

(1988) 03 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 1921 of 1987

Harish Chandra Kapoor

APPELLANT

Vs

Air India and Another

RESPONDENT

Date of Decision : 10-03-1988

Acts Referred:

Air Corporations Act, 1953 — Section 34, 45
Air India Employees Service Regulations, 2000 — Regulation 15, 43
Constitution of India, 1950 — Article 226, 77

Citation : (1988) 1 BomCR 669

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Indira Jaising, Anand Grover and Nilima Dutta, for the Appellant; Ashok Desai, Ashwinikumar, E.P. Bharucha and S.K. Wadia, instructed by Mulla and Mulla, C.B.C. for respondent No. 1, F.S. Nariman, D.R. Dhanuka, Liladhar Vyas and Ajay Kapur, instructed by S. Sankarrama Krishnan, for respondent No. 2, for the Respondent

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution impugns the imposition and continuance of a decision of enforced leave upon the petitioner a Deputy Managing Director of respondent No. 1 hereinafter to be referred to as "Air India"/"Corporation" upon a direction given by the second respondent, which is the Union of India.

2. Air India is one of the two Corporations established u/s 3 of the Air Corporations Act, 1953 (AC Act). At the relevant time, the Managing Director of the Corporation was one Captain Bose and the Chairman of the Board of Directors Dr. Sidhu. Later on, Mr. Rajan Jaitley took over as the Managing Director and Dr. Sidhu's tenure came to an end with the appointment of a regular Chairman Mr. Ratan Tata. The AC Act vests the power of general superintendence, direction, management of affairs and business of the Corporation in a Board of Directors. Section 34 of this Act empowers the Central Government to give to Air India directions as to the exercise and performance of

its functions. The recipient Corporation is enjoined to give effect to directions issued by the Central Government. The expression "Central Government" is not defined in the AC Act. For that reason one goes to the General Clauses Act, 1987 (Act No. 10 of 1897). Section 8 of Act 10 of 1897 gives a long list of definitions of words of common occurrence in different Central Acts and Regulations. The definitions given in section 3 are to have effect, unless, "there is anything repugnant in the subject or context". By sub-section 3(8) of Act 10 of 1897, the Central Government in relation to the Act would mean the "President". Section 45 of the AC Act empowers the Corporation to make Regulations not inconsistent with the Act or the Rules framed thereunder. The power to frame Regulations embraces various subjects including the terms and conditions of service of officers and other employees of the Corporation other than the Managing Director and Officers of any category other than those referred to in section 44. The Regulations attain force only if made with the previous approval of the Central Government. The Corporation has with previous approval of the Central Government framed what are known as "Air India Employee's Service Regulations" hereinafter referred to as the "Regulations". In Clause 3(f) of the Regulations, the expression "Head of Department" is made to include a Deputy Managing Director. But it is made clear in Clause 3 that the definitions enumerated there cannot supersede the connotation or colour given to an expression or word by "context otherwise". Clause 8 of the Regulations provides for a period of probation of six months or twelve months as may be prescribed. The period afore-mentioned may be reduced by the Managing Director at his discretion or, "for reasons to be communicated in writing, extended by the competent authority". Clause 15 of the regulations lays it down that increments are dependent on business conditions as well as conduct and ability of the employee and no increment within a grade accrues as of right or as a matter of course. It is however made clear that increments can be withheld only for "reasons to be recorded in writing" and this after informing the employee concerned in writing of the grounds on which it is proposed to withhold increments and giving him a reasonable opportunity of showing cause against the action proposed to be taken. Clause 43 speaks of punishments which can be imposed on employees of the Corporation. These number as many as eight. Clause 43-A empowers the suspension of an employee pending an enquiry into misconduct ascribed to him. The order of suspension has to be in writing and is to be followed "as soon as possible by a charge sheet setting out the misconduct alleged against the employee". Clause 44 provides for an adequate opportunity to the employee to defend himself before he is awarded any punishment, except the punishment of censure. The age of retirement prescribed by Clause 46 is in case of employees like the petitioner, 58 years. Schedule I to the Regulations makes it clear that in relation to five of the penalties specified in Clause 43, the authority competent to impose the said penalties vis-a-vis a Deputy Managing Director, would, be the Managing Director. Against the punishment imposed under any of the five different heads the affected Deputy Managing Director has a right of appeal to the Chairman. The Chairman can impose all the eight

penalties listed in Clause 43 and the aggrieved employee has a right of appeal to the Corporation which means, the Board of Directors appointed u/s 4 of the AC Act. Acting u/s 40 of the AC Act the Air India has enumerated delegation of financial and administrative powers under instruments of delegation effective as from January 1, 1987.

3. Petitioner joined the Corporation's Engineering Department in December 1954. His academic qualifications were Inter-Science with Physics, Chemistry and Mathematics from Calcutta University. That apart, he had acquired a diploma in Aeronautical Engineering from Air Technical Training Institute, Dum Dum, Calcutta. In the course of service, petitioner acquired different qualifications and licenses. Joining as a Floor Engineer, petitioner went through the different ranks and from 1983 to 1985, was the Director of Engineering heading the Engineering and Maintenance Departments. On 1-10-1985, petitioner was promoted and appointed to the post of Deputy Managing Director. The Managing Director of the Corporation on 8-10-1985 issued a memorandum outlining the division of responsibilities as between him and the two Deputy Managing Directors. In so far as the petitioner was concerned, departments/divisions dealing with engineering, stores and purchases, ground services and civil works and properties were to report to him. Para 5 of the memorandum stated that the administration and establishment matters pertaining to their respective departments would be co-ordinated by the Deputy Managing Director concerned. The Director of Engineering who is the head of department concerned with the Engineering Section has duties and responsibilities which are set out at page 94 of the petition compilation. This compilation is distinct from another which is the documents compilation. Briefly, page 94 speaks of the Director of Engineering being responsible for the overall functioning of the Engineering Department. His specific functions include the evolving and issuance of policy directives and instructions in respect of maintenance and overhaul programmes to meet proper airworthiness and safety standards.

