

(2003) 04 DEL CK 0057

In the Delhi High Court

Case No : CWP No's. 2251 - 2255 of 1999

Sudhanshu Gupta, M.K. Sinha, P.N. Bahuguna, Brijendra
Shekhar, P. Srinivas and Joy Chattacharya

APPELLANT

Vs

Airports Authority of India and Another

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Citation : (2003) 4 AD 743 : (2003) 105 DLT 620 : (2003) 69 DRJ 722 : (2004) 1 SLJ 105

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : C.S. Vaidyanathan and Rajeev Sharma, for the Appellant; V.P. Singh and Anjana Gosain, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.

1.The petitioners in these six writ petitions were employed as Air Traffic Controllers with the Airport Authority of India, i.e., respondent No. 1 and are aggrieved by their dismissal from service without holding an enquiry on the ground that in the interest of security of the Authority and public interest, it was not expedient to hold an enquiry.

2.The Cadre of Air Traffic Controllers has three posts of Assistant Aerodrome Officer, Aerodrome Officer and Senior Aerodrome Officer and the petitioners were recruited through a regular process of selection. These Air Traffic Controllers perform critical functions of managing the control of air traffic and the entire communication systems of the airports including communication with the aircraft in air, landing and take off of the aircrafts. Thus, safety of the aircrafts is dependent on the performance of these Air Traffic Controllers.

3.The job profile of the Air Traffic Controllers has been summarized and set out in the writ petition as under :-

- "(i) prevent collisions between aircraft;
- (ii) prevent collisions between aircraft on ground and between aircraft and obstructions on ground (Manoeuvring area i.e. Runway, Taxiway etc.);
- (iii) expedite and maintain an orderly flow of air traffic;
- (iv) provide advice and information useful for the safe and efficient conduct of flights;
- (v) notify appropriate organisations regarding aircraft in need of search and rescue aid and to assist such organisations as required."

4. In order to achieve the aforesaid objects and to perform the job satisfactorily, the air space is divided into basic units called the Flight Information Regions (FIRs) and the services provided by Air Traffic Controllers in generic terms is called air traffic service (ATS). The air traffic service consists of the air traffic control service responsible for achieving the first three objects mentioned above, while the Flight Information and Alerting Service is to achieve the objects mentioned at next two Serial Nos.

5. It is stated in the petition that job requirement of the Air Traffic Controllers is strenuous and the International Labour Organisation (ILO) had recommended that responsibilities of the Air Traffic Controllers resemble with those of professional pilots and, thus, their remuneration should be in commensurate with their responsibilities. The non-implementation of these recommendations by the respondent No. 1 is the grievance, which the Air Traffic Controllers held out against the said respondent.

6. The petitioners are stated to have been appointed initially with the National Airport Authority. In 1994, the Airports Authority of India was constituted by an Act of Parliament being the Airports Authority of India Act (hereinafter to be referred to as "the said Act") which came into force w.e.f. 01.04.1995. In terms of the provisions of Section 18 of the said Act, the employees of the international airport and the National Airport Authority became the employees of the Airport Authority of India and their service terms were protected. The employees had to continue in service at least till the expiry of one year from the appointed date and in terms of Section 47 of the said Act, the International Airport Authority Act, 1971 and the National Airport Authority Act, 1985 stood repealed.

7. Since there were disputes between the Air Traffic Controllers and the respondent No. 1, it is stated that a number of persons belonging to the Cadre of Air Traffic Controller decided to resign from service on the expiry of one year in terms of Section 18(2) of the said Act. However, a suit was filed by the respondent No. 1 on the original side of this Court being Suit No. 620/1997 and interim orders were passed on 31.03.1997 restraining the en mass resignation of the members of the Air Traffic Controllers (Guild). The suit is subsequently stated to have been withdrawn.

8. In April, 1997, a Committee is stated to have been constituted by respondent No. 1 to examine the cadre profile of Air Traffic Controllers and to examine the issue of their career progression and remuneration known as Julka Committee. The said Committee submitted its report on 01.09.1997. Even the recommendations of the said Committee are stated not to have been implemented, though the said recommendations fell short of the expectations of the Air Traffic Controllers (Guild). The dispute in this behalf escalated and in January, 1999, the Guild threatened launching of a satyagrah movement and that they would follow the procedure exactly in verbatim. The petitioners claimed to be non-union activists, who were discharging their duties strictly as per the terms and conditions of their service, but in terms of the impugned order signed by the respondent No. 2 in the capacity of the Chairman of the respondent No. 1, the penalty of dismissal from service was imposed on the petitioners with immediate effect.

9. The dismissal orders are more or less in similar terms and since the writ petitions have been argued treating civil writ petition being CWP No. 2053/1999 as the lead matter, the impugned order in the said case is as under :-

"AIRPORTS AUTHORITY OF INDIA

NO. A.60011/42/98-IR & PP February 17, 1999 O R D E R

It is reported that on the afternoon of 10th February, 1999, when Shri Sudhanshu Gupta, Sr. Manager (ATC) was performing duty at Mumbai Airport at Area Control(S), he was deliberately delaying the handing over of aircraft being held over VOR under his control to the Radar Controllers to ease the traffic congestion, which in itself was caused due to the deliberate slow clearances. The GM observed the slow handling is against the procedures and training imparted to Shri Gupta by AAI before he was rated for the position in Area Control.

