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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd March, 2023

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W.P.(C) 3200/2023

SHANKAR SHYAMNAVAL MISHRA

..... Petitioner

Through: Mr. Akshat Bajpai, Mrs. Ishanee Sharma, Mr. Shobhit Trehan and Ms. Renuka Parmanand, Advocates (M: 7080975620).

versus

**UNION OF INDIA, THROUGH ITS PRINCIPAL SECRETARY,
MINISTRY OF CIVIL AVIATION & ORS.**

..... Respondents

Through: Mr. Ashish Jain, CGSC with Mr. Gaurav Kumar, Ms. Ankita Kedia, Advocates and Mr. Chetanya Puri, GP (M: 9811125100).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner-Shankar Shyamnaval Mishra has filed the present writ petition seeking directions for Constitution of the Appellate Committee in a time bound manner, by the Respondent No. 2- Director General of Civil Aviation (“DGCA”) under Para 8.5, Section 3-Air Transport, Series M, Part VI of the Civil Aviation Requirement for Handling of Unruly Passengers (“CARHUP”) issued on 8th September 2017.
3. The brief background of this petition is that an incident took place on 26th November 2022 in Air India flight AI-120, where a passenger seated in the next row accused the Petitioner of misconduct and inappropriate

behaviour in an inebriated state. The complaint made by the said passenger was recorded on the Airsewa Grievance Portal on 20th December 2022, and the Internal Inquiry Committee (“Committee”) was constituted in the Petitioner’s complaint on 24th December 2022 under Para 6 of CARHUP. The said Committee conducted enquiries on 4th January 2023, 10th January 2023, 12th January 2023 and 16th January 2023 and after issuing a show cause notice dated 23rd December 2022 and recording the evidence/statements of the complainant and the Petitioner, came to the following conclusion on 18th January 2023:-

“In view of the above discussion, the Committee reaches to an irresistible conclusion that the allegations made against the respondent-passenger in the "proforma for reporting of unruly/disruptive passenger" [copy Annexure A1] stand established and accordingly the Committee holds that the respondent-passenger Shri Shankar Shyamnaval Mishra is squarely covered under the definition of "unruly passenger" as defined in paragraph 3.1 of the CAR. The respondent- passenger Shri Shankar Shyamnaval Mishra is accordingly put in "NO Fly List". Keeping in view all the facts and circumstances discussed above, he is banned from flying for a period of 4 months (four months) as provided in Level 2 of paragraph 8.1 of the CAR from the date of this report.

We may again made it very clear that the above findings recorded by this Committee are limited to the present inquiry proceedings only and shall not be taken as expression of any opinion on the merits of the criminal case or any other independent proceedings.

Let a copy of this Report be also sent to the respondent-passenger Shri Shankar Shyamnaval Mishra and his counsel Shri Akshat Bajpai, Advocate

through email as provided under paragraph 8.4 of the CAR. ”

4. As can be seen from the above order passed by the Committee, the Petitioner has been held guilty of having been a “*unruly passenger*” in terms of para 3.1 of CARHUP. He has been put on the “NO fly list” for a period of four months as provided in Level 2 of para 8.1 of CARHUP.

5. The said Report/order dated 18th January 2023, is appealable to the Appellate Committee formed under para 8.5 of the CARHUP. Para 8.1 and 8.5 of CARHUP is relevant and is set out below:-

“8.1 For any person, who is placed in the No-Fly List, other airlines shall have the option to ban him from taking flights to/from/within India for a duration as indicated below:

<i>a) Level 1</i>	<i>upto three months</i>
<i>b) Level 2</i>	<i>upto six months</i>
<i>c) Level 3</i>	<i>for a minimum period of 2 years or more without limit</i>

<i>d) Persons covered under Para 7</i>	<i>Barred till such time that the person is perceived to be national security risk by the Ministry of Home Affairs</i>
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8.5 Aggrieved persons (other than those covered under para 7 of this CAR), on receipt of communication of ban from the airline, may appeal within sixty days from the date of issue of the order, to an Appellate Committee constituted by the Ministry of Civil Aviation, consisting of the following:

a) Retired Judge of a High Court as Chairman.

b) Representative from a passengers association or consumer association retired officer of Consumer Dispute Redressal Forum as Member.

c) Representative of the airlines of the rank not below the rank of Vice-President or equivalent as Member.”

d)

6. Ld. counsel for the Petitioner submits that immediately upon receipt of the above order, the Petitioner wrote an e-mail to the DGCA on 19th January, 2023, informing that the Petitioner intended to file an appeal and prayed for the constitution of the Appellate Committee as per CARHUP. It is submitted that no replies were received from the DGCA. The said e-mail was also served personally on the DGCA and to the Respondent No. 1- Ministry of Civil Aviation.