4. One of the tasks undertaken by the Air India is to arrange for and execute what are known as VVIP flights. For such flights figure in the present case. The first of these four was a flight on which took place the Dutch Roll incident on 27-10-1985. That flight was prepared by K.G. Rao, B.P. Balinga, Ranga Rao, J. Naigamwala, T.R. Vardarajan, T.D. Thadani, S.N. Hoon, I.J. Charles, A.K. Huckoo, S.K. Sengupta, S.P. Puri and R.P. Buxy. Significantly, B.P. Baliga accompanied the flight as an Engineering Executive. Next came the Osaka incident which took place on 1.12.1985. The committee entrusted with the task of preparing this flight consisted of K.G. Rao, I.J. Charles, H.K. Malik, Khambatta, T.R. Varadarajan, T.D. Thadani, S.N. Hoon, S.V. Vaishampayan, A.K. Huckoo, S.K. Sengupta, S.P. Puri and R.P. Buxy. A.K. Huckoo accompanied the flight as an Engineering Executive. The third incident took place May 12, 1986 in respect of a ferry-cum-proving flight. There was a false warning and the committee incharge of preparing and executing the flight consisted of K.G. Rao, I.J. Charles, H.K. Malik, Khambatta, M.P. Balani, B.K. Mangaokar, S.N. Hoon, S.V. Vaishampayan,

A.K. Huckoo, S.K. Sengupta, S.P. Puri and R.P. Buxy. S.N. Hoon accompanied the flight as an Engineering Executive. The last was the flight in which occurred the incident of August 10, 1986. In between Pargue and Delhi, the aircraft gave out a fire warning. As a result of this warning, the place was diverted to Moscow. A Full-check revealed that the fire warning was false. The Committee entrusted with the preparation and execution of this flight consisted of K.G. Rao, I.J. Charles, H.K. Malik, Khambatta, M.P. Balani, B.K. Mangaokar, S.N. Hoon, S.V. Vaishampayan, A.K. Huckoo, S.K. Sengupta, R.P. Buxy, N.P. Sharma, S.M. Balakrishnan, Arun Mohite and A.K. Subramaniam. S.K. Sengupta accompanied the flight as an Engineering Executive.

5. The incident which took place on 10th August, 1986 being the causa-causans or the decision impugned in this petition, it is necessary to give a few details in regard thereto. The mishap occurred when an Air India Extra Section (VVIP) flight scheduled from Prague to New Delhi had to be diverted to Moscow due to a fire warning coming on during the flight. The Prime Minister was on the said flight. The diversion having taken place, the craft landed at Moscow where it was established that the fire warning was false. The diversion of the flight occasioned anxiety. The next day i.e. 11 August, 1986, the petitioner directed an internal enquiry by the Director Engineering and the Engineering Manager to look into the incident. The Engineering Team on flight submitted reports on 11th and 12th of August, 1986. On 13th August, 1986, acting upon an oral message conveyed to him, petitioner applied for 15 days privileged leave. This was granted. The leave went on being extended upto specified periods and was made sine die by a letter addressed to the petitioner by the Managing Director on 13 February, 1987. In this letter the Managing Director made it clear that the decision to send the petitioner on leave was taken at the instance of the Ministry of Civil Aviation and was not a decision of Air India. It was further made clear that as the Deputy Managing Director, the petitioner was not responsible for day-to-day operations, his responsibility being limited to co-ordination of various matters and assisting the Managing Director in policy matters. In the meantime, the Government had appointed a Committee consisting of Air Marshal Raje, Chairman of the National Airport Authority Air Vice Marshal S.S. Ramdas, Senior Maintenance Staff Officer of the Western Air Command and H.S. Khola, Director of Air Safety, Director General of Civil Aviation, to enquire into the incident and submit a report. The Committee, hereinafter referred to as "The Raje Committee" conducted a detailed enquiry and submitted a report. It recorded a number of findings and some of the findings need reproduction in full and for that reason are given below.

"3. The inflight fire warning of No. 3 engine was not as a result of actual fire or hot gas leak from the engine, but was due to drop in insulation resistance of the fire detection system.

4. The bottom fire wire element right hand connector and the element end were found contaminated with oil, moisture and dirt during rectification at Moscow.

5. The No. 3 engine oil breather outlet was found mismatched on the cowl aperture and its seal had a gap due to deteriorated condition.

6. The ceramic insulator body of the bottom element right hand connector of No. 3 engine was found cracked and the connector gasket was corroded.

7. Correct type of new hermetically sealed connector compatible with aircraft wiring were not installed at four positions on Nos. 1, 2 & 3 engines, including the involved connector of No. 3 engine.

8. Proper procedure for installation of engine fire wire connector was not followed during preparation of the aircraft for VVIP flight.

14. The "Sang Sheet Completion Certificates" are signed by the Assistant Engineering Managers without actually supervising the work or even scrutinising the schedules carefully. The certificates are signed in a casual manner just on the basis that the engineers have appended their signatures against the inspection items.

15. The "Certificate for VVIP Flight" to the effect that the aircraft has been maintained in the approved manner was signed by Dy. Engineering Manager (QC & TS) in a casual manner and without even scrutinising the maintenance schedules.

16. The minimum insulation resistance value (1 megohm) of the fire warning system presently being followed by Air India is for the old types of fire sensing elements which were superseded by Being Service Bulletin 3236 issued in February 1976, introducing new types of elements presently in use on Air India Being 707 aircraft. The Quality Control System of Air India and Airworthiness Authorities of DGCA have both failed to detect this erroneous procedure.

23. The inflight fire warning incident on No. 3 engine could have been avoided if installation of the engine fire wire connectors had been carried out according to the correct procedures.

13. Causes of the incidents.

(a) The No. 3 engine fire warning came "ON" due to drop in insulation resistance of the fire detection system on account of oil/moisture contamination of the bottom fire wire element and its right hand connector.

The contributory factors were :-

(i) Crack in ceramic insulator body of the connector and corrosion of the gasket due to improper installation of the connector.

(ii) Mismatch of the engine and breather outlet on the cowl and deteriorated condition of the seal which remained unattended.

(iii) Lack of proper supervision of the aircraft preparation work by senior engineers.

The Committee made certain recommendations and the important ones are-

"2. Air India should, on the basis of statistical data and experience, formulate the following for VVIP flights :

(a) Special Schedules for preparation of aircraft.

(b) Special transit checks to be carried out at outstations.

