
(2004) 12 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 836 of 2003

Prem Kumar Upadhyay

APPELLANT

Vs

Air India Ltd. and Another

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 33(2)
Penal Code, 1860 (IPC) — Section 34, 417, 420
Prevention of Corruption Act, 1947 — Section 5(1)

Citation : (2005) 2 MhLj 711

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Ashok D. Shetty, Rita K. Joshi and Amrita S. Shetty, JJ, for the Appellant; S.K. Talsania and J. Saluja, instructed by M.V. Kini and Co., for the Respondent

Judgement

F.I. Rebello, J.—The petitioner was served with charge-sheet dated 15-5-1990. In the charge sheet it was alleged that the petitioner being a staff member applied for and was authorised a staff concessional air passage Bombay/Delhi/Bombay against which he was issued on 15-1-1988 a ticket No. 098-403062 against payment of Rs. 356/-. It was then alleged that the petitioner passed on the said ticket to one Mr. Mohan Lal, Advocate, who has approached him to obtain for himself a full fare ticket of Rs. 2170/- which was to be defrayed from the several loans advanced to him by Mohan Lal earlier. The said Mohan Lal was not happy to receive a staff concessional passage ticket issued to the petitioner in lieu of the desired full fare ticket. Said Mr. Mohanlal reported the matter to the respondent company whereupon the petitioner paid Mr. Mohan Lal the sum of Rs. 1850/- leaving a balance of Rs. 320/- to be paid, and collected the said ticket back.

It was then alleged that on further investigation into by the Vigilance Division, it was revealed that one ticket No. 098-395414 issued in favour of the petitioner was utilized for travel on the sector Bombay/Delhi by flight AI-306 on 6-11-1987

arriving at Delhi at 18.15 hrs. The leave record of the petitioner indicated that petitioner was on a day's sick leave on 6-11-1987 and his attendance card was showing that he was on duty at Bombay between 6.24 am and 13.28 hrs on 7-11-1987. On interrogation by the vigilance officer, petitioner contended that he had used his international ticket for travel Delhi/Bombay but was unable to produce the jacket of the relevant ticket. There were only two flights namely AI-108 and AI-888 departing Delhi after the arrival of Flight AI-306 at Delhi on 6-11-1987 and reaching Bombay before 06.00 hrs. on 7-11-1987. Verifications of the flight coupons of these two flights revealed that no flight coupon pertaining to petitioner was uplifted on these flights. It was therefore, concluded that the petitioner's ticket bearing No. 098-395414 was allowed to be used by someone else for travel Bombay/Delhi on Flight No. AI-306 of 6-11-1987. It was therefore, set out that the acts on the part of the petitioner constitute misconduct under Air India Employee's Service Regulations as also Air India Passage Regulations.

The petitioner was therefore, charged for the following misconducts :

- 1) Failure to maintain absolute integrity and conducting yourself in a manner not conducive to the best interests, credit and prestige of the corporation.
- 2) Fraud in connection with the business of the Corporation.
- 3) Breach of rules, regulations and orders applicable to the establishment.
- 4) Commission of acts subversive of discipline.

The petitioner was called upon to submit his explanation with reference to the above charges within seven days from the receipt of the same. An enquiry was conducted in which petitioner was found guilty of the charges levelled.

2. A second charge sheet came to be issued against the petitioner dated 17-12-1992. It was set out therein that the petitioner had at about 0100 hrs. on 11 November, 1992 approached the Check-in-counters operated for flight DL-107/11/11/92 with a Delta Airline ticket No. 20011496374-0062111308271 and Indian passport K-362513 issued at Bombay on 6-1-1991 and presented petitioner's travel documents for check-in at Bombay airport. The petitioner had no check-in baggage and was carrying only a hand baggage. As per the practice Mr. J. Vallado security agent of Delta Airline examined the travel documents of the petitioner and questioned him regarding purpose of his visit to New York without check baggage and reason for buying a full fare ticket when he was entitled for free/confessional/gratis tickets, being an employee of Air India. The petitioner informed him that he had exhausted his passages and he was proceeding to New York to attend to urgent work. Since the explanation offered by him was not convincing the matter was referred to Mr. S. K. Sharma, Delta Security incharge who advised Mr. J. Vallado security to allow the Petitioner to check in on the flight.

It is then set out that Delta Airline flight DL-107/11/11/192 was operating from security hold No. 4 and the passengers admitted in the security hold after

frisking were directed to board flight when the departure was announced. At the boarding gate while carrying out documentation checks, the security staff of Delta Airlines found that passenger presenting the boarding card issued in favour of petitioner was not the same who had presented the documents for checking at the check-in counters. He therefore, detained the passenger and summoned Mr. S. K. Sharma, Security incharge, Delta Air Line Bombay. During the interrogation and documents checks, it came to light that the passenger was one Mr. Billo Joginder Singh, a sikh aged about 25 years and the travel documents in his possession were forged. The matter was therefore, referred to ACP, Immigration Sahar International Airport, Bombay for taking necessary legal action. Since the petitioner was involved in the said Act, the petitioner was arrested by the Sahar Airport Police station at 04.00 hrs. at 13-11-1992.

