

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.761/2018

ORIGINAL APPLICATION NO.219/2018

This the 13th day of February, 2019

CORAM:- R.VIJAYKUMAR, MEMBER (A)

R.N.SINGH, MEMBER (J)

1) ORIGINAL APPLICATION NO.761/2018

Bhagwati Sharan Tiwary, S/o Shri Nathuni Tiwary, R/o 0-11/1, Airport Authority of India Colony Vile Parle (East), Mumbai, Maharashtra-400099.

(By Advocate Shri R.G.Walia) ...Applicant

Vs.

1. The Union of India, through its Secretary, Ministry of Civil Aviation, Government of India, Rajiv Gandhi Bhavan, Opp. Safdarjung Airport, New Delhi-110003.

2. The Under Secretary (Aviation Security), Ministry of Civil Aviation, Govt. of India, Rajiv Gandhi Bhavan, Opp. Safdarjung Airport, New Delhi-110003.

3. The Director General, Bureau of Civil Aviation Security, Ministry of Civil Aviation, Govt. of India, 'A' Wing, 3rd Floor, Janpath Bhawan, Janpath, New Delhi-110001.

4. Shri Kumar Rajesh Chandra, Director General, Bureau of Civil Aviation Security, Ministry of Civil Aviation, Govt. of India, 'A' Wing, 3rd Floor, Janpath Bhawan, Janpath, New Delhi-110001.

5. Smt.Radharani Poojari, Senior Clerk, Office of Regional Director, Bureau of Civil Aviation Security Mumbai, Ground Floor, New Airport Authority Building, Parsiwada, Opp. Solitaire Hotel, New Airport Authority of India Colony, Vile Parle (East), Mumbai Maharashtra-400099.

(By Advocate Shri V.S.Masurkar) ...Respondents

2) ORIGINAL APPLICATION NO.219/2018

Bhagwati Sharan Tiwary, S/o Shri Nathuni Tiwary, R/o 0-11/1, Airport Authority of India Colony Vile Parle (East), Mumbai, Maharashtra-400099.

(By Advocate Shri R.G.Walia)

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3. The Director General, Bureau of Civil Aviation Security, Ministry of Civil Aviation, Govt. of India, 'A' Wing, 3rd Floor, Janpath Bhawan, Janpath, New Delhi-110001.
4. Shri Kumar Rajesh Chandra, Director General, Bureau of Civil Aviation Security, Ministry of Civil Aviation, Govt. of India, 'A' Wing, 3rd Floor, Janpath Bhawan, Janpath, New Delhi-110001.
5. Shri Arun Kumar, Joint Secretary, Chief Vigilance Officer and Inquiry Officer, Room No.353, Ministry of Civil Aviation, Rajiv Gandhi Bhavan, Near Safdarganj Airport, New Delhi-110003.

(By Advocate Shri V.S.Masurkar) ...Respondents

Reserved on :- 10.01.2019

Pronounced on:- 13.02.2019

O R D E R

R. Vijaykumar, Member (A)

OA No.761/2018 is an application which was filed on 23.10.2017 under section 19 of the Administrative Tribunals Act, 1985, before the Principal Bench and listed as OA No.3698/2017. An M.A. was filed to stay a departmental inquiry on the

basis that the charge memo had not been duly approved and was heard on 6.4.2018 and orders pronounced on 13.4.2018 as below:

"7. We have perused the original record of the Ministry of Civil Aviation-respondent No.1, wherein the matters relating to DE proceedings against the applicant have been dealt with. We observe that the Ministry of Civil Aviation has switched over to digital file system. We also notice that the file has been seen by the Hon'ble Union Minister for Civil Aviation on 05.07.2017 at 4:18 p.m. and on its return by the Secretary, Civil Aviation on 06.07.2017, who directed the officials down below in the Ministry to communicate to BCAS for necessary action. Obviously, the communication to BCAS was to be made in regard to the order of the Minister. In the Affidavit, referred to hereinabove, the respondents have clearly stated that the charge-sheet was approved by the Hon'ble Minister on 05.07.2017. Hence, after perusal of the records and particularly in view of the averments made in the Affidavit, which is duly sworn in, we are, *prima facie*, satisfied that the impugned charge-memo dated 14.07.2017 has been issued to the applicant only after obtaining the approval of the competent authority, i.e., the Hon'ble Union Minister of Civil Aviation.