It is further reported that when GM (Aerodromes) asked Shri Sudhanshu Gupta that why he was not handing over the aircraft to the Radar Controller to ease the congestion Shri Sudhanshu Gupta reported to the GM., "You know the reason and we can achieve the result by this only."

These acts are unbecoming of a disciplined officer of AAI and the acts are prejudicial to the security of the Authority.

By these acts, Shri Gupta has committed misconduct under sub-regulation 5(5), (6), (9), (20) and (22) of the ECDA Regulations.

AND WHEREAS the undersigned as the Disciplinary Authority is satisfied that in the interest of the security of the Authority and Public Interest, it is not expedient to hold any inquiry in the manner provided in the said Regulations.

AND WHEREAS on a careful consideration of facts, the undersigned as Disciplinary Authority has come to the conclusion that Shri Gupta is not a fit person to be retained in the services of the Authority.

Now, Therefore, the undersigned in exercise of the powers conferred on me under Regulation 33 read with Regulation 26 of the said Regulations, imposes the penalty of dismissal of Shri Sudhanshu Gupta from the services of Authority with immediate effect.

Sd/-

(D.V. Gupta)

Chairman"

The order is slightly different in civil writ petition being CWP Nos. 2252/1999 and 2253/1999, which are respectively as under :-

"AIRPORTS AUTHORITY OF INDIA

NO. A.60011/42/98-IR & PP February 17, 1999 O R D E R

It has been observed since February 1, 1999 that Shri P.N. Bahuguna, Asst. Manager (ATC) posted at Mumbai Airport was inciting and instigating the ATC Controllers to go slow in their work to disrupt the movement of the aircraft. He has incited and instigated the officers to go-slow through word of month and instructions issued on the ATC Guild official letter heads. This has resulted in ATCOs resorting to go-slow agitation and deliberately disrupting aircraft movements in Mumbai. Some examples of actions following from the instigation's are given below.

On 10.2.1999, at Mumbai Airport, during the afternoon shift, at around 1745 IST, 15 aircraft were holding over the VOR and 12 aircraft were on the ground due for take off. It was observed that the various Air Traffic Controllers on duty were intentionally and deliberately delaying the movement of the flights. Instead of changing over aircraft 3 to 4 at a time from Area Control to Radar Control, the aircraft were handed over/taken over by the concerned controllers only in one or twos.

It has been further observed that the space between the two arriving aircraft varied from 12 to 17 N.M. which should normally have been 8 to 10 N.M. Resulting in intentional delay to arriving traffic.

While monitoring the traffic, G.M. (ATC), Mumbai observed that the various Controllers were intentionally resorting to delaying the movement of the aircraft to settle the demands of Air Traffic Controllers Guild. One of the Controllers Shri M.K. Sinha reiterated to the GM. "Jab tak faisla nahi hoga aisa hi chalega". Another Controller Shri Sudhanshu Gupta mentioned to G.M., "you know the reason and we can achieve the result by this only". The officers were purposely delaying the traffic and not following the normal practice, rather they were delaying the flights without following the rules i.e. by not making the full use of capacity of the system provided to them and as they were trained and instructed to use. They also intentionally did not coordinate to expedite traffic.

The actions of Shri Bahuguna were entirely unprofessional, unethical and resulted in inhuman and cruel treatment to the passengers and by these acts, Shri Bahuguna has committed misconduct under sub-regulations 5(5), (6), (9), (20) and (22) of the ECDA Regulations.

AND WHEREAS the undersigned as the Disciplinary Authority is satisfied that in the interest of the security of the Authority and Public Interest, it is not expedient to hold any inquiry in the manner provided in the said Regulations.

AND WHEREAS on a careful consideration of facts, the undersigned as Disciplinary Authority has come to the conclusion that Shri Bahuguna is not a fit person to be retained in the services of the Authority.

Now, Therefore, the undersigned in exercise of the powers conferred on me under Regulation 33 read with Regulation 26 of the said Regulations, imposes the penalty of dismissal of Shri P.N. Bahuguna from the services of Authority with immediate effect.

Sd/-

(D.V. Gupta)

Chairman"

"AIRPORTS AUTHORITY OF INDIA

NO. A.60011/42/98-IR & PP February 17, 1999 O R D E R

(i) Where the employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial; or

(ii) Where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonable practicable to hold an enquiry in the manner provided in these regulations; or

(iii) Where the disciplinary authority is satisfied that in the interest of the security of the Authority, it is not expedient to hold any inquiry in the manner provided in these regulations."

The aforesaid regulation, thus, empowers the Authority to impose penalties without following the process laid down in Regulations 28, 29 and 30 in the circumstances mentioned in the said Regulations. Regulation 33(ii) is para materia to the powers conferred under Article 311(2) proviso (b) of the Constitution of India (hereinafter to be referred to as, "the Constitution") in respect of a Government servant, while regulation 33(iii) is para materia to the Article 311(2) proviso (c) of the Constitution.

