

(2001) 03 BOM CK 0060

In the Bombay High Court

Case No : Writ Petition No. 2127 of 1988

Avinashkumar Bhasin

APPELLANT

Vs

Air India

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Air India Employees Service Regulations, 2000 — Regulation 32, 42, 43, 45, 48
Constitution of India, 1950 — Article 47
Criminal Procedure Code, 1973 (CrPC) — Section 360, 368
Misuse of Drugs Act, 1971 — Section 5(1)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 32
Powers of Criminal Courts Act, 1973 — Section 13, 13(1), 13(3), 7

Citation : (2001) 3 ALLMR 135 : (2002) 4 BomCR 772 : (2001) 91 FLR 307 :
(2001) 2 LLJ 1504 : (2001) 3 MhLj 673

Hon'ble Judges : Smt. Ranjana Desai, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : Mr. R.V. Bhasin, for the Appellant; Mr. E.P. Bharucha Mr. Zubin Kamdin, Mr. R.C. Dhuru, Mr. K.B. Swamy and Ms. E. Pereira, instructed by Bhasin and Co., for the Respondent

Final Decision : Dismissed

Judgement

Ranjana Desai, J.—The petitioner, an ex-employee of Air India, has impugned in this petition the Order dated 11th January, 1988, passed by Deputy Director In-flight Service, dismissing him from the service of Air India Corporation from the date of communication of the order to him. He has also impugned the order dated 30th March, 1988, passed by Secretary and Deputy Director (Administration), Air India dismissing his appeal against the said order dated 11th January, 1988.

2. The petitioner was working as an Assistant Flight Purser with Air India. He was on temporary posting at London, where he was posted along with several others to perform flight duty, and to facilitate his stay in London, the petitioner was provided with accommodation in Sheraton Heathrow Hotel. On 30th April. 1974,

he was apprehended at about 8p.m. by London Police on the allegation of being in possession of 195 mg. of Cannabis, a controlled drug of Class B. The charge-sheet read as follows:

"At 95, Gunterstone Road, W-14, he did have in his possession 195 mgs. of controlled drug of class "B" to wit Cannabis, in contravention of Section 5(1) of Misuse of the Drugs Act, 1971".

The petitioner was subsequently tried before the Magistrate's Court at West London. Before the English Court, he pleaded guilty. The English Court conditionally discharged him.

3. The petitioner's services were terminated vide order dated August 27, 1974. The petitioner challenged the said termination by preferring Miscellaneous Petition No. 527 of 1975, in this Court. By his judgment and order dated 24th of September, 1979, a learned Single Judge of this Court set aside the said order of termination because the said order was passed under Regulation 48 of the Air India Employees Service Regulations and the said Regulation 48 was struck down by this Court in Miscellaneous Petition No. 1663 of 1975 decided on 19th July, 1979. *S.S. Muley v. J. R. D. Tata and Ors.*,.

4. Air India preferred an appeal being Appeal No. 437 of 1979 against the said judgment and order setting aside the order terminating petitioner's services. A Division Bench of this Court by its judgment and order dated 26th June, 1986, dismissed the said Appeal because, by that time, Regulation 48 of the said Regulations was also struck down by the Supreme Court. The Division Bench set aside the order of termination dated 27th/30th August, 1974 and ordered that the petitioner shall be entitled to receive all the emoluments, pay, amounts etc., which he was entitled to, subject to the petitioner giving credit to Air India of all the amounts paid or received or withdrawn from the Court by him pursuant to the interim order dated 26th November, 1985, passed by the High Court. The Division Bench further ordered that the amount of Rs. 45,000/-deposited in Court pursuant to the said Order shall also be paid to the petitioner for which he will give credit to Air India. It was further clarified that Air India shall be at liberty to hold a departmental enquiry against the petitioner. Pursuant to the High Court's decision, by letter dated 31st March, 1987, the petitioner was suspended from service. The letter dated 31.3.1978 states that the petitioner was being suspended pending enquiry with immediate effect and that, during the period of suspension, he will be paid subsistence allowance as per the provisions of the Air India Employees Service Regulations.

