

(1992) 11 PAT CK 0014

In the Patna High Court

Case No : Letters Patent Appeal No. 18 of 1986

The Indian Airlines and others

APPELLANT

Vs

Captain Dhiresh Prasad Shahi

RESPONDENT

Date of Decision : 24-11-1992

Acts Referred:

Air Corporations Act, 1953 — Section 40(1)

Citation : (1993) 2 PLJR 334

Hon'ble Judges : B.C. Basak, C.J.; S.N. Mishra, J

Bench : Division Bench

Advocate : Ram Balak Mahto and Laxmi Narain Das, for the Appellant;
Basudeva Prasad and Kishore Kumar Sinha, for the Respondent

Judgement

B.C. Basak, C.J. and Ch. S.N. Mishra, J.—This appeal is directed against the judgment and order passed by a Learned Single Judge of this Court in a writ petition (C. W. J. C. No. 1275/81) wherein the petitioner prayed for quashing the order dated 9th September, 1980 (being Annexure 18) passed by the Board of Directors, Indian Airlines, New Delhi, dismissing the statutory appeal of the petitioner and the order of removal of petitioner from service dated 4th July, 1973, as a Captain in the Indian Airlines, which was passed by appellant No. 1 Chairman of the Indian Airlines (respondent no. 1 in the writ petition), as communicated to the respondent - petitioner by letter dated 4th July 1973 (Annexure 15); for issue of writ in the nature of mandamus commanding respondents in the writ petition to reinstate the petitioner into service and grant of other consequential reliefs. The facts of this case, as far as they are relevant for the purpose of disposal of this appeal, are as follows : The respondent - petitioner joined the Indian Airlines in the year 1959 and he was promoted as First Officer. In the year 1962 he was promoted as Captain in the Indian Airlines. There were some alleged incidents in respect of certain Indian Airlines flights of 24.11.1972 and 25.11.1972 in respect of which the petitioner was the Captain in command of the plane. The petitioner was called upon to submit his comments in respect of certain complaints made regarding the same to which the petitioner

submitted his reply. Thereafter a charge sheet was served on the petitioner which suites as follows :

Charge no. 1

That as Commander of Flight IC-231 of 24.11.72 aircraft VT-EBJ, your performance was below the required standard and you violated the safely regulations, failed to comply with the instructions given by air traffic control while operating the above flight, therefore, you endangered the safety of the aircraft as well as of the passengers. This act of your is tantamount to gross negligence of duty of a serious nature, you have, therefore, committed breach of standing orders as applicable to you under para 16, clause 12 i.e., neglect of work or negligence or gross negligence of a serious nature.

Evidence which is proposed to be considered in respect of the charge :

- (i) Oral evidence of Capt. P. N. Mehrotra, Co-pilot of the flight.
- (ii) Oral evidence of Miss A. Sinha, Air Hostess of the flight.
- (iii) Oral evidence of Shri A. K. Sarkar, ANE, Assistant Superintendent of Maintenance, who was on duty at Gauhati on the day of the incident.
- (iv) Statement of Sri M. N. Venkateshan, passenger on the subject flight (Copy attached)
- (v) Statement of Sri B. K. Banik, passenger on the subject flight (copy attached).
- (vi) Any other evidence oral or written which may be relevant to the charge.

Charge no. 2.

You delayed flight IC-267 ex-Silchar on 24th November, 1972 without adducing any cause. On arrival of flight IC-256 from Imphal on the same day you caused the flight to be terminated at Silchar casually attributing reason for termination of the flight to a snag in the aircraft without specifying the nature of the snag and other relevant required details. Further IC-256 of 24.11.72 was scheduled to operate so delayed flight on 25.11.72. The STD of this flight IC-256 of 25.11.72 was fixed from Silchar at 09.00 hrs. You reported at Airport only at 10.5 hours causing unnecessary delay, inconvenience and hardship to the passengers. You have, therefore, committed breach of standing orders as applicable to you under para 16, clause 32 read with clause 23 i.e., carelessness and bad careless work. Evidence which is proposed to be considered in support of this charge :

- (i) Oral Evidence of Capt. P. V. Mehrotra.
- (ii) Oral evidence of Miss. A. Sinha, Air hostess.
- (iii) Oral evidence of Shri P. S. Pillai, Silchar.
- (iv) Statement of Sri M. N. Venkateshan, passenger on the subject flight (copy attached)

(v) Statement of Sri B. K. Banik, passenger on the subject flight (copy attached)

(vi) Any other evidence oral or written which may be relevant to the charge.

2. The petitioner filed his written reply. One Mr. G. S. Dhillon was appointed as Enquiring Officer. After the transfer of Mr. Dhillon, the hearing took place on 6th and 7th of March, 1973 wherein various persons were examined by the presenting officer. The petitioner did not produce any witness, but submitted his written defence.