13.The aforesaid regulations were framed by the National Airport Authority in exercise of the powers conferred by the National Airports Authority Act, 1985, which was repealed by Section 46 of the Airports Authority of India Act, 1994. As stated above, the Officers of the National Airport Authority became the Officers

of the Airport Authority of India in terms of Section 18(1)(b) of the said Act and were required to serve the Airport Authority of India at least till the expiry of a period of one year from the appointed date of 01.04.1995 in terms of Section 18(3) of the Act. Section 18(7) of the said Act provides that all employees on the rolls of the Airport Authority of India shall be governed by the rules and regulations made by the Authority in respect of the service conditions of the Officers and other employees of the said Authority and rule-making power was provided u/s 41 of the said Act to the Central Government. However, Regulations could be made by the Authority u/s 42 of the said Act provided the same are approved by the Central Government and published in the Official Gazette. Till the decision to terminate services of the petitioners was taken, no Regulations had been framed by the Central Government. Thus, the basic contention of the petitioners is that in the absence of any Regulation(s) made under the said Act, the ECDA Regulations framed under the National Airport Authority Act cease to have force of law after expiry of one year or at the most on the expiry of two years since under the proviso to Section 18(2) of the said Act, the period of one year could be extended by another year. The petitioners have also contended that the normal procedure of holding an enquiry could not have dispensed with by the respondents and it was a mala fide and colourable exercise of power. The charges leveled have also been specifically denied and the writ petition has been filed for quashing of the impugned order of dismissal from service.

14. In the counter affidavit, the action taken against the petitioners sought to be justified. It is stated that the Air Traffic Controllers (Guild) issued a notice dated 27.01.1999 to resort to work to rule agitation, until their demands were settled. The operation of the flights throughout the country were disrupted, especially the flights from Delhi and Mumbai Airports. It was found on scrutiny that the Air Traffic Controllers were resorting to intentional delays of flights without exception. Initially, the delaying tactic was adopted by attempting control of one aircraft at a time leaving all other traffic on hold. All such actions resulted in avoidable delays, excessive burning of fuel and even diversion of flights. On being questioned by the General Manager about the same, the petitioners replied that they could achieve the result only by such methods. Since the action on the part of the petitioners amounted to misconduct under the various regulations and were of a serious nature for safety and security of aircrafts as also the passengers, it was decided that it will not be possible to hold an enquiry in the interest of public and for security of the statutory functions entrusted to the Authority. In the counter affidavit, it is reaffirmed that the petitioners were on duty and the relevant times have been given for the same. Insofar as the demands of the Guild were concerned, it was stated that the petitioners cannot be granted the benefits in terms of the recommendations of ILO taking into consideration the financial and economic position of the country. Some of the recommendations of the Julka Committee are stated to have been implemented and yet the petitioners resorted to agitational approach trying to hold the entire nation to ransom.

15.It has also been stated in the counter affidavit that the provisions of Section 33(iii) of the Regulations have been given, especially keeping in mind the nature of services provided and undertaken. Since there was illegal strike and work to rule agitation, which endangers the safety and security of the passengers, the respondent Authority was left with no option, but to dismiss particularly those employees who had intentionally disrupted the flights and after perusing the relevant material, the respondent decided to dispense with the requirements of enquiry. It has further been stated that ECDA Regulations continued to have force of law till such time new Regulations are notified under the said Act and the time period is not limited to two years in this behalf.

16.Learned senior counsel for the petitioner stated that a meaning has to be given to the complete Regulation 33(iii). It is, thus, contended that a satisfaction of the disciplinary authority is required that in the interest of security of the Authority, it is not expedient to hold an enquiry in the manner provided in the Regulations. However, some enquiry is necessary even though the enquiry may not be possible as per the Regulations. This is stated to be the natural meaning of the last sentence of the said Regulation 33(iii). In this behalf, learned senior counsel contended that the said provision was similar to Article 311(2) proviso (c) of the Constitution. The difference being that in the present case it was security of the Authority, while under the said Article it was security of the State. Learned senior counsel drew attention to the impugned order, which stated that in the interest of security of the Authority and public interest, it is not expedient to hold enquiry in the manner provided in the Regulations. In this behalf, it was contended that the expression "public interest" does not figure anywhere under the said Regulation 33(iii). It was further contended that what was required for exercise of the said power under the said Regulation is that such an enquiry is not to be held in the interest of security of the Authority and not that the said Act is prejudicial to security of the Authority. It was, thus, contended that this material distinction has been obliterated in exercise of the power by the respondent authorities as is apparent from the impugned order as also the stand taken in the counter affidavit.

17.Insofar as the issue of applicability of the Regulations is concerned, learned senior counsel for the petitioner contended on the same lines as the stand taken in the writ petition that in view of the provisions of the said Act, the Regulations could have continued for one year or at best for two years. In this behalf, reliance was placed on Section 18 of the said Act. Learned senior counsel referred to the Office Order dated 31.03.1997 issued by the respondents stating that in pursuance to Section 18(7) of the said Act, the Authority had resolved that every Officer or employee of the Authority would have the same tenure, same remuneration as also same terms and conditions as earlier subject to any modification/changes in the service conditions, which may take place in the future. Learned senior counsel contended that the same could not have been done by way of an Office Order and further it did not even provide for termination of services. It was, thus, contended that first Regulations had to be

made by the Central Government in terms of Section 42(5) of the said Act.

18. Learned senior counsel referred to the judgment of the Supreme Court in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, which dealt with the exercise of power u/s 5 of the Indian Telegraph Act, 1885. It was held that the power conferred u/s 5(1) of the Indian Telegraph Act, which dealt with the occurrence of any public emergency and the consequent action was not an unbridled power. The occurrence of a public emergency was a sine qua non for exercise of power under this Section and the authority concerned must record its satisfaction as to the existence of such emergency. Further, it had to be a public emergency and not any kind of emergency. Learned senior counsel, thus, contended that even assuming that the Regulations can apply and are in force, no unbridled power can be given and the power must be exercised within the strict four corners of the wordings of the said provision.