5. Final certification of the aircraft, after the preparation for VVIP flight, should be carried out by the Engineering Manager incharge and counter-signed both by Engineering Manager (O.C & TS) and the Director of Airworthiness of Civil Aviation Department.

6. The final release of VVIP aircraft, after transit checks enroute, should be counter-signed by the senior-most engineer accompanying the VVIP flight.

9. Air India should issue a Staff Notice giving complete background and seriousness of engine fire warnings, importance of following the correct procedures for the installation of new hermetically resistance of fire detection system. Use of correct type of connectors compatible with the aircraft wire gauge thickness should also be highlighted.

11. The flight crew members detailed for the VVIP flights should be given refresher training on the simulator as an integrated team."

The order appointing the Raje Committee set out terms of reference one of which was--

"In case the technical snag was due to human failure, the committee would fix responsibility."

The report was submitted under a covering letter of Air Marshal Raje addressed to the Secretary to the Department of Civil Aviation. The letter gave out the names of the personnel held directly responsible for the incident and they were Arun Mohile, A.K. Subramaniam, Balakrishnan, and S.V. Vaishampayan. This was apart from the Moscow-based technicians. One of the paragraphs of the letter had this to say :---

"In addition to the above, the Committee has formed the opinion that there is inadequate technical supervision and personal involvement by various Air India personnel at almost all levels, responsible for reparing the aircraft for the VVIP flight and for servicing it enroute. The various aspects have been highlighted in the findings of the Committee and remedial action suggested in the recommendations."

6. The Raje Committee report was received by the Ministry of Civil Aviation in the first week of September 1986. The Secretary of the Department of Civil Aviation, Dr. Sidhu, scrutinised the report and the notings made thereon in his department and recorded a note on 12 September, 1986. This note is of great significance and portions thereof need to be commented upon. First, Dr. Sidhu affirmed the

Raje Committee findings about the blameworthiness of Messrs. Mohile, Subramaniam, Balakrishnan and Vaishampayan. Next he held that though the Committee had not found any senior supervisory officer responsible, he was of the view that this responsibility fell squarely upon the Deputy Director of Engineering. This officer was to be suitably dealt with inasmuch as he was vicariously responsible. About the petitioner, Dr. Sidhu had this to say :---

"The Inquiry Committee has neither directly nor indirectly held Shri Kapoor responsible for the incident in respect of the VVIP flight. Shri Kapoor is looking after a number of Divisions in Air India as Deputy Managing Director. Maintenance and Engineering is one of his many responsibilities. Though we may not take a serious view considering his seniority and clean record so far, and he may not be held responsible for any specific negligence, yet he cannot be considered to be totally free from the blame. It would seem appropriate that he may be cautioned in writing to be circumspect and to exercise effective supervision in important matters like preparation of the aircraft for the VVIP flight. A copy of the caution letter may also be placed in his CR dossier."

The file then went upto the Minister of State for Civil Aviation. At that time the Department of Civil Aviation was under the overall charge of the Transport Minister with Cabinet rank. Mr. Jagdish Tytler was the Minister of State. He did not agree with Dr. Sidhu in regard to the petitioner. To quote his note dated 17 September, 1986---

I am of the firm view that it is Shri H.C. Kapoor, Dy. Managing Director, who should be held responsible and discharged from his duties. This is because, it was Shri H.C. Kapoor who as the Dy. Managing Director was the senior-most person looking after Engineering and Maintenance and even prior to this he was incharge of the Engineering and Maintenance as the Director of Engineering, Air India. This is the third incident to occur during VVIP flights of the Prime Minister ever since Shri Kapoor took over charge as Deputy M.D., Air India. Such incidents can endanger valuable lives, cause unnecessary apprehensions in the minds of the public and also undermine the faith of the travellers in Air India. I am surprised that how come the Secretary did not propose dismissal of Shri Kapoor when so frequently, under Shri Kapoor's charge and supervision, the Prime Minister and other senior Ministers and officials accompanying him have been inconvenienced during their flights ? It has also been brought to my notice that Shri H.C. Kapoor is not even well qualified to hold such a senior position. He does not even hold a licence on Boeings or Airbus aircraft. His basic qualification is an Inter Science only and all his licences are on small aircraft and engines.....It can thus be seen that the very principles, checks, maintenance schedules and the technical supervision which was planned by the Air India Management was found inadequate. It is, therefore, no wonder that in the last 12 months this was the third embarrassing incident to occur during a VVIP flight. Shri H.C. Kapoor has been the senior-most person looking after the Engineering Department for a number of years. These incidents

are, reflective of the policy laid down during the past few years and for this Shri Kapoor himself has to be held responsible."

The Cabinet Minister Mrs. Mohsina Kidwai affixed her signature to the note on 25 September, 1986.

7. Capt. Bose as the Managing Director addressed a letter to the Chairman of Air India on 27-11-1986. In this letter, it was stated that petitioner had been asked to proceed on leave pursuant to a direction given by the Ministers for Transport and Civil Aviation, that, but for the incident of 10-8-1986 there was nothing against the petitioner that in fact the petitioner had made significant contributions in different areas/departments under his control and that he would have been confirmed in the post of Deputy Managing Director effective as from 1-10-1986 subject to the approval of the Board and the Government. Three months later i.e. on 26-2-1987, Capt. Bose addressed a letter to Dr. Sidhu making it clear that the mishap for which petitioner was sent and continued to be on leave was attributable to a product defect, that lapses in relation to checks had been ascribed by the Raje Committee to individuals who did not include the petitioner, that Air Marshal Raje had in fact made it clear that no blame could be ascribed to the petitioner and that it was only proper and fair that petitioner was asked to rejoin duty at an early date.

