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**(1998) 07 DEL CK 0020**  
**In the Delhi High Court**  
**Case No : CW.No. 2255 of 1996**

Bhagwan Dass

APPELLANT

Vs

Indian Airlines Ltd. and Others

RESPONDENT

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**Date of Decision :** 16-07-1998

**Acts Referred:**

**Citation :** (1998) 6 AD 492 : (1998) 75 DLT 613 : (1998) 47 DRJ 795

**Hon'ble Judges :** K. Ramamoorthy, J

**Bench :** Single Bench

**Advocate :** Mr. A.K. Jain, for the Appellant; Ms. Ratna Divedi, for the Respondent

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## **Judgement**

K. Ramamoorthy,J.

1. The petitioner is working with the first respondent. He applied for loan under the Indian Airlines Housing Loan Regulation. On the 25th of March, 1996, a charge-sheet was issued on the ground that the petitioner had violated the terms of the loan granted to him, and Therefore, he is guilty of misconduct.

2. The petitioner has challenged the initiation of disciplinary proceedings on the main ground that the charges leveled against him do not come within the purview of the misconduct and, Therefore, the first respondent had no jurisdiction to issue the charge-sheet. The first respondent has filed the counter-affidavit and stated that it is within the power of the Indian Airlines to take action against the employee if he or she commits breach of the terms of the loan sanctioned under the provisions of the Indian Airlines Staff Housing Loan Regulations.

3. The learned counsel for the petitioner, Mr.A.K.Jain, relied upon the judgment of the Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., . According to the learned counsel, the ratio laid down by the Supreme Court in this case would govern the instant case. In the case before the Supreme Court, an employee of the Project and Equipment Corporation of India availed of loan under the Project and Equipment Corporation of India Ltd House

Building Advance (Grant and Recovery) Rules. Under similar circumstances, disciplinary action was taken against that employee and order of dismissal was passed which was challenged. The circumstances leading to the filing of the appeal before the Supreme Court were stated by the Supreme Court in paragraphs 2 & 3 of the judgment which read as under:-

"Respondents the Project and Equipment Corporation of India Ltd. ('Corporation' for short) since its formation in 1971 a wholly owned subsidiary company of State Trading Corporation ('STC' for short), a Government of India undertaking up to 1976 when it was separated and since then it functions as a Government of India undertaking. The appellant A.L.Kalra joined as Under Division Clerk in the STC on August 6, 1963. On November 1, 1963, came to be promoted as Assistant and earned a further promotion on May 22, 1974 as Accountant. On the setting up of the Corporation, the appellant exercising his option came to be transferred as Accountant to the Corporation, on November 9, 1976. Under the relevant conditions of transfer, he continued to be governed in the matter of recruitment and promotion by the relevant rules of the STC. He was promoted in an officiating capacity as Deputy Finance Manager Grade II on June 29, 1978 and he was put on probation after being promoted as Deputy Finance Manager Grade II on regular basis effective from February 5, 1979. The appellant applied for and obtained an advance in the amount of Rupees 16,050 for purchasing a plot of land on April 4, 1979 for which he executed the requisite agreement on April 4, 1979. The rules under which advance was obtained are styled as "The Project and Equipment Corporation of India Ltd. House Building Advance (Grant and Recovery) Rules ('Rules for House Building Advance' for short) framed in exercise of the powers conferred upon the Board of Directors by the Articles of Association of the Corporation. The appellant also applied for and obtained an advance in the amount of Rs.11,000/- for purchase of a new motor cycle on July 7, 1979. This advance is governed by what are styled as the Projects and Equipment Corporation of India Ltd. Conveyance Advance (Grant and Recovery) Rules ('Conveyance Advance Rules' for short).

In respect of the house building advance according to the respondent-Corporation, in view of Rule 10 (1) (c) (i) the appellant was required to utilise the amount drawn by him for the purpose for which advance was granted within two months of drawl and submit the documents evidencing the purchase of plot within the prescribed time failing which he was liable to refund at once the entire amount together with interest to the Corporation. The agreement dated April 4, 1979 executed by the appellant also obligated him to utilise the advance for the purpose for which the same was sanctioned and to produce the sale-deed for verification by the Corporation failing which the whole of the advance had to be refunded with interest. It was alleged that the appellant neither utilised the advance for the purchase of plot nor refunded the amount despite several reminders and ultimately on November 13, 1979, a memorandum was served upon him cautioning him that if he failed to refund the entire amount forthwith, disciplinary proceedings will be initiated against him. As the appellant failed to

comply with the request made in the memorandum, his salary from November 7, 1979 as a whole was withheld for adjusting the amount of advance and the interest payable thereon. He was also charged penal interest for the default committed by him."

