

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

Reserved on : 06.01.2021

Pronounced on : 06.04.2021

+ **LPA 608/2019 & CM APPL. 41644/2019, CM APPL. 22653/2020
& CM APPL. 343/2021**

AIRPORTS AUTHORITY OF INDIA

...Appellant

Through: Mr. K.K. Rai, Senior Advocate
with Mr. Digvijay Rai, Mr.
Ramkrishna Veerendra and Mr.
Aman Yadav, Advocates.

versus

P. SREE KRISHNA & ORS.

...Respondents

Through: Mr. Dhan Mohan, Mr. Ravi
Mishra, Ms. Mahima Gautam
and Ms. Shivani Chaudhary,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J.

1. The present intra-court appeal under Clause 10 of Letters Patent stems from departmental disciplinary proceedings instituted against Respondent No. 1 (*hereinafter referred to as "PSK"*), resulting in the order passed by the Disciplinary Authority of the Appellant Company (*hereinafter referred to as "AAI"*), as confirmed by the Appellate Authority, imposing the penalty of – '*Reduction of pay by one increment /stage in time scale of pay for a period of one year with effect from the date of the order*'. These orders were

assailed in a writ petition filed by PSK, being W.P. (C.) No. 9149 of 2017 which has culminated in the impugned judgment dated 1st August, 2019 passed by the learned Single Judge, whereby the afore-noted orders have been quashed with a direction that if PSK has suffered any promotion/seniority or other benefits, the same shall be restored, provided he is otherwise eligible for the same.

BRIEF FACTS:

2. The brief factual matrix giving rise to the present appeal is as follows:

(i) On 20th February, 1991, PSK joined the erstwhile National Airport Authority of India as Assistant Executive Engineer (Group A). On 20th October, 2006. He was promoted to the post of Joint General Manager Engineering (Civil) (*hereinafter referred to as “JGM Engg. (Civil)”*). He was transferred to Hyderabad International Airport on 12th April, 2007 where he served as JGM Engg. (Civil) till 7th October, 2010 and thereafter, as the JGM Engg. (Civil) at the Jaipur Airport.

(ii) On 29th October, 2012, a major penalty charge-sheet under Regulation 4(1) (a), (b) & (d) and 5 (i), (v) & (ix) of the Airports Authority of India Employees (Conduct, Discipline & Appeal) Regulations, 2003 (*hereinafter referred to as “Regulations”*) was issued to PSK for alleged misconduct committed by him in the work of ‘*Painting of Runway Markings at Hyderabad Airport*’ involving manipulation of records and favouring the contractor therein.

(iii) The statement of articles of charges reads as under: -

a) Article-I

Shri P, Sreekrishna, Jt. G.M.(Engg-Civil), being the Engineering-In-Charge, in connection with the work of "Mechanized Painting of runway markings at Hyderabad Airport" has been found to be responsible for

violated the terms and conditions of agreement executed on 28.02.2008 for the said work to, favour the contractor M/s. Innovative Reflectors.

b) Article-II

Shri P. Sreekrishna, Jt. G.M.(Engg-Civil), being the Engineering-In-Charge, in connection with the work of "Painting of runway markings at Hyderabad Airport" has been found to be responsible for manipulated of the records of the said work at site, resulting the payment was made to the contractor M/s. Innovative Reflectors Pvt. Ltd., for over measurement.

By his aforesaid acts, Shri P. Sreekrishna, Jt. General Manager (Engg-Civil), failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner prejudicial to the interest of AAI, and unbecoming of him as an employee of AAI. He has also exhibited dishonesty and negligence in the performance of his duties, thereby contravening the provisions of Regulations 4(1) (a) (b) & (d), and committing misconduct under Regulations 5 (i) (v) & (ix) of the Airports Authority of India Employees (Conduct, Discipline & Appeal) Regulations, 2003."