5. A charge-sheet dated 13th April, 1987 was issued to the petitioner. The charge-sheet stated that while the petitioner was temporarily posted at London from 19th March, 1974, he was apprehended in his hotel room for being in possession of 195 mg. of controlled drug of Class B, to wit, cannabis, in contravention of Section 5(1) of the Misuse of Drugs Act, 1971, by the London Police on April 30, 1974. It was further stated that the petitioner was tried before the Magistrate's

Court at West London and convicted of the said offence and sentenced to conditional discharge of two years on 16th May, 1974. The charge-sheet further went onto say that possession of the contraband drug i.e. Hashish constituted misconduct under the Air India Employees Service Regulations. The petitioner was, therefore, charged with the following:-

- (i) Commission of act subversive of discipline and of good behaviour.
- (ii) Conducting himself in a manner not conducive to the best interest, credit and prestige of the Corporation.
- (iii) Conviction in a Court of Law for a criminal offence involving moral turpitude.

The petitioner was directed to submit his written explanation within seven days of the receipt of the said letter.

6. The petitioner by his letter dated 20th April, 1987, submitted his reply stating that the incident referred to in the letter of the Corporation was 13 years old; that the petitioner was suspended by a memo dated 7th May, 1974; that by letter dated 12th June, 1974, the suspension order was lifted and the petitioner was reinstated in service and was allowed to resume his duties. This according to the petitioner indicated that the Corporation was not serious about the charges. It was also stated that the present charge-sheet amounted to double jeopardy as it had raked up an issue which was not deemed worth taking action for 13 years. The petitioner requested for a personal hearing. The petitioner also requested the Corporation to give him copies of all documents on which the Corporation proposed to rely.

7. The enquiry was conducted. The petitioner personally appeared before the Enquiry Committee and made his submissions. He informed the committee that the incident in question had taken place while he was visiting 95, Gunterstone Road with a friend of his. There were two other people at this address. Loud music was being played. The landlord came in and asked the tenant to lower the music. After about half an hour police came in. They were taken to Fulham Police Station. They were informed that a butt of a quarter cigarette was found in the ash tray in that place. The butt contained 195 mgs. of cannabis. The petitioner and others were told that they were smoking those cigarettes. The petitioner denied this allegation. He pointed out that only one pound sterling was found on his person. Nothing relating to the said drug was found. The police harassed and abused the petitioner. They insisted that the petitioner was smoking that butt of cigarette. He was not allowed to go for medical test. No legal help was given to him. The police went to his room in Sheraton Heathrow Hotel. They could only get 200 pound starlings. After the police returned from Sheraton Heathrow Hotel, they told him that if he did not plead guilty, he would be locked up for days. He was compelled to plead guilty and get over the matter as quickly as possible. It is in these circumstances that he pleaded guilty, though he was not concerned with the offence.

8. The petitioner also contended that the incident in question did not involve moral turpitude. Nothing was done or alleged to have been done knowingly. The petitioner had not committed any act subversive of discipline and good behaviour. He had not conducted himself in a manner not conducive to the best Interest and prestige and credit of the Corporation. He specifically contended that he was not convicted by a Court of Law because a conditional discharge was not conviction. Since he was not convicted, the petitioner contended that all the three charges levelled against him must fall.

9. The petitioner further contended that he had already been punished for this incident in 1974, by way of termination and any punishment imposed for this incident today would amount to double jeopardy. When he was asked as to why he did not go in for an appeal, he stated that, on the advice of the police and his lawyer, he was convinced that going in for an appeal would be futile and waste of time.

10. After conclusion of the enquiry, the Enquiry Committee submitted its report dated 7th November, 1987. After considering the submissions of the petitioner and of the management, the Committee observed that it was inclined to accept the deposition of the management witness that the petitioner did not act in a manner conducive to the best interest, credit and prestige of the Corporation and had also indulged in an act subversive of discipline and good behaviour. In its opinion, the petitioner could not, after pleading guilty, claim that he had not acted in the manner which was not conducive to the best interest, credit and prestige of the Corporation and that he had not indulged in an act which is subversive of discipline. The Committee also observed that while the management had brought witnesses to establish its case, the petitioner had not produced any witness to contest what the management witnesses had said. The Committee, therefore, found the petitioner guilty of :

- (i) Commission of act subversive of discipline and of good behaviour;
- (ii) Conducting yourself in a manner not conducive to the best interest, credit and prestige of the Corporation;
- (iii) Conviction in a Court of Law for a Criminal offence Involving moral turpitude.