It was then set out that it is an evidence that the petitioner helped the said passenger Mr. Billo Joginder Singh in-arranging for boarding card for flight DL 107 on presentation of forged travel documents and thus connived in the commission of the said offence. The charge sheet then sets out that the above acts on the part of the petitioner constitute misconduct of the Model Standing Orders (Central) applicable to the petitioner and petitioner was charged as under :

1. Fraud or dishonesty in connection with the business of the corporation.
2. Breach of law applicable to the establishment.
3. Commission of an act subversive of discipline.

The petitioner was called upon to submit his explanation. In respect of this charge sheet also an enquiry was conducted and the petitioner was found guilty.

3. The petitioner was dismissed from service on 15-9-1995. The respondent company filed Approval Application No. 51 of 1995 on 20-11-1998 before the Central Industrial Tribunal. The Tribunal found that both the enquiries were not fair and proper and in gross violation of the principles of natural justice and fair play and accordingly was pleased to deny approval to the action of the respondent company in dismissing the petitioner from service. The respondent company then filed Writ Petition before this Court being Writ Petition No. 2547 of 1998 which came to be dismissed by order dated 24-2-2000. The Respondent then preferred an appeal which came to be disposed of by a consent order of 18-4-2000. The orders of the Industrial Tribunal and of this Court were set aside by consent, as in the meantime a substantive Industrial dispute vide Reference No. CGIT 41 of 1999 was pending on the subject of reinstatement of the respondent. The petitioner was allowed to withdraw the amount deposited in this Court along with interest thereon without any security. The tribunal was directed to hear and dispose of the reference within six months from the date of hearing. Statement made on behalf of the respondent company was accepted that the respondent company would not rely upon the enquiry proceedings and would prove the charges against the respondent by leading fresh evidence before the

tribunal which alone the tribunal shall take into consideration which shall consider both documentary and oral evidence. It was made clear that the petitioner would also be entitled to lead evidence if he desires for defend the charges against him. There were further directions issued in the matter of refund of amount directed to be paid to the petitioner.

4. The parties thereafter lead evidence before the Industrial Tribunal. The learned tribunal by its award dated 14-8-2002 was pleased to hold that the action of the respondent company in dismissing petitioner from service with effect from 15-9-1995 is justified and consequently held that the petitioner was not entitled to any relief. Insofar as first charge sheet is concerned, held that the Management had proved that the workman had not travelled on Delhi Bombay Sector, but had allowed someone else to travel which amounts to fraud in connection with the business and property of the respondent company. Insofar as charge in passing the staff air ticket to Advocate Mohanlal the tribunal held that from the evidence, it was clear that intention of the workman in selling the ticket was of wrongful gain and to cause wrongful loss to the company which is clearly dishonesty with the business and property of the employer.

Addressing itself to the second charge sheet dated 17-12-1992 held that from the evidence it could clearly be pointed out that the petitioner had helped one Billo Jogindersingh to board the flight which was dishonesty.

Dealing then with the issue of quantum of punishment the learned tribunal noted that the petitioner in the past had been awarded punishment of reduction of two stages in his basic pay for the period of two years with effect from 1-6-1987 as in an enquiry, it was proved that he had forged signature of one Mr. J.P.F. Tata, for regularising his absence. The record filed by the Management was challenged by the workman. The argument advanced on behalf of the petitioner was that he had not challenged the punishment as there was no provision for individual workman to challenge the same under the provisions of the Industrial Disputes Act. The tribunal noted that the petitioner was member of the Union which could have espoused his cause. The tribunal then noted that the charge proved there was also of forgery, dishonesty and of the same nature as the present enquiry and consequently held that the penalty imposed of dismissal is proportionate. The learned tribunal thereafter was pleased to uphold the action of the dismissal of the petitioner from service. It is this award which is the subject matter of the present challenge.

