that the petitioner had stayed with him in Bombay when he appeared for the exams, however, he had not appeared alongwith the petitioner for the ATPL exams .

47. Capt. Rajesh Kumar Singh, another witness cited by the petitioner, expressed his inability to appear on 15.02.2018, the date fixed by respondent no.1. He, however, did not state anything about him appearing alongwith the petitioner for the examination or having witnessed him giving such exam.

48. Mr. Shivdas Shetty, another co-examinee cited by the petitioner, vide his email dated 12.02.2018, first stated that he had seen the petitioner during the examination, however, vide his subsequent email dated 15.02.2018, stated that he had met the petitioner outside the exam hall.

49. The Impugned Order records that in the hearing held on 15.02.2018, the DGCA produced before the respondent no. 1 the responses received from the above named witnesses in a tabulated form.

The same was also supplied to the petitioner. It was stated that out of six witnesses cited by the petitioner, two had not appeared in the examination alongwith the petitioner.

50. The petitioner produced Capt. Rajesh Kumar as his witness before the respondent no. 1. His testimony has however, been disregarded by the respondent no. 1 on the ground that he had tried to influence him. The petitioner does not dispute this fact, but only states that his testimony should not have been discarded on this ground.

51. As far as the invigilator is concerned, DGCA addressed email dated 09.02.2018 to him requesting him to confirm whether the signature appended in the 'Signature of Invigilator' column of the OMR sheet were his or not and whether he was willing to testify the adherence to the procedure for admitting/verifying the credentials of the candidates during the exam.

52. Mr. Prasen Mehta, the invigilator, expressed his inability to appear on the date fixed by the respondent no. 1 due to his preoccupation. No further endeavor was made to secure his presence or verify facts from him.

53. The petitioner, in the hearing held on 15.02.2018, requested for an adjournment so that he may personally request the other pilots, who had not attended the hearing, to attend the same. The respondent no.1, allowed such opportunity to the petitioner. The respondent no.1 further directed DGCA to call upon the DGCA officials who had worked as

supervisor/superintendent/invigilator for conducting the examination under consideration.

54. The Impugned Order records that on 21.02.2018 the petitioner produced Capt. Harleen Kaur Sarna, one of the witness cited by him, and she stated that she had seen the petitioner at the examination venue/complex but she cannot testify/verify whether he did actually appear in the exam in person or not.

55. As far as the Supervisors for the examination are concerned, the Impugned Order records as under:-

“9. The officers/officials of DGCA, who acted as Supervisor /superintendent in the said examination, stated that it was not their responsibility to check the ID proofs of the candidates who had appeared for the examination. Their duty instead was to ensure that all the candidates present in the examination hall have signed their presence in the attendance sheet and all the particulars have been filled up in the relevant columns of question paper and OMR/answer sheets by the candidates and the same has also been duly signed by them. Shri.S. Dutta, DGCA who had acted as superintendent during the examination, stated that his responsibility was to allocate roles to invigilators and reconcile the number of copies of examination documents etc, and not check the ID proofs etc. Shri Ravi Krishna, DGCA confirmed that no official record is made/preserved, specifying the name of supervisor(s)/invigilator(s), room/hall wise.

10. Captain Sehgal stated that he recognizes Sh. James George, Dy. Director, DGCA as one of the invigilator during the exam. However Sh. George, who attended the hearing denied remembering anything of that time period.”

56. It is important to note here that the respondent no.1 did not formally record the statements made by the abovementioned witnesses nor the Impugned Order reflects whether an opportunity of cross-examination was afforded to the petitioner and if so, what was the result of such cross-examination. It is for this reason that I have earlier observed that the procedure followed by respondent no.2 was clearly flawed and cannot be countenanced. However, at the same time, in my view, the flaw in the procedure does not vitiate the Impugned Order to an extent to be set-aside.

57. The only challenge to the narration of the statements of the witnesses is to the statement of Capt. Harleen Kaur Sarna, where the petitioner alleges that she testified to the presence of the petitioner inside the examination venue. However, such assertion is not backed by any affidavit of the witness and is infact, vaguely made in the following words:

- “R. For that the Respondent No. 1 failed to appreciate that Captain Harleen Sarna could have only testified to the Petitioner presence inside the examination centre/venue and not to the extent of whether she had seen the Petitioner inside his examination hall.*
- S. For the Respondent no. 1 failed to appreciate that there were several halls inside the examination centre and that Captain Harleen Sarna and that the Petitioner were seated in separate halls.*
- T. For that the Respondent No. 1 failed to appreciate that the original purpose of Captain Harleen Sarna’s presence at the examination hall was to enable her to write own examination papers and not to check and*

remember others presence as also check whether others were writing their respective papers.”