7. Since no reply was received from both DGCA and Respondent No. 1, the present writ petition has been filed seeking the following prayers:-

“(a) Issue a Writ in the nature of Mandamus directing the Respondent No. 1 to constitute an Appellate Committee in a time bound manner as envisaged under Para 8.5 of the Civil Aviation Requirement for Handling of Unruly Passengers, issued by the Office of the Director General of Civil Aviation vide Notification no. F. No. 23-14/2014-AED issued on 08.09.2017

(b) Alternatively, issue an order or direction constituting an Appellate Committee as envisaged under Para 8.5 of the Civil Aviation Requirement for Handling of Unruly Passengers, issued by the Office of the Director General of Civil Aviation vide Notification no. F. No. 23-14/2014-AED issued on 08.09.2017

(c) Issue an order or direction that the sixty day period granted to the Petitioner under Para 8.5 of the Civil Aviation Requirement for Handling of Unruly Passengers to prefer an appeal shall begin from the date of the notification of the constitution of the Appellate Committee.”

8. After hearing the matter on 15th March, 2023, since the Appellate Committee is not presently constituted, the following order was passed:-

“3. The present petition has been filed by the Petitioner seeking constitution of an Appellate Committee as per Rule 8.5 of the Civil Aviation Requirements (CAR) for handling of unruly passengers.

4. The Petitioner intends to challenge the order dated 18th January, 2023 issued by the Internal Inquiry Committee appointed by the Director General of Civil Aviation (DGCA), designating him as an unruly Passenger and banning him from flying for a period of four months.

5. The Id. Counsel for the DGCA - Mr. Asheesh Jain submits that he would be placing on record the constitution of the Appellate Committee within a week. Let the same be done.”

9. Mr. Ashish Jain, Id. Counsel appearing for the Respondent No.1 has today submitted that Respondent No.1 had constituted the Appellate Committee on 8th November, 2018 consisting of one Chairperson, who is a retired Judge of this Court and two members. On 9th February, 2023, the Chairperson had resigned from the Appellate Committee and accordingly, right now there is a vacancy in the composition of the Appellate Committee and the Respondent No. 1-Ministry is in the process of constituting the Appellate Committee by appointing the Chairperson. The remaining two persons previously appointed by Respondent No.1, have given their consent to continue. He submits that the Respondent No.1-Ministry is hopeful of constituting the Appellate Committee over the next two weeks.

10. Ld. counsel for the Petitioner submits that they expressed their intention to file the appeal vide email dated 19th January, 2023 itself.

However, since the DGCA did not reply to the email and also initiate the process for constitution of the Appellate Committee, the appeal was not filed before the Appellate Committee by the Petitioner.

11. Under Para 8.5 of the CARHUP, the limitation period for filing an appeal against the order of the Committee is 60 days from the date of the issuance of the order. Instead of writing an email on 19th January, 2023, stating an appeal will be filed, the Petitioner ought to have filed an appeal against the Committee's order, since the Appellate Committee was functioning at that time. Be that as it may, since the vacancy has now been created due to the non-existence of the Chairperson, who is to be appointed, therefore, considering the facts and circumstances of this case, the Petitioner is permitted file an appeal before the Appellate Committee within two weeks from today.

12. The Appellate Committee shall be constituted within two weeks. The hearing of the appeal before the Appellate Committee shall be held on 20th April, 2023. Ld. counsel for the Petitioner shall be communicated by the Respondent No. 1- Ministry of the time and venue of the hearing of the appeal. If there is any change in date, the same shall be communicated to Ld. Counsel for the Petitioner. It is made clear that this Court has not examined the merits of the matter.

13. All contentions of the parties are left open.

14. With these above terms, the present petition with all pending applications, if any, is disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 23, 2023/Mr/dn