11. Pursuant to the report, by order with dated 11th January, 1988, the Corporation dismissed the petitioner from service from the date of communication of the order dated 11th January, 1988. While dismissing him from service, the Deputy Director In flight Service observed that he had gone through the report and proceedings of the Enquiry Committee along with relevant papers and he fully concurred with the findings of the Enquiry Committee. He further observed that the misconduct committed by the petitioner was of a serious nature and taking into account the gravity of the offence he had decided to award him the punishment of "Dismissal from the service of the Corporation" as provided under Regulation 43(h) of the Air India Employees' Service Regulations.

12. Being aggrieved by this order of dismissal, the petitioner preferred an appeal under Regulation 45 of the Air India Employees Service Regulations. By his order dated 4th April, 1988 the Secretary and Deputy Director (Administration) rejected the said appeal as being devoid of merits. It is in these circumstances that the present petition is filed.

13. We have heard at length Mr. Bhasin, the learned Counsel appearing for the petitioner and Mr. Bharucha, the learned Counsel appearing for the respondent.

14. Mr. Bhasin contended that the impugned orders are perverse and deserve to be set aside. He contended that the case made out by the London Police that the petitioner was found in possession of cannabis or that he was smoking cannabis, is totally fabricated, that the London Police blackmailed him and under threats forced him to plead guilty. He was told that, if he did not plead guilty, he would be kept in jail for a long time. He was also told that, if he pleads guilty, he would be conditionally discharged and then he can go back to India. The learned Counsel also urged that the order of conditional discharge cannot be viewed as conviction by Criminal Court.

15. Counsel for the petitioner contended that the petitioner was not guilty of any offence involving moral turpitude. According to Mr. Bhasin, on the same allegations, the petitioner was earlier suspended. He was then ordered to be reinstated. On the same charges again an enquiry was instituted and his services were terminated. This amounts to double jeopardy. Mr. Bhasin also contended that the action taken by the Corporation is a belated action and the Corporation is guilty of laches and on this count also the impugned order deserves to be set aside.

16. As against this Mr. Bharucha contended that the petitioner pleaded guilty before the learned Magistrate and he was conditionally discharged. The fact that he pleaded guilty is even accepted by the petitioner. Therefore, the order of conditional discharge cannot be treated on par with acquittal as the petitioner was not absolved of the charges. Mr. Bharucha also urged that possession of cannabis is a serious offence and in fact the Indian Laws are more stringent and, therefore, a serious view of the matter will have to be taken. According to Mr. Bharucha, there is no substance in the contention that the Corporation is guilty of any laches. Drawing our attention to the judgment and order dated 26th June, 1986, passed by the Division Bench of this Court in Appeal No. 437 of 1979. Mr. Bharucha urged that though the order of termination dated 27/30th August, 1974 was set aside, liberty had been granted to Air India to hold a departmental enquiry against the petitioner. It is pursuant to this liberty that the departmental enquiry was held against the petitioner. The petitioner was represented by his counsel when this order was passed. The petitioner did not challenge this order and, therefore, he cannot now urge that there is any delay. We shall now deal with the rival contentions.

17. Mr. Bhasin argued that a conditional discharge order is not a conviction for a

criminal offence in a Court of Law. He drew our attention to Section 13 of the Powers of Criminal Courts Act, 1973 as applicable in the United Kingdom. u/s 7 thereof, if a Court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion, having regard to the circumstance including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, it may make an order discharging him absolutely or if the Court thinks fit, discharge him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified therein.

18. u/s 13 of the same Act. If an offender is conditionally discharged, the conviction shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made. Sub-section (3) of Section 13 states that conviction of the offender who is conditionally discharged shall be disregarded for the purposes of any enactment or instrument which imposes any disqualification or disability upon convicted person or authorizes or requires the imposition of any such disqualification or disability.