8. By January 1987, petitioner's patience had given out. In letters written thence forth petitioner came out with the allegation that the real reason for the enforced leave decision was his refusal to succumb to Minister Tytler's pressure to recommend purchase of aircrafts in which M/s. Puri and Hirschmann were interested. In the meantime, the Air India had received a copy of the Raje Committee Report. The Corporation saw no reason to hold petitioner responsible for the mishap that occurred in the aircraft carrying the Prime Minister. It had received communications from the Boeing Company, and, these communications in the form of telex messages are at Exs. Q, R and S to the compilation. The long and short of the messages was that the false fire warning was due to a defect in the product. Several such fire warning had been noticed and there was a proposal to redesign the product. This defect in the product was referred to by Capt. Bose in his letter dated 26-2-1987 to Dr. Sidhu. The comments of Air India upon the Raje Committee report seem to have been placed before the Minister of Civil Aviation, and on 11-6-1987, the Minister recorded a note, the excerpts wherefrom read thus :---

"The intention of the Government therefore would not be to make scape-goats of junior officials because after all, they only perform as per the procedures prescribed to them and the supervision that they are subjected to. Even if there are some lapses by the junior officers, it would be expected that an experienced person who for the last 3 years was the Head of the Department would take some personal interest to see what had gone wrong, to see how better practices could be instituted and to generally ensure that supervision is meticulous and is of the highest order even if it involves visiting the shop floor personally or having

a new look at procedures and manuals personally himself. On moral grounds, I would have thought that Shri H.C. Kapoor would have resigned himself.....During the investigation, the Committee has been able to pinpoint a number of lapses and wrong practices followed by Air India maintenance schedules and also execution of work on the aircraft. Some of these have a direct bearing on the incident and others reflect a casual attitude to the task of preparing an aircraft for a VVIP tour. In the same letter the Committee has also given its opinion that there is inadequate technical supervision and personnel involvement by various Air India personnel, at almost all levels, responsible for preparing the aircraft for the VVIP flight and for servicing it en route. The various aspects have been highlighted in the findings of the Committee and remedial action suggested in the Recommendations...More important if no salutary action was taken against those directly responsible for running the department then it could have been said that Air India failed to provide safe flights, caused unnecessary apprehension in the minds of the Indian public, endangered valuable lives and in general undermined the faith of air passengers in Air India itself..... It was also brought out by the Investigation Committee that the Management had allowed procedures to become lax and for itself to be so distanced from the shop floor, that certificates were being signed by Managers "without actually supervising the work or even scrutinising the schedules carefully". There cannot be anything more serious than this practice. Similarly, the Management had also failed to ensure that changes ordered by the Boeing Company as early as February, 1976 in the Minimum Insulation Resistance Value of the fire warning system was.....also not followed in this case. There was thus enough material and evidence before the Government to proceed directly against the senior-most person in Air India responsible for the Air India Engineering Department. These facts became even more important, because the incumbent who occupied the senior most post had earlier been directly in charge of the department in his capacity as the Director of Engineer. The laxity shown by the Corporation in the preparation of an aircraft for a VVIP charter reflected the casual attitude of Shri H.C. Kapoor, who for the last 5 years had been the Head of Engineering in Air India in one way or the other; who could have played a major role in formulating adequate policies and maintenance checks; and who could have ensured committed and dedicated supervision of the aircraft. Perhaps he could not do so because he was not very familiar with the intricacies and complexities of jet engines since all his licences were on small planes powered by propeller engines. It was thus clear that the confidence of the Government, in the abilities of Shri Kapoor was lost, especially in view of his failure to ensure that incidents on non-schedule charters did not recur repeatedly. In view of the basic faults brought out in maintenance check, maintenance procedures and certificates, preparation of maintenance schedules, execution of work on the aircraft and inadequate technical supervision and personal involvement of Air India personnel, Government could have no alternative but to hold the senior-most person incharge of the department as directly responsible for the sharp decline in maintenance and engineering standards and any particular incidents

on non-schedule charters, especially in one due to which the country failed to provide even the highest in the land an undisturbed flight schedule. Although, based on the above arguments. I would still hold Shri H.C. Kapoor responsible and also uphold the decision that his services be dispensed with, a second opinion as suggested above, from the Ministry of Law and two eminent Counsels Shri Soli Sorabjee and Shri Dada Chanji of M/s. Mulla and Mulla may be taken now that Air India's Legal Counsel has given an opinion which is placed in the file. Further action will be decided on the advice given by the Ministry of Law and two eminent Counsels."

9. The Air India had a new Managing Director in Mr. Rajan Jaitley and on 22.5.1987 petitioner addressed a representation to him. The representations repeated allegations made in the earlier communications about petitioner being victimised etc. etc. and making it clear that he was left with no option, but to seek redress in a Court of law. Four days after the minister's note of 11.6.1987 i.e. on 15-6-87 petitioner lodged the present petition in Court.

10. The petition takes exception to the order imposing on petitioner the disability of not being allowed to work. It is contended that he was not at fault for the false fire warning occurrence. As a matter of fact no human agency was responsible for this occurrence. The product was defective and this had been established by the message received from the Boeing Company. In any case if any human agency was responsible, those persons had been singled out by the Raje Committee report. Minister Tytler had tried to pressurise him into recommending the Combi and Hirschmann aircrafts. His refusal to succumb to the pressure had angered the Minister, who was waiting for an opportunity to be revenged. Minister Tytler took advantage of the VVIP flight diversion to fasten blame upon him. The decision to send him on leave had been widely publicised and had attracted a great deal of adverse publicity. As a consequence of the decision, increments due to him had not been released and he had not been confirmed. That apart, he had missed the opportunity of being considered for appointment as the Managing Director consequent to the retirement of Capt. Bose from that post. The decision had the effect of disabling him from performing his duties. Such a disability was not known to the Regulations. The procedural safeguards provided by the Regulations before visiting him with the penalty of enforced leave had not been followed. He was in no way responsible and liable for the diversion. For all these reasons, petitioner prayed for a writ to quash the direction sending and continuing him on enforced special leave. As consequential to the quashing of the impugned direction petitioner sought mandatory orders directing respondents to release his increments, confirm him and permit him to resume work. Respondents in their returns asserted that petitioner's conduct was blameworthy. He was the senior most incharge of the Engineering Section of Air India and had been lax in not working out proper policies for ensuring flight safety. In fact, he was also responsible for the three earlier mishaps which took place on 27-10-1985, 1-12-1985 and 12-5-1986. Petitioner was in direct and immediate charge of the Engineering Department. The false fire warning leading

