

(2018) 11 DEL CK 0035

In the Delhi High Court

Case No : Civil Writ Petition No.2439 Of2003 & Civil Miscellaneous Appeal No. 12575 Of 2018

Sushma

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 19, 19(2)

Citation : (2018) 11 DEL CK 0035

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : S.P. Chadha, Suruchi Suri

Final Decision : Dismissed

Judgement

1. Vasudev Prasad, the late husband of the petitioner (referred to, hereinafter, as "Prasad", for convenience), joined Indian Airlines Limited

(Respondent No. 2 herein) on 25th March, 1974 as a cleaner. His services were confirmed in the post of cleaner with effect from 22nd October,

1974. He was promoted as foreman-A vide order dated 31st December, 1997.

2. On the allegation that he was aiding in the retrieval, from the aircraft, of 88 gold biscuits valued at Rs. 10 lakhs each, which were being said to be

smuggled into India from Sharjah by two persons, Prasad was arrested on 27th June, 2000. Following thereupon, Prasad was placed under deemed

suspension, vide order dated 29th June, 2000, consequent on his having remained incarcerated for a period of over 24 hours. The order of suspension

also stated that Prasad would not be entitled to wages or subsistence allowance for the period of his deemed suspension.

3. The issue of entitlement, of Prasad, to subsistence allowance, does not survive for consideration; ergo, no further allusion is being made thereto.

4. Vide order dated 20th February, 2001, passed in CM(M) 4817/2000, this Court, observing that Prasad appeared to be only a small functionary

in the smuggling racket and that there was nothing on record to show that he himself was a smuggler and had any direct link with the smugglers

who were sending gold to India or receiving gold in India, opined that Prasad apparently got involved in the nefarious activity of smuggling for petty

financial gains. Keeping in view the said observations, this Court, taking stock of the fact that Prasad had remained in custody for about eight months

and that the trial was likely to take considerable time, enlarged him on bail, vide order dated 20th February, 2001, which merits reproduction, in

extenso, thus:

“Heard.

The petitioner and his two co-accused are being prosecuted on the basis of a complaint filed by the respondent on the allegations that 88 gold biscuits

of 10 lakhs each were recovered from the possession of two of the co-accused. It is alleged that this gold was being smuggled from Sharjah and the

petitioner was helping in the retrieval thereof from the Aircraft. The allegations are that for quite some time, the accused persons were indulging in

such activities.

I have gone through the complaint and carefully considered the facts and circumstances of the case. The petitioner appears to be only a small

functionary in the smuggling racket. There is nothing on record to show that he himself was a smuggler had direct links with those who were sending

the gold to India or with those who were receiving the same in India. It appears that the petitioner for making petty financial gains, got involved in this

nefarious activity. He is in custody for the last about eight months. The trial is likely to take considerable time.

Considering the surrounding facts and circumstances of the case and the fact that the petitioner was already in custody for the last about eight months,

the application for bail is allowed and the petitioner is ordered to be released on bail upon his executing a personal bond in the sum of Rs. 25,000/- with

two sureties in the like amount to the satisfaction of the court concerned.

This bail shall be further subject to an undertaking that the petitioner shall not

leave India without the permission of the Court. In case the petitioner is having a Passport, the same shall be surrendered by him before the Court, at the time of preparation of the bail bond and in case he is not having any Passport, an affidavit shall be filed by him to say that he has no Passport. Further, in case at any stage the petitioner is found involved in a similar offence, his bail shall be immediately cancelled and he shall be taken into custody by trial Court.

Nothing stated herein shall be taken as an expression of opinion on the merits of the case pending in the Trial Court as the observations made herein

are tentative only.â??

(Emphasis supplied)

5. Consequent on his being enlarged on bail, Prasad represented, on 28th February, 2001, to Respondent No. 2, requesting that his suspension be revoked and he be permitted to join duties with immediate effect.

6. Respondent No. 2 responded to the said request of Prasad, vide communication dated 1st March, 2001, stating that, as he had been â??involved in

various acts of omission/commission of serious natureâ?, his request, for being permitted to join duties, could not be acceded to. As such, pending

further inquiry, the said communication placed the petitioner under suspension with immediate effect.

7. Vide communication dated 29th March, 2001, the services of Prasad were terminated, by Respondent No. 2, again with immediate effect,

purportedly under Rule 13 of the Indian Airlines Employeesâ? Service Regulations (hereinafter referred to as â??the Service Regulationsâ?)

applicable to employees in the service of Respondent No. 2.