4. The charge against the employee in the case before the Supreme Court reads as under:-

"A memorandum dated July 22, 1980 was served upon the appellant stating therein that the competent authority proposes to hold an enquiry against him under Rule 27 of the Project and Equipment Corporation of India Ltd. Employees" (Conduct, Discipline and Appeal) Rules, 1975 ('1975 Rules' for short). There were two heads of charges in the charge-sheet drawn-up against the appellant on which disciplinary enquiry was proposed to be held. These two heads of charges read as under:-

"Article I

Shri A.L.Kalra while functioning as Deputy Finance Manager-Grade II in the Finance Division of the PEC during April, 1979 applied and drew an advance of Rs.16,050/- for purchase of a plot of land at Faridabad. But he did not furnish the relevant documents in the office nor did he refund the amount of advance to the Corporation within two months of the date of drawl of the advance as required under R.10(1)(c)(i) of PEC House Building Advance (Grant and Recovery) Rules.

Shri Kalra by his above act exhibited lack of integrity and conduct unbecoming of a public servant and violated R.4(1) and (iii) and R.5(5) of the PEC Employees" (Conduct Discipline & Appeal) Rules and Rule 10(1) (c) (i) of PEC House Building Advance (Grant & Recovery) Rules and thereby committed misconduct punishable under the PEC Employees" (Conduct, Discipline & Appeal) Rules, 1975.

Article-II

Shri A.L.Kalra drew a conveyance advance of Rs.11,000/- in July, 1979 for purchasing a motorcycle, but did not utilise the amount for the above purpose and did not furnish cash receipt etc. evidencing purchase of the vehicle within one month as required under R.8 of the PEC Conveyance Advance (Grant & Recovery) Rules. Nor did he refund the amount of advance to the Corporation as required under R.10(I) ibid.

Shri A.L.Kalra by his above act exhibited lack of integrity and conduct unbecoming of a public servant and violated R.4(1)(i) and (iii) and R.5(5) of PEC Employees" (Conduct, Discipline & Appeal) Rules and also violated R.8 and R.10 (i) of the PEC Conveyance Advance (Grant & Recovery) Rules and thereby committed misconduct punishable under the PEC Employees" (Conduct, Discipline & Appeal) Rules, 1975."

The appellant was also asked to submit his defense statement within 10 days from the date of the receipt of the memorandum. The appellant by his letter dated Feb.13, 1980 requested for extension of time to file the defense statement. It appears that he sought further extension of time by three weeks which request was declined by the memorandum dated Feb.23, 1980. The Committee of Management in exercise of the powers conferred by sub-rule (4) of Rule 27 of the 1975 Rules appointed Shri A.S.Nangia, Chief Marketing Manager as the Enquiry Officer to enquire into the charges against the appellant. The appellant submitted on June 13, 1980 a detailed statement pointing out that the inquiry was the outcome of malice for various reasons therein mentioned and also explaining why there was delay in refunding the advances and specifically pleaded that in view of the fact that the first advance was sought to be recovered by withholding his salary and adjusting the pay towards advance and charging penal interest and in the second case by accepting the document evidencing purchase of scooter, no misconduct could be said to have been committed by the appellant and the disciplinary enquiry was uncalled for. Various other contentions were also raised in the defense statement. The Enquiry Officer conducted the enquiry in respect of the aforementioned two charges. One U.S.Aggarwal, Finance Manager of the Corporation appeared as Presenting Officer. The appellant conducted his own defense."

5. The Supreme Court held:-

"If the rules for granting the advance themselves provided the consequences of the breach of conditions, it would be idle to go in search of any other consequence by initiating any disciplinary action in that behalf unless the 1975 Rules specifically incorporate a rule that the breach of House Building Advance Rules would by itself constitute a misconduct."

The Supreme Court noticed that there was no such rule in that case.