19. On the basis of these specific provisions of English Statute, Mr. Bhasin urged that, assuming this Court comes to a conclusion that conditional discharge amounts to conviction, since u/s 13(3) of the said Act the conviction is not to operate as a disqualification or disability, it was wrong on the part of the Air India to initiate proceedings on the basis thereof and terminate the petitioner's service on that count.

20. In our opinion, the words "conditional discharge" can never be interpreted to mean an acquittal. u/s 7 of the said Act, it is only a person who is convicted of an offence who can be conditionally discharged. The conviction is then put under suspension so as to give the convict some *locus poenitentiae*. In case of breach of the said conditions, the said person is liable to be imprisoned again. It is mercy shown by the Court to an accused on his promising to the Court that he shall behave himself. This is further evident from the fact that Section 13(1) of the said Act states that conviction of an offence for which an order discharging a person conditionally is made under Part I thereof shall be deemed not to be a conviction for any purposes other than purposes of the proceeding in which the order is made and of any subsequent proceeding which may be taken against the offender under the preceding provisions of the said Act. Therefore, that it is a conviction cannot be disputed. It is only by the deeming provision of the Statute that it is regarded as not to be a conviction for certain purposes. Once it is held that the petitioner was convicted, then Service Regulation 42(xx), which makes conviction in a Court of Law for criminal offence a disqualification, is clearly attracted.

21. It will now be necessary to consider Mr. Bhasin's alternative submission that even if this Court comes to a conclusion that the Petitioner was convicted, the conviction was under Misuse of Drugs Act, 1971 as in force in United Kingdom.

The said Act had no extra territorial jurisdiction and, therefore, this Court is not bound by it and the said conviction is not conviction by a Criminal Court in India. It is true that generally, an Indian Court will not lend its aid to enforcement either directly or indirectly of a foreign Criminal Law. The imposition of a conviction or penalty normally reflects the exercise by a State of Its sovereign power and it is an obvious principle that an act of sovereignty can have no effect in the territory of another State. It is true that jurisdiction over the crime belongs to the country where the crime is committed. However, though enforcement will not be allowed, it is going too far to assert that the penal laws of one country cannot be taken notice of in another for any purpose whatsoever. If an occasion arises, the nature of the crime, though springing from a penal law devoid of extra territorial effect, cannot be ignored by a State, particularly if its own law are also stringent and its public policy also is aimed at curbing such crimes.

22. In this connection, it will be useful to refer to the judgment of the Court of Chancery Division in *re Macartney* (1921) 1Ch 522, where while dealing with enforcement of foreign judgments the Court observed, "The principle upon which foreign judgments receive recognition in our country is one of comity. It does not require, but rather forbids it, when such a recognition works a direct violation of the policy of our laws and does violence to what we deem the rights of our citizens."

23. In this context, it is therefore necessary to have a look at the relevant Indian laws meant for dealing with people indulging in offences involving narcotic drugs. The Narcotic Drugs and Psychotropic Substances Act, 1985 ("the N.D.P.S. Act" for short) contains stringent provisions to deal with such offences. Section 20(b) (ii) provides for rigorous imprisonment for such a term which shall not be less than ten years, but which may extend to 20 years apart from a sentence of fine to a person, who possesses cannabis in contravention of the provision of the said Act or any rule or order made or condition of licence granted thereunder where such contravention relates to cannabis other than ganja. Section 32A of the N.D.P.S. Act says that except a sentence awarded u/s 27 thereof, no other sentence in the said Act shall be suspended, remitted or commuted. Section 33 denies the benefit of Section 368 of the Code of Criminal Procedure to a drug offender, which means that a drug offender cannot be ordered to be released on probation of good conduct or after admonition. It also denies to the drug offenders the benefit of Probation of Offenders" Act unless such a person is 18 or below 18 years of age. Section 37 of the N.D.P.S. Act makes every offence punishable under it cognizable and non-bailable. Bail can be granted only in exceptional cases after the Prosecutor is heard and after the Court is satisfied that the accused is not guilty and that he is not likely to commit any offence while on bail.