Thereafter the Enquiring Officer submitted his report wherein he found that the charges against the petitioner were proved. The relevant portion of the finding is set out hereinbelow :

From the findings, and the evidence on which I have relied, and dealt with in great detail, I now draw the conclusion that both the charges, for which Capt. Shahi was chargesheeted "neglect of work or negligence or gross negligence of a serious nature and carelessness and bad and careless work" stand proved in every aspect.

While drawing the above conclusion, I have taken into account the degree of responsibility compatible to the type and area of Job function and its immediate and after-effect on the flight safety which is supreme so as to deserve a special mention.

I wish to further mention that by his act and action, before, during and after relevant segments Capt. Shahi has displayed such irresponsible attitude, forcing his second-in-command to rebellious mood, a situation, which can only be attributed as a resultant factor, if viewed in totality, for which Capt. Shahi alone is responsible.

I am also of the opinion, as a Carrier, we owe great responsibility to the travelling public, and as passengers, when they make reference to uncomfortable or abnormal flights, dispassionately without prejudice, we are obliged to examine the matter properly and carefully.

I am not called upon, as Enquiry Officer, to make any recommendation in the matter and therefore leave the subject entirely to the competent authority for disposal.

3. Thereafter, the show cause notice was issued to the petitioner as to why the punishment of removal shall not be imposed on him. On 11.6.1973 the petitioner filed show cause. Thereafter an order of removal was passed on 4th of July, 1973 (Annexure 15) by the then Chairman of the Indian Airlines Corporation, which is set out herein-below :

I have carefully considered your reply dated 11th June, 1973, to the show cause notice issued to you vide letter no. HPD/02/DPS/73 dated 22nd May, 1973, and have come to the conclusion that you have not shown any satisfactory cause against the proposed punishment. The enquiry conducted into the charges

against you has conclusively established the following serious acts of misconduct on your part.

- (i) The take off phase was deliberately pushed into an unsafe area;
- (ii) Steep climb was effected by you soon after getting airborne.
- (iii) Left hand steep turn was taken contrary to ATC instructions.
- (iv) The flight level was changed without obtaining clearance which is not only contrary to the operating procedure but is also unsafe.
- (v) Delayed the departure of the flight without any sufficient cause or reason thereby causing inconvenience and hardship to the passengers.

2. Your actions endangered the safety of the flight in question and also caused great inconvenience to the passengers.

3. Each one of the charges levelled against you is grave enough to warrant your removal from the services of the Corporation. I do not see any mitigating circumstances brought out in your reply. I have, therefore, decided to impose the punishment already proposed. Accordingly, I order your removal from the services of the Corporation with immediate effect.

4. You will not be entitled to any payment for the period of your suspension except for the subsistence allowance already received by you.

Thereafter the petitioner filed a statutory appeal before the Board as provided under the relevant provisions. The petitioner's appeal was not disposed of for a long time and the petitioner filed a writ petition (C. W. J. C. No. 3484 of 1979) for disposal of the appeal. By an order dated 8th of April, 1980, the High Court disposed of the said petition directing that the statutory appeal of the petitioner be disposed of within three months from the date on which the new Board was formed. Thereafter the Board in its meeting held on 10th of July, 1980, appointed a Sub-Committee to consider the appeal. The relevant extract from the minutes of the Board meeting is set out hereinbelow :

Removal from Service of Capt. D. P. Shahi, Pilot, Calcutta Region ?Appeal under Indian Airlines Standing Orders (Regulations) concerning Discipline and Appeals.

Chairman apprised the Board of the background of the case. After detailed discussion the Board appointed a Committee consisting of Chairman, Sri Raghu Raj and Sri C. B. Jain as specified u/s 40(1) of the Air Corporation Act, 1953, and authorised it to examine and dispose of the appeal submitted by Capt. D. P. Shahi.

4. It may be pointed out in this context that the Chairman at this point of time was some one different from the Chairman who had passed the order of removal. Pursuant to the aforesaid decision of the Board, the Subcommittee, after going through the relevant records, decided to reject the appeal. After stating the different points raised by the petitioner in his appeal, the Sub-Committee dealt

with the same point by point and rejected the same. Ultimately, the Sub-Committee decided as follows :

After careful consideration of the points raised by Capt. Shahi the Committee came to the unanimous conclusion that the findings of the Enquiry Officer are reasonable and logical and that considering the gravity and the nature of the evidence, the punishment imposed by the competent authority is commensurate with the offence committed by the employee. (Para 6)

The Committee also considered Capt. Shahi's request for personal hearing. It is observed that in the charge sheet the Regional Director, Calcutta, had given opportunity to Capt. Shahi for a personal hearing which he did not avail. He has now requested for a personal hearing at this stage. The committee's attention was drawn to Standing Orders concerning discipline and appeal of the Corporation which stipulate personal hearing at appellate stage by competent authority. The Committee took the view that discretion is vested in competent authority to consider a case for grant of personal hearing at the appellate stage, in which it may be inclined to seek any clarification and if the competent authority does not consider necessary, no question of violation of principles of natural justice will arise. (Para 7)

