

(2021) 10 TEL CK 0055
In the Telangana High Court
Case No : Writ Appeal No. 534 Of 2020

Air India

APPELLANT

Vs

Rathod Rathan Singh

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Citation : (2021) 10 TEL CK 0055

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

The present writ appeal is arising out of order dated 28.06.2019 passed in W.P.No.41825 of 2018 by the learned Single Judge allowing the writ petition preferred by sole respondent herein directing his reinstatement into service.

The facts of the case reveal that the respondent/employee before this Court was working on the post of Assistant Security Officer in the service of Air India and was posted at Rajiv Gandhi Airport, Hyderabad. The Director of Revenue Intelligence on the basis of inputs received by them that the respondent - Assistant Security Officer along with other persons would be attempting to smuggle foreign gold bars into India, apprehended two persons and the respondent also. The respondent confessed his misdeeds before the Director of Revenue Intelligence and a follow up search was conducted on 09.10.2018 at his residence by the officials of Director of Revenue Intelligence and an amount of Rs.1,80,000/- was recovered from him, which he has received from Sri Syed Majid Hussini towards consideration for smuggling gold worth Rs.2 crores. A panchanama was prepared on 09.10.2018. The gold was confiscated and proceedings were initiated by competent authority and there is an adverse order against the respondent under the Customs Act. The respondent was terminated by the employer by invoking the provision of Regulation 13-A of the Indian Airlines (Employees other than Flying Crew and those in the Aircraft Engineering Department) Service Regulations. Meaning thereby, no departmental enquiry was

held and by invoking Regulation 13-A, the order of dismissal was passed. The order of dismissal is on record and the same is reproduced hereunder:

"Airlines House

Meenambakkam,

Chennai 600 027.

To

Shri R. Rathan Singh

Asst. Officer - Security,

E.No.683515/Per Nr.81013303

Air India Limited, Hyderabad.

Residential Address:

H.No.13-234/1

Raja Rajeshwari Colony,

Meerpet, Hyderabad - 500 097.

Ref: RDSR/SEC/683515/81013303/2703, 07.11.2018

Sub: Termination of Service

This is to inform you that the Board of Directors of Air India Ltd., has decided to terminate your services with immediate effect under Regulation 13(a) of the Service Regulations applicable to you.

Accordingly, your services stand terminated with immediate effect. Though you are not entitled to any notice or salary in lieu thereof in terms of Service Regulation 13(a), a Cheque No.997820 dated 07.11.2018 for an amount of Rs.56,185.67 (Rupees Fifty six thousand one hundred and eighty five and paise sixty seven only) drawn in your favour on State Bank of India is enclosed.

Finance Department has been advised to settle your account immediately.

(C.N. Hemalatha)

Regional Director - SR (Coord)

Encl: Cheque No.997820 dated 07.11.2018."

Learned Single Judge has allowed the writ petition only on the ground that Employees Service Regulation 2003 at the time the order was passed was not in force as new Regulations came into effect from 01.04.2013 and the 2003 Regulations stood repealed. Regulation 13-A of the 2003 Regulations reads as under:

"13A. The services of an employee may be terminated without assigning any reasons to him/her and without any prior notice but only on the following grounds not amounting to misconduct under the Standing Orders, namely:-

(i) If he/she is, in the opinion of the Corporation (the Board of Directors of Indian Airlines) incompetent and unsuitable for continued employment with the Corporation and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the Corporation;

OR

(ii) If his/her continuance in employment constitutes, in the opinion of the Corporation (the Board of Directors of Indian Airlines), a grave security risk making his/her continuance in service detrimental to the interests of the Corporation;

OR

(iii) If in the opinion of the Corporation (the Board of Directors of Indian Airlines), there is such a justifiable lack of confidence which having regard to the nature of duties performed, would make it necessary in the interest of the Corporation, to immediately terminate his/her services."

The new regulations which came into force with effect from 01.04.2013 are having similar para - materia provision under Regulation 17-A, and the same is reproduced as under:

"Termination of Service.

17(a) The services of an employee may be terminated without assigning any reasons to him/her and without any prior notice but only on the following grounds not amounting to misconduct under these Regulations, i.e.,

(i) If he/she is, in the opinion of the Board of Directors of the Company, incompetent and unsuitable for continued employment with the Company and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the Company;

OR

(ii) If his/her continuance in employment constitutes, in the opinion of the Board of Directors of the Company, a grave security risk making his/her continuance in service detrimental to the interests of the Company;

OR

(iii) If, in the opinion of the Board of Directors of the Company, there is such a justifiable lack of confidence which, having regard to the nature of duties performed, would make it necessary in the interest of the Company, to immediately terminate his/her services.

Provided however that, in emergent situations for reasons to be recorded in writing, the CMD/MD may terminate the services of employees subject to the subsequent approval of such action by the Board of Directors of the Company."

In the considered opinion of this Court, the appellant/employer has passed an order under Regulation 17-A only. Wrong mentioning of a statutory provision will not make the order of termination void as held by the learned Single Judge. Regulations 13-A and 17-A are word by word identical and, therefore, in the considered opinion of this Court, the appellant/employer was justified in dispensing with the services of an employee, who was part of a member of smuggling team smuggling gold into the country. The employer is empowered to terminate the services of the employee without assigning any reason and without any prior notice in case in the opinion of the Board of Directors of the Company the employee is incompetent and unsuitable to be continued in employment of the Company. It also provides that the employer can terminate the services without assigning any reason if the continuation of the employee is detrimental to the interest of the Company.

In the considered opinion of this Court, keeping in view the facts and circumstances of the case, mere wrong mentioning of a provision will not invalidate the order passed by the employer.

Resultantly, the writ appeal is allowed. The impugned order passed by the learned Single Judge is set aside.

Miscellaneous petitions, if any, pending in this writ appeal shall stand closed. There shall be no order as to costs.