5. On behalf of the petitioners, learned counsel insofar as charge sheet dated 15-5-1990 in the matter of issuance of staff ticket to Mr. Mohanlal was pleased to submit as under :

The allegations against the petitioner are based on a bald complaint made by Mohanlal enclosing zerox copy of the staff ticket and the statement of account. The original ticket was not produced nor has company ever asked for the original ticket at any stage. The petitioner at no point of time had told Mohanlal that he

will get a staff ticket. Mohanlal in fact says that he has no oral or documentary evidence and only inferred that the ticket was sold by conduct and not by words. Addressing himself to the issue of Exhibit 21/6, the confession letter in handwriting which is denied and under Exh. 21/10 the apology letter which is typewritten, it is submitted that the handwriting/signature of the petitioner was neither compared nor proved through any handwriting expert and yet findings are based on this unproved documents. The original copy of the statement Exh. 21/6 it is submitted is not with Mohanlal nor was it produced by the company. It is submitted that there is no material whatsoever to show that Mohanlal had paid any balance amount to the petitioner for the ticket and the material on record would show that Mohanlal's case could not be accepted. The charge was framed under the companies service regulations and not under the Model Standing Orders. Admissions on the part of Mohanlal are sought to be pointed out that the ticket was merely a guarantee for the recovery of loan. It is then submitted that the purported apology letter dated 6-7-1988 is fabricated document as original shown to Mohanlal was on the letterhead and there was no mention of apology letter in the statement of 9-12-1988, to contend that when the statement was given apology letter did not exist. It is submitted that there are glaring and material inconsistencies in the evidence of Mohanlal which the tribunal has ignored, the onus was on the company to prove the charges which it has not discharged. On the contrary the tribunal has proceeded as if it is the petitioner, who has to prove his innocence.

Dealing with the second charge, in the first charge-sheet of allowing some other person to travel on Bombay-Delhi on 6-11-1987 on the staff ticket, it is submitted that the tribunal wrongly held that the petitioner had not applied for leave while applying for ticket as it was not supported by any evidence nor any practice was proved and the point was never in issue. The documentary evidence on record would indicate that the petitioner had never applied for any leave and for a particular date while applying for staff ticket. It is then set out that the tribunal could not have considered the admissions on the part of the petitioner at Exh. 21/22 in which he has been exonerated of the charge based on the very document and which enquiry had been held to be defective and set aside. The letter dated 9-11-1987 was considered as afterthought. Moreover the evidence given by Dalvi, firstly as management witness in the earlier proceedings and subsequently as workman's witness in the present evidence was ignored by the tribunal. It is submitted that CGIT ignored letter dated 9-11-1987. The tribunal also did not pass any order on the application made to it for production of documents. It is submitted that the attendance records cannot be relied upon specially when the time card of the petitioner is wrongly punched on 6-11-1987. Even though he was on sick leave. It is submitted it was wrong to put onus on the petitioner for wrong attendance on 7-11-1987. Though the petitioner sought production of duty allocation sheet of 7-11-1987, the vital and relevant document by which presence of petitioner and work performed could be seen, the same was never produced. It is then submitted that the evidence of the

company's officer would squarely show that he and his wife had travelled Bombay-Delhi on 6-11-1987. The petitioner had retracted his earlier statement and this was not considered and further no enquiries were made of train journey. The charge-sheet in fact was issued in the petitioner after 2 1/2 years of the incident. The findings therefore, that the petitioner had wrongfully passed on Delhi Bombay staff ticket to somebody else and not travelled himself was not borne by the record and as such the finding is erroneous and perverse.

Dealing with the second charge-sheet dated 17-12-1999 it is submitted that the charge is not related to employment. There is no causal connection between the alleged offence and employment and the allegation did not constitute misconduct under the Model Standing Orders. The petitioner consequently could not have been charge sheeted. Reliance for that purpose is placed in the Judgment of the Apex Court in *Rasiklal " Patel v. Ahmadabad Municipal Corporation and Anr.*, AIR 1985 SC 504 to contend that the Apex Court has clearly set out that unless, either in the Certified Standing Orders or any Service Regulation any act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though alleged misconduct was not included in any of the enumerated misconducts. It was submitted that the contention by the company that this point was not raised earlier is without any basis as there are general pleadings in the writ petition about maintainability and jurisdictional aspects as well as about legality of this action. Being purely a legal submission based on material on record, it is open to the petitioner to so contend. It is then submitted that no reliance can be placed on the statement of the petitioner Exh. 21/31 made in the earlier enquiry as it is set aside, specially after having agreed before the Division Bench of this Court (o lead fresh evidence and after making statement that they will not rely upon the earlier enquiry. It is submitted that the petitioner in his statement had set out that it is Mr. Mishra, Superior colleague who was responsible, yet the company did not record statement of Mr. Mishra nor did it produce him as witness. The fact that Mr. Mishra expired later would be of no consequence. It is also submitted that the petitioner was charge sheeted for similar offence before the Criminal Court where he was honourably acquitted on merits. Considering that no punishment can be imposed. Reliance is placed on the judgment of the learned Single Judge of this Court in *Jijaba Namdeo Borude Vs. Union of India and Others*, . Reliance is also placed in the judgment of the learned Single Judge of Kerala High Court in the case of *K. Babu Vs. Union of India (UOI)* and Another, and some other judgments. It is submitted that the learned Tribunal ought not to have placed reliance in the zerox copy of the migration slip. Attention is then invited to the evidence of the witness Mr. S. R. Sharma and Mr. Volledo who in the criminal trial has deposed that the petitioner was not a person who had checked in or reported at the counter which would be material evidence which could not have been ignored by the CGIT. The handwriting on the immigration slip was not proved as the petitioner has stated that it is a manipulated and fabricated document. It is then submitted that the respondent company