8. In view of the above, we decline the prayer made in this MA. The MA is accordingly dismissed".

2. Thereafter, the applicant filed two Transfer Petitions, the first in PT No.196/2018 to transfer this O.A. filed before the Principal Bench to Mumbai and PT No.133/2018 seeking the transfer of another related OA on the same disciplinary

proceedings, being OA No.219/2018 filed before the Bombay Bench, to the Principal Bench of the Tribunal. The Principal Bench dismissed PT No.133/2018 and allowed PT No.196/2018, thereby transferring OA No.3698/2017 to this Bench of the Tribunal. It further directed hearing both OAs together and their prompt disposal. The transferred OA from Principal Bench has been re-numbered as OA No.761/2018 and has been heard along with OA No.219/2018 on 19.12.2018 and again on 10.1.2019 when the original disciplinary file record of the Ministry was produced and orders were reserved on both the OAs.

3. The applicant has sought the following reliefs in OA No.761/2018 (OA No.3698/2017 - PB):

- "(i) Setting aside chargesheet/memorandum dated 14.7.2017 issued by the respondents;
- (ii) Setting aside two letters both dated 18.8.2017 issued by the Respondents reducing the subsistence allowance of the applicant from 50 % to 25%;
- (iii) Issue directions to the Respondents to enhance the said allowance to 75% in accordance with the Fundamental Rule 53;
- (iv) Pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper".

4. The applicant has cited twenty five grounds in support of the reliefs sought by him. Most of

these grounds are challenges to the contents and purposes of each of the charges levelled against him in the charge sheet. In addition, he has raised certain questions about transfer of his Steno Grade 'D' of his office who was attached to him, the reduction of his subsistence allowance to 25% on 18.8.2017 without expressing reasons, the lack of approval of the Competent Authority viz. The Hon'ble Minister of Civil Aviation for the initiation of the disciplinary proceedings and for the charge sheet and he has further alleged mala fides by virtue of personal bias, prejudice, conflicts and ill-will on the part of the Director General Civil Aviation (R-3) in regard to the applicant in his personal capacity and has accordingly, impleaded him as Respondent No.4.

5. The respondents had filed a short reply on the directions of the Principal Bench on 25.10.2017 and had affirmed that both initiation and charge-sheet had received proper approvals from the Competent Authority. With regard to the subsistence allowance, the aspect of subsistence allowance was referred to a Review Committee set up by the Ministry of Civil Aviation (R-1) and on the recommendations of this Committee and based on the

facts and circumstances, the period of suspension was extended by another 180 days beyond 19.8.2017 and subsistence allowance was reduced to 50% of the previous subsistence allowance viz. 25% and orders were issued by the Ministry (R-1) on 18.8.2017.

6. The applicant filed rejoinder to this limited reply reiterating his charge that the initiation of disciplinary enquiry and charge sheet had not been duly approved by the Competent Authority. He has also challenged his continued suspension.

7. R-2, the Under Secretary in the Ministry, has also filed a reply affirming that the orders were issued under his signature pursuant to the approval of the Hon'ble Minister of Civil Aviation. On behalf of the official respondent no.3, the Joint Director in that office has also filed a similar affidavit in reply. R-4 who has been impleaded in his personal capacity and holds the office cited as R-3 has filed his reply affirming issuance of charge sheet under his approval based on the approval of the Hon'ble Minister of Civil Aviation and has enclosed extracts of digital communications in this regard. There is no record of R-5 having filed reply.

8. Along with the reply of R-1, the extracts of the original file with digital transcripts of the approvals obtained at various levels in the Directorate General, Civil Aviation and in the Ministry have been enclosed.

9. When the MA No.4576/2017 was heard on the challenge raised by the applicant to the maintainability of disciplinary proceedings, the Principal Bench heard the matter on 6.4.2018 and pronounced orders on 13.4.2018. During the hearing, the Bench perused the original record of the Ministry and noted the details of approval of initiation of disciplinary proceedings with suspension and of the charge memo by the Competent Authority viz. the Hon'ble Minister, as recorded in the initial para above.