6. The charge issued by the first respondent in the instant case is as under:-

"Explanation submitted vide your letter dated 1.12.1995 in reply to our letter No.HQ/Civil Eng/89(d)/1905 dated 17.11.1995 has been considered and found unsatisfactory. You are, Therefore, hereby charged as under:-

Charge No.1

That on 11th January, 1988 you submitted an application requesting for grant of housing loan to the tune of Rs.1,43,000/- to enable you to purchase a ready built flat "B" Category at Patparganj (The General Co-operative Group Housing Society Limited (Regd.), Shubham Apartments, 37, Patpar Ganj, Delhi-110092). Your application was duly considered by the sanctioning authority and after examination of documents, you were sanctioned housing loan amounting to Rs.1,23,000/- vide letter No.HGA:VI:HL:88-89/338 dated 22nd Sept. 1988 and 28th March, 1990 for acquisition of the aforesaid flat through membership of the General Co-operative Group Housing Society Subject to inter alia, execution/

furnishing of personal bond and agreement. It has been reported that contrary to the terms of agreement dated 17th Oct.1988 and personal bonds dated 10th October, 1988 and 26th March, 1990 executed by you, as also in violation of provisions of is Staff Housing Loan Regulations, on 6th July, 1993 you had unauthorisedly sold your flat No.136 in Shubham Apartments, constructed by General Cooperative Group Housing Society Ltd./ to Shri Prem Kumar Bajaj S/o Shri Mohan Lal Bajaj for a sum of Rs.2,75,000/- (Rupees two lakhs seventy five thousand only). This unauthorised sale was effected by you without taking any prior permission from Indian Airlines and before repaying the amount of loan together with interest thereon. Your above act if proved, would tantamount to your committing breach of Clause 1 and 16(14) of Standing Orders (Regulations) concerning Discipline and Appeals applicable to you, which reads as under:-

Clause-1:

"Every employees of the Corporation (now Company) shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests, credit and prestige of the Corporation(now Company)."

Clause 16(4):

"Theft, fraud and dishonesty in connection with business or property of the Corporation(now Company)."

Clause-16(8):

"Breach of any standing order or any law or rules applicable to the establishment."

Clause-16(14):

"Breach of any rule or instructions for the maintenance and running of any department or the maintenance of the cleanliness of any portion of the establishment."

Evidence which it is proposed to consider in support of the charges:-

1. Indian Airlines Housing Loan Regulation.
2. Your application dated 11th January, 1988 requesting for grant of housing loan in the prescribed proforma.
3. Letter No.HGA: VI:HL:88-89/338 dated 22nd Sept.1988 conveying sanction of housing loan and requiring you to execute/furnish certain documents.
4. Agreement bond dated 17th October, 1988 executed by you.
5. Personal Bonds dated 10th Oct. 1988 and 26th March, 1990.
6. Attested photocopy of General Power of Attorney dated 6th July, 1993 executed by you in favor of Sh.Mohan Lal Bajaj s/o Late Sh.Chettu Ram Bajaj r/o

X/2786, Gali No.t, Raghubar Pura No.2, Gandhi Nagar, Delhi-31.

7. Attested photocopy of receipt dated 6th July, 1993 executed by you for having received a sum of Rs.2,75,000/- from Sh.Prem Kumar Bajaj, s/o Sh.Mohan Lal Bajaj, r/o X/2786, Gali No.5, Raghubar Pura No.2, Gandhi Nagar, Delhi-31.

8. Any other evidence documentary or oral which may be considered relevant to the charges.

#### Charge No.2.

That in accordance with instructions contained in para-2(f) of letter No.HGA:VI:HL:88-89/338 dated 22nd Sept.1988 conveying sanction of housing loan to the tune of Rs.1,23,000/- and requiring you to execute furnish certain documents, you were required to mortgage the said flat to be purchased by you with the amount of this housing loan. As per the records, you took possession of flat No.136, Third Floor, Shubham Apartments, Plot No.37, IP Extension, Delhi-92 on 07-02-1993 and failed to mortgage the said flat in accordance with instructions contained in the sanction letter dated 22nd Sept.1988. Your conduct in not mortgaging the said flat to Indian Airlines and its subsequent sale to Sh.Prem Kumar Bajaj s/o Sh.Mohan Lal Bajaj, leads to the conclusion that you misutilised Corporation's funds (now Company), for your personal advantage/gains.

Your above action, Therefore, is not in consonance with the provision of the Standing Orders applicable to you and tantamounts to a misconduct within the meaning of Clauses 1, 16(4) and 16(8) of Standing Orders (Regulations) concerning Discipline and Appeals. (Clause 1, 16(4) & 16(8) to be reproduced from the Standing Orders) Evidence which it is proposed to consider in support of charges:-

1. Letter No.HGA:HL:88-89/338 dated 22nd Sept.1988 conveying sanction of housing loan and requiring you to execute/furnish certain documents besides complying with the instructions contained therein.