attempted to show that the documents taken on record were original documents when in fact only xerox copies were produced. It is pointed out Exh. 21/6 which admittedly is two enclosures but has been shown as only one enclosure by the respondent company. In Exh.21/24 remarks are not shown in the original produced during the evidence. Lastly it is submitted that the petitioner had made an application for production of documents which were material and relevant but the same was not produced. For all the aforesaid reasons, it is submitted that the findings by the learned tribunal that the respondent company had established the charge ought to have been set aside. It is lastly submitted that considering the above, the punishment of dismissal from service be set aside.

6. On behalf of the respondent company, their learned counsel firstly submits that what the petitioner is doing is to challenge the findings of fact recorded by the tribunal. It is submitted that it is settled position in law that while exercising jurisdiction under Article 226 of the Constitution of India, the findings of fact reached as a result of appreciation of evidence by the Tribunal cannot be re-opened or questioned in writ proceedings. It is also settled position in law that the findings of fact recorded by the Tribunal cannot be challenged under writ proceedings on the ground that the relevant and material evidence produced before the tribunal was insufficient or inadequate to sustain the impugned findings. Reliance is placed in the judgment of the Apex Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

Dealing with the matter on merits, insofar as the first charge sheet against the petitioner that he had valid staff concessional ticket on Bombay-Delhi Sector and permitted someone else to travel on the same ticket and misappropriated the amount, it is submitted that the ticket was utilised on 6-11-1987 for flight AI 306 which reaches Delhi at 18-15 hrs. The attendance record of the petitioner clearly establishes that he was on duty at Bombay between 6.24 a.m. and 13.28 hrs. Between 18.15 hrs. on 6-11-1987 and 6 O'clock on 7-11-1987 there were only two flights on Delhi-Bombay Sector and the petitioner has admittedly not travelled on these flights. It is therefore, submitted that it is clearly established that the petitioner did not travel Bombay Delhi on 6-11-1987 as it will be impossible for him to be on duty on 7-11-1987 at 6.24 a.m. The defence of the petitioner is then considered that he had travelled Delhi by flight AI-306 and returned at Bombay by train on 8-11-1987 and his contention that his attendance card, was erroneously punched on 7-11-1987 by someone showing him present and that on 9-11-1987, he had written to Air India about the wrong punching. It is submitted that considering the evidence, the tribunal has noticed that the petitioner admitted in his evidence that generally whenever staff concessional air ticket is available, he had always applied for leave. The petitioner's case was that he was absent on both 6-11-1987 and 7-11-1987 though on both the days he was marked present in the attendance card. The letter dated 9-11-1987 does not make any reference to alleged wrong punching or showing him present on 6-11-1987. Had the letter dated 9-11-1987 been written contemporaneously by the petitioner, he would have also mentioned

there about the alleged wrong presence on both the dates, including 6-11-1987. In fact the application for leave of 6-11-1987 was applied only on 24-11-1987. It will therefore, be unusual for him not to apply for leave for 7-11-1987, had he really been not present. The letter dated 9-11-1987 was created after-thought and did not bear any seal of the authority for having received the same. The tribunal did not believe the evidence of Dalvi who claimed to have received the letter dated 9-11-1987. It is therefore, submitted that this is in the matter of appreciation of evidence. It cannot be said that the findings arrived at by the tribunal are perverse and or findings which no reasonable person could have arrived at based on the material which was available.

Dealing with the second charge in respect of the first charge sheet, it is submitted that the charge was established by examining Mohanlal whose evidence was unshaken in the cross-examination, Mohanlal has clearly stated, that the petitioner owed him money and he had asked him to get ticket to Delhi and instead of that petitioner got staff ticket which he refused to accept. The petitioner admitted that he had owed money to Mohanlal. Mohanlal filed written complaint dated 22-6-1988. The statement of Mohanlal was recorded by Vigilance Officer on 9-12-2000. They noted the apology letter dated 6-7-1988 issued by the petitioner to him and in the apology letter petitioner admitted that he had taken his ticket back from Mohanlal and said sorry for having committed the mistake which he will not occur in future and requested Mohanlal to withdraw the complaint against him. Mohanlal in fact wrote a letter dated 4-4-1988 stating that after making complaint the petitioner had given him all money back and felt sorry for having done all that. He has further mentioned in the letter that he had returned the ticket back to the petitioner and he do not want to proceed against the petitioner. The petitioner in his evidence admitted that he might have given withdrawal letter to Management. Further the petitioner returned the ticket to Respondent Corporation on 7-7-1988. My attention is then invited to the evidence on record specially reply filed before the conciliation officer and to the written statement filed to the application made for approval. Therein the petitioner has pleaded that Mohanlal had taken signature of the petitioner on a plain paper and the typed material has been put on letter not by the petitioner nor with his consent and knowledge and therefore, he is not bound by the same. It is then submitted that the petitioner has admitted his signature on the apology letter though he disputed the contents. It is pointed out that the petitioner relied on letter dated 4-4-1988 wherein Mohanlal sought to withdraw his complaint. It is pointed out that the language of the apology letter and the letter of Mohanlal withdrawing the complaint are identical. It is also pointed out during the cross-examination the petitioner had admitted that he had not challenged the contents of the letter of Mohanlal. Considering the evidence on record, it is submitted that the tribunal was right in drawing a conclusion which it had arrived at.