58. The Impugned Order, while confirming the order passed by the respondent no.2, gives the following reasons:

“11. After perusing the records of the case and hearing the Appellant, representatives of DGCA and the Pilots who appeared as witnesses, I order as follows:-

“As requested by Capt. Rajesh S. Sehgal, he was given an opportunity to request the pilots who were indicated by him as his co-examinee in the exam under consideration, to attend the hearing in person to testify his presence during the said examination. Only 2 out of 6 pilots mentioned by him as witnesses attended the personal hearings. It was also observed that another 2 out of 6 had in fact not appeared in the said exam at all. The 4 pilots who appeared in the exam have stated(on email on in person during hearing) to have seen/met Capt. Rajesh Singh Sehgal at examination venue/campus/outside the exam hall but they categorically refrained from testifying about Capt. Rajesh Singh Sehgal’s presence inside the exam hall and whether he actually wrote the exam in person. Mere presence in/around the building premises does not imply that he has actually written the examination.

One of the pilots called by Sh. Sehgal as a witness, Capt. Rajesh Kumar, also tried to influence me during the hearing stating that he knew my younger brother.

The report of C.F.S.L. lab regarding the signature also indicates that the signature of Sh. R.S. Sehgal does not match with the signature on the examination documents.

In 2010, the system of conducting examination was that the examination centre would have a superintendent along with few supervisors and invigilators. Some of the invigilators were private employees of Thakur Institute of

Aviation Technology, Mumbai, where the examination was conducted. DGCA has confirmed that the records are not available as to who was the invigilator in the hall where Capt. Sehgal(appellant) wrote the exam. The DGCA officials who were examined stated that checking the identity proof was the responsibility of the invigilator assigned to the room. None of the superintendent/supervisor who were examined, could confirm that it was indeed Capt. R.S. Sehgal who wrote the exam. It was shocking that two the six pilots cited as witnesses by the appellant on the ground that they had appeared in the exam with him, had in fact not appeared in the said exam at all.

It is understood that DGCA has now put greater check at the examination centres including CCTV cameras to prevent impersonation.

Therefore, in my considered opinion there is no reason to differ from the findings and decision of DGCA.”

59. The Impugned Order, therefore, is passed after appreciating the statements made by the witnesses, both the ones cited by the petitioner as also the ones who are officials of the DGCA. As noted hereinabove, this Court in exercise of its powers of judicial review, cannot enter into an arena of re-appreciation of such evidence to form its own conclusion thereon. In the present case, the respondent no.1 has placed reliance on the report of the CFSL and the fact that the petitioner had cited two witnesses as officers who had attended the examination alongwith him, however, this plea was found to be incorrect. As noted hereinabove, the CFSL report was categorical in nature stating that the petitioner had indeed not signed the OMR sheet or the Attendance Sheet for the written examination. Whether such evidence was enough to hold against the

petitioner is not for this Court to decide as it would not be a case of “no evidence” but appreciation of quantum and quality of evidence, which this Court is not authorized to do while exercising its power of judicial review. Equally, the fact that there should have been a scrutiny of the Admit Card at the entrance of the examination centre and during the examination, though important, is a fact to weighed against the overwhelming evidence of the petitioner’s signatures not matching. This exercise of re-appreciating the evidence and counter-weighting the same is not permitted to the court exercising its powers of judicial review.

60. It would also be important to remember that under Rule 38 of the Aircraft Rules, 1937, the Central Government has been charged with the function of granting the Pilots’ licence. Under Rule 41A of the Rules, the DGCA has been statutorily charged with the function of conducting examination for grant of such licenses. Sub-rule (4) of Rule 41A of the Rules authorizes the Director-General to debar permanently or temporarily a candidate from any flying test or examination where such applicant has, in the opinion of the Director-General, adopted unfair means during the test or examination. Therefore, the duty of not only conducting the examination but also its sanctity is of the Director-General. In a pilots’ hand is not only the aircraft but also the lives of the passengers and the crew. Therefore, the opinion of the Director-General on the sanctity of any such examination, should not be easily interfered with by the court. In such matters, the courts must show restraint and grant more latitude to the authority.

61. For the above reasons, reliance of the petitioner on the judgments of the Supreme Court in *Hanumant Govind Nargundkar* (Supra), *Sharad Birdhichand Sarda* (Supra), *K.S. Gandhi* (Supra), and *Sachin Kumar Singhraha* (Supra) cannot be accepted. It must be noted that *Hanumant Govind Nargundkar* (Supra), *Sharad Birdhichand Sarda* (Supra), and *Sachin Kumar Singhraha* (Supra) were cases dealing with criminal prosecution. As observed herein above, the case of a departmental inquiry, like the present, is to be decided on preponderance of probabilities and not beyond reasonable doubt. This was also so decided in *K.S. Gandhi* (Supra). Tested on this anvil, it cannot be said that the inference drawn by the respondents from the evidence on record is of such a nature that no reasonable person could have arrived at such a conclusion.