to the diversion of the aircraft carrying the Prime Minister was due to an engineering lapse. Petitioner presided over the Engineering Section and it was his remissness which had led to the mishap. In any case, no final action had been taken against the petitioner and the decision to send him on leave was a provisional one. They did not give him the right of action to rush to a Court of law. There was no truth in the contention that petitioner had been pressurised by Minister Tytler to recommend the purchase of either the Combi aircraft or the Hirschmann aircraft. In fact the respondents had accepted the recommendation not to go ahead with the proposal to purchase Combi aircraft. In relation to the Hirschmann aircraft, petitioner had himself justified its acquisition and on behalf of Air India had written to the Government for issuance of a Letter of Intent. The title to that aircraft not being clear Government gave up the decision to go ahead with the proposal to purchase the Hirschmann aircraft. Petitioner's confirmation had been rightly withheld pending a decision on the action to be taken against him. It was not open to him to contend that he could be considered for the post of Managing Director. Anyone, including an outsider, could be appointed to that post. In relation to the non-release of his increments, that was a natural consequence of his being on leave on the date the increments fell due. Apart from the Officers of the respondents, Minister Tytler has also submitted an affidavit. He has denied the allegations levelled against him in the petition and has contended that the direction to send petitioner on leave was the result of a bona fide exercise of power. Petitioner being the senior most person looking after the Engineering and Maintenance Sections since a long time had been rightly held to be responsible for the recurrence of mishaps which endangered valuable lives, caused unnecessary apprehension and undermined the faith of travellers in the Corporation. Briefly, the defences amount to saying that the petition is premature in that no actionable cause has arisen, and next, that the order sending and continuing the petitioner on enforced leave is legal.

11. The first question to which I have to address myself is as to whether the petition discloses a cause of action? For the petitioner it is contended that the decision sending him on leave is contrary to the Regulations, vitiated by bad faith, and, on merits, untenable. The only power given to Air India to penalise an officer/employee is the incorporated in the Regulation framed in exercise of the power conferred u/s 45(2)(b) of the AC Act. Regulation 43 enumerates eight punishments which may be imposed by a Competent Authority for good and sufficient reason. Enforced leave is not included in the punishment so enumerated. Regulation 43-A speaks of suspension pending an enquiry into misconduct. It does not sanction a decision to send an employee on leave pending consideration of action to be taken against him. The procedure under Regulation 44 has admittedly not been followed. It is not open to the Corporation or the Air India to contend that petitioner has not acquired the right to complain in a Court of law. The correspondence and the notings disclose that the decision to send the petitioner on leave was because of the findings that he was responsible for the diversion of the flight and next that this decision was to

enable respondent No. 1 to take punitive action against him. Respondents counter by pointing to section 34 of the AC Act as a source of the power whereunder Air India has been required by respondent No. 2 to send the petitioner on leave. Counsel for the petitioner replies that section 34 is not invocable in cases of disciplinary action to be taken by the Corporation against an officer/employee. It is difficult to accept this submission. Section 45 is certainly the source of power for the Regulations framed by the Corporation in relation to the terms and conditions of service of officers and employees of Air India. But from this it does not follow that the power u/s 34 cannot be utilised for taking disciplinary action against an officer of the Air India. As section 34 indicates the Central Government is empowered to give to the Corporation directions as to the exercise and performance by the Corporation of its functions. The functions of the Corporation include taking of disciplinary action or action short of that, provided for in the Regulations against its officers and employees. Whatever comes within the exercise and performance by Air India of its functions, would be within the scope of the Central Government's direction making powers. It was next argued that the decision to fall within section 34 of the AC Act had to be in writing and such writing was not forthcoming. Section 34 does not prescribe any particular mode in which the directions are issued, couched or expressed. The argument that a decision sought to be brought u/s 34 had to be in the manner prescribed by Article 77 of the Constitution now arises for consideration. Article 77 requires that all executive action of the Government of India shall be expressed to be taken in the name of the President. Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made for the conduct of Government business. Article 77 nowhere lays down that executive action of the Government of India, if not expressed to be taken in the name of the President shall be deemed to be void or invalid. What are the articles prescribed is that once orders and instructions incorporating the decisions of the Government of India authenticated in the manner specified in the rules and purport to be in the name of the President, they shall not be called in question on the ground that they were not an order or instruction made or executed by the President. To put it differently, directions issued u/s 34 do not get validity only by being clothed in the manner required by Article 77 of the Constitution. For the petitioner it is contended that section 34 could not be invoked to support the decision of a functionary less than the President of India. Recourse is had to the definition of "Central Government" in General Clauses Act (Act 10 of 1897). But the definition given in that Act will not prevail over that made repugnant by the subject or context of the enactment under interpretation. Section 34 of the AC Act confers upon the direction issuing authority a power which can be exercised only by one in close proximity to the Corporation. In so far as the President of India is concerned, he is not in such proximity to even the departments of the Union Government leave alone Government controlled Corporations like the Air India. For that reason, the subject and the context of section 34, indicate that the authority empowered to issue directions is not constitutional head of the

Government but one in close touch with the affairs of the Corporation. To put it differently, the power of the Central Government to issue directions u/s 34 is vested in the Ministry incharge i.e. of Civil Aviation. It is not disputed that the direction to send the petitioner on leave and continue that leave was given by Air India in pursuance of an order of respondent No. 2. Petitioner's Counsel contended that the direction affected petitioner's right to work and this right could not be taken away unless he was placed under suspension which could be done only if there was an enquiry pending against him. In *V.P. Gidroniya Vs. The State of Madhya Pradesh and Another*, different kinds of suspension were taken note of. One variety of suspension was that vesting in the master, the right to forbid his servant from doing work which he had to do under the terms of contract of service or the provisions governing his conditions of service and at the same time keeping in force the master's obligations under the contract. In relation to this form of suspension the Court held :---

"The suspension in the case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. In other words, the employer is regarded as issuing an order to the employee which because the contract is subsisting the employee must obey.