Original Application No.219/2018

10. With regard to OA No.219/2018, which was filed on 19.3.2018 before this Bench of the Tribunal at Bombay under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following reliefs in relation to the same disciplinary proceedings:

"(a) This Hon'ble Tribunal will be pleased to call for the record which led to the passing/issuance of the impugned orders

i.e.

(i) the impugned Inquiry Officer's Report dated 22.2.2018 i.e. **Annex. "A1"**

(ii) the impugned DAILY Order SHEET dated 18.12.2017 whereby in a casual and biased manner the Applicant was disallowed to engage a Defence Assistant. i.e. **Annex. "A2"**

(iii) the impugned Order dated 24.10.2017, i.e. **Annex. "A3"** and

(iv) the impugned Order dated 13.09.2017 appointing the Enquiry Officer i.e. Respondent No.5, **Annex. "A4"**

and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same with all consequential benefits of Seniority, promotion, pay fixation, arrears of pay etc. etc.

(b) This Hon'ble Tribunal will be pleased to hold and declare that the entire inquiry conducted by the Inquiry Officer was illegal and wrong and accordingly quash and set aside the same and if the Hon'ble Tribunal directs the Respondents to conduct a fresh inquiry then it may be directed that the Inquiry Officer be changed/replaced in the present case.

(c) Any other and further and additional orders as this Hon'ble Tribunal deems fit and necessary in the nature and circumstances of the case may be passed.

(d) Costs of the application be provided for".

11. The relief 8(a)(iii) refers to an interim reply given on 24.10.2017 by the respondents enclosing replies given by the respondents to the issues raised in the representation dt. 10.9.2017 made by the applicant on his request for personal hearing and which contained a direction to him to

file his reply to the charge sheet within two weeks.

12. Further, in OA No.219/2018 R-5 differs from OA No.761/2018 in that the Inquiry Officer has now been impleaded by name while alleging mala fides against him.

13. The applicant is an Ex-Serviceman who took up services with the respondents as Deputy Commissioner of Security in 2007 at Kolkata and moved from there to Mumbai as Senior Regional Deputy Commissioner of Security. He has alleged mala fide on the part of respondent no.4 for various reasons and also holds him responsible for transfer order issued on 16.9.2016 by which he was moved from Mumbai to Imphal and for which he had availed legal remedies. He has raised certain issues relating to the alleged mala fides in transfer of a Steno Gr.'D' in his office. He was placed under suspension on 22.5.2017. Thereafter, he was served with a charge sheet on 14.7.2017 itemising several Articles of Charge alleging gross insubordination, wilful disobedience, indiscipline and misconduct. The applicant filed a reply on 10.9.2017 addressed to the office of R-3 in which he refers to his representation made to the Hon'ble Prime Minister of India, Chairman Complaints Committee, and expressed

an intention to make further representations in due course, and also expressed his desire to be heard in person. On receipt of a letter from the Inquiry Officer dt. 13.9.2017 for inquiry on 22.9.2017, the applicant wrote a reply on 18.9.2017 requesting not to proceed with the inquiry. He also states that the IO was not appointed as per Rules and submits that when he has challenged the charge sheet, the inquiry should have been postponed. He alleges that his reply dt. 10.9.2017 was never placed before the Competent Authority viz. the Hon'ble Minister for Civil Aviation. On these and other bases he alleges that the charge sheet was absolutely frivolous, malicious and false. He also further states that after his interim reply dt. 10.9.2017, the reply was not placed before the Competent Authority viz., the Hon'ble Minister for Civil Aviation by the respondents and in the meanwhile, approval for appointment of Inquiry Officer (IO) and Presenting Officer (PO) had already been sought before issue of charge sheet. He has raised questions and complaints about the conduct of the inquiry for which he has written to the IO who is also the Joint Secretary, Ministry of Civil Aviation. He further complains that when he attended the inquiry on

18.12.2017, he asked for permission to engage a Defence Assistant and that he could not attend the further inquiry on 19.1.2018 because he was unwell and that the respondent no.4 was preventing him from attending the hearings. He also raised certain questions about the conduct of the inquiry which is said to have not been done in his presence. He also questions the completion of the inquiry and the inquiry report, a copy of which was served on him on 7.3.2018. He has approached this Tribunal challenging this inquiry report among other impugned orders.