19. Insofar as the factual matrix was concerned, it was contended by learned senior counsel on the basis of the civil writ petition being CWP No. 2053/1999 that the concerned person was not on duty in the afternoon of 10.02.1999, but was on duty in the night on 10.02.1999. It was further stated that the Air Traffic Controller(s) had nothing to do with handing over of the craft. In this behalf, the duty roster was referred to of the night shift of 10th February, 1999. The reply of the respondent in this behalf, was also referred to which sought to explain this fact by referring to UTC time (Greenwich Time) and not Indian Standard Time (IST). In this behalf, the case of Mr. M.K. Sinha (CWP No. 2251/1999) was referred to state that if the plea of the respondent was accepted, then there would be discrepancy in that case. Thus, it was contended that there has to be a uniform time taken and it cannot be that in one case, it is UTC time and in another case, it is IST.

20. Learned senior counsel for the respondent on that other hand, forcibly contended that before getting into the factual matrix of the case, the scope of judicial review and the doctrine of pleasure have to be appreciated. It was contended that Regulation 33 is para materia to the proviso to Article 311(2). Learned senior counsel, thus, referred to the judgment of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, in which this doctrine of pleasure in the context of Article 311 of the Constitution was examined. Learned senior counsel submitted that there was a similarity in the exercise of power in the present case as compared to the said judgment where such powers had been exercised in view of the Railways strike. In that case, the Supreme Court observed as under:-

"61. The language of the second proviso is plain and unambiguous. The keywords in the second proviso are "this clause shall not apply". By "this clause" is meant clause (2). As clause (2) requires an inquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. There is no scope for any ambiguity in these words and there is no reason to give them any meaning different from the plain and

ordinary meaning which they bear. The resultant effect of these words is that when a situation envisaged in any of the three clauses of the proviso arises and that clause becomes applicable, the safeguard provided to a government servant by clause (2) is taken away. As pointed out earlier, this provision is as much in public interest and for public good and a matter of public policy as the pleasure doctrine and the safeguards with respect to security of tenure contained in clauses (1) and (2) of Article 311.

... .. 70. The position which emerges from the above discussion is that the keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause shall not apply" is mandatory and not directory. It is in the nature of a Constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned government servant. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of inference or implication. The maxim "expressum facit cessare tacitum" ("when there is express mention of certain things, then anything not mentioned is excluded") applies to the case. As pointed out by this Court in *B. Shankara Rao Badami and Others Vs. The State of Mysore and Another*, , this well-known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any one of them into the second proviso.

... .. 129. ... Not taking prompt action may also be construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all clause (b) is not meant to be applied in ordinary, normal situations but in such situations where it is not reasonably practicable to hold an inquiry.

130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform; capable of being put into practice, done or accomplished; feasible". Further the words used

are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

... .. 132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing as the case may be, when at the commencement of the inquiry

or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, Therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. At clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of

that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory Explanation for the non-production of the written reasons.

... .. 141. The question under clause (e), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected by this satisfaction that in the interest of the security of the state, it is not expedient to hold an inquiry as contemplated by Article 31(2). The satisfaction of the President or Governor must, Therefore, be with respect to the expediency or in expediency of holding an inquiry in the interest of the security of the State. The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable impolitic". The same dictionary defines "expedient" as meaning inter alia "advantageous; fit, proper, or suitable to the circumstances of the case". Webster's Third New International Dictionary also defines the terms "expedient" as meaning inter alia "characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances". It must be born in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, Therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There may be other factors which may be required to be

considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, Therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public.

142. In the case of clause (b) of the second proviso, clause (3) of Article 311 makes the decision of the disciplinary authority that it was not reasonably practicable to hold the inquiry final. There is no such clause in Article 311 with respect to the satisfaction reached by the President or the Governor under clause (c) of the second proviso. There are two reasons for this. There can be no departmental appeal or other departmental remedy against the satisfaction reached by the President or the Governor; and so far as the Court's power of judicial review is concerned, the Court cannot sit in judgment over State policy or the wisdom or otherwise of such policy. The Court equally cannot be the judge of expediency or in expediency. Given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the inquiry. The satisfaction reached by the President or Governor under clause (c) is subjective satisfaction and, Therefore, would not be a fit matter for judicial review. Relying upon the observations Bhagwati, J., in *State of Rajasthan and Others Vs. Union of India and Others*, , it was submitted that the power of judicial review is not excluded where the satisfaction of the President or the Governor has been reached mala fide or is based on wholly extraneous or irrelevant grounds because in such a case, in law there would be no satisfaction of the President or the Governor at all. It is unnecessary to decide this question because in the matters under clause (c) before us, all the materials, including the advice tendered by the Council of Ministers, have been produced and they clearly show that in those cases the satisfaction of the Governor was neither reached mala fide nor was it based on any extraneous or irrelevant ground.

