



Writ Appeal No.4044 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN**

**Writ Appeal No.4044 of 2019
and C.M.P.No.25363 of 2019**

1. The General Manager (Personnel),
Air India Ltd.,
Southern Region,
Chennai – 600 001.

2. The Regional Director,
Air India Ltd.,
Airlines House,
Meenambakkam, Chennai.

.... Appellants

Vs

Mr.N.Seelan

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 26.04.2019 made in W.P.No.30008 of 2014.

For Appellants : Mr.K.Srinivasa Murthy

For Respondent : Ms.Thenmozhi Sivaperumal



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JUDGMENT

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(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This intra-court appeal has been directed against the order passed by the Writ Court dated 26.04.2019 made in W.P.No.30008 of 2004.

2. The respondent was working as a Security Guard of the appellant organization, against whom, a charge of theft has been made, for which, there was a criminal proceedings, simultaneously Departmental proceedings also went on.

3. In the criminal proceedings, the employee was acquitted by the competent Criminal Court.

4. However, insofar as the disciplinary proceedings is concerned, based on Enquiry Officer's report the disciplinary authority has inflicted the punishment of removal from service by order dated 25.04.1997. The said punishment order was under challenge in the said writ petition.



5. The learned Judge, who heard the writ petition has ordered the same to the extent that the punishment of removal from service is to be modified into one of compulsory retirement. Aggrieved over the same, the present intra-court appeal has been directed.

6. Mr.K.Srinivasa Murthy, learned Standing Counsel appearing for the appellants would contend that, merely because in criminal case the employee/respondent has been acquitted, it cannot be stated that the punishment awarded against the employee, because of the Enquiry Officer's report, where the charge framed against him has been proved, which was accepted by the disciplinary authority and imposed the punishment by way of Departmental proceedings by the appellant Department, cannot be found fault with.

7. He would further submit that the learned Judge has stated that the Disciplinary Authority has relied upon only the Management Witness alone i.e., MW2, who was the Investigating Officer in the criminal case also and based on his evidence or deposition such a findings since has been given by the Enquiry Officer and such a punishment of removal from service was imposed, therefore, that was found fault with by the



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learned Judge and therefore, the learned Judge has modified the punishment into a compulsory retirement.

8. However, the learned Standing Counsel would further submit that, insofar as the punishment of compulsory retirement is concerned, no such punishment could be imposed against any employee against whom the charges are proved for a major penalty. In this context, the learned Standing Counsel has relied upon Rule 17 of the Service Rules, where number of punishments have been enumerated in the list of punishments, there has been no punishment called compulsory retirement. The punishments, which are available are censure, fine, forfeiture of emoluments, recovery, withholding increment or promotion, reduction to a lower post or a grade, removal from service and dismissal with or without retirement benefits in part or full. Pointing out this, the learned Standing Counsel appearing for the appellants would contend that the punishment of compulsory retirement since has not been provided under the Service Rules such a punishment can never be imposed on the employee, therefore, such kind of modification that has been made by the learned Judge through the impugned order cannot be sustained, he contended.



9. We have heard Ms.Thenmozhi Sivaperumal, learned counsel appearing for the respondent, who would submit that, the learned Judge have considered the merits of the case as the employee was acquitted in the criminal case, where the Investigating Officer was not at all examined and the case or charge made against him since has not been proved before the Criminal Court he was acquitted. When that being the position, the very same Investigating Officer, who stood as MW 2 before the Disciplinary Authority i.e., Enquiry Officer and based on his only evidence since the conclusion has been arrived at by the Enquiry Officer, which was accepted by the Disciplinary Authority, which triggered the mind of the learned Judge to interfere with the said major punishment that has been imposed against the employee. Hence, the modification has been effected by making the said punishment of removal from service into a compulsory retirement, hence such a approach of the learned Judge cannot be said to be an erroneous one. Hence, the impugned order does not warrant any interference from this Court, learned counsel contended.

10. We have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.



11. Insofar as the conclusion that has been arrived at by the learned Judge in the impugned judgment is concerned, the learned Judge has not completely set aside the punishment awarded against the employee, he has only modified the punishment into a compulsory retirement. For such a modification, the objection raised on behalf of the appellant is that, as per the Rule there has been no such punishment called compulsory retirement. We have also indicated the list of punishments that are enumerated in Rule 17 of the Service Rules.

12. Assuming that the major punishment alone to be given to the employee, instead of removal from service from the Corporation, dismissal can be imposed, where the dismissal either with or without retirement benefits in part or full also one of the major punishment that is provided under Rule 17(h) of the Service Rules.

13. The reason for such reduction since has been given in the order impugned by the learned Judge as the Enquiry Officer has only relied upon MW-2, however, the MW-2 can never be deposed before the Criminal Court even though he stood as a Enquiry officer and that is how the Criminal case also ended in acquittal.



14. Therefore, on the strength of MW2 whether based on suspicious circumstantial evidence and preponderance of probability such a major punishment of removal of service can be imposed against the employee was the question that triggered the mind of the learned Judge, therefore he has come to a conclusion to modify such punishment into compulsory retirement, which in the considered opinion of this Court is to be sustained.

15. The only technical objection since has been raised by the learned counsel appearing for the appellants that there has been no such punishment under the rule of compulsory retirement, we found that, there is an equal punishment of compulsory retirement in the name of dismissal with or without retirement benefits in part or full.

17. Therefore, with that nomenclature the modified punishment can be imposed against the employee.

18. In the result, the following orders are passed in this appeal:

- ◆ That the impugned order is sustained. But the same time, in view of the rule position, where the punishment of compulsory



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retirement is not enumerated as one of the punishments, we feel that the employee can be imposed the alternative punishment of dismissal from service with retirement benefits and accordingly, such a punishment is imposed.

- ◆ Resultantly, the employee/respondent is entitled to retirement benefits from the appellant Organization within a period of three (3) months from the date of receipt of a copy of this order.
- ◆ It is made clear that the imposition of modified punishment of dismissal from service with retirement benefits should way back to the original date of punishment awarded against the employee and accordingly, at that time, what was the retirement benefits accrued on the respondent shall be calculated and be paid to the respondent. In this regard, if at all any other documents or records are available with the employee, the respondent/employee shall forward the same along with the copy of this order to the appellant Organization, who on receipt of the same, shall comply with the order within the time as indicated above.



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WEB COPY With these observations and directions, this writ appeal stands disposed of. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(G.A.M., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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