14. The respondents have filed their reply on 4.4.2018 asserting that the application was premature as the applicant had not exhausted the statutory remedies under the CCS (CCA) Rules, 1965 read with the provisions of the Administrative Tribunals Act, 1985. After denying the various charges and allegations made by the applicant, they referred to his request for personal hearing made in his representation dt. 10.9.2017 and for which a reply was sent on 24.10.2017 stating that his request for interview with the Minister of State for Civil Aviation, Secretary, Ministry of Civil Aviation and Director General BCAS had been examined

by the Ministry of Civil Aviation and rejected as per rules and procedures applicable to the matter. They referred to Rule 14(40)(b) sub rule 4(b) of CCS (CCA) Amendment Rules, 2016 which does not make it mandatory for the Disciplinary Authority to accede to a request for personal hearing of the delinquent officer. They denied the allegation that the charge sheet was issued without approval of the Competent Authority. They also state that the appointment of the IO and PO was made by the Ministry and R-3 and R-4 had no role whatsoever in placing the applicant under suspension or for framing the Articles of Charges and issue of charge sheet. They deny the allegations of mala fides against R-3 and R-4. They refer to the suspension orders dt. 22.5.2017 which have been issued in the name of the President. They also deny the contentions of the applicant with regard to the supply of documents, cross-examination of witnesses, opportunities as required during the inquiry, and other related matters. They deny the allegation that there were any mala fides in the transfer of the applicant from Mumbai to Imphal or that it was related to a dispute relating to Ground Handling Contractor. They also state that the allegation of mala fides in relation to the transfer

of Stenographer is wrong because he was transferred on administrative grounds. On the aspect of Subsistence Allowance and its reduction, they state that the Ministry constituted a Review Committee which forwarded its recommendations to the Disciplinary Authority who took these decisions. With regard to the allegations of a lady, they state that, that matter has been referred to a Sexual Harassment Committee which is a separate inquiry and these aspects have been mentioned in the Inquiry Report of which, a copy has been supplied to the applicant. With regard to the conduct of the inquiry, they state that the inquiry was conducted as per laid down rules and procedures and that the applicant was offered all opportunities but he declined the opportunities and instead adopted dilatory tactics to delay the disciplinary proceedings.

15. The R-4 has filed reply denying all allegations of mala fides and that he had no prejudice, ill-will or anything adverse against the applicant and had assigned work to the officers of BCAS in public interest and accordingly adopted the affidavit filed by the official respondents.

16. R-5 has also filed a reply in his personal

capacity as impleaded adopting the affidavits filed by the official respondents and asserted that he had discharged his duties properly without prejudice and that the allegations made were diversionary tactics and that the OA was devoid of merits.

17. The applicant in his rejoinder has reiterated his allegations of mala fide. He has argued that the OA is not premature and has gone on to make allegations against the learned counsel for respondents. He has also stated that the OA is not premature because the disciplinary proceedings were conducted in an illegal, unfair and as a post-decisional hearing/inquiry without proper opportunity provided to the applicant. He has reiterated the lack of opportunity given to him for personal hearing and further alleges mala fides on the part of the officials. He denies that approval has been taken for the disciplinary proceedings and charge sheet nor for the suspension, extension of suspension and reduction of subsistence allowance. He has further raised various questions on the manner in which inquiry was conducted and that his replies has not been properly considered by the Disciplinary Authority. In support of his allegations of mala fides he has referred to the

transcripts of a conversation which he states took place between the applicant and R-4 and proved criminal intimidation and personal mala fides. He has alleged that the Review Committee set up by the Ministry of Civil Aviation is headed by R-3 and R-4 against whom he has specifically alleged mala fides and therefore, its recommendations are also vitiated on this count.

18. During the final hearing, the respondents produced the original file and filed notings relating to the disciplinary proceedings of the applicant. These are in the form of digital communications between the BCAS and within the Ministry and the record was carefully perused. The office of R-3 has noted various aspects of behaviour on the part of the applicant. They have also noted the fact of a secret Intelligence Bureau Report on acts and omissions of the applicant including calling female airline/airport staff beyond office hours on one pretext or the other and that it was tarnishing the image of the organisation. A letter dt. 9.5.2017 from the Ministry advising framing of charges has also been taken into consideration while sending proposals for placing the applicant under ad-interim suspension, particularly in view of

