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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.12696 of 2020
and
W.M.P No.15682 of 2020

Chellam Prasad ... Petitioner

Vs.

1. General Manager (Commercial) Northern Region,
Air India, 2nd Floor, Main Reservations Building,
Safdarjang Airport,
New Delhi – 110 003.

2. Executive Director (Commercial),
Air India, Airlines House,
113, Gurudwara Rakabganj Road,
New Delhi.

3. CMD, Air India,
Airlines House,
113, Gurudwara Rakabganj Road,
New Delhi.

4. The Manager (Finance) Payrolls and Final Settlement,
Air India, Airlines House,
Theni Highway, Opposite Honda Showroom,
Meenambakkam,
Chennai – 600027. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue writ of mandamus directing the 4th respondent herein to release the Provident Fund due to the petitioner and refund all the recoveries made from the petitioner's salary from February 2016 and from August 2016 till June 2019, in terms of the representation dated 27.02.2020 issued to the 3rd respondent and consequently direct the 3rd respondent herein to hear the Appeal and pass orders within a time frame.

For Petitioner : Mr.Srinath Sridevan

For Respondents 1 to 4 : Mr. K.Srinivasamurthy for M/s. Row & Reddy

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ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus directing the 4th respondent herein to release the Provident Fund due to the petitioner and refund all the recoveries made from the petitioner's salary from February 2016 and from August 2016 till June 2019, in terms of the representation dated 27.02.2020 issued to the 3rd respondent and consequently direct the 3rd respondent herein to hear the Appeal and pass orders within a time frame.

2. The petitioner herein was originally appointed as Assistant Station Superintendent with the respondent-establishment. She was promoted as the Manager of the Commercial Department and further promoted as a Senior Manager in 2005, and thereafter, she was posted as Cargo Manager for three years from 2004 to 2007. In December 2012, she was transferred to Moscow and was posted as the Station Head. According to the petitioner, when she was posted in Moscow, the station was facing severe shortage of support staff and therefore, the functioning of the station was being affected. According to her, there was no Airport Manager to manage the affairs of the station for some time.

3. In 2015, an Audit was conducted and it was found that there were some discrepancies in the amount maintained in the Moscow office. The petitioner gave her explanation stating that she was not responsible for the discrepancies that were noticed by the Auditors. On the basis of the audit objections, the petitioner was transferred to New Delhi and was directed to take charge as the Manager of the Domestic Cargo Department. Subsequently, on 11.01.2016, the petitioner was placed under suspension on the basis of the allegations of financial irregularities. Thereafter, several correspondences have been exchanged between the petitioner and the respondents-Management and the suspension came to be revoked on 01.06.2016.

4. According to the petitioner, without issuing any formal charge sheet, the Management started to deduct a sum of Rs.50,000/- from the petitioner's monthly pay. Finally, on 27.01.2017, a charge sheet was issued by the first respondent coming up with several allegations of financial irregularities during her posting at Moscow. In response to the charge sheet, a detailed reply was sent by the petitioner denying all the allegations specifically. Despite her detailed and specific explanation to each of the allegations, an enquiry was conducted into the charges. The Enquiry Officer, on completion of the proceedings, submitted a report on 13.02.2019 and held that the charges were not proved against her. The copy of the enquiry report was furnished to the petitioner and her explanation was sought by the Management. However, surprisingly, in the face of the enquiry report substantively in favour of the petitioner, a Show Cause Notice

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was issued on 17.05.2019 stating that the second respondent was not in agreement with the findings of the Enquiry Officer and found infirmity in the findings and held the charges against the petitioner were conclusively proved.

5. At this, the petitioner submitted a reply on 28.05.2019, explaining and clarifying the answers to each one of the charges and contended that the enquiry findings were well considered and premised on the unimpeachable evidence made available in support of the defence. The second respondent, however, without providing any further opportunity, has passed an order dated 13.06.2019, imposing a punishment of reduction of rank and reverted the petitioner to the post of Senior Manager, re-fixing the basic pay by reducing one increment in the pay of Senior Manager till her retirement and further direction was also issued to recover a sum of RUB 45,80,098 from her retirement dues.