The said Regulation 13 read thus:

â??13(a) The services of an employee may be terminated without assigning any reason to him/her and without any prior notice but only on the

following grounds not amounting to misconduct under the Standing Order, namely:-

If he/she is in the opinion of the Company (the Board of Directors of Indian Airlines) incompetent and unsuitable for continued employment with the

Company and such incompetence and unsuitability is such as to make his/her continuance employment detrimental to the interest of the Company.

OR

If his/her continuance in employment constitutes, in the opinion of the Company (the Board of Directors of Indian Airlines) a grave security risk

making his/her continuance in service detrimental to the interest of the Company.

OR

If in the opinion of the Company (the Board of Directors of Indian Airlines), there is such a justifiable lack of confidence which having regard to the

nature of duties performed, would make it necessary in the interest of the Company, to immediately terminate his/her services.â??

8. In conjunction with Regulation 13 of the Service Regulations, it may be noted that â??misconductâ? was defined in Order 28 of the Standing

Orders applicable to Respondent No. 2, in the following terms:

â??28. Rules of Discipline:

Without prejudice to the generality of the term â??Misconductâ?? it shall be deemed to include the following acts of omission and commission:

1. Failure while on duty to observe any rule or regulation promulgated by the authorities in relation to Airports and/or Aerodromes.

2. An employee in the service of the Corporation shall not, without the previous sanction of the Corporation, directly or indirectly engage in any other

business, occupation, or employment and shall not accept fees, emoluments, commission or honoraria whatsoever from any other party.

3. Acceptance of gifts from a subordinate employee.

4. Lending money to or borrowing money from subordinate employees.

5. Wrongful transferring of gate pass or permit.

6. Entering or leaving the Companyâ??s premises except by the gate or gates appointed for the purpose.

7. Taking notes, drawings sketches or photographs of any plant, process or work or of any aircraft or engine or taking copies of the Corporationâ??s

papers or documents or files without the permission of the Management or knowingly being in unauthorised possession of any of the above.

8. Wilful insubordination or disobedience, whether â??aloneâ? or in combination with others, of any lawful and reasonable order of his superior.

9. Participation in an illegal strike or abetting, inciting, instigating or acting in furtherance thereof.

10. Wilful slowing down in performance of work, or abetment, or instigation thereof.
11. Theft, fraud and dishonesty in connection with business or property of the Corporation.
12. Taking or giving bribes or any illegal gratifications.
13. Absence without leave or overstaying sanctioned leave, without sufficient grounds of proper or satisfactory explanation.
14. Late attendance on more than 4 occasions within a month.
15. Habitual breach of any standing order or any law or rules applicable to the establishment.
16. Collection without the permission of the Manager or the Head of the Department of any money within the premises of the establishment except as sanctioned by any law of the land or rules of the Corporation for the time being in force.
17. Engaging in any business or trade within the premises of the establishment.
18. Drunkenness, riotous, disorderly or indecent behaviour in the premises of the establishment.
19. Wilful neglect of work.
20. Commission of any act subversive of discipline or of good behaviour the premises of the establishment.
21. Habitual breach of any rule or instructions for the maintenance and running of any department or the maintenance of the cleanliness of any portion of the establishment.
22. Frequent repetition of any act or omission for which a fine may be imposed under the Payment of Wages Act, 1936.
23. Wilful damage to work in process or to any property of the Corporation.
24. Interference with any safety devices installed in or about the establishment of any Airport or Aerodrome.
25. Canvassing for union membership or the collection of union dues within the premises of the establishment during working hours except in accordance with any law or with the permission of the Manager or Debt of the Department.
26. Holding meetings inside the premises of the Manager except in accordance with provisions of any law for the time being in force.

27. Distribution or exhibition within the boundaries of the establishment of any newspapers, hand bills, pamphlets, or posters without the previous sanction of the Manager or Head of the Department.

28. Disclosure to any unauthorised person of information relating to the Corporation's business or the defence measures.

29. Gambling within the premises of the establishment.

30. Smoking within the premises of the establishment where it is prohibited.

31. Sleeping on duty.

32. Conviction in any court of law for any criminal offence involving moral turpitude.

33. Giving false information regarding name, age, father's name, qualification, ability or previous service and experience at the time of employment.