certain kinds of interference by him that would prejudice investigation, trial or inquiry. Accordingly, the papers were processed in the Ministry for placing the applicant under suspension, for reference of the sexual harassment complaint to the Complaints Committee, to place the applicant under suspension, and then for the BCAS (R-3) to formulate draft charges. This received the approval of the Minister in Note No.#10 on 22/05/2017 at 11:29 AM and on this basis, suspension orders were approved by the Joint Secretary on 22/05/2017 3:14 PM and orders for paying subsistence allowance approved by R-3 on 23/05/2017 at 5:30 PM. Thereafter, a draft charge sheet was proposed by respondent no.3 which was scrutinized in the Ministry of Civil Aviation and proposed for approval of the Competent Authority, the Hon'ble Minister for Civil Aviation, who accorded his approval in Note No.#44 at 04:18 PM and was despatched by speed post on 14.07.2017. Thereafter, the file was referred to the Ministry for appointing Inquiry Officer and Presenting Officer and the Ministry proposed appointment of an officer of the rank of Joint Secretary in the Ministry who had no occasion to express an opinion in the earlier stages of the

case. The Presenting Officer proposed was Joint Director (Administration), BCAS in the office of R-3 and after some discussion in the file notings, it was proposed accordingly and approved by the Competent Authority in Note No.#79 on 06/09/2017 at 01.00 PM and this matter was conveyed to the office of R-3. Later, a note was moved for extension of suspension period and payment of Subsistence Allowance which was also approved in the Ministry in orders of the Ministry dated 14/08/2018. The relative notes explained the constitution of a Committee by the Ministry of Civil Aviation in order dt. 16.08.2017 and its recommendations for extending suspension for another 180 days beyond 19.08.2017 and reduction of subsistence allowance by 50% as recommended by the Review Committee. These proposals received approval from the Competent Authority in Note No.#22 dt. 17.08.2017 at 06:47 PM and were duly communicated.

19. The learned counsels were heard in regard to OA No.761/2018. Learned counsel for applicant urged his grounds for alleged mala fides against R-4 at great length including by reference to a transcript of a tape recorded conversation and other aspects by which he claimed that the mala fides on the part of

R-4 had biased the entire disciplinary proceedings. He attempted to relate various administrative actions of transfer of a stenographer, his own transfer to Imphal, and other aspects as evidence of mala fides. On the records of approval submitted by the respondents, he argued that there was no application of mind by the Hon'ble Minister who was the Competent Authority in this matter and referred to a need for application of mind as set out in

Kunwar Fateh Singh v. Union of India and Anr.
Central Administrative Tribunal, OA No.63/2011
 decided by the CAT, Principal Bench on 28.01.2015..

20. In support, he suggested that lack of an icon under the Minister's signature meant that there was no digital signature and that the Minister could not have granted approval. He claimed that none of his replies to the charge sheet reached the Minister. He argued that appointment of Inquiry Officer before he could file a reply suggested bias and relied on the decision of the Hon'ble Apex Court in **State of Punjab v. V.K.Khanna**, AIR 2001 SC 343.

21. He further stated that he had actually given an interim reply on 10.9.2017 and that on 24.10.2017 he had been given two weeks time to file reply (page 112 of OA 219/2018). The applicant argued various

Articles of Charge sheet in an effort to explain that they did not support the charge of misconduct.

22. In reply, learned counsel for respondents has rebutted the assignation of bias by the applicant to the IB Report stating that the IB was an independent body and did not come under the purview of the Ministry or any of the respondents. He also stated that the applicant had participated in the inquiry on some of the days when hearing was held and therefore, he was estopped from taking such grounds. He also referred to the interim orders of this Tribunal dt. 19.3.2018 at para 10 which directed respondents to continue with the inquiry. He further stated that the applicant is at liberty to raise all his grievances and doubts by way of a representation made to the respondents and even ask for personal hearing. He referred to the rulings in **State Bank of Patiala v. S.K.Sharma** (1996 AIR 1669), that the test of prejudice is mandatory and can be judicially reviewed once punishment order is passed. He also mentioned that no representation has been filed on the basis of the Inquiry Officer's Report till date of final hearing. Thereafter, he also urged that in view of Section 20 of the Administrative Tribunals Act, 1985, the applicant

was premature. In reference to the citation of **State of Punjab v. V.K.Khanna**, he pointed out that the Hon'ble Apex Court had held that the Chief Minister himself, who was the Disciplinary Authority, bore mala fides whereas, this was not the case in the present instance.