... .. 167. The proper running of the railway service is vital to the country. Railway trains carry not only those going for a holiday but also those who commute to work or business. In certain cities, for instance - Bombay, lakhs commute daily by train for this purpose. The railway trains also carry those going to attend the funeral or obsequies ceremonies of near and dear once and equally they carry marriage parties. They carry those who are in urgent need of medical treatment or have been seriously injured and not having proper medical aid in the places where they reside, have to be rushed to the nearest town, city or district head quarter where such medical aid is available. They carry essential commodities like foodgrains, oil, etc. They carry equipment and machinery vital for the needs of the country. In times of disturbances they carry members of the

defense Forces and the Central Reserve Police Force. In this connection, it is pertinent to note what Shaj, J., as he then was, had to say in *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, about the railway administration and employment in railway service :

"... employment in the Railways is in a vitally important establishment of the Union in which the employees are entrusted with valuable equipment and a large measure of confidence has to be reposed in them and on the due discharge of the duties the safety of the public and the efficient functioning of the governmental duties depend. Not only the traveling public, but the Union and the States have in a considerable measure to depend upon rail transport for the functioning of the governmental machinery and its welfare activities. It would be possible even for one or a few employees of the Railway to paralyse communications and movement of essential supplies leading to disorder and confusion. The Railway service has Therefore a special responsibility in the smooth functioning of our body politic..."

It has been necessary to quote extensively from the judgment of Tulsiram Patel's case (*Supra*) because the various parameters of exercise of powers under the proviso to Article 311(2) have been dealt with in the said judgment and Regulation 33 is the para materia provision to the said Article. To that extent, there is a common ground between both the parties in the present petition. The Supreme Court has elucidated not only the doctrine of pleasure, but also what is meant by the concept of public good, the circumstances for holding an enquiry, the reasons for not holding an enquiry, the concept of security of the State and proper running of the essential services like the Railways. The same principles would apply to the present case where one is considering the issue relating to the air passengers.

21.Learned senior counsel contended that there were two different aspects mentioned in the impugned order - the first was the Act of being prejudicial to security of the Authority and the second was the interest of security of the Authority in which it was not expedient to hold an enquiry. It was, thus, contended that the second part can also be a threat perception and it is the subjective satisfaction of the concerned authorities, which has to take place, which does not require judicial review so long as it meets with the essential requirements. Insofar as the Act being prejudicial to security of the Authority is concerned, it is contended that the same is really a sine qua non to the second situation of interest of security of the Authority not requiring the enquiry to be held.

22.Learned senior counsel has referred to various situations, which arose on account of work to rule agitation by the Guild and referred to the documents placed on record as also illustrations of the extreme situation. A number of documents were filed with Index on 16.02.2000 including communication between higher authorities on account of work to rule agitation, which had resulted in avoidable delayed flights. The matter was extensively reported even

in the Press including letters written by the passengers referring to the lack of social consciousness in the chaos created as a result of the said agitation. A request was also made to register an F.I.R. by the Regional Executive Director at Mumbai on account of the said agitation. The Order dated 16.02.1999 passed by the Delhi High Court on the issue of the said agitation in CCP No. 20/1999 in Suit No. 1359/1995 was also referred to where on forming a prima facie opinion, contempt notices were issued and directions were also passed for the Air Traffic Controllers to restrain themselves from adopting any agitational approach and to comply with their duties. The text of the message, which is the transcript filed with the additional affidavit dated 17.02.2000 was also referred to show the approach of the agitating employees. The affidavit referred to the F.I.R.s being registered under various provisions of the Indian Penal Code and the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 under which four persons including Sudhanshu Gupta were arrested and their bail applications were rejected. They were in police custody for about 47 days. A reference was subsequently made to the report dated 11.02.1999 of the General Manager (Aerodromes), Mumbai Airport.

23. Learned senior counsel dealt with the aspect of the Regulations in question being in force in the absence of any Regulations being made under the said Act. The Regulations were duly enacted u/s 38 of the National Airport Authority Act, 1985. Admittedly, no new Regulations have been framed. A reference was, thus, made to Section 46 of the said Act, which is the repelling and saving clause and is as under :-

"46. Repeal and saving.- On and from the appointed date.-

(i) the International Airports Authority Act, 1971 and the National Airports Authority Act, 1985 shall stand repealed;

(ii) the International Airports Authority and the National Airports Authority constituted under the aforesaid Acts shall cease to exist.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the aforesaid Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act deemed to have been done or taken under the corresponding provisions of this Act."

It is, thus, contended that while repelling the earlier two Acts, it was clarified by sub-section (2) of Section 46 that any action taken or purported to have been done under the said Acts, which have been repealed, shall, insofar as they were not inconsistent with the provisions of the said Act, deemed to have been done or taken under the corresponding provisions of the said Act. It is, thus, contended that the earlier Regulations continued to have force of law under the said repelling provision. In the alternative, it was contended that there could not have been a vacuum and as a matter of abundant caution, the administrative order was issued on 31.03.1997 stating that the same terms and conditions of service would continue to apply as applicable to the employees before repeal of

the said two Acts and coming into force of the said Act.

24. Section 18(7) of the said Act is contended to be only an enabling provision, which did not take away the force of the Regulations. Learned senior counsel for the respondent has also relied upon the provisions of Section 24 of the General Clauses Act, 1897, which provides that in the eventuality of any Central Act or Regulation being repealed or reenacted, then unless it is otherwise expressly provided, any order, scheme, rule, form or bye-law shall continue to have force so far as it is not inconsistent with the provisions reenacted and deem to have been issued under the provisions so reenacted unless it is superceded. This provision is to be read with Section 6(b) of the General Clauses Act, which specifies the effect of such repeal and states that unless a different intention appears, the repeal shall not affect the previous operation of enactment so repealed or anything duly done or saved therein. It is, thus, contended that once the Regulations have been properly enacted under the enactment of 1985 and they are not repealed or substituted by new Regulations and there is nothing contrary in the present enactment, the same shall continue to have force of law. This is stated to be in accordance with Section 46 of the said Act, which is a repelling and saving clause and has also been done as confirmed in the Office Order dated 31.03.1997 as also in the minutes of the meeting of 25/26.03.1997. It is contended that vacuum should not be created.