24. We may also refer to Chapter IV of the Constitution of India which contains the Directive Principles of State Policy. Article 47 of Chapter IV reads thus :

"47. Duty of the State to raise the level of nutrition and the standard of living

and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health."

These provisions, without doubt, bring out clearly the policy of the law that drugs are anathema to society. In view of these provisions, we are unable to agree with the learned Counsel for the petitioner that since the Misuse of Drugs Act has no extra territorial jurisdiction, the petitioner's conviction thereunder should be ignored. In our opinion, therefore. Regulation 42(xx) is clearly attracted to the facts of the present case.

25. Mr. Bhasin then urged that, even assuming it is a conviction since u/s 13(3) of the Powers of Criminal Courts Act, 1973 a conviction of an offender who is conditionally discharged has to be disregarded for the purposes of any enactment or instrument which imposes any disqualification or disability upon convicted persons or authorises or requires the imposition of any such disqualification or disability, no disciplinary proceedings could have been initiated on the basis thereof under the Air India Services Regulations. That is to say the conviction of the petitioner shall not be a disqualification or a misconduct within the meaning of Regulation 42(xx).

26. We are not impressed by this submission. As we have already noted, under the N.D.P.S. Act, sentence of a narcotic drug offender cannot be commuted, remitted or suspended; he cannot get the benefit of Section 360 of the Cr.P.C. or the Probation of Offenders Act also. Granting any such benefits to the petitioner is clearly and manifestly contrary to the Public Policy of India and, therefore, in our opinion, the petitioner cannot be heard to say that the conviction/conditional discharge order passed by the English Court must be disregarded and no disciplinary proceedings can be initiated on the basis thereof. The language of the Regulation does not require that the conviction must be by a Criminal Court in India. That the petitioner was convicted by a Criminal Court, for an offence involving moral turpitude is evident. Since the Powers of Criminal Courts Act, 1973 has no extra-territorial operation and does not apply in India, the peculiar deeming effect of Section 13 thereof by which the conviction is not deemed to be one on an order of conditional discharge being made, cannot apply. For the same reason, Section 13(3) also does not apply. Consequently, the petitioner has been rightly held guilty of a misconduct under Air India Service Regulation 42(xx) and dismissed. We find no ground for interference therewith.

27. We may now take up the contention of the petitioner that delay vitiates the order of dismissal. The petitioner's service were first terminated by the order dated 27/30 August, 1974. The said order of termination was passed under Regulation 48 of the Air India Employees Service Regulations. The petitioner challenged the said order. The said Regulation 48 was struck down by this Court in Miscellaneous Petition No. 1663 of 1975 decided on 19th of July, 1979. In view

of this, this Court on 24th September, 1979 quashed the termination order. Air India carried an appeal before the Division Bench vide Appeal No. 437 of 1979. It was pointed out to the Division Bench that the said Regulation 48 was also struck down by the Supreme Court and, therefore, the Division Bench dismissed the appeal. The Division Bench however, ordered that Air India shall be at liberty to hold a departmental enquiry against the petitioner.

28. At the hearing before the Division Bench the petitioner was represented by his counsel. The Counsel for Air India sought clarification that the Air India should be granted liberty to initiate departmental proceedings against the petitioner. The Division Bench, while granting this liberty, recorded that the counsel appearing for the petitioner had no objection to such a clarification being given by the Court. Following is the material portion of the Division Bench's Order ;

"Shri Desai, however, seek clarification that Air India shall be at liberty to take departmental proceedings against the petitioner in spite of the setting aside of the order of termination dated 27th/30th August, 1974. Shri Singhvi, learned Counsel appearing for the petitioner, has no objection to such a clarification being given by Court."

29. This order was not challenged by the petitioner. Therefore, the enquiry instituted by the Air India in the year 1987 being pursuant to this order cannot now be challenged as delayed enquiry. The charge-sheet was submitted on 13th of April, 1987. The enquiry was concluded within a period of seven months and the report came to be submitted on 7th of November, 1987. The petitioner came to be dismissed from service on 11th of January, 1988. The argument that there is delay in conducting the enquiry is, therefore, misconceived and we reject it.