23. In **OA No.219/2018**, the learned counsel for applicant reiterated the arguments made out in the OA on the inquiry report, disallowance of defence counsel, and the time allowed for filing reply. On the aspect of alternate remedy, he argued that the general rule of execution and writ jurisdiction due to availability of an alternative remedy was a rule of discretion and not one of compulsion as held by the Apex Court in **M.P. State Agro Industries Development Corpn. Ltd. v. Jahan Khan**, the Court held that:

"In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar".

He also referred to a rulings of the Hon'ble Apex

Court in **K.B.Bharadwaj v. Union of India and Ors.**, 2002(2) ATJ 477, reiterating the same aspects. He also emphasised the requirements of natural justice in the inquiry proceedings and that mandatory procedures had not been followed.

24. Learned counsel for respondents argued that the application was prima facie premature and that all objections should be raised by the applicant with the Inquiry Officer and now, the Disciplinary Authority, since Inquiry Report has now been submitted and also served on the applicant.

25. We have carefully considered the arguments of the learned counsels of both parties and the pleadings on record and have considered these in terms of the law laid down, the statutes and precedents as set out by rulings of the Hon'ble Apex Court and all various Courts and Tribunals.

26. The role of this Tribunal is akin to that of Judicial review under Article 226 of the Constitution of India. As held by the Hon'ble Apex Court in **H.B.Gandhi, Excise and Taxation Officer cum Assessing Authority, Karnak v. Gopinath and Sons**, 1989STPL 6497 SC, judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. The purpose of judicial

review is to ensure that the individual receives fair treatment. Further, as ruled by the Hon'ble Apex Court in **Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and Others**, (1996) 1 SCC 327, when a show cause notice is assailed as a nullity and issued without jurisdiction:

"10. ... In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and taken up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India".

27. On the aspect of jurisdiction, the Hon'ble Apex Court also ruled in **Special Director and Anr. v. Mohd Ghulam Ghouse and Another**, (2004) 3 SCC 440 that:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law

for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted".

28. The Hon'ble Apex Court has also held in **Union of India and Another v. Kunisetty Satyanarayana**, (2006) 12 SCC 28 that "A writ petition lies when some right of any party is infringed. A mere show cause notice or charge-sheet does not infringe the right of anyone". The Court also held that:

"16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter".

29. In **Union of India and Others v. Upendra**

Singh, (1994) 3 SCC 357 the Hon'ble Apex Court considered that the intervention of the CAT was akin to the jurisdiction of the High Court under Article 226 of the Constitution and if such an application had been filed before the High Court, it would have been considered to be a writ of prohibition, while before the Tribunal it is to be considered in the same terms by which a writ of prohibition is issued by applying the same principles, norms and constraints which apply to the said jurisdiction and further, that the writ of prohibition is issued only when patent lack of jurisdiction is made out. The Hon'ble Apex Court also referred to the decision in **Union of India v. A.N.Saxena,** (1992) 3 SCC 124, which had recorded that the Tribunal should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The Hon'ble Apex Court further held:

6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the

disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons⁵. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

30. We are guided by the rulings of Apex Court in dealing with the present matter where the applicant has made a hypothetical assertion and has presumed that the suspension orders, initiation of proceedings, draft charge sheet, appointment of

Inquiry Officer and Presenting Officer were all made in a disorderly fashion, without application of mind and without proper approval of the Competent Authority. On the aspect of the step-by-step procedure for examining the need for suspension and initiation of disciplinary proceedings, as also for approval of the charge sheet, the files were examined both by the Principal Bench and again by this Bench and they were found to have been issued in proper order. The appointment of the Inquiry Officer and Presenting Officer also followed the logic of a disciplinary proceeding and cannot be challenged in respect of these aspects. The applicant has claimed that there was no application of mind and has referred to the decision of **Kunwar Fateh Singh** (supra). In that case, we note from the discussion at para 18 that the facts and circumstances suggested that the Disciplinary Authority (Competent Authority) had not applied its mind and respondents had mechanically taken action to issue the charge sheet. However, that does not appear to be the case in the present instance. Even otherwise, this is a matter which the applicant could have raised while filing reply to the Inquiry Report or at any stage that he considered fit, so

that it would draw the attention of the Disciplinary Authority to his allegations in that context.