25. Learned senior counsel referred to the judgment of the Supreme Court in *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, . The said case dealt with the regulations for coal mines made under the Mines Act of 1923, which was repealed and reenacted as a new Act of 1952. It was held that the Regulations are deemed to be made under the provisions of the new Act and continue to have force of law and the Regulations, though part of the earlier Act, are not repealed with it. In the said case also, the earlier Regulations had not been superceded by any new Regulations made under the relevant provision of reenacted Act. Reliance was placed on the provisions of Section 24 of General Clauses Act and since there was no provisions expressed or otherwise in the later Act to the contrary and the Regulations were not inconsistent with the reenacted provisions, the same were held to be in operation. It was observed by the Supreme Court as under :-

"13. ... One may pause here to remember that regulations framed under an Act are of the very greatest importance. Such regulations are framed for the successful operation of the Act. Without proper regulations, a statute will often be worse than useless. When an Act is repealed, but re-enacted, it is almost inevitable that there will be some time lag between the re-enacted statute coming into force, and regulations being framed under the re-enacted statute. However efficient the rule-making authority may be it is impossible to avoid some hiatus between the coming into force of the re-enacted statute and the simultaneous repeal of the old Act and the making of regulations. Often, the time lag would be considerable. It is conceivable that any legislature, in providing that

regulations made under its statute will have effect as if enacted in the Act, could have intended by those words to say that if ever the Act is repealed and re-enacted, (as is more than likely to happen sooner or later), the regulations will have no existence for the purpose of the re-enacted statute, and thus, the re-enacted statute, for some time at least, will be in many respects, a dead letter. The answer must be in the negative. Whatever the purpose be which induced the draftsmen to adopt this legislative form as regards the rules and regulations that they will have effect "as if enacted in the Act", it will be strange indeed if the result of the language used, be that by becoming part of the Act, they would stand repealed, when the Act is repealed. One can be certain that that could not have been the intention of the legislature. It is satisfactory that the words used do not produce that result. For, if we apply the rule of harmonious construction, as has been pointed out above. S. 31(4) does not stand in the way of the operation of S. 24 of the General Clauses Act.

... .. 20. The true position appears to be that the Rules and Regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost. Therefore, with regard to the effect of a repeal of the Act, they continue to be subject to the operation of S. 24 of the General Clauses Act.

21. For the reasons given above, we have no hesitation in holding that the provisions of S. 31, sub-sec. 4 of the Mines Act, 1923, do not stand in the way of the full operation of S. 24 of the General Clauses Act, 1897, and that in consequence of these provisions the Coal Mines Regulations, 1926, continued to be in force at the relevant date and have to be deemed to be regulations made under the Mines Act, 1952."

26. Learned senior counsel next referred to the judgment of the Supreme Court in *Hasan Nurani Malak Vs. Assistant Charity Commissioner, Nagpur and Others*, in which the legal consequences of saving what was done under the previous Act has been explained as under :-

"10. The words "anything duly done" in sub-cl. (a) are very often used by the legislature in saving clauses such as we have in S. 86(3). Section 6 of the General Clauses Act, 1897 also provides that unless a different intention appears the repeal of an Act suffered there under. The object of such a saving clause is to save what has been previously done under the statute repealed. The result of such a saving clause is that the pre-existing law continues to govern the thing done before a particular date from which the repeal of such a pre-existing law takes effect."

Learned senior counsel also referred to the judgment of the Supreme Court to the same effect in *Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh*

and Others, .

27.Learned counsel for the petitioners in rejoinder sought to rebut the aforesaid contentions and contended that there was a mandate u/s 42(5) of the said Act to make new Regulations, which had not been made. It was, thus, contended that the saving clause would not apply, as it would be in contravention to the provisions of Section 42(5) of the said Act.

28.Learned counsel referred to the Constitution Bench judgment of the Supreme Court in *Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others*, where it was held that a repeal of a statute or deletion of a provision unless covered by Section 6(11) of the General Clauses Act or a saving provision totally obliterates it from the statute book and the proceeding pending there under stands discontinued. It was held that when the term "Central Act or regulation or rule" is used in that Act, reference has to be made to the definition of that term in the statute. It may, however, be noticed that u/s 2(51) of the General Clauses Act, "rule" has been defined to mean, "a rule made in exercise of a power conferred by any enactment and shall include a regulation made as a rule under any enactment". Thus, regulation has been specifically included within the definition of "rule".

29.Learned counsel referred to the provisions of Regulation 33 to contend that in case of exercise of power under Article 311(2) proviso (b), the objective satisfaction has to be made, which is subject to judicial review. However, in case of power under proviso (c) to Article 311(2), it is the subjective satisfaction, which is subject to very limited judicial review. Thus, in case of objective satisfaction, even if one of the reasons survives for such satisfaction, order has to be sustained, but in the case of subjective satisfaction, even if one of the reasons is found not to be correct, then the order has to go.