Dealing with the second charge sheet, it is set out that no evidence is required to prove the charge as the petitioner himself admitted in his reply dated 18-1-1993 to the charge sheet. Not only that in his statement of claim the petitioner

reiterated the same. In his statement dated 6-4-1993, before the Enquiry Committee, the petitioner again categorically admitted having done various acts alleged against him. Statement was brought on record before the tribunal and the petitioner was confronted with the same and he admitted signature on the said statement. It is pointed out that the main challenge by the petitioner to the finding of the tribunal are on two counts. Firstly that the allegation do not constitute misconduct under the Model Standing Orders and secondly that he has been acquitted by the criminal Court for the same charges. In answer it is submitted that the petitioner cannot be permitted to agitate that the allegation made against him in the said charge sheet do not constitute misconduct under the model standing orders. The same point was not raised either during the enquiry or in the proceedings u/s 33(2)(b) and in the proceedings before this Court arising from order; as also in the proceedings before the tribunal resulting in impugned award or in the present writ petition. Independently it is submitted that the allegations against the petitioner would constitute misconduct for the following reasons. The petitioner could obtain Visa for USA as well as Passport issued to him by the Government Authority, only on the basis of NOC given by the Respondent Corporation. But for the fact that the petitioner was an employee of the Respondent Corporation and that it had issued NOC for American VISA, the petitioner would not have got the VISA. Without prejudice it is submitted that the allegations made against the petitioner are admittedly offences punishable under the immigration laws and therefore, they are per-se misconduct. For that purpose reliance is placed on the judgment of the Supreme Court in the matter of B.C. Chaturvedi v. Union of India 1995 (6) SCC 739. Dealing with the next contention that the enquiry could not have been held, it is submitted that the acquittal of delinquent in the criminal trial by itself would not conclude the departmental proceedings on the self same charges. For that purpose reliance is placed on the judgment of the Apex Court in the case of State of Rajasthan Vs. B.K. Meena and others, and other judgments. Adverting to the judgment in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, it is pointed out that the judgment does not take any different view from the settled position in law. In that case considering the peculiar facts namely the employee was found guilty in an ex parte enquiry, it was considered to be unfair, more particularly in view of the fact that the employee was not paid any subsistence allowance and it had been made clear that in view of non-payment of subsistence allowance to him, he could not participate in the enquiry. Further the very witnesses were disbelieved in the criminal trial resulting into the acquittal of the delinquent. The same witnesses were examined in the ex parte enquiry. It is pointed out in the instant case, the acquittal of the petitioner was not a clean acquittal but for technical reasons as the two witnesses could not identify the petitioner. It is therefore, submitted that the disciplinary proceedings could have been initiated in spite of the petitioner's acquittal by the criminal Court. At any rate it is set out that the petitioners admitted all the allegations on more than one occasion. The only defence was that he was compelled to do so by Mishra. In these circumstances, the tribunal was justified in concluding that the charge was

established for the reasons set out therein.

Dealing with the issue of quantum of punishment it is submitted that the charges against the petitioner had been proved and apart from that the petitioner has been facing criminal charges for various offences though in one of them, he has been acquitted purely on technical grounds. Each of the charges levelled against the petitioner is serious enough to justify his termination, as it relates to dishonesty. Dealing with the contention of the petitioner that certain documents were not supplied to him, placing reliance in the judgment of the Apex Court in the case of *State of Tamil Nadu v. Thiru V. Perumal and Ors.* JT 1996(5) SC 604 it is contended that it is settled position in law that non-supply of documents, unless it causes prejudice in the defence of the delinquent would have no consequence at all. For the aforesaid reasons, it is submitted that this Court should not interfere with the impugned order.