12. For the petitioner it is contended that the impugned order had affected the petitioner adversely in material terms and that sufficed to answer the objection as to the maintainability of the petition. It was pointed out that because of the impugned order, Air India had not released increment due unto the petitioner, had not confirmed him and had excluded him from consideration for succeeding Capt. Bose in the post of Managing Director. The respondents united on most matters have fallen out in respect of the right to withhold increments and direct confirmation of the petitioner. The Air India maintains that until a decision is taken vis-a-vis the entitlement of petitioner to return to work, there is no question of releasing the increments or passing an order of confirmation. The submission is that these two incidents of service are relatable to petitioner being allowed to function as the Deputy Managing Director without let or hindrance. A cloud has been cast over this right of the petitioner in the shape of the decision sending him on leave and its removal until today. As long as that decision remains, petitioner cannot claim release of increments or a direction that he should be confirmed in the post of Deputy Managing Director. The Union of India takes a different stand. Its contention is that the direction to send the petitioner on leave did not in any way affect his right to receive increments nor deny to him the right of confirmation. The direction amounted to a direction simpliciter that petitioner stay away from work. No direction had been given to deprive petitioner of the increments and confirmation to which he was entitled under the Regulations. In so far as the Regulations are concerned, Regulation 15 makes the increments automatic unless there be reasons recorded in writing explaining the withholding of an increment and giving unto the affected employee a reasonable

opportunity of showing cause against the action taken or proposed to be taken. Now, no such order recording reason for withholding the increments exists. Petitioner's increment become due before the filing of the petition. Till as late as the hearing of the petitioner, respondent No. 2 had not made it clear that the direction to send petitioner on leave did not include the withholding of increments or confirmation. Had that been made clear to Air India, it would have certainly complied with its obligations under the Regulations. The same goes for not confirming petitioner. Regulation 8 lays it down that every person appointed in or promoted to a permanent vacancy shall, before his confirmation in the post be required to undergo probation for six months or twelve months as may be prescribed. The stipulated period of probation may be reduced by the Managing Director, or for reasons to be communicated in writing extended by the competent authority. Unless there be a writing extending the probation period, it will have to be deemed that the probation has come to an end. This will be so even if no specific order of confirmation has been passed (see *State of Punjab Vs. Dharam Singh*, & *P.K. Chinnasamy Vs. Government of Tamil Nadu and Others*,). There is nothing in the Regulation to support the stand taken by Air India. Non-confirmation and non-release of increments are not inextricably linked up with the order sending petitioner on leave. In fact that order proceeds on the assumption that there is a case requiring investigation into a lapse allegedly attributable to the petitioner, and, not that such a lapse has been *prima facie* established, for which reason all service benefits are to be denied unto him. The best proof of this is the omission to suspend petitioner under Regulation 43-A or to pass the orders for withholding of increments and extending the period of probation.

13. It is further contended that petitioner has been deprived of the right to be considered for the post of Managing Director. The reply given by Air India to this contention is that merely because the petitioner was a Deputy Managing Director did not entitle him to be considered for promotion to the post of Managing Director. But is it not disputed that a Deputy Managing Director is eligible for being considered for appointment to the post of Managing Director. It is a different matter that Managing Director need not be from the Officers serving in Air India. Last, the petitioner points to the loss of reputation and the mental agony he has had to undergo by virtue of the wide publicity given to the decision sending him on leave. That the decision was widely publicised is not disputed. That the decision was construed as a stigma or a blot upon the petitioner, is also indisputable. It may be argued that intangibles of this nature do not constitute a cause of action warranting an approach to a Court of law. The quotation from *Gindroniya's* case (*supra*) shows that an employer can issue a direction to his employee to refrain performance of service required of him during a particular period (underlinings mine). The period has to be definite and cannot be prolonged indefinitely. In the instant case, what has been done by the respondents was to put petitioner on the back burner for all times to come. Making an initial show of limiting the "no-work" direction to specified periods,

the Air India at a later stage made, the disability virtually unlimited. Merely saying that the Air India was awaiting instructions from the Ministry of Civil Aviation was cold comfort to a man placed in petitioners position. Petitioner is due to retire on the last day of April 1938. He had barely worked for 11 months as Deputy Managing Director. Repeated reminders that a decision be taken have yielded to results. As late as 11-6-1987, Minister Tytler wanted consultation with Counsel of eminence to support his expressed desire to dismiss, discharge, compulsorily retire and in some way, get rid of the petitioner. The filing of the petition has been made an excuse for inaction when there was a way out to take the permission of the Court to do whatever could be done. A long course of inaction cannot be countenanced in the name of delay being an inevitable feature of administrative action. In O.P. Gupta Vs. Union of India (UOI) and Others, it was observed :---

"It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised it would imply that the Executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration".

The principle implied in this exposition is that the executive is not at liberty to drag its feet, and for no ostensible reason. The factual data in the shape of the many enquiry reports is with the Air India and the Government. In spite of this material having been made available, a long note is drawn up containing baseless insinuations against the petitioner and ending up with a direction that advice be obtained from Counsel of eminence, presumably because the legal advice until then received did not favour the course preferred by the Minister. In P.K. Chinnasamy Vs. Government of Tamil Nadu and Others, the Supreme Court recognised the right of a public servant to being given a posting commensurate to his ranking in the service. The same principle is attracted to the case of the petitioner. A public servant at the end of his career occupying a high rank is to be permitted to work in that rank and not waste his talents sitting at home. The answer that he is getting his full salary and that the employer will give him the withheld increments along with interests and pass the necessary order of confirmation is adding insult to injury. This is of course on the basis that there is no justification for the continuance of the disability imposed upon the petitioner. To this question I shall now turn.

14. In this connection, petitioner has this to say that false fire warning which precipitated the whole affair was not due to a human failure. It was due to defect in the product. If any human agency was responsible for the snag, they had been isolated by the Raje Committee. In so far as he was concerned, he had nothing to do with the preparation or execution of the VVIP flights. Before the Minister held him responsible, no opportunity has been given to him to show cause against the action proposed to be taken. In reality, the decision was a substitute

for the punishment the Minister wanted to impose upon him for his failure to co-operate in the acquisition of the Combi or the Hirschmann aircrafts. The reply of the respondents is that petitioner was the senior most person incharge of the Engineering section of Air India. Several lapses of an engineering nature had been brought to light by the Raje Committee. There was no truth in the allegation that the Minister was interested in the purchase of the Combi or the Hirschmann aircrafts. On going through the Raje Committee report and other papers, the Minister bona fide felt that the petitioner was at fault. No final decision had been taken, and therefore, it was not necessary to give a show cause notice to the petitioner. The action taken against him was in the nature of a "holding operation". This did not require the issuance of a show cause notice or ascertaining his reply before directing him to go on and continue to be on leave until an appropriate decision could be taken. Undue delay had not been occasioned in the taking of a decision. As soon as the Raje Committee report was received, the Ministry of Civil Aviation had processed the same and, with the Minister's remarks, it had been forwarded to the Air India for their comments. Later on, the Minister was again shown the papers, when disagreeing with the secretary to the Ministry of Civil Aviation he counselled the department to obtain legal opinion. Counsel for the rivals have referred to a number of decisions in support of their rival submissions. The cases relied upon for the respondents are discussed below.