34. Purchasing properties, machinery, stores, etc., from selling properties, machinery, stores, etc., to the Corporation without express permission in writing from the Chairman.

9. The petitioner contends in the writ petition that, as a conviction in any court of law for any criminal offence involving any moral turpitude was

stipulated as constituting a misconduct, under Clause 32 of Order 28 of the Standing Orders, Regulation 13, which applied only in the case of

termination on grounds which did not amount to misconduct under Standing Orders, would not apply to her husband.

10. It may be mentioned, even at this juncture, that this submission is fallacious, on the face of it, as, on the date of his termination, Prasad had not been convicted for any offence, involving moral turpitude or otherwise.

11. The petitioner also contends that the case of her husband was not covered by any of the exigencies contemplated by clauses (i) to (iii) of clause

(a) of Regulation 13 of the Service Regulations (supra).

12. It is in these circumstances that the petitioner has approached this Court, by means of the present writ petition, with the following prayers:

(a) Issue writ or order or direction in the nature of certiorari, mandamus quashing the impugned orders dated 29.6.2000, and 29.3.2001.

(b) Issue an order or direction in the nature of Mandamus commanding the Respondents;

(c) to pay subsistence allowance as per rules of the Company from 29.06.2001

to 28.2.2001 i.e. during the period it was illegally denied; and

(d) to treat the period of unlawful termination from 30.3.2001 to 17.1.2003 as duty for all purposes with consequential benefits.

(e) to pay all consequential retiral benefits to the dependents of the deceased employee as admissible to retiring employees under rules of the

Company.

(f) issue any further or other orders or writ as deemed just and proper by this Honâ?ble Court as per facts and circumstances of the case besides cost

and expenses of the present litigation.

(g) Award exemplary costs as the Respondents have acted in gross violation of the law of the land and constitutional provisions of this case.â??

13. Respondent No. 2, in its counter affidavit, has contended thus:

(i) Insofar as the suspension of Prasad, and the decision regarding payment of subsistence allowance, to him, were concerned, Respondent No. 2 had

acted strictly in accordance with the provisions of the Standing Orders applicable to it, and no infraction thereof could be said to exist. So long as

Prasad had not been granted bail, sub-clause (6) of Order 29 of the Standing Orders applied to him, whereunder no subsistence allowance was

available. As soon as Prasad had been granted bail by this Court, Respondent No. 2 issued a fresh order of suspension. This order being relatable to

clause (5) & (7) of Order 29, the petitioner was entitled to subsistence allowance, which was granted to him. As is noted hereinabove, this issue no

longer survives for consideration.

(ii) The decision to terminate the services of Prasad under Regulation 13 of the Service Regulations was taken by the Board of Directors in its

meeting, dated 15th March, 2001, in view of his involvement in the serious and nefarious activity of smuggling that jeopardized the security as well as

other legitimate interests of the respondent. Such act, on the part of Prasad, was clearly detrimental to the interests of Respondent No. 2, especially

considering the nature of his employment. Inasmuch the very nature of duties performed by Prasad included undertaking of international flight duties

and unrestricted access to the airport and aircraft, his continuance in service, had become a security risk. There was complete loss of confidence, in

Prasad, by Respondent No. 2.

(iii) As such, the invocation, by Respondent No. 2 of Regulation 13 of the Service Regulations, could not be characterized as illegal and arbitrary.

(iv) This Court had, while granting bail to Prasad on 20th February, 2001, opined that he was also involved in the smuggling racket, though it was only

for making petty financial gains. Such involvement, nevertheless, was serious in nature, and rendered it impossible to continue Prasad in the

employment of the Respondent no. 2. It had resulted in lack of confidence, in Prasad, by Respondent No. 2, which justified termination of his services,

under Regulation 13(a) of the Service Regulations.

(v) Regulation 13 did not require holding of any formal inquiry.

The reliance, by the petitioner, on the definition of 'misconduct', as contained in the Standing Order, was misplaced, as Regulation 13 did not

contemplate termination on the ground of 'misconduct'.