30. Next, it is contended that the order of dismissal is bad as it tantamounts to double jeopardy. Under clause (A) of the said Regulation 48, the services of a permanent employee could be terminated without assigning any reason by giving him 30 day's notice in writing or pay in lieu of notice. In S.S. Mulay's case (supra) Savant, J. held that, there was no guidance anywhere in the said regulation for the exercise of the power conferred by it; that it placed untrammelled power in the hands of the authorities, that it was an arbitrary power which was conferred and it did not make any difference that it was to be exercised by high ranking officials. When the petitioner challenged his order of termination passed under, the said Regulation 48, it was set aside by the learned Single Judge of this Court in Misc. Petition No. 1663 of 1975, decided on 19th July, 1979 on the basis of the said judgment. The appeal filed by the Air India before the Division Bench being Appeal No. 437 of 1979 was also dismissed on the same reasoning. Therefore, the order of termination was not set aside on merits. It was set aside because Regulation 48-A enabling termination of service without enquiry and without assigning any reason was declared to be bad in law. There was no adjudication of the allegations made against the petitioner on merits. In fact, it is because of this fact that the Division Bench, while dismissing

the appeal filed by Air India, granted liberty to Air India to take departmental proceedings against the petitioner in spite of setting aside of the order of termination of the petitioner's services. The Counsel for the petitioner was present and he had no objection to such an order being passed. The relevant portion of Division Bench's order dated 26th June, 1986 is quoted by us hereinabove. Since the petitioner's case was not examined on merits, and he had conceded to the order granting liberty to Air India to hold departmental proceedings against him, there is no question of the petitioner being subjected to double jeopardy.

31. Mr. Bhasin next urged that, assuming that the petitioner was found in possession of cannabis, it is not an offence involving moral turpitude. We have no hesitation in rejecting this argument. The petitioner was a responsible officer of Air India. Under the service regulations to which the petitioner was subject, he had to maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interest, credit and prestige of the Corporation. Regulation 32, which is relevant in this connection, reads as under :

"General Conduct. -Every employees shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interest, credit and prestige of the Corporation."

Therefore firstly we find the conduct of the petitioner to be in breach of this regulation.

32. In Mohd. Hanif v. Additional Commissioner and Additional Regional Director, Aurangabad and Others, a Division Bench of this Court had occasion to consider what is meant by "moral turpitude". The question there was, whether the conduct of the petitioner in that case of going to the hospital in a drunken state, abusing and behaving in a disorderly manner involved moral turpitude. The Division Bench observed that the expression "moral turpitude" had not been defined anywhere and the conception in the very nature of things cannot be put in a straight jacket so as to admit of any degree of precision. It must necessarily depend on the facts of each case. The Division Bench quoted with approval the observations of the Punjab High Court in Chandgi Ram v. Election Tribunal. We may do likewise :

"..... "Moral turpitude" is a phrase which can hardly be accurately defined. It can have various shades of meaning in the various sets of circumstances. Normally as this phrase is understood, it is used in law with reference to crimes which refer to conduct that is inherently base, vile or depraved and contrary to the accepted rules of morality whether it is or is not punishable as a crime. They do not refer to conduct which before it was made punishable as a crime was generally not regarded as wrong or corrupt."

33. Therefore, conduct which is inherently base, vile or depraved and contrary to the accepted rules of morality falls within the ambit of the term "moral turpitude". Possession of a narcotic drug is undoubtedly not looked upon by the

society as an innocuous act. Society, particularly in India, is averse to drug offenders and shuns them. It is conduct contrary to the accepted rules of morality and hence involves moral turpitude. We have already noted that in the Indian laws more stringent provisions are made to deal with narcotic drug offenders. We have also referred to Article 47 of the Constitution of India which contains a Directive Principle of State Policy which makes prohibition of consumption of drugs as one of the State's objectives. Therefore we have no manner of doubt that the offence in which the petitioner was involved involves moral turpitude. There is no merit in this submission also.

34. In our opinion, therefore, the petitioner is not entitled to any reliefs. The petition deserves to be dismissed and is dismissed accordingly with no order as to costs.