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W.P.No.27693 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.27693 of 2022 &

WMP.Nos.26965 &26966 of 2022

A.Murugaiyan

... Petitioner

Vs

1. The Chief Executive Officer,
AI Airport Services Ltd., [Formerly known as
AIR India Air Transport Services Limited],
2nd Floor, GSD Building, AIR India Complex,
Terminal – 2, IGI Airport, New Delhi – 110 037.
2. N.Sridhar,
Officer on Special Duty-OSD/HR
AI Airport Services Ltd., [Formerly known as
AIR India Air Transport Services Limited],
2nd Floor, GSD Building, AIR India Complex,
Terminal – 2, IGI Airport, New Delhi – 110 037.
And presently working as Nodal officer,
AI Airport Services Ltd., Room No.S201,
Above Domestic BMA, Cochin International Airport Ltd.,
Nedumbassery, Ernakulam – 683 111.
3. The Regional Director [Southern Region],
Air India, Airlinehouse,
Meenambakkam, Chennai – 600 022.



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4. The General Manager – Personnel [O],
Air India, Airlinehouse,
Meenambakkam, Chennai – 600 022.

... Respondents

Prayer:- Writ Petition filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to show cause notice bearing No.AIASL/HQ/86101430/[R]1957 dated 21.07.2022 and consequent letter Ref.No.AIASL/HQ/1994A dated 25.08.2022 issued by the fourth respondent and quash the same and consequently direct the respondents to provide passage facility to the petitioner.

For Petitioner : Mr.U.Karunakaran

For Respondents : Mr.N.G.R.Prasad
for Mr.K.Srinivasamurthy

ORDER

This Writ Petition has been filed to quash the show cause notice bearing No.AIASL/HQ/86101430/[R]1957 dated 21.07.2022 and consequent letter Ref.No.AIASL/HQ/1994A dated 25.08.2022 issued by the fourth respondent and consequently direct the respondents to provide passage facility to the petitioner.

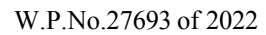


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2. The writ petitioner was originally appointed as Plant Technician vide proceedings reference No.AI/RECT/5057 with effect from 03.06.1983 in AIR India Personal Department. Thereafter, he was promoted to various higher level and finally promoted as Deputy General Manager with effect from 28.10.2016 in AIR India Airport Services. The petitioner was transferred to AIR India Air Transport Services, Ltd., [AIATSL] with effect from 01.02.2013 from AIR India with specific condition that the services will continue to be governed the service conditions applicable to AIR India as on the date of transfer. Thereafter, the petitioner attained the age of superannuation and retired from services of Air India Air Transport Services Limited on 31.09.2019. After the date of superannuation, a show cause notice dated 21.07.2022 has been issued to the petitioner and thereafter, punishment withdrawing the Passage Facility given to the petitioner as the benefit of retirement has been imposed even before decision taken on the show cause notice dated 21.07.2022. Challenging the same, the present Writ Petition has been filed.

3. In the counter filed by the first and second respondents, their main contention is that the Chief Vigilance Officer, Vigilance Department of Air



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filed the show cause notice dated 21.07.2022, the communication dated 16.08.2022 sent to Air India limited and penalty order dated 25.08.2022 along with the Writ Petition would prove that the petitioner is in knowledge of things and since he has no answer to justify his misdeeds as evident from the Report of the Chief Vigilance Officer dated 21.04.2020, the petitioner conveniently failed to submit his reply to the show cause. Therefore, it is not open to the petitioner to now contend that he was not given opportunity. Though the Vigilance officer report dated. 21.04.2020 was received, the petitioner in collusion with the previous CEO had hidden the Vigilance Report. A Writ Petition in W.P. 6568 OF 2021 was filed before the Bombay High Court seeking a direction to handover the irregularities committed by the petitioner and the then CEO to the Central Vigilance Commission for detailed investigation. It is then the Vigilance Report dated 21.04.2020 surfaced and immediately action has been taken against he petitioner. Therefore the petitioner's contention that there is a delay in taking action against him is not tenable. The petitioner cannot take advantage of his own misdeeds and suppression. Hence, prayed for dismissal of this Writ Petition.



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4. Though various grounds have been raised in the Writ Petition, the main ground on which the impugned Order has been challenged is that even before decision has been taken by the competent authority, a communication has been sent on 16.08.2022 by the Officer on Special Duty as if the competent authority has decided to withdraw the passage facility. However, no such Order has been passed by the competent authority. It is the contention of Mr.N.G.R.Prasad, learned Senior Counsel for the respondent that the competent authority has already taken a decision and thereafter, the same has been confirmed by the authority in written on 25.5.2022. The learned Senior Counsel also brought to the notice of this Court the letter dated 18.08.2022 indicating the manner in which the Order came to be passed.

5. At the outset, a perusal of the records, though sever allegations have been raised against the petitioner, this Court has not ventured into those allegations. Once the departmental proceedings has been initiated, the same has to be done as per rules. The communication dated 18.08.2022 addressed by OSD though indicate that the competent authority has decided to withdraw his passage facility for a period of 5



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years with immediate effect, the correspondence placed before this Court, particularly, the letter dated 18.08.2022 indicate that the notice sent to the writ petitioner has been returned as unclaimed and no reply has been received till date and therefore requested the CEO to convey his decision in the above matter. Based on the letter dated 18.08.2022, the Order has been passed by the competent authority on 25.08.2022 imposing the punishment of withdrawal of passage benefit for a period of 5 years with immediate effect. This Order has been passed only on 25.08.2022. However, the communication dated 18.08.2022, in fact, indicate that Officer on Special Duty has addressed a letter to the authorities as if the punishment has already been imposed by the competent authority. Hence, the very communication relied on by the respondent indicate that no opportunity, whatsoever, has been given and the Order is predetermined and the Order came to be passed later.

6. In such view of the matter, the very Order of punishment withdrawal of passage facility is set aside and the matter is remitted back to the first respondent to conduct enquiry as per rules applicable to the employees after following the principles of natural justice. The petitioner



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shall give his explanation within a period of one month from the date of receipt of a copy of this Order and thereafter, the authorities shall proceed further as per law.

7. Accordingly, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

18.07.2023

Index:Yes/No

Neutral Citation : Yes/No

vrc

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N.SATHISH KUMAR, J.

VTC

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