14. Rival Submissions

14.1 Arguing on behalf of the petitioner, Mr. S.P. Chadha, learned counsel, submits that the impugned order dated 29th June, 2000, terminating the

services of Prasad under Regulation 13 of the Service Regulations, was illegal, as it contained no reasons whatsoever. Mr. Chadha has drawn my

attention to Regulation 13(a), which already stands reproduced hereinabove. He points out that each of the various eventualities, envisaged in

Regulation 13(a) required, as a sine qua non, the opinion of the Board of Directors (hereinafter referred to as 'BOD') to the effect that, on

account of the said eventuality, it was not appropriate to continue the services of Prasad. This opinion, Mr. Chadha would contend, was necessarily to

be reflected in writing and, no such written opinion being forthcoming in the present case, the termination of the services of the petitioner's husband

stood vitiated.

14.2 Regulation 13 of the Service Regulations would not apply, as it dealt only with situations in which the act of the employee was 'not amounting

to misconduct'. Conviction, in a court of law, for a criminal offence involving moral turpitude, being one of the defined 'misconducts', Prasad

could not have been terminated under Regulation 13, on the ground of his having been involved in a criminal case.

14.3 The act of Respondent No. 2 in terminating the services of his client, without assigning any reason and without holding any inquiry, was illegal.

For this proposition, Mr. Chaddha relies on Union of India v. Tulsiram Patel, (1985) 3 SCC 398 and S. Atyavir Singh v. Union of India, (1985) 4 SCC

252.

14.4 Mr. Chadha placed reliance, further, on the guidelines contained in OM No. 11012/11/85-Estt(A), dated 11th November, 1985 and 4th April,

1986, issued under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter referred to as "the CCS

(CCA) Rules"], which set out the circumstances in which formal inquiry can be dispensed with, before terminating the services of a government

servant. He submits that, inasmuch as Rule 19(2) of the CCS (CCA) Rules is analogous to Regulation 13(a) of the Service Regulations (supra), the

aforementioned OMs, dated 11th November, 1985 and 4th April, 1986, issued under Rule 19 of the CCS (CCA) Rules, ought to apply mutatis

mutandis, to action taken under Regulation 19(a) of the Service Regulations. Mr. Chadha submits that the present case was not one which involved

national security, or in which holding of an inquiry was not reasonably practicable. He, therefore, submits that there was no justification for jettisoning

a formal inquiry, while deciding to remove the petitioner's husband from service.

14.5 Mr. Chadha has also submitted that the issue of subsistence allowance no longer survives for consideration, having been carried up to the

Supreme Court and decided in favour of his client.

14.6 Ms. Suruchi Suri, arguing on behalf of the Respondent No. 2, draws my attention to the averments, contained in the counter affidavit of

Respondent No. 2, in which it was pointed out that, in view of the involvement of Prasad, in smuggling, which was hazardous to national security as

well as to the interests of Respondent No. 2, a conscious decision had been taken, by the BOD of Respondent No. 2, in its meeting held on 15th

March, 2001, to terminate the services of Prasad. The nature of the duties performed by Prasad, Ms. Suri points out, included undertaking

international flight duties, which involved unrestricted access to the airport and to the aircraft. The involvement, of such an employee, in smuggling, it

was submitted, rendered the continuation of the employee, in the services of the Respondent No. 2, a security risk. No fault, could, therefore, in her

submission, be found with the decision to terminate the services.

14.7 Ms. Suri also draws attention to the fact that this Court, even while granting bail to Prasad on 20th February, 2001, observed that he was involved in the activity of smuggling, even if only as a small functionary.

14.8 Ms. Suri submits that, in such circumstances, it was clear that Prasad had committed a serious offence involving moral turpitude, and his removal from service, could not, therefore, be questioned.

14.9 Ms. Suri seeks to place the case of Prasad, under the third category of cases contemplated by Regulation 13(a) i.e. by submitting that the act of Prasad had resulted in justifiable lack of confidence which, having regard to the nature of duties, performed by him, made it necessary, in the interests of Respondent No. 2, to immediately terminate his services. She, however, admitted that there was no "opinion", on record of the BOD, to the said effect.