7. We may now proceed to consider firstly whether the respondent Management has been able to prove the charge of misconduct in respect of the charge sheet dated 17-12-1990. In doing so, the first contention which will have to be examined is whether on account of acquittal of the petitioner in C. C. No. 108/P/98 was it open to the learned tribunal to hold the petitioner guilty of the charges of misconduct as held by the tribunal. The judgment acquitting the petitioner is on record. The judgment dated 24-12-1996 clearly sets out that for want of evidence, petitioner stood acquitted. The point framed for consideration by the learned Magistrate was as under :

"Is it proved by the prosecution that accused Prem Kumar Upadhaya impersonated Billo Jogindersingh at the time Immigration check and provided forged passport and other documents to accused Billo Jogindersingh?"

The petitioner was charged for arranging a boarding card for flight DL 107 and having permitted Billo to use the ticket issued in favour of the petitioner. During disciplinary enquiry, both Sharma and Volledo were examined before the Industrial Tribunal. Before considering the findings, we may now examine whether the judgment relied upon on behalf of the petitioner support him in the contention which has been urged by him.

The Judgment in *Jijaba Namdeo Borude Vs. Union of India and Others*, was by a learned Single Judge of this Court and the ratio of that judgment is that the enquiry officer and the disciplinary authority cannot ignore the order of honourable acquittal as irrelevant in disciplinary proceedings. As pointed out earlier in the instant case the petitioner was not honourably acquitted but was given benefit of doubt. In the case of *K. Babu Vs. Union of India (UOI)* and Another, once again a learned Single Judge of Kerala High Court proceeded to hold that when the employee is honourably acquitted, by the criminal Court, it will not be expedient or proper to continue departmental proceedings against him on the same charges and same evidence because usually the decision of a Court trained in examining and answering questions of law and facts should receive the

utmost respect and should be placed on a higher pedestal than the conclusion reached by an enquiry officer who may also be honest and impartial, but is still not so trained and not bound by rules of evidence and set legal principles. It will therefore, be clear that the learned Judge of Kerala High Court has again proceeded in the case of a clean acquittal. In *M. Paul Anthony (Captain) v. Bharat Gold Mines Ltd. and Anr.* 1999 (I) CLR 1032, the Apex Court proceeded on the footing that when the whole case of the prosecution was thrown out and the appellant was acquitted with a finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand. This judgment is on the facts of that case. The general rule as explained by a catena of judgments of the Apex Court, is that it is open to the Management to initiate departmental proceedings even in the case of acquittal by criminal Court as long as acquittal was not honourable or clean acquittal but the acquittal is based on benefit of doubt or otherwise. The Apex Court in the *State of Andhra Pradesh Vs. Sree Rama Rao*, was pleased to observe as under :

"The enquiry officer appears to have stated that the judgment of the Magistrate holding a criminal trial against a public servant could not always be regarded as binding in a departmental enquiry against the public servant. In so stating the enquiry officer did not commit any error. The first ground on which the High Court interfered with the order of the punishing authorities is therefore, wholly unsustainable."

Considering the object of the criminal trial and that of the Disciplinary enquiry the Apex Court in the case of *State of Rajasthan Vs. B.K. Meena and others*, has observed as under :

"The approach and the objective in the criminal proceedings and the disciplinary proceeding is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, should not be a matter of course, but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."

It is therefore, clear from these judgments that it is open to the Management in the case where the delinquent employee is acquitted of criminal charges on account of benefit of doubt and/or for want of evidence to initiate or continue disciplinary proceedings. The well settled legal principle in a domestic enquiry is that the enquiry officer is not bound by the rules of evidence. What must be

complied with is fair play and principles of natural justice. The objection therefore, as raised by the petitioner on that count must be rejected.

We then come to the other contention which has been raised namely that the charge is not related to employment and there is not even casual connection with the alleged offence and employment. The submission is that the allegations do not constitute employment misconduct under MSO and no disciplinary action can be taken. The Apex Court in *Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others*, was pleased to observe that a misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto should not expose the workman to a penalty and cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty.

In *Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another*, , the Apex Court had once again set out that it is well settled that unless either in the certified standing orders or in the service regulations, the act of omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct.

This position of law was again reiterated in *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, . Some exceptions have been carved out to this rule in *B.C. Chaturvedi Vs. Union of India and others*, . The delinquent employee was found in possession of assets disproportionate to known source of income of delinquent public servant. That was not included in the definition of misconduct in CCS (CCA) Rules. The Apex Court held that even so, if delinquent fails to successfully account for such assets, it would be treated as misconduct, since if ingredients of Section 5(1)(e) of P.C. Act, 1947, pertaining to the same charge are satisfied, the public servant would be liable to punishment as being a public servant, if at any time, during the period of his office, he is proved to have been in possession, by himself or through any person on his behalf, of pecuniary resources or property disproportionate to his known sources of income, he is enjoined to satisfactorily account for the same. If he fails to account for, he commits misconduct. The need to make this misconduct expressly a part of enumerated items of misconduct under Central Civil Services (CCA) Rules is obviated.