15. In *Wiseman and another v. Borneman and another* (1971) AC 297, Lord Reid (see page 308) observed as follows :---

"It is, I think, not entirely irrelevant to have in mind that it is very unusual for there to be a judicial determination of the question whether there is a prima facie case. Every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a prima facie case, but no one supposes that justice requires that he should first seek the comments of the accused or the defendant on the material before him. So there is nothing inherently unjust in reaching such a decision in the absence of the other party".

Again in *Norwest Holst Ltd. v. Secretary of State for Trade and others* (1978)1 Ch 201, Geoffrey Lane, L.J., delineated different phases of an investigation in these words :

"In every investigation or allegation of fraud or misfeasance there are, it seems to me, by and large three different phases. First of all, the administrative phase; next the judicial phase; and, finally the executive phase when the orders of the Court or the Tribunal are, if necessary executed or promulgated. Quite plainly, fairness to the suspect (if one may call him that) demands that he should be given a chance of stating his case before the final period the execution. But on the other side and the other side are entitled to fairness just as the suspect is fairness to the inquirer demands that during the administrative period he should be able to investigate without having at every stage to inquire from the suspect what his side of the matter may be..."

The third decision relied upon is that of Lord Denning M.R. in (1978)1 W.L.R. 1061 :---

"But they do not apply to suspensions which are made, as a holding operation, pending inquiries. Very often irregularities are disclosed in a Government department or in a business house: and a man may be suspended on full pay pending inquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At the stage the rules of natural justice do not apply".

It was submitted that the Supreme Court has accepted this principle by its decision in Krishna Chandra Tandon Vs. The Union of India (UOI), . Palekar, J., speaking for the Court observed :

"Thus, where neither the inquiry officer nor the punishing authority relied on the report made against the delinquent servant for arriving at his conclusions the servant cannot make a grievance of the denial of reasonable opportunity on ground of non-supply of copies of these reports".

The decisions relied upon go slightly beside the point. First respondents have to answer the charge of arbitrariness writ large in the decision to send and continue the petitioner on indefinite leave. I have in an earlier paragraph given out the crew entrusted with the preparation and execution of the VVIP flights beginning with 27-10-1985 and ending with 10-8-1986. Petitioner does not figure amongst the personal entrusted with the handling of the VVIP flights. Merely saying that he was the senior most person incharge of the Engineering section carries the matter no further. If the highest functionary had to be penalised, it could have been the Managing Director. This is because in a larger sense the head of the Corporation is constitutionally or to use the expression of Dr. Sidhu "vicariously" responsible. Even on the date on which petitioner was asked to proceed on leave, there was no material warranting his being singled out for blame. The off-the-cuff reaction taken immediately after the incident may be passed over as explicable wrath. An incident giving rise to dismay and embarrassment, if not unnecessary apprehension, had taken place and some heads had to roll. This may have been necessary for effect or it may have been necessary to act as a deterrent to the assumed indifferent workers and officers of the Corporation. But by the first week of September 1986, there was no reason for anyone, much less the Minister, to entertain wrong impressions about the cause of the mishap. Being company in its telex message has clarified that the mishap was occasioned by a product defect. The Raje Committee report had after a detailed consideration located the guilty personnel. Those guilty at the shop floor level

had been named. A general remark in the forwarding letter of Air Marshal Raje that there had been laxity right down the line did not imply blameworthiness on the part of the petitioner. In fact on 26-2-1987, Capt. Bose in a communication to Dr. Sidhu came out with a clear exoneration by Air Marshal Raje vis-a-vis the petitioner. The words used in that letter need reproduction and they are :

"In reply to a specific query from the Secretary, Civil Aviation, Air Marshall C.K.S. Raje clarified that the Enquiry Committee had not made any reference whatsoever, to Mr. H.C. Kapoor, Dy. Managing Director."

The suggestion made in this letter was that fairness necessitated a revocation of the disability imposed upon the petitioner and a direction that he should return forthwith to perform his duties. On 16th May 1981 (see page 316 of the petition compilation) an internal memo had been issued by the Corporation whereunder a Senior Travel Standing Committee was constituted to prepare and monitor VVIP flights. The Deputy Managing Director was not part of this Standard Committee. To begin with was there any substance in the note recorded by Minister Tytler on 17-9-1986 ? This note was made at the foot of the note prepared by Dr. Sidhu on 12-9-1986. In his note, Dr. Sidhu fastened vicarious responsibility upon the Deputy Director of Engineering. He spoke of petitioner having been held responsible neither directly nor indirectly. It was conceded that he was looking after a number of divisions as the Deputy Managing Director-maintenance and engineering being, only one of his many responsibilities. No specific negligence could be attributed to him. Something made Dr. Sidhu to remark that the petitioner "cannot be considered to be totally free from blame". What was blameworthy about the petitioner was left unsaid. The note shown an awareness of Dr. Sidhu to placote the Minister who had taken the decision to send petitioner on special leave. For that reason and in conformity with bureaucratic ambivalence. Dr. Sidhu suggested the inoffensive measure addressing a letter of caution to the petitioner. The caution was to the effect that he be circumspect and exercise effective supervision in important matters like preparation of aircrafts for VVIP flights. The Regulations do not contemplate of a caution as a measure of punishment. But Minister Tytler was not to be pacified. Petitioner contends that this was because he had incurred the wrath of the said Minister by refusing to co-operate in helping the acquisition of the Combi or the Hirschmann aircrafts. I do not think it necessary to go into this allegation. The reason is the inadequacy of proceedings under Article 226 to test and decide allegations of this nature. Moreover, it is not as if the petition cannot be decided without enquiring into these allegations levelled against the Minister. The Minister was not to be pacified and his note went on to proclaim the petitioner as the villain of the piece. The Minister has not given hard reasons in support of the view propounded by him in his notes of 17-9-1986 and 11-6-1987. He is not exonerated of the baseless decision taken by him having regard to the Cabinet Minister being also a party to the course of action suggested by him. That the Cabinet Minister concurred with the decision of Minister Tytler does not in any way improve the situation for the respondents. If one acted without there being

any basis for the course of action taken, the other fell in with the suggestion for no more a reason than that it came from her deputy. That such decisions are open to judicial review is no longer open to doubt. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, it was laid down :---

"It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

Again in the trend setting *Kraipak's* decision, *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, it was stated :---

"Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi judicial enquiries. Enquiries which were considered administrative at one time now being considered as quasi judicial in character. Arriving at a just decision is the aim of both quasi judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than in a quasi judicial enquiry."