30.In this behalf, learned counsel referred to the judgment of the Supreme Court in *Zora Singh, ,* where it was observed in para 10 as under :-

"10. ? The second contention also was rejected, and in our view rightly. The High Court was right in holding that even if there were amongst the reasons given by the Commissioner, some which were extraneous, if the rest were relevant and could be considered sufficient, the Commissioner's conclusions would not be vitiated. The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise."

31.Learned counsel also referred to the judgment of the Supreme Court in Satyavir Singh and Others Vs. Union of India (UOI) and Others, , which has referred to the judgment in Tulsiram Patel's case (Supra). It was held that it is not a total or absolute impracticability, which is required by clause (b) of the second proviso to Article 311(2), but what is required is that holding of an enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. Under clause (c) of the second proviso, it was held that the satisfaction reached must necessarily be subjective satisfaction because expediency involves matters of policy. It is, thus, contended that reading of the said judgment along with Zora Singh's case (Supra) would imply that even if one of the reasons is found not to be correct, the whole edifice collapses and the order must go.

32.I have given considerable thought to the rival contentions advanced by the learned counsel for the parties being conscious of the fact that the impugned order has resulted in the petitioners" losing their job without an enquiry being held. Such power is not to be exercised in a routine manner, but has to be applied only in the circumstances existing within the parameters of Regulation 33.

33.The petitioners performed critical functions in the matter of regulation of air traffic control. In fact, they say so in the writ petition. A split second decision, which is wrong, can cause a disaster. The consequence of non-performing of any job having a go-slow in the process or a work to rule agitation can have serious consequences to the life and safety of the air passengers. The petitioners are qualified Engineers. The petitioners were, thus, well aware not only of the importance of their job, but also the consequences of the dereliction of any duty. The more important the job, greater the responsibility.

34.The grievance of the Guild and the petitioners is non-implementation of the recommendations of the ILO and even of the Julka Committee. The stand of the respondents is that some recommendations of the Julka Committee were implemented, but in view of larger financial repercussions, it was not possible to implement all the recommendations of the Julka Committee or the recommendations of the ILO. It is, thus, being stated that given the financial constraints of a country like ours, the same remuneration is not possible as is being paid to similar workers in more economically developed parts of the world.

35.Even if it is assumed that the petitioners and the Guild had a genuine grievance, it does not behave such qualified personnel entrusted with critical task to adopt such an agitational approach. Legal remedies are available for enforcement of their rights, yet there was a threat of satyagrah movement and work to rule agitation. I have no manner of doubt that Mahatma Gandhi did not have such situations in mind while propagating satyagrah. It was a clear case of abuse of the innovative concept utilized against foreign power governing our country in the pre-Independence period.

36.In the aforesaid background, the legal ramifications of the decision taken by

the respondents have to be considered.

37.The first material aspect is the very existence of the Regulations under which the power has been exercised by the respondents. It is nobody's case that the Regulations were not properly framed under the then existing enactment of 1985 being the National Airport Authority Act, which was repealed by the said Act, which provided for a saving clause. The saving clause itself protected any action taken or done under the repealed Act so far as it was not inconsistent with the provisions of the Act. Section 41 grants the power to make rules while similar powers are granted for making Regulations u/s 42 of the said Act. First such Regulations have to be made by the Central Government and published in the Official Gazette. It is the case of both the parties that no such Regulations have been framed. Thus, the question, which has to be considered, is whether in the absence of any new Regulations having been framed, the earlier Regulations lapse and cease to have force of law or they continue to be protected by the saving clause read with provisions of the General Clauses Act.

38.I am unable to accept the contention of the learned senior counsel for the petitioners that the continuation of the Regulations means that the same is contrary to the provisions of the said Act. No doubt, there is a power given to make new Regulations, but non-making of such Regulations does not mean that continuation of earlier Regulations is in conflict with the provisions of the said Act. Section 18 of the said Act provides that the Officer or employee of the National Airport Authority becomes an Officer of the Airport Authority of India on same service conditions and with same rights and privileges. The enabling provision of Section 7, which provides that the Officers continuing with the Authority will be governed by the rules and regulations of the Authority has to be understood in the context of the provisions that such Office shall continue for a period of one year with a provision of extension of further one year for such benefits and such privileges to apply to him. Here again, there is no conflict with continuation of the Regulations.

39.In my considered view, there cannot be a vacuum which was envisaged and the said Regulations would continue to have force of law in the absence of any alternative or contrary Regulations made by the Central Government.

40.The aforesaid has also to be understood in the context of the provisions of Section 6(b) read with Section 24 of the General Clauses Act, which provides for continuation of a scheme, rule, form or bye-law issued under the repealed Act or Regulation to the extent it is not inconsistent with the provisions of the reenactment. A "rule" has been defined u/s 2(51) of the General Clauses Act to include a regulation. Thus, the continuation of the Regulations enacted under a repealed Act, which have not been so specifically repealed and which are not inconsistent with the new enactment, is specifically mandated under the aforesaid provisions.