(iv) The Inquiry Officer (*hereinafter referred to as "IO"*) submitted its report dated 26th March, 2014, concluding that the charges against PSK stood proved. The same is summarized below:

A. Article-I: The IO recorded that PSK being the EIC should have got the agreement executed on or before 17th November, 2007 and not as late as 28th February, 2008 and has further recorded that PSK passed and forwarded (a) the payment of the first running bill amounting to Rs.3,01,020/- on 11th January, 2008 and (b) the payment of second running bill amounting to Rs. 2,34,203/- on 5th February, 2008, prior to execution of the contract. He has further observed that PSK committed an act of misconduct by violating Clause 3.10 of the contract which required the contractor to deposit, prior to commencement of work, 20 litres of paint in sealed drums duly marked with the name of the manufacturer, batch numbers, date of manufacturer, manufacture's test certificate and labelled "for AAI use only". The paint

register did not mention the above details. A certificate was obtained from the paint companies specifying the date of manufacturer, batch numbers etc. during the enquiry proceedings. However, the IO opined that the said certificate has no relevance as its genuineness cannot be determined at this juncture, and thus held PSK to be negligent in duty.

B. Article-II: The paint register was maintained by the field engineers from 24th November, 2007 to 16th September, 2008. According to AAI, it appeared that there was a manipulation of record through overwriting, discrepancies in entries with respect to the receipt of yellow and white paint and discrepancies as regards back-dated measurement. The IO observed that the entries in the measurement book did not tally and the manipulation in the register was owing to the failure and lack of devotion to duty by PSK to conduct periodic checks of register. Further, the IO observed that there was shortage of 120 litres of white paint and stated that excess payment had been released to the contractor.

(v) On the representation of PSK against the report, the Disciplinary Authority observed that the IO has not co-related his findings during the enquiry proceedings and hence directed the IO to revisit his findings based on the evidence on record. Since the IO had retired by then, he refused to do so, and further submitted that the Disciplinary Authority may instead appoint another IO to conduct a fresh enquiry.

(vi) The Disciplinary Authority elected not do so and instead, after examining the enquiry report prepared by the IO, *vide* its order dated

26th/29th May, 2015, held that, there was no reason to discard the findings of the IO and imposed the penalty of '*Reduction of pay by one increment/stage in time scale of pay of PSK for a period of one year with effect from the date of issuance of order*'. PSK was to earn his normal increment of pay during said period of reduction, and upon expiry of this period, the reduction would not have the effect of postponing the future increment of his pay.

(vii) Aggrieved by the above, PSK filed an appeal before the Appellate Authority. The same was rejected *vide* order dated 10th May, 2016 with no modifications to the penalty order.

(viii) PSK then challenged the afore-noted orders by way of a writ petition before this Court, which has resulted in the impugned judgement, setting aside the orders of the Disciplinary and Appellate Authorities, with restoration of benefit of seniority/promotion. The learned Single Judge arrived at the conclusion that the non-consideration of the evidence produced by PSK and the rejection of material witnesses during the enquiry proceedings is in violation of the principles of natural justice.

(ix) AAI impugns the judgment *inter-alia* contending that the learned Single Judge has exceeded the scope of judicial review, by re-appreciating evidence and basis thereon, interfering in findings of facts.

CONTENTIONS OF THE PARTIES:

3. Mr. K. K. Rai, learned Senior Counsel appearing on behalf of AAI, has raised the following contentions:

3.1. Preliminary Submission

It is settled law that in case of disciplinary proceedings, judicial review is confined to examining the decision-making process which should conform to principles of natural justice and statutory protection prescribed under law. A Court, while exercising its jurisdiction under Article 226 cannot re-appreciate, review, re-assess and thereby reject evidence *vide* an independent conclusion of facts. Only under exceptional circumstances is the quantum of punishment interfered with i.e., if it is unconscionable and arbitrary. Under no circumstances, are Courts to go into re-appreciation of facts and exercise their jurisdiction as a fact-finding authority. In the present case, there is not only re-appreciation of facts but also inconsistent findings have been arrived at by the learned Single Judge by making a misplaced reference to facts.