14.10 Ms. Suri finally seeks to point out that the vires of Regulation 13 stood upheld, by the Supreme Court, in *Indian Airlines Ltd. v. Prabha D.*

Kanan, (2006) 11 SCC 67. The judgment in *Prabha D. Kanan* (supra), on which Ms. Suri had relied, dealt with the constitutionality of Regulation 13 of

the Indian Airlines (Flying Crew) Service Regulations (hereinafter referred to as the "Flying Crew Regulations"). To a query, Ms. Suri responded

that the Flying Crew Regulations were identical to the Service Regulations with which this Court is concerned in the present case. She has also placed

on record, for the said purpose, a copy of the Flying Crew Regulations. Regulation 13 of the Flying Crew Regulations may be reproduced thus :

"13. The services of an employee may be terminated without assigning any reasons to him/her and without any prior notice but only on the

following grounds not amounting to misconduct under the Standing Orders, namely:

(a) If he/she is, in the opinion of the Company (the Board of Directors of Indian Airlines) incompetent and unsuitable for continued employment with

the Company and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the

Company;

or

if his/her continuance in employment constitutes, in the opinion of the Company (the Board of Directors of Indian Airlines), a grave security risk

making his/her continuance in service detrimental to the interests of the Company;

or

if in the opinion of the Company (the Board of Directors of Indian Airlines) there is such a justifiable lack of confidence which, having regard to the

nature of duties performed, would make it necessary in the interest of the Company, to immediately terminate his/her services.

(b) No employee shall resign from the employment of the Company without giving six months' notice in writing to the Company of his/her intention to

resign:

Provided that Managing Director of the Company may dispense with or reduce the period of six months on grounds of continued ill-health of the

employee or such other compelling or extraordinary circumstances which in the opinion of the Managing Director warrant such dispensing with or

reduction in the period of notice:

Provided further that the Company will be at liberty to refuse to accept termination of his/her services by an employee where such termination is

sought in order to avoid disciplinary action contemplated or taken by the management.â??

14.11 It is clear that Regulation 13(a) of the Flying Crew Regulations is in pari materia with Regulation 13(a) of the Service Regulations.

Analysis

15. Prabha D. Kanan (supra), while upholding the vires of Regulation 13 of the Flying Crew Regulations, made it clear that, where the said Regulation

was invoked, the court could call for the records to examine the basis for such invocation. In view thereof, this Court had, vide order dated 23rd

February, 2018, directed Ms. Suri to place on record, a copy of the minutes of the BOD, relating to the decision to terminate the services of the

petitioner's husband. Ms. Suri has, in compliance thereof, placed a copy of the minutes of the 56th meeting of the BOD, held on 15th March, 2001,

wherein the decision, to terminate the services of the petitioner's husband, had been mooted and was approved, alongwith a copy of the

memorandum proposing the termination. The relevant paragraphs, from the 56th meeting of the BOD, held on 15th March, 2001, read thus :

â??Minutes of the 56th meeting of the Board of Directors of Indian Airlines

Limited held on 15th March, 2001 pertaining to the following item of your

Department:-

Termination of Services of Shri Vasudev Prasad, Foreman Employee No.278866, Northern Region, Delhi:

The proposal as contained in the Memorandum, was discussed and keeping in view the facts and reasons set out therein, the Board approved that the

services of Shri Vasudev Prasad, Employee No. 278866 be and are hereby terminated in terms of Regulations 13 of the Indian Airlines Employee

Service Regulations.â??

16. The memorandum, dated 15th March, 2001, which was approved in the aforementioned meeting of the BOD, may be reproduced, to advantage as

under :

â??Indian Airlines Limited

56th Meeting

15.3.2001

Memorandum

(Item no.14)

Termination of Services of Shri Vasudev Prasad (Foreman), Employee No.278866, Northern Region, Delhi

It was reported that on 27th June, 2000, Shri Vasudev Prasad Foreman, Employee No.278866, while on duty, retrieved a packet containing 44 gold

bars of 10 tolas each, weighing 5.130 kgs. from one of the rear toilets of an A-320 aircraft (VT-EPD) operating IC-882, while the aircraft was parked

at the domestic terminal after completing an international flight. After retrieval of the 44 gold biscuits from the said aircraft he went out of the airport

and proceeded to Hotel De Romana, Jama Masjid Area, Delhi with Shri Sheikh Javed who was waiting for him outside the airport. He handed over

the gold biscuits to Shri Salim Sheikh staying in Room No. 104 of the same hotel, wherefrom the aforesaid 44 gold biscuits were recovered and seized

by the Directorate of Revenue Intelligence.

Shri Vasudev Prasad admitted that he was involved in gold smuggling and further disclosed that there was another packet of 44 gold biscuits

concealed in another rear toilet of the same aircraft and that the aircraft would be back at the domestic terminal at 2000 hrs. after completing its

domestic flight from Mumbai. Based on this information, the officers of the Directorate of Revenue Intelligence recovered, in the presence of Shri

Vasudev Prasad and independent witnesses, another 44 gold biscuits of 10 tolas each weighing 5.130 kgs. on 27th June, 2000.