41.The Supreme Court was dealing with a similar situation in respect of the

Mines Act in Kohlapur Canesugar Works Ltd.'s case (Supra) where the Regulations were framed under the old Act and the new Act had the provision for making Regulations. The Supreme Court applied the principles of General Clauses Act to hold that the earlier Regulations will continue to have force of law. The importance of the Regulations framed under the Act was considered, which are necessary for successful operation of the Act. Some time has to take place between the reenacted statute coming into force and the Regulations being framed. In certain cases, there may be even delays and it is not possible to avoid hiatus between the coming into force of the reenacted statute and the simultaneous repeal of the old Act and making of Regulations. In fact, the Supreme Court noticed that the time lag may be considerable and the purpose is that the earlier Regulations would continue to have force unless new Regulations came into being or the earlier Regulations were specifically repealed.

42. I am, thus, of the considered view that the Regulations in question have force of law and, thus, it was permissible for the respondent authorities to act under the Regulations.

43. The next important question to be considered is the exercise of power under the said Regulations. These Regulations, as stated above, are para materia to the provisions of clause (b) of the second proviso to Article 311(2) of the Constitution. The benefit of the judgment in Tulsiram Patel's case (Supra) is available where the Supreme Court at length elucidated the principles of parameters of judicial scrutiny in the exercise of such powers. That was a case of Railways strike. In the present case, we are concerned with air traffic and a go-slow agitation where the passengers do not even have their two feet on the ground.

44. In Tulsiram Patel's case (Supra), it was clearly held that the only meaning attributable to the proviso to Article 311(2) was that the enquiry shall not be held and that there was no ambiguity in the words. Thus, there was no reason to give any meaning different from the plain and ordinary meaning. Thus, when a situation arose as envisaged in the three clauses of the proviso, there would be no question of any enquiry. While dealing with this issue of enquiry, the Supreme Court held that in matters of such agitation, a firm hand is required as also prompt action. There is an element of deterrence, but that is unavoidable and necessary concomitant of such action. Such clause is not to be applied in the ordinary and normal situation, but in situations where it is not reasonably practicable to hold an enquiry. The example of such situations can be where agitationists can put pressure on witnesses resulting in prejudice in the enquiry. Such situation is held to be possible not restricted to the time period of initiation against the Government servant, but also during the course of an enquiry. The recording of reasons for dispensing with the enquiry have to proceed with the order of imposing the penalty and, thus, the reasons for dispensing with the enquiry need not find place in the final order.

45. While dealing with the issue of security of the State (in the present case, it is

security of the Authority), it was held that the question was not whether such security of the State had been affected or not, but that even there may be likelihood of such acts taking place where the interest of security of the State may be affected. The satisfaction would, thus, be with respect to the expediency of holding of an enquiry in the interest of security of the State. The Supreme Court stated, "The Court cannot be the judge of expediency or in expediency and given a known situation, it is not for the Court to decide whether it was expedient or inexpedient in the circumstances of the case to dispense with the enquiry.". In view thereof, the subtle distinction, which is sought to be drawn by the learned counsel for the petitioners by stating that what is required is that an enquiry is not to be held in the interest of security of the Authority and not that the Act is prejudicial to the security of the Authority, cannot be sustained.

46.If carrying on a go-slow agitation of the Guild in important and vital matters of security of air traffic, which can endanger life of passengers is not a situation, what can be such a situation?

47.The Guild and the petitioners took the law into their own hands and despite knowing the serious consequences of their conduct decided on this course of action. The consequences are, thus, of their own making and in such a situation, there can be no question of sympathy factor in favor of the petitioners, who have lost their jobs. This is certainly a case where the power ought to have been and has been exercised under the Regulations.

48.Insofar as the factual matrix is concerned, the effort on the part of the learned counsel for the petitioners has been to point out that a particular petitioner was not on duty in the afternoon, but in the night or at a different time. The relevant charts had been filed and Explanations had been given by the respondent by reference to the concept of different base levels from which time is measured and whether it is 1st or UTC. Be that as it may, it is not the function of the judicial scrutiny to go with a microscope into all these detailed factual aspects. There has to be some material on record, on consideration of which the power should have been exercised.

49.The relevant records have been produced and perused. Not only this when at the earlier stage records were produced, copies were asked to be made available to the learned counsel for the petitioners, which were so handed over, despite the initial reluctance of the learned counsel for the respondents. The subsequent event showed that the reluctance was not misplaced, as further applications were filed for production of records for scrutiny by the petitioners to go into minute details. This was not the purpose of production of records. The object was to satisfy the conscious of the Court that there was relevant material, which could form the basis of such opinion and the decision, which had been arrived at by the respondent. The original records produced, which contain the reports of the superiors as also the responses of the petitioners on being questioned of their conduct, show that the action taken by the respondents was not without basis. This Court is not a court of first appeal to go into the various factual matrix of

the disciplinary proceedings. In the present case, in fact, there has been no enquiry, but a decision has been taken on the basis of the relevant material that it is not expedient to hold an enquiry in the interest of security of the Authority and public interest.

50.The reference by learned counsel for the petitioners in rejoinder to Zora Singh's case (Supra) as also Satyavir Singh's case (Supra) would have no bearing because, in my considered view, there is no reason, which has been found to be incorrect so as to arrive at a conclusion that the whole decision is vitiated.

51.The petitioners have reaped what they had sowed. The consequences are harsh, but then the conduct of the petitioners is also highly irresponsible, especially taking into consideration the sensitive nature of their duties. The petitioners failed to realize the seriousness of the consequence of their conduct, which was possible and their obligations in that behalf. The result was their dismissal from service.

52.In view of the aforesaid, I find no merit in the writ petitions and the same are dismissed leaving the parties to bear their own costs.

53.Interim orders stand vacated.