31. A perusal of the charge sheet shows that it makes specific allegations regarding conduct and discipline, performance of work, sexual harassment etc. which have been detailed in seven articles of charges. We do not wish to enter into the merits of these charges and the basis on which they have been made which are subjects for the Inquiry Officer and for the Disciplinary Authority. However, despite the fact that these charges need to be proved with factual evidence, it cannot be said, prima facie, that no misconduct can be made out as found by a reading of the various Articles of Charge. The truth of the allegations is not the present concern of this Tribunal and in view of the strict rulings of the Hon'ble Apex Court on intervention in such matters, we do not consider it appropriate to intervene at this stage of the matter.

32. The applicant has urged that judicial review by way of invoking the powers of this Tribunal in the nature of writ jurisdiction would be available despite the availability of an alternative remedy in the event that there was a failure of a fundamental

right or failure of natural justice. In both the OAs filed by the applicant, he has alleged mala fides against the R-4. In OA No.219/2018 he has also alleged mala fides against the Inquiry Officer. In the case of R-4, he has argued that R-4 has been the primary cause for the disciplinary proceedings that have been taken against him. However, as we have seen from the original file records of the respondents, all the decisions in regard to these disciplinary proceedings have been taken by the Competent Authority and after they were seen and recommended by the Secretary, Ministry of Civil Aviation. No mala fides have been alleged against these persons who were responsible for applying their mind to the issue and for taking these decisions that have led to the disciplinary inquiry against the applicant. As regards the mala fides against the Inquiry Officer, the applicant has primarily argued that he has not been given opportunity to cross-examination, verify documents, present documents of his own and to call defence witnesses. This case is quite different from the cited case of **M.P. State Agro Industries Development Corpn. Ltd.** (supra), where the issue was of the alternative remedy available to the petitioner for

filing an appeal rather than to approach the Tribunal for justice invoking writ jurisdiction on the grounds that his fundamental rights had been violated and rules of natural justice had not been followed. In the present case, reference to the Interim Report served on the applicant shows that the Charged Officer (CO) was required to appear for the Inquiry Proceedings on 22.9.2017, but did not attend and instead replied on 18.9.2017 informing that he had written to one Mr.Dinesh Rana, Joint Director (Administration), BCAS on 10.9.2017 and on receipt of a reply, he would submit his further requirement to be able to reply to the Articles of Charge. On the next date of inquiry on 23.10.2017, the CO reiterated the same position and further that he had initiated legal action against the Disciplinary Proceedings. On this, the IO advised the PO to examine the representation and provide materials and documents of various kinds and on which he was duly informed of the position of the matter. The CO did not attend the next inquiry on 21.11.2017 and for the inquiry on 18.12.2017, he claimed that the matter was sub-judice before this Tribunal and that he needed more time for filing oral/ written submissions. This process has

continued and it cannot be denied by the CO that several opportunities were provided to him to raise his contentions. Although the subject matter of the contentions and the manner in which the matter was dealt with by the CO, PO and the IO will all need examination by the Disciplinary Authority, it is apparent that on a prima facie view that there is no manifest evidence for violation of fundamental rights or the rules of natural justice and it is entirely left to the applicant to make out such a case if he can develop adequate credible evidence to place before the Disciplinary Authority who would be taking a view in this matter. Such evidence and views would, no doubt, find a place in the reply of the applicant to the Inquiry Report that has already been served on him. In these circumstances, citations referred by the applicant and the arguments thereof are of no help to his case.

33. In the circumstances, the relief sought in OA No.761/2018 for setting aside the charge sheet and with regard to the subsistence allowance are not maintainable. Further, the relief sought in OA No.219/2018 for intervening in the inquiry are also clearly not maintainable. In the circumstances

discussed above, both the OAs are dismissed. The applicant is directed to cooperate in the conclusion of the inquiry and fulfil his part from the stage at which the disciplinary proceedings are pending, in his own interest. Further, in the facts and circumstances of the case, viewed in balance, no costs are being imposed.

(R.N.SINGH)
MEMBER (J)

(R.VIJAYKUMAR) ✓ | |
MEMBER (A)

B.