In the instant case, the petitioner was employee of Air India Limited. He had access to the airport as employee of Air India Limited. In his letter dated 18-1-1993 addressed to the Engineering Manager, he clearly sets out pursuant to notice dated 21-12-1992 that he had reported at 0100 hrs on 11-11-1992 and approached the check-in counters operated for flight No. DL 107 and he did not have any check in baggage except hand-baggage. Ticket No.

20011496374-0062111308271 and Indian Passport No. K-362515 were given to him by Mr. A. S. D. Mishra, Master Technician (COD) Engg. It is further set out that Shri. Mishra got his passport from his wife from the residence and made a copy of the same. He did not go through the ticket, passports etc. given to him by Shri. Mishra, He then sets out that Billo Joginder Singh, who boarded the aircraft entered the airport from domestic side with the connivance of Shri. Mishra. From this it would be clear that petitioner was at check in counter with ticket and his own passport. The petitioner has put onus on the respondents that they ought to have examined Mr. Mishra. The material before the Tribunal was that it was the petitioner who had approached and checked in. There was therefore no onus on the respondents to prove otherwise. If it was the case of the petitioner that Mishra who was responsible or that Mishra had taken passport from his wife, he ought to have led evidence on that matter. It is true that Mishra could not have been available considering his demise. Petitioner's wife was not examined. At any rate, even if that argument is accepted, the letter dated 18-1-1993 would show that petitioner in connivance with Mishra admits to smuggle out Mr. Billo from International Airport. The establishment of the respondent was at International Air port. It is true that every offence, unconnected with the business and or working of the establishment cannot be treated as a misconduct if not enumerated. However, if the offence is in connection with the use of the establishment of the employee for the offence and that offence is by misusing the premises of the establishment of the employer, then it can be a misconduct in the matter of breach of law applicable to establishment or commission of an act subversion of discipline. There can be no difficulty therefore, in holding that the petitioner was guilty of the charges as levelled. Insofar as evidence is concerned, it is immaterial whether the original of the immigration was produced in evidence or not considering the admission by the petitioner himself. The learned Tribunal has on consideration of the material arrived at the finding of fact. That finding of fact cannot be said to be perverse nor the award on that count be liable to be set aside on the ground that there was violation of principles of natural justice and fair play or of the Standing Orders. The charge against the petitioner in respect of second charge sheet must be held to be proved.

8-9. We then come to the first charge-sheet which consists of two charges. First being that he had taken the staff concessional ticket and given it to Mohanlal. The learned counsel has sought to assail the finding on various counts. One of the contention raised was that the charge as framed under Air India Employees Service Regulations and not under the Model Standing Orders. The employee of the respondent were earlier governed by the service regulations. Subsequent thereto, they were repealed. This was noticed by the Apex Court in *Air India v. Union of India and Ors.* 1995 (II) L.L.N. 612. The Apex Court held that on repeal of the Act the provision of the Industrial Standing Orders Employment Standing Orders in other words Model Standing Orders Act would apply. Earlier in *Air India v. Union of India and Ors.* 1994 (62) FLR 438, Delhi High Court had taken a view

that Model Standing Orders will apply. The charges against the petitioner were in respect of misconduct alleged in the year 1987/88 when the Service Regulations applied. Whereas insofar as second charge sheet was concerned, the misconduct alleged was in the year 1992 when the standing orders were held to be applicable. That contention must therefore, be rejected.

The Apex Court in B.C. Chaturvedi (supra) in the matter of disciplinary proceedings had observed as under :

"Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In the instant case the earlier domestic enquiry was not relied upon and evidence was led before the Tribunal. The question really is whether the findings recorded can be said to be perverse, considering the challenges as raised by the petitioner. Ultimately, it was Mohanlal, Advocate himself who had lodged the complaint and who was examined. There was therefore, sufficient material before the learned Industrial Tribunal both documentary and oral. A writ Court while exercising jurisdiction and considering the findings of fact recorded by the tribunal has to be guided by the law laid down by the Apex Court. The law has been succinctly set out in Syed Yakoob Vs. K.S. Radhakrishnan and Others, , The Apex Court observed as under :

"In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued, if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence, which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned

finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a Writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised....."

The various contentions urged on behalf of the petitioner were basically on reappraisal of evidence and or non-consideration of evidence. This is purely in the realm of appreciation of evidence, which exercise the Writ Court will not undergo, considering that the findings are not perverse.