2. Your letter dated 28th Nov.1994 addressed to the Deputy Manager(Vigilance), IAL - Airlines House, New Delhi-110 001.

3. Agreement Deed dated 6th July, 1993 executed by you in favor of Sh.Prem Kumar Bajaj s/o Sh.Mohan Lal Bajaj for selling your above said flat.

4. Copy of receipts dated 6th July, 1993 executed by you for having received a sum of Rs.2,75,000/- from Sh.Prem Kumar Bajaj.

5. Any other evidence, documentary or oral which may be considered relevant to the charges.

#### Charge No.3

It has been further reported that you appeared before Sh.J.K.Tanwar, the then Deputy Manager(Vigilance) (now Manager(Vigilance)) on 17.11.1993 and were

told about a complaint against you for having unauthorisedly sold your flat in Cooperative Society at PATPARGANJ BY MISUSING HOUSING LOAN SANCTIONED BY INDIAN AIRLINES. You requested for some time for rendering a statement in this regard and promised to report again on 22.11.1993 at 1430 hours. However, on 22.11.1993, you reported at 1600 hours instead of 1430 hours and refused to reply to any of the query pertaining to investigation of this complaint.

Subsequently, on written instructions from your Department, you reported to the Deputy Manager(Vigilance) on 4.1.1994 and again refused to reply to any of the query with regard to investigation. These proceedings were witnessed by Sh.Yadram Singh, Chief Pharmacist, IAL - Medical Department, who also advised you to cooperate during the enquiry, but you refused.

A similar incident was repeated on 12th Dec.1994 when you appeared before the Deputy Manager(Vigilance) investigating into your case in the presence of Sh.Yadram Singh, Chief Pharmacist of Medical Department, IAL, Headquarters, New Delhi. Upon being asked to render your statement in relation to the investigation in the above matter, you refused to write anything. Even after much persuasion, you did not agree to give any statement. You mis-behaved with the investigating officer and told him that you are leaving his office.

Further, in your letter dated 7-10-1994, you leveled uncalled for allegations against the Vigilance Department of harassing you because you are an officer from the Scheduled Caste community. You had, Therefore, persistently refused to co-operate with the Investigating Officer, misbehaved with him and leveled uncalled for allegations against the Investigating Officer and the Vigilance Department. These deliberate actions on your part during the course of investigations, would tantamount to your committing breach of clause-1 and misconduct as envisaged under Clause 16(1) and 16(13) of Standing Orders (Regulations) concerning Discipline and Appeals applicable to you, which read as under:-

Clause-1:

"Every employees of the Corporation (now Company) shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests, credit and prestige of the Corporation(now Company)."

Clause-16(1):

" Willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior."

Clause-16(13):

"Commission of any act subversive of discipline or of good behavior in the premises of the establishment."

Evidence which it is proposed to consider in support of the charges:-

1. Report of Sh.J.K.Tanwar, Deputy Manager(Vigilance) dated 9th Feb.1995.
2. Statements of Sh.Yadram Singh, Chief Pharmacist, IAL dated 4th January, 1994 and 12th Dec.1994.
3. Letter No.HQ/Civil Eng/89(E-2)/1351 dated 26.9.94 addressed to Sh.Bhagwan Dass by the Dy.General Manager (Civil Engg.).
4. Letter dated 7.10.1994 addressed to Dy.General Manager(Civil Engg.) by Sh.Bhagwan Dass, Overseer.
5. Any other evidence, documentary or oral which may be considered relevant to the charges.

You are hereby requested to put in a written statement of your defense in reply to the charges within seven days from the date of receipt of this letter. You are warned that if no statement is received from you by the undersigned within the time allowed, it will be presumed that you have none to furnish and orders will be passed in your case accordingly.

You are further required simultaneously to inform the undersigned in writing whether you desire to be heard in person and in case you wish to examine or cross-examine any witness, to submit along with your written statement their names and addresses together with a brief indication of the evidence each such witness will be expected to give."

7. There is no rule as pointed out by the Supreme Court stating that any violation of the employee of the rules and regulations would constitute the misconduct. Therefore, the dictum laid down by the Supreme Court would apply to the facts of this case and the first respondent cannot issue any charge-sheet against the petitioner. Accordingly, the writ petition is allowed.

8. There shall be no orders as to costs.