A total of 88 gold biscuits, valued at Rs. 46.88 lakhs in the market, were recovered. All the three persons were arrested by the Directorate of

Revenue Intelligence on 28th June, 2000. Shri Vasudev Prasad was placed under deemed suspension by the General Manager (Engineer) Northern

Region, Delhi consequent to his arrest. He continues to be under judicial custody.

Copies of letter dated 13th June, 2000 from the Joint Director (INT) Directorate of Revenue Intelligence, Seizure panchanamas dated 27th June, 2000

and the statements of Shri Vasudev Prasad recorded on the 27th and 28th June, 2000 are appended as Annexures-1, 2 & 3 respectively.

Admittedly, Shri Vasudev Prasad committed the act of collecting the packets containing the gold biscuits from the toilet of the aircraft. He has

confessed to have committed this act. He also retrieved another packet from the rear toilet of the same aircraft in the presence of the DRI officials

and other witnesses. He committed the act for pay off. He also confessed to have committed similar acts on a number of earlier occasions. These

acts are not only illegal but also anti-national. In addition placing and retrieval of items from certain portions of the aircraft which is not meant for

storage of goods, in all probability, jeopardizes the safety and security of the aircraft and the passengers on board.

Shri Vasudev Prasad acted in a manner detrimental to the interest of the company, more so, considering the nature of his employment. The act

committed by him makes him untrustworthy and unsuitable for continued employment in Indian Airlines. His conduct too was detrimental to the

interests of the Company. Considering the nature of the duties performed by him, which includes undertaking international flight duties, having

unrestricted access at the airport and to the aircraft, Shri Vasudev Prasad is a grave security risk, which makes his continuance in service detrimental

to the interests of the organisation. He had committed an illegal act with full knowledge expecting an illegal pay off. The Company has lost confidence

in him and it is necessary, in the interest of the Company, to terminate his services.

General Manager (Engineering), Northern Region, and Regional Director (North) have recommended termination of Shri Vasudev Prasad, Foreman,

Employee No. 278866, Northern Region, Delhi in terms of Service Regulation 13(a).

It is therefore, proposed to terminate the services of Shri Vasudev Prasad, Foreman, Employee No. 278866, Northern Region, Delhi in terms of

Service Regulation 13 (a), which is reproduced as under:-

If he/she is, in the opinion of the Company (the Board of the Directors of Indian Airlines) incompetent and unsuitable for continued employment with

the Company and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the

Company.

And

If in the opinion of the Company (the Board of the Directors of Indian Airlines) there is such a justifiable lack of confidence which having regard to

the nature of duties performed, would make it necessary in the interest of the Company, to immediately terminate his/her services.

For approval.â??

17. The issue of subsistence allowance, and its payability to Prasad no longer specifying for consideration, this Court is seized only with the question of

justifiability of the decision to terminate his services.

18. Regulation 13(a) of the Service Regulations contemplates three situations, in which the services of an employee of Respondent No. 2 could be

terminated. These are (i) if the employee is, in the opinion of Respondent No. 2, incompetent and unsuitable for continued employment with

Respondent No. 2, in such a way that such continued employment would be detrimental to its interests, (ii) if the continuance, in the said employment,

constitutes, in the opinion of the BOD of Respondent No. 2, a grave security risk and (iii) if, in the opinion of the BOD of Respondent No. 2, there is

such a justifiable lack of confidence which, having regard to the nature of duties performed by the official, would make it necessary, in the interests of

Respondent No. 2. to immediately terminate his/her services.

19. Re: the judgment in Prabha D. Kanan

19.1 Prabha D. Kanan (supra) questioned the vires of Regulation 13 of the Flying

Crew Regulations which, as already noticed hereinabove, were in pari materia with Regulation 13(a) of the Service Regulations, applicable in the instant case. As in the present case, Tulsiram Patel (supra) was pressed into service, by the respondent in that case before the Supreme Court.

19.2 One of the ground that the Regulations did not provide for any appeal, against a decision to terminate the services of an employee, though the decision to terminate, under Regulation 13, was summary in nature, without following due process of inquiry. At the very least, therefore it was sought to be contended, a remedy of appeal should necessarily be provided, against such decision.