3.2. Violation of principles of natural justice due to non-summoning of witnesses-

The IO had considered the relevancy of the witnesses mentioned by PSK and arrived at the conclusion that the witnesses being the Airport Director and the Finance Officer of AAI, had no role in the implementation of the contract and were not relevant. But, the learned Single Judge ignored this reasoning and erred in returning a mechanical finding that there has been a violation of principles of natural justice due to non-examination of the abovementioned witnesses. To buttress the submission that the IO is not bound to summon defence witnesses and the person seeking to summon witnesses must justify their production, reliance was placed on the decision of the Supreme Court of India in ***Naresh Govind Vaze v. Government of Maharashtra & Ors.***,¹ wherein it has been held as follows:

¹ (2008) 1 SCC 514

“24. The appellant did not elaborate to as to how the provisions of the said Rules had not been followed. Only because the Rule provides for summoning of the defence witnesses, the same would not mean that the inquiry officer had no discretionary jurisdiction in this behalf. An inquiry officer cannot summon witnesses far less the Judges of the High Court who have nothing to do in the matter. The delinquent officer must show that the witnesses to be summoned have something to do with the issues involved in the disciplinary proceedings.”

3.3. On merits of charges

(a) Regarding Article-I- It is seen that there are inherent contradictions in the impugned judgment as the learned Single Judge himself observed that, *“two running account bills were paid to the contractor without execution of the Contract Agreement, thereby indulged in violation of contract agreement”*. Therefore, he could not have held that the charge against PSK was “not proved”. Further, while AAI in its counter affidavit on record, admitted that Shri Kanchagar, the predecessor Engineer-in-Charge (‘EIC’) was transferred, however, the responsibility of ensuring that obligations given in the contract were complied with, fell on PSK since he was exercising the powers of EIC at the time and that he failed fulfil such obligation of executing the agreement prior to release of payment.

(b) Regarding Article-II- It was wrongly submitted by PSK before the learned Single Judge that the charge of measurement was dropped against co-charged officer, namely Shri Ravisekhar. The entries in the measurement book were recorded by one Shri Md. Jahangir Alam, however, action against him could not be initiated as he resigned from services of AAI w.e.f. 1st September, 2008. Further, since there was no charge levied against Shri Ravisekhar on this issue, there was no question of the charge being

dropped in this regard. PSK had deliberately withheld this fact from the learned Single Judge which resulted in an erroneous finding.

3.4. Finally, no prejudice is caused to PSK as the least major penalty has been imposed under Clause 27 of the Regulations.

4. Mr. Dhan Mohan, learned counsel for PSK, opposed the stance of the Appellant, on the following grounds:

4.1. As Shri Prakash Kanchagar was available at Hyderabad Airport till 20th November, 2007, and the agreement was to be signed by 18th November, 2007, it was the duty of Shri Kanchagar and not PSK to get the same signed.

4.2. During investigation, the role and responsibility of the co-charged, Shri Ravisekhar regarding manipulation of the record, was established. However, no charge was levied against Shri Ravisekhar on this issue, as admitted by AAI.

4.3. There is total non-application of mind which is evident from the lack of consideration of various documentary and oral evidences adduced by PSK before the IO. This is further reinforced by the direction of the Disciplinary Authority to the IO to reconsider the report, which was however not done.

4.4. If the IO was adamant not to revisit the findings on the basis of the evidence on record, then it was incumbent on the Disciplinary Authority to quash the enquiry conducted and then either to proceed to initiate a fresh enquiry or consider the evidence on record on its own. In the instant case neither has the Disciplinary Authority applied its mind

while awarding the punishment nor has it kept the basic principles of natural justice in mind.

ANALYSIS AND FINDINGS:

A. On preliminary objection regarding scope of interference under Article 226.

5. We have given our anxious consideration to the contentions advanced by the counsel for the parties and feel that we must first deal with the preliminary submission made by Mr. Rai regarding the exercise of jurisdiction by the learned Single Judge under Article 226 of the Constitution of India. AAI has stressed that the learned Single Judge has exceeded its jurisdiction by re-appreciating evidence. On this aspect, we would only like to observe that the principles enunciated by the Courts on this subject are well-settled. Under Article 226, the Court is ordinarily not expected to delve into questions of fact and interfere with the findings of disciplinary authorities as the Court while acting under Article 226 is not a court of appeal. Interference is only warranted when the disciplinary authority has erroneously refused to admit admissible and material evidence or there has been a violation of the principles of natural justice.² While exercising appellate jurisdiction under Letters Patent, we would have ordinarily not re-visited the factual aspects. However, each case would turn on its own facts. Here, we have perused the enquiry report to satisfy ourselves if the learned Single Judge had overstepped its jurisdictional mandate or whether his interference was necessary. For the reasons discussed hereinafter, in our opinion the learned Single Judge's interference was indispensable as there was a complete non-application of mind by the IO, the Disciplinary Authority and the Appellate Authority. Both the