6. The petitioner, being aggrieved by the order of the disciplinary authority, filed an appeal before the third respondent on 18.06.2019. Subsequently, the petitioner stood retired from service on attaining the age of superannuation on 30.06.2019. At the time of her retirement, a sum of Rs.18.65 lakhs had been deducted from the retirement benefits of the petitioner and a major portion of the retirement benefits were with-held. Challenging the action of the disciplinary authority imposing punishment on the petitioner, the writ petition has been filed for the relief stated supra.

7. During the pendency of the writ petition, the appeal dated 18.06.2019, which was stated to be pending before the third respondent, was disposed of and conveyed by the General Manager (IR), Air India, vide communication dated 07.12.2021. The contents of the letter conveying the decision of the Appellate Authority are extracted hereunder:

> "This has reference to your Appeal dated 18.06.2019 against the Punishment Order No.HCD/4R/501 dated 13.06.2019 passed by the Competent Authority wherein the punishment of a Major Penalty - "Reduction in rank" in terms of Regulation 100 (B) (i) i.e. "Reduction to a lower scale of pay, post/grade with fixation of pay" was awarded to you.
>
> 2. Your above Appeal was placed before the Appellate Authority i.e.CMD and on examination of your appeal, I have been directed to convey to you as under:-
>
> (i) A proper action in terms of Air India Employees' Service Regulations has been taken against you for the serious Misconduct, committed by you at Moscow Station, which has resulted in a monetary

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loss of Rs.45 Lacs (approximately) to the Company.

(ii) Being a Country Manager, Moscow you were overall Incharge of the Station and overall responsibility of irregularities at the Station during your tenure were attributable to you.

(iii) From the contents of the above Appeal, no genuine extenuating circumstances or cogent reasons have been brought forward by you to review the punishment, as requested by you.

(iv) Hence, the punishment awarded by the Competent Authority vide order dated 13.06.2019 stands.

3. However, CMD has taken an extreme compassionate view of your case keeping in view the fact that you had already retired from the service of the Company and that recovery would be made from your retiral dues. CMD has therefore, ordered that there would not be any recovery of the remaining amount i.e. Rs.28,24,006.68 which remains unrecovered from the total amount of Rs.45,74,006.68, which was the financial loss caused to the Company, during your tenure at Moscow.

4. Hence, your appeal dated 18.06.2019 is accordingly disposed of, as stated above."

8. The learned counsel appearing for the petitioner submitted that the manner in which the appeal was disposed of, as conveyed by the General Manager (IR), Air India, in his communication dated 07.12.2021, did not demonstrate that there was proper application of mind on the part of the Appellate Authority, who is the third respondent herein. According to him, when an appeal is preferred to the third respondent, who is the Chairman and Managing Director of the respondent-establishment, order passed in the appeal must be communicated directly to the petitioner and it cannot be conveyed through the General Manager without a copy of the order that is actually passed by the Appellate Authority.

9. The learned counsel would submit that from the above communication, nothing could be deduced as to whether there was any application of mind at all by the Appellate Authority in terms of the Rule position. The learned counsel in this regard referred to the Air India Employees' Service Regulations and also referred to Chapter 1 and further referred to Regulation No.104, dealing with the Appeals, which is extracted hereunder:

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"104. APPEALS:
(i) An employee may appeal against an order imposed upon him on any of the penalties specified in Regulation 100 to the Appellate authority notified under Regulation 102.
(ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority notified under Regulation 102. The Appellate Authority shall consider the appeal and pass appropriate orders within 3 months from the date of receipt of appeal by him. The Appellate Authority may pass order confirming, reducing or setting aside the punishment either prospectively or retrospectively."

10. When an appeal is preferred to the Appellate Authority, it is incumbent upon him to consider every legitimate point that has been raised in the appeal and address the same and a reasoned order to be passed. However, the manner in which it is communicated through a lower official, does not inspire confidence that the petitioner's appeal has been properly considered by the Appellate Authority at all.

11. According to the learned counsel appearing for the respondent-establishment, the Appellate Authority has considered the appeal and decided to reject the appeal, as there was no merits in the appeal. The General Manager has simply conveyed the decision taken by the Appellate Authority and therefore, it cannot be stated that the lower authority has taken the decision in response to the appeal filed by the petitioner. The General Manager (IR) has merely conveyed the decision taken and therefore, for all practical purposes, it should be taken that appeal has been rejected by the Appellate Authority after proper application of mind. Therefore, it is open to the petitioner to work out her remedy in the manner known to law, if she is really aggrieved by the order passed in the appeal.