19.3 The Supreme Court repelled the said argument, in para 34 of the judgment, thus :

“34. Evidently, there is no provision for appeal since the decision is taken by the highest authority of the corporate entity viz. Board of Directors

which includes the Chairman also. The appellant is a body corporate. No appeal can be made against the order passed by the Chairman and the Board

of Directors. The order being passed by the highest authority, the question of providing for appeal would not arise. Even in Tulsiram Patel [(1985) 3

SCC 398 : 1985 SCC (L&S) 672], this Court held that no appeal would be available from an order passed by the President of India. Regulation 13 is

invoked when the termination of the services is effected by reason of some act on the part of the employee which does not amount to misconduct. It

can be invoked:

- (i) where an employee is rendered incompetent and unsuitable,
- (ii) where continuance in employment may also constitute a grave security risk,
- (iii) where there is justifiable lack of confidence,
- (iv) where lack of confidence must have a direct correlation to the nature of duties performed,
- (v) where the Board must consider it to be necessary in the interest of the Corporation to immediately terminate the services of the employee concerned.

The provisions, therefore, provide for inbuilt safeguards.”

19.4 Reliance was also placed, by the Supreme Court, on its earlier decision in Ajit Kumar Nag v. General Manager, Indian Oil Corporation Ltd.,

Haldia, (2005) 7 SCC 764, which repelled the contention that it would be arbitrary to confer summary power of termination on the establishment. The

Supreme Court held that, where such power was conferred on the highest administrative authority in the establishment, such conferment of power

could not be regarded as arbitrary. Para 37 of the judgment in Prabha D. Kanan (supra) which deals with this aspect, may be reproduced thus :

“37. Referring to Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] , this Court held that as security of a State is not involved and a

limited power is conferred upon the General Manager being the highest administrative head of the Corporation, it cannot be contended that the power

had been conferred upon a petty officer of the Corporation. It was further opined: (Ajit Kumar Nag case [(2005) 7 SCC 764 : 2005 SCC (L&S) 1020]

, SCC pp. 783, para 35)

“35. We are equally not impressed and hence unable to uphold the contention that clause (vi) of Standing Order 20 confers a blanket or

uncanalised power on the General Manager. In our judgment, sufficient guidelines and safeguards have been provided in the Standing Orders

themselves, such as (i) the power is conferred on the highest administrative head of the Corporation; (ii) eventualities have been specifically and

expressly stated in clause (vi) of Standing Order 20; (iii) satisfaction of the General Manager that such an eventuality has arisen; (iv) recording of

reasons in writing; and (v) right of appeal against the decision of the General Manager. Such a provision, in our considered view, cannot be held

arbitrary or unreasonable, violative of Article 14 of the Constitution.”

19.5 In para 38 of the judgment, the Supreme Court went on to observe that the absence of a provision of appeal, against the decision to terminate the

services of an employee, taken under Regulation 13 of the Service Regulations, would not be arbitrary solely on that ground, as the remedy of judicial

review, under Article 226 of the Constitution of India which the petitioner has invoked in the present case would always be available to the employee.

Reliance was also placed on the observation, in Central Inland Water Transport Corporation v. Brojo Nath Ganguly, (1986) 3 SCC 156, to the effect

that, “although all persons comprising of the Board of Directors would have human frailties, but a provision for appeal cannot be made from the

highest authorities”.

19.6 Para 41 of the judgment went on to observe, in this context, thus :

“41. The regulation provides for simpliciter discharge. It does not debar any employee from being reappointed. By such simpliciter discharge, the employee concerned would not be debarred from obtaining appointment elsewhere. Power can be exercised only in interest of the Company. In a case of this nature, requirements to comply with the principles of natural justice as such may not be practicable.”

19.7 Thereafter, paras 44 and 45 of the judgment in Prabha D. Kanan (supra) held thus :

“44. But, in a case of this nature although there is no provision for appeal, but even in a judicial review, the court may require the employer to produce the records, on a perusal whereof the court may come to a finding as to whether the order passed by the Board of Directors was bona fide or not.

45. A judicial review of such an order would be maintainable. In a case of judicial review, where no appeal is provided for, the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not confine its jurisdiction only to the known tests laid down therefor viz. illegality, irrationality, procedural impropriety. It has to delve deeper into the matter. It would require a deeper scrutiny.”