²State of Andhra Pradesh and Ors. v. Chitra Venkata Rao, (1975) 2 SCC 557

Jeevan Singh Bathyal v. Union of India & Ors, MANU/DE/2290/2020

Director General of Police, Railway Protection Force and Ors. v. Rajendra Kumar Dubey, AIR 2021 SC 91

Disciplinary Authority and the Appellate Authority in a perfunctory manner, agreed with the findings of the IO without taking into consideration the stand of PSK. The findings of the IO were thus perverse as there was manifest failure of justice. Moreover, the principles of natural justice have been flouted. Therefore, the learned Single Judge was thus justified in setting aside the punishment awarded in exercise of the powers of this Court under Articles 226 of the Constitution.

B. On proving of Articles of Charge-

6. In the instant case, there are broadly two charges issued against PSK for violation of terms and conditions of the agreement, resulting in dereliction of duty. We propose to express our opinion on each article of charge independently.

(a) *Article 1:*

7. This Article of charge essentially has three components: (i) PSK should have gotten the agreement executed on or before 17th November, 2007; (ii) despite the agreement not being executed, PSK passed on two running bills for certain amounts and (iii) paint register did not carry the details as mandated under Clause 3.10 of the Agreement.

8. Single Judge's findings- With respect to this Article of charge, the learned Single Judge has observed as under:

“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.

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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.”

9. We have put our minds to the aforesaid observations made by the IO and the learned Single Judge, and juxtaposed them against the contentions of the parties. With respect to the first Article of charge, as rightly pointed out by Mr. Dhan Mohan, there is absolutely no discussion of the reply/defence furnished by PSK. It was pointed out that the contractor signed the agreement on 14th November, 2007, but the EIC at the time, Shri Kanchagar did not sign the same, despite reminder. The negligence was attributable to Shri Kanchagar and not PSK. It was asserted that the non-execution of the agreement by Shri Kanchagar only came to be known to Shri P. Ravisekhar, Manager (C) and PSK on 7th January, 2008 when Shri G.M.S. Rao, Vigilance Officer had asked for the agreement. The unsigned agreement was handed over to Shri G.M.S. Rao on 7th January, 2008 on account of there being a complaint against Shri Kanchagar. On 11th January, 2008, PSK along with Shri Ravisekhar and Shri A V Rama Krishna sought an

explanation regarding non-signing of the agreement from Shri Kanchagar when he was on personal leave in Hyderabad, but no satisfactory explanation surfaced. This defence by PSK finds no mention in the inquiry report. PSK had also contended that the aforesaid facts were brought to the notice of the then Airport Director– Shri R.K. Singla as well as DGM (Finance)- Shri Bhavani Singh *vide* a note dated 10th January, 2008. He further contended that the Airport Director in a meeting held in the presence of the DGM (Finance), directed the release of payment to the contractor immediately as the work done by him was operationally important and as per the tender condition No. 51, monthly interim bills were to be paid to the contractor for the work done. In the aforesaid meeting, a decision was taken that payment should be made to the contractor immediately and agreement could be executed by Shri Kanchagar after his joining back at Hyderabad. According to PSK, these circumstances sufficiently explained the delayed execution of the agreement with the contractor. This explanation, however does not find any mention in the analysis given by the IO while holding the charge to be proved against PSK.