62. *Digamber Vaishnav* (Supra) was also a case dealing with a criminal prosecution and therefore, cannot have an application to the facts of the present case.

63. The submission of the learned senior counsel for the petitioner that the Show Cause Notice showed predetermination of the findings against the petitioner, holds no water. The show cause notice merely refers to the investigation report and cannot be said to have predetermined the inquiry against the petitioner.

64. The submission of the petitioner that the respondent no.1 could not have transformed itself into an enquiry authority thereby seeking to remedy the defect in the enquiry conducted by the respondent no.2, cannot come to any aid to the petitioner in the present case. It is evident

from the reading of the Impugned Order that the witnesses were summoned at the request of the petitioner. The petitioner participated in such proceedings without any protest and in fact, sought an adjournment to produce further witnesses. Hence, the conduct of the petitioner clearly establishes petitioner's assent to the procedure adopted in the adjudication of the appeal filed by the petitioner before the respondent no.1.

65. This court in ***Aneuser Busch Inbev India Limited Vs. Commissioner (Excise, Entertainment And Luxury Tax) & Ors***, MANU/DE/4352/2019, has held that in such cases, the conduct of the party complaining about breach of principles of natural justice would also have to be considered. Having participated in such proceedings without protest, the petitioner cannot be now allowed to challenge the procedure adopted by the Appellate Authority merely because the result is not to his liking. Law does not permit a party to both approbate and reprobate.

66. In ***Joint Action Committee of Airline Pilots' Association of India (ALPAI) & Ors. v. Director General of Civil Aviation & Ors., 2011(5) SCC 435***, the Supreme Court explained the doctrine of election as under:-

“12. The doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

67. In view of the above, the submission of the petitioner that the Appellate Authority could not have held inquiry itself, cannot be accepted in the facts of the present case.

68. This, however, leaves me with a submission of the learned counsel for the respondents that even otherwise, the petitioner is not entitled to any relief from this Court on account of his placing reliance on the email of N. Geetanjali P. Parelkar, one of the witness cited by the petitioner as having attended the examination alongwith the petitioner. She submits that Ms. Geetanjali had, in fact, not attended the examination alongwith the petitioner and was absent. In spite of the same, she first tried to mislead the respondent no.1 by sending an email stating that the petitioner had gone inside the examination centre alongwith her and on finishing the papers, they both had discussed the same with each other. The respondent no.1 ignored such email as it was shown that she was not present in the subject examination. In spite of the same, the petitioner again relied upon her email before this Court. This Court in its order dated 27.09.2018 recorded as under:

“6. During the course of arguments, Mr. Balbir Singh, learned Senior Counsel appearing for the petitioner relied upon an email dated 15.02.2018 sent by N. Geetanjalee P. Parelkar confirming that she had entered the examination hall on 24th and 25th November, 2010 along with the petitioner. The petitioner relies heavily on the said email as evidence of the petitioner having taken the examination on 24th and 25th November 2010 along with Ms Parelkar.

7. Ms. Anjana Gosain, learned counsel appearing for respondent nos.1 & 2 states, on instructions, that Ms N.

Geetanjalee P. Parelkar did not take the examination on that dates as indicated and was absent.

8. Let an affidavit to that effect be filed within a period of two weeks from today.”

69. The respondent no.2, in compliance with the above order filed an affidavit submitting that Ms. Geetanjali did not even appear from the Mumbai Centre and had applied for appearing in the examination at the New Delhi Centre but was absent in all the three written examinations. It was only after the filing of the said affidavit, that the petitioner sought to withdraw his reliance placed on the email of Ms. Geetanjali. This Court, however, by an order dated 01.11.2018 denied such permission to the petitioner by dismissing his application seeking amendment to the Writ Petition.

70. The learned counsel for the respondents has further stated that the petitioner has also filed a false copy of the appeal that was filed by him before the respondent no.1, before this court. She has placed on record the copy of the appeal as filed by the petitioner before the respondent no.1. There is clearly a distinction between the two inasmuch as in the appeal filed by the petitioner before the respondent no.1, the petitioner had named the six witnesses, however, in the copy filed before this Court, the said paragraph has been changed and the reference to the witnesses by petitioner has been removed. This was clearly done to mislead this Court to believe that the petitioner had not named the said witnesses.

71. I find that the above conduct of the petitioner itself is sufficient to disentitle the petitioner from claiming any relief from this Court. As held

by the Supreme Court in *K.D. Sharma Vs. Steel Authority Of India Ltd. and Ors.*, MANU/SC/3371/2008 and *Kishore Samrite Vs. State of U.P. and Ors.* MANU/SC/0892/2012, where a person approaches a Court with unclean hands, making mis-statement or filing false documents, that itself is a ground disentitling him to any relief from the Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

72. For the reasons stated above, I find no merit in the present petition. The same is dismissed. The parties shall bear their own costs.

NAVIN CHAWLA, J

MAY 18, 2020

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