16. The repeated plea of there being some date to justify the action taken against petitioner has to be merely stated to furnish its own refutation. The Raje Committee report has identified the person responsible, Air Marshal Raje's covering letter lamenting the entire staff's remissness cannot apply to one who had nothing to do with the preparation and execution of the flight. This is evident from the petitioner not being part of the team for any of the four flights which the minister took into consideration to indict him. In any case, Capt. Bose's letter reciting the complete exoneration of petitioner by Air Marshal Raje in the presence and hearing of Dr. Sidhu has not been repudiated by the respondents. Dr. Sidhu's submission of 12-9-1986 is more in the nature of an ad-hocism. He possibly knew of Minister Tytler's strong feelings in regard to the petitioner. Walking the tight rope, he offered the sop of administering a caution to the petitioner. In so doing he could not have been unaware of such a caution not being a penalty recognised by the Regulations. The suggestion was more in the nature of an offering to an obsessed, though totally mistaken titular head of the Ministry. Dr. Sidhu's submission does not point in what sense petitioner deserved

the caution suggested by him. As to the Minister's notes of 17-9-1986 and 11-6-1987, they indicate a strong determination to eliminate petitioner come what may. Not one circumstance mentioned therein justify the culminations against petitioner. In the first flush of anger at what happened on 10-8-1986, the reaction may have been excusable. Not a little survived after receipt of the Raje Committee report. Far from relating in the Minister stuck to his convictions even as late as 11-6-1987. In the meantime, the petitioner's protestations of innocence went ignored. Section 34 of the AC Act empowers the Central Government to direct action against employees of Air India. But the exercise of that power must be for a cause made out and not baseless Ministerial convictions. The overriding power vested in the Central Government by section 34 is not to be used for devising new racks against officers/employees of the Corporation. The oft-repeated assertion that petitioner was the topmost functionary in the Engineering Department is factually incorrect. Once he was elevated to the post of Deputy Managing Director, he ceased to be responsible for day-to-day operations. Even otherwise the head of a department cannot go testing every aircraft meant for VVIP flight with a spanner and magnifying glass. It is no use holding petitioner responsible for the alleged outdated flying manuals. Those manuals are prepared by the DGCA. If there had to be scapegoats, they had to be found at levels higher or lower than the Deputy Managing Director. The argument that no final action has been taken against the petitioner cuts no ice. Pointless dithering to perpetuate an arbitrary act in the name of its being part of the administrative phase, is not beyond judicial correction. To sum up there was no justification to visit petitioner with the disability or continue it indefinitely.

17. Reliance was placed upon the Supreme Court's decision in O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, in support of the contention that Air India should not be forced to take back an employee in whose competence it did not have confidence. It is not the Air India which has lost the required confidence. It is not the administrative head of the Ministry of Civil Aviation who has discovered any lack of competence or dedication in the petitioner. The only functionary ascribing blameworthiness to the petitioner is the Minister of State for Civil Aviation and with that decision the Cabinet Minister had chosen to concur. The two notes drawn up by Minister Tytler show a determination to somehow find fault with petitioner so as to hound him out of the Corporation. If courts do not come to the succour of people placed in the position of the petitioner, they will be failing in their duties. The failure will be all the more inexcusable, if it is a Writ Court which instead of discharging its plain duty, countenances the continuation of a process of harassment begun months ago. It was suggested that the petitioner had made baseless allegations against Minister Tytler in the matter of pressurising him to recommend the purchase of the Combi or the Hirschmann aircrafts and this disentitled him from the relief that he be permitted to resume work. I do not see how the making of reckless allegations disentitles an otherwise deserving employee from being permitted to

resume work. After all, the duty to be faithful is, to the organisation and not to any individual however highly placed he may be. On behalf of Air India it was suggested that in case it was convinced of the justness of the petitioner's case, it would be enough if I gave a direction to the respondents to take a final decision in relation to the petitioner's right to resume work. Acceding to this request would be to lend judicial approval to a totally undeserved penalty. On the verge of retirement petitioner should not be allowed to depart in clouds of suspicion. An officer who has risen from the ranks to a top position in the Corporation deserves a declaration that he was not remiss. Petitioner deserves liberation from the stigma of incompetence and laxity unjustly stamped upon him. The penalty visited upon him may deprive him of the blaze of glory to which he is entitled. But the least that can be done to make amends to him, is, to relieve him of the trial of infamy which has pursued him since the ill-fated day of 13-8-1986. I have commented at length on this aspect of the matter because of the certainty that respondents will ask for a stay of the operation of this judgment. This will be to enable them to move a higher Court. Normally, I would accede to any such request without hesitation. It is a right of aggrieved parties to get an adequate opportunity to challenge the correctness of the verdict that has gone against them. But in the situation in which the petitioner is placed, accepting any such request will be perpetuating injustice. He has about 50 days left to complete his tenure of service. Chances of his getting an extension are of course there. But it is near certain that he will not get an extension or re employment. Having regard to the material that has come on record it cannot be doubted that petitioner's competence and dedication to work are beyond reproach. To that effect is the testimony of Capt. Bose incorporated in his letter dated 26-2-1987. No Officer of equal rank or a superior from the Air India has said anything to the contrary. For all these reasons, I decline to accede to the anticipated request for staying the operation of this judgment. The result of the foregoing discussion is that the petition succeeds and hence the order.

ORDER

Rule in terms of petition prayers (a), (c), (d) and (e) made absolute with costs. The arrears of increments shall be paid to the petitioner along with interest at rate 12% per annum to be computed as from today until the payment is made. Respondents shall bear their own cost. For the reasons given earlier, I reject the anticipated request for staying the operation of this judgment.