10. Likewise, relating to the issue of violation of Clause 3.10 of the Agreement, PSK had raised several contentions. He had *inter-alia* contended that as per the works manual, there was no standard proforma for paint register, and accordingly, proforma of cement register was being followed by all the engineers at all airports. The said proforma did not contain the columns for making entries inconsonance with Clause 3.10. The afore-noted details are not mentioned in any register of any airport for making entries; however, invoice copies and DC challans are being maintained separately in the file. PSK also contended that the above position was also confirmed by defence witness, namely, Shri A.V. Ramakrishna. All invoices/DC challans clearly exhibited the details of the airports, contractors' name, address,

quantity etc. These records were also available with the IO. Further the Disciplinary Authority had admitted the record pertaining to supply of paint by the supplier for runway painting work at Hyderabad. It is noted that the aforesaid records have been brushed aside by the IO by merely stating that they have no relevance as the genuineness cannot be asserted.

(b) *ARTICLE 2:*

11. This Article of charge effectively has four components: (i) PSK has made statements to the effect that on examination of paint register there was a shortage of white paint; (ii) the dates of measurement and actual receipt of yellow paint did not match; (iii) entries made in the paint register had been modified by overwriting; and (iv) genuineness of signature in the register could not be verified.

12. Single Judge's findings- On this Article of charge, the learned Single Judge observed as under:

“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.”

13. As regards the second Article of charge, again we find that the reply of PSK has not been considered by the IO. PSK had contended that the defence witness Shri A.V. Ramakrishna, then Assistant Manager (C) had overseen the work for two days on 25th and 26th December, 2007 when Shri Ravisekhar, then Manager (C) and Md. Jahangir Alam, JET (C) were on leave. He confirmed that he received 120 litres of white paint on 26th December, 2007 from the agency and he had entered the name in the paint register in the presence of contractor's representative and both of them

signed in the paint register and it was confirmed that the paint drums received by him had the mark “for AAI use only”. PSK has further asserted that on a query raised with M/s J&N of Coimbatore and Vizag, the Coimbatore branch confirmed the supply of 120 litres of white paint though DC along with other connected documents such as batch numbers, manufacturers, test certificates. These aspects have not been considered by the IO, the Disciplinary Authority or the Appellate Authority.

14. From the above, it transpires that the IO and also the Disciplinary Authority or the Appellate Authority have not cared to co-relate the evidence on record and have, in a very terse manner, come to the conclusion that the charges against PSK stood proved. There are no cogent reasons assigned as to why the stand and the evidence produced by PSK was not found to be reliable. The IO ought to have at least considered the same, before discounting them by giving reasons, howsoever brief they may be. In these circumstances, since there was complete non-application of mind and non-consideration of the evidence furnished by PSK, the findings of the IO and the orders of the statutory authorities of AAI cannot be sustained.

15. In these circumstances, the learned Single Judge correctly came to the conclusion that the reasons furnished for arriving at the conclusion were not credible and thus, in our opinion, the Court was justified in interfering in the matter. The learned Single Judge’s closing observations read as under:

“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.”

C. On Violation of Principles of Natural Justice due to non-summoning of witnesses

16. In the impugned judgment, the learned Single Judge has held that there was a violation of principles of natural justice due to non-examination of material and relevant witnesses. Mr. Rai has contended that the IO has considered the relevancy of the witnesses mentioned by PSK and decided that the witnesses' testimonies were immaterial. He has further contended that the IO is not bound to summon the defence witnesses. While, the IO may not be bound to summon all the defence witnesses, there can be no dispute with the fact that the charged officer cannot be left high and dry. If the witnesses to be summoned are necessary having regard to the nature of charge, the IO cannot decline to summon the witness without providing a satisfactory explanation for the same. On this aspect, the learned Single Judge has noted as under:

“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.”*

17. On the aforesaid issue, we may note that the very purpose of a domestic inquiry is to find out the true factual matrix and thus, the right of the employee to examine defence witnesses cannot be taken lightly. The witnesses' name and the purpose for summoning them, had a direct co-

relation to the charges levelled against PSK. We therefore, do not find any irrationality in the view taken by the learned Single Judge that denying PSK an opportunity to examine the said witnesses caused prejudice to him. This is clearly a violation of principles of natural justice, and we find no reason to interfere with the said reasoning.

18. In view of the aforesaid, we find no ground to interfere with the impugned judgment. Accordingly, the present appeal along with the pending applications is dismissed. No order as to costs.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

APRIL 6, 2021
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