20. After Prabha D. Kanan (supra), therefore, the reliance, of Mr. Chadha, on Tulsiram Patel (supra) and Satyavir Singh (supra), which essentially dealt with the permissibility of taking disciplinary action by dispensing with the requirement of inquiry, cannot be regarded as well taken, in view of the provisions contained in the Regulations.

21. I have already reproduced, hereinabove, the Memorandum dated 15th March, 2001, which was approved by the BOD of Respondent No. 2 in its 56th meeting, held on the said date. The circumvention of the law, found to have been committed by Prasad and reflected in the said memorandum, cannot be regarded, by any stretch of imagination, as trivial or minor in nature. Prasad was alleged to have participated in smuggling of 44 gold bars, weighing 5.13 kg, from one of the rear toilets of an A-320 aircraft, which was parked at the Domestic Terminal after completing an International flight. It was alleged that, after retrieval of the said gold biscuits, Prasad proceeded to a hotel in the Jama Masjid area, where he handed over the

biscuits to Mr. Salim Sheikh who was waiting for him. The biscuits, it is noted in the memorandum, were subsequently seized, by the officers of the

DRI, from the said Salim Sheikh. On being queried in this regard, Prasad admitted his involvement in smuggling of gold. At his instance, another cache

of 44 gold biscuits, weighing 5.13 kg was retrieved, resulting in a total retrieval of 88 gold biscuits, the total value whereof is stated to be Rs. 46.88

lakhs.

22. Prasad has also been found, in the aforesaid memorandum, as having committed the similar acts in the past, and to have confessed in that regard.

The memorandum notes that these acts clearly jeopardise the safety and security of the aircraft as well as the passengers on board, besides being

inherently anti-national in nature.

23. For these reasons, the memorandum opined that the continuance of Prasad, in the services of Respondent No .2, was a security hazard, and was

also detrimental to the interests of passengers, the aircraft (to which the petitioner would have unrestricted access) as well as to the interests of

Respondent No. 2 itself.

24. The BOD of Respondent No. 2 approved the proposal, as contained in the above extracted memorandum dated 15th March, 2001, to terminate the

services of Prasad, under Regulation 13 of the Service Regulations. I do not find any reason, whatsoever, to differ from the said decision, much less,

set it aside. The infraction committed by Prasad was extremely serious. It involved corruption, criminal infraction of the law, as well as jeopardising of

national interests, fiscal and otherwise, involving the security of passengers, the aircraft, and the country in general.

25. The reliance by the petitioner, on the order dated 20th February, 2001, passed by this Court in granting CM(M) 4817/2000 is in my regard

completely misplaced. If anything, the said order operates against Prasad's interests, rather than in his favour. There is a specific finding, by this

Court, to the effect that Prasad was also a functionary in the racket of smuggling of gold. Seized, as it was, with the question of grant of bail, this

Court returned an observation that Prasad was only a "small functionary". That may have been a relevant consideration, while examining the

justifiability of enlargement of Prasad on bail, especially as he had already remained incarcerated for some time. The categorisation, by this Court, in

the said order, of Prasad as a "small functionary in the smuggling racket" is, quite obviously, vis-à-vis the larger players therein, being the actual smugglers of the gold, and, possibly, their major accomplices, etc.

26. This Court cannot afford to concern itself, in a case such as this, with the magnitude of the involvement of Prasad in the racket of smuggling of gold. The involvement of Prasad, therein, was more than sufficient to act as a ground to sever the link of employer and employee between Prasad and the Respondent No. 2. Persons who choose to involve themselves in the activity of smuggling of gold, irrespective of the extent of such involvement, cannot afford to remain in the service of the national carrier of the country. It is as simple as that.

27. Neither, in the facts of the case, can Respondent No. 2 be faulted in deciding to dispense with the requirement of a formal inquiry. Apart from the fact that this issue may be regarded as no longer res integra, in view of the judgement of the Supreme Court in Prabha D. Kanan (supra), allowing Prasad to continue in service would involve the pernicious potentiality of his engaging himself in similar activities. No exception can, therefore, be found, with Respondent No. 2, in acting as it did.

28. Resultantly, there can be no question, whatsoever, of this Court interfering with the decision, of Respondent No. 2, to strike the name of Prasad off its rolls.

29. As a result, this writ petition fails and is dismissed.

30. There shall be no order as to costs.