12. This Court considered the submissions of the learned counsel for the petitioner as well as the learned counsel for the respondents.

13. This Court is unable to countenance the specious arguments of the learned counsel for the respondent-establishment that the communication dated 07.12.2021 was in fact a decision taken by the Appellate Authority in response to the appeal filed by the petitioner on 18.06.2019. As rightly contended by the learned counsel for the petitioner,

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when the Appellate Authority is conferred with the power to deal with the appeal against the order of the punishment of the disciplinary authority, the power has to be exercised cautiously and carefully and the same cannot be treated as an empty ritual to be disposed of mechanically, as a matter of course. The power that is conferred on the Appellate Authority must be discharged with utmost circumspection and not the way it was conveyed through communication dated 07.12.2021. This Court, on perusing the contents of the impugned communication, is forced to come to an inexorable conclusion that there was no proper consideration of the appeal by the Appellate Authority.

14. It appears from the communication that the General Manager was acting as an alter- ego of the third respondent by holding brief for him as if the third respondent has taken a compassionate view in the matter. The manner in which the appeal has been disposed of, as communicated in the rejection order dated 07.12.2021, does not inspire confidence at all. It is trite in law to hold that if any appeal remedy that is provided in respect of the disciplinary matters, such remedy must be meaningful and fruitful and not an empty formality or trifle inanity. It is therefore important that the Appellate Authority discharges his function as quasi-judicial authority and act with judicious disposition. In this case, the Appellate Authority failed to demonstrate that there was application of mind in regard to the evidence that was let in, in the enquiry and the findings of the Enquiry Officer. There is also nothing on record to show that the Appellate Authority has applied his mind on the ultimate punishment imposed on the employee by the disciplinary authority. In the absence of consideration of these crucial and important matters, order that has been conveyed, vide communication dated 07.12.2021, has to be peremptorily discountenanced both in law and on facts.

15. It is needless to mention that when the Appellate Authority is vested with the powers in disciplinary matters, such power needs to be exercised, vis-a-vis what is stated in the appeal, and cannot be disposed of in a cavalier fashion like the present one. This is more so when rejection of appeal, results in severe legal injury and grave civil consequences.

16. In the said circumstances, the order of the Appellate Authority, dated 07.12.2021, is liable to be interfered with.

17. This Court is also conscious of the fact that what is prayed for in the Writ Petition is only to issue a Writ of Mandamus. In order to avoid multiplicity of proceedings, this Court Suo-Motu quashes the order of the Appellate Authority/General Manager(IR) of Air-India, as conveyed in the communication, dated 07.12.2021 in Ref.No.HPDO2/769, a copy of which was produced before this Court today. However, while

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holding as such, this Court is also of the view that the Appellate Authority has to revisit his order by considering the appeal afresh and pass a reasoned order disclosing his independent application of the mind.

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18. While passing orders, the Appellate Authority shall take into account the relevant facts like past track record of the petitioner, availability of evidence in support of the allegations, enquiry findings and proportionality of punishment imposed by the Disciplinary Authority.

19. The Appellate Authority is directed to pass appropriate orders in this regard, within a period of twelve weeks from the date of receipt of copy of this order.

20. The Writ Petition stands allowed to the extent indicated above. No costs. Connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.General Manager (Commercial) Northern Region,
Air India, 2nd Floor, Main Reservations Building,
Safdarjang Airport, New Delhi - 110 003.

2.Executive Director (Commercial),
Air India, Airlines House,
113, Gurudwara Rakabganj Road, New Delhi.

3.CMD, Air India,
Airlines House, 113,
Gurudwara Rakabganj Road, New Delhi.

4.The Manager (Finance) Payrolls and Final Settlement,
Air India, Airlines House,
Theni Highway, Opposite Honda Showroom,
Meenambakkam,
Chennai - 600027.

+1cc to Mr.Srinath Sridevan, Advocate SR. No.65723
+1cc to N.G.R.Prasad, Advocate SR. No.65784

W.P.No.12696 of 2020

SR(CO)
PR (06/01/2022)

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