Another limb of the argument has been that the petitioner sought for documents which were not made available and consequently the impugned award is liable to be set aside. We may gainfully refer to the judgment of the Apex Court in State of Tamil Nadu Vs. Thiru K.V. Perumal and others, . The issue arose before the Apex Court as to whether the non furnishing of the documents asked for by the delinquent employee has prejudiced the case of the delinquent. The Apex Court observed relying on its earlier judgment in State Bank of Patiala and others Vs. S.K. Sharma, that it was the duty of the respondent to point out how each and every document was relevant to the charges or to the enquiry being held against him and whether and how their non-supply has prejudiced his case. Equally, it is the duty of the Tribunal to record a finding whether any relevant documents were not supplied and whether such non-supply has prejudiced the defendant's case. In the instant case, considering the material on record and the oral and documentary evidence, whether it be primary evidence or secondary evidence, in my opinion, it is not possible to hold that the production of any other documents would have in any manner strengthened the case of the petitioner or by non-production the case of the petitioner or by non production the case of the petitioner has been prejudiced. I am clearly of the opinion that considering the material on record, the respondents have been able to show that the petitioner had taken ticket on staff concession and had given it to Advocate Mohanlal. It was returned only after payment was made by the petitioner to Mohanlal. The charge of misconduct therefore was established against the petitioner. It is not possible to interfere with the said finding of fact recorded by the Tribunal in the exercise of the extra ordinary jurisdiction of this Court.

10. We may then deal with second charge of the first charge sheet namely that the petitioner availed of the staff concession ticket for Delhi Bombay but allowed it to be used by someone else and thereby failed to maintain absolute integrity in a manner not conducive to the best interests, credit and prestige of the Corporation as also fraud in connection with the business of the Corporation. The learned counsel for the petitioner has tried to laboriously point out as to why based on the material on record the charge was not proved. There is documentary evidence on record to show that the Petitioners attendance card was punched as being present both on 6th and 7th November, 1987. The case put up by the petitioner is that he was absent on both the days. It is firstly

pointed out that insofar as 6th November, is concerned, he was on sick leave and that he was not present on the 7th November, and he made complaint on 9-11-1987 in the matter of he being marked present on 7-11-1987 when he was absent. The petitioner in so far as 6-11-1987 is concerned, did not make any such protest in his letter of 9-11-1988. From the records, it is seen that he was not present on 6-11-1987 and in his letter of 9-11-1987. The protest was only in respect of 7-11-1987. The application for leave for 6-11-1987 was applied for only on 24-11-1987. This silence on the part of the petitioner has not been explained. The mere fact that he was able to produce ESIS certificate for his absence on 6-11-1987 would be of no consequence, The argument advanced on behalf of the petitioner is that he had called for duty attendance charge for the date which was not produced and on that count inference could have been drawn against the respondent herein. Even assuming that there can be some lacuna, the question is as to why the petitioner would be marked present on 6-11-1987 and 7-11-1987 if in fact he was not present. As noted earlier, the charge sheet came to be issued nearly after 1.1/2 years on 15-5-1990 and that was only after according to the management, the started investigating complaint received from Mohanlal. It is therefore, not possible to accept that the presence on 6th and 7th November, 1987 had been done without the knowledge of the petitioner herein. Nothing has been brought on record as to why some other person would mark his presence if he was not present. The learned Tribunal after examining the evidence on record, was pleased to reject the explanation offered by the petitioner. It was sought to be contended on behalf of the petitioner that he had given letter of 9-11-1987 and that has been proved by him through witness Dalvi. The learned tribunal for the reasons recorded has chosen to reject the evidence of Dalvi. It cannot be said that the reasons so given are irrational or the view taken was a view not possible. Considering the appreciation of the facts by the learned tribunal and the law laid down by the Apex Court in Syed (supra), to my mind this will be a fit case where this Court should not interfere with the findings recorded by the learned tribunal. It must be held that the petitioner is guilty of the charges as levelled.

11. That leaves us with the last question as to whether the punishment imposed can be said to be disproportionate. In the instant case, the learned tribunal has addressed itself to the issue of punishment apart from the charges which have been held to be proved against the petitioner, the record would show that the petitioner was arrested by Tardeo Police Station on 23-3-1997 and was accused in C.R. No. 91 of 1997 for the offences punishable u/s 417 and 420 read with Section 34 of Indian Penal Code. It is no doubt true that the petitioner has produced on record that he has been acquitted in the said case. The charge was that the petitioner by misrepresenting as an Air India Officer had extracted money from people promising to give employment in Air India. Earlier, the petitioner was awarded punishment of reduction of two stages as in the enquiry it was proved that he has forged the signature of Mr. Tata, Asst. Engineering Manager, to falsely certify his date of reporting on 8-8-1987 in his attendance

card in order to regularise his absence on that day. The record to that effect was produced. The only contention advanced on behalf of the petitioner was that the respondent could not have challenged the punishment. The learned tribunal considering the record thought it appropriate not to interfere with the punishment imposed u/s 11A of the Industrial Disputes Act. In my opinion, considering the gravity of misconduct and the past record it will not be possible for this Court in the exercise of its extra ordinary jurisdiction to interfere with the punishment imposed by the respondent Management. The order of the tribunal does not suffer from any error of law apparent on the face of record. In the light of that rule discharged. No order as to costs.