It was also observed that before imposing the punishment the competent authority had issued a show cause notice calling upon the delinquent employee to show cause why the punishment proposed is 11 of imposed. The employee replied to the show cause notice and punishment was imposed only after due consideration. (para 8)

At the appellate stage, the case is generally decided on the basis of the records. The Committee decided against the grant of personal hearing and has considered this appeal on the basis of the available records. The Committee has carefully considered the appeal of Capt. Shahi and for the reasons aforementioned has come to the conclusion that no review of the order of the competent authority is warranted on the facts and the circumstances of the case and, therefore, decided to reject the appeal. (Para 8)

5. Ultimately, this matter was considered by the Board and the Board ratified the same. The relevant extract of the Board meeting is set out hereinbelow :

The Board was informed that the Subcommittee appointed to consider the appeal of Captain D. P. Shahi against order for his removal from service met on 6th August, 1980. The Sub-Committee upheld the decision taken and rejected the appeal. The Board ratified the decision of the Subcommittee.

6. Thereafter the present writ petition was filed on 17th April 1981, which was allowed by a judgment and order dated 5.12.1985.

7. The Learned Judge by his judgement and order upheld the contentions raised in the writ petition and allowed the writ petition. The learned Judge held that the enquiry was bad in law and it was accordingly quashed. It was further held that

the appeal had not been heard in the manner prescribed by law and, therefore, the appellate orders were also quashed. It was pointed out that consequences of the quashing of the order of dismissal would be to the beneficial advantage of the petitioner in regard to his emoluments and service.

8. Before the learned Judge the impugned orders were challenged on two points. Firstly, it was submitted that the appeal itself, particularly the method in which it was heard and disposed of, was contrary to the prescribed procedure. The second point was that the enquiry itself stood vitiated due to non-observance of the rules and procedure of natural justice. The ground of attack on this enquiry was recorded by the learned Judge as follows :

(i) Neither Shri M. N. Ventakeshan nor Shri B. K. Banik were examined as witnesses in the enquiry, though the reports or complaint made by them were relied upon by the Inquiring Officer;

(ii) The reports or complaint filed by Shri M. N. Ventakeshan and Mr. B. K. Banik had no nexus to the charges framed;

(iii) The statements of the witnesses actually examined in the enquiry, which were made prior to the enquiry, were not served on the petitioner in spite of his request particularly that of other crew members of the flight concerned, on one of whom great reliance has been placed by the Enquiring Officer, i.e., Captain P. N. Mehrotra; and

(iv) Certain important documents that were vital for the defence of the petitioner, were not produced or handed over to the petitioner.

The learned Judge found fault with the charges on the ground that they were vague but did not use this as by itself as a ground to quash the entire enquiry which should ordinarily have been done" because the petitioner had made an effective reply. Regarding the explanations submitted by the petitioner in the inquiry the learned Judge observed as follows :

..... These explanations have been rejected mainly on the basis of evidence of Mr. Mehrotra and the then members of the crew on the flight. Thus, it amounts to the rejection of one's explanation on the basis of some ipse dixit and that too in the light of grave doubts raised by the petitioner about Mr. Mehrotra's veracity in view of their strained relationship. In this application it is not possible for me to deal with the correctness or otherwise of the findings one way or the other, but I have no hesitation in saying that the authorities should have exercised more care in considering the comparative merits of the two claims, i.e., the petitioner on the one side and the witnesses on the other, in view of the serious consequence that was likely and ultimately did accrue and also whether any of the steps taken by the petitioner was motivated by any act of negligence or whether they were bona fide acts, though not very correct. This should also have had a bearing on the punishment that has been inflicted on the petitioner. In any event, the whole of this portion is affected by the non-examination of Mr.

Ventakeshan and Mr. Banik, though relying on their statements in the enquiry and non-service of the statement of the witnesses, including that of Mr. Mehrotra on the petitioner before enquiry. The Sub-Committee of the Board of the Indian Airlines Corporation, who examined the appeal of the petitioner, has stated that no statement was recorded which could be given to the petitioner of these witnesses. Surprisingly this statement should have come from persons in the highest rank of administrative ladder of the Corporation. of there was no report, it does not improve the matter because there should have been a preliminary statement before the charge have been framed and if there were reports or statements, they should have been served upon the petitioner. (Para 6)

Another matter of extreme surprise is that the facts said to be stated by Mr. Mehrotra and also contained in the complaint petition of Mr. Ventakeshan and Mr. Banik had not been set out in the charge. It is also surprising and it is not disputed that Mr. Mehrotra did not make a complaint about the conduct of the petitioner as copilot, though it is said that for a time he refused to fly with the petitioner and did so only on persuasion. Further, had Mr. Ventakeshan and Mr. Banik not made any complaint, the matter would have remained grounded for ever. Here it will be of interest to set out the statement of Mr. Venkateshan, which is as follows, in order to show the difference between the charge and the original complaint, thus destroying any nexus between them.

The flight IC 256 arrived at Silchar at 3.00 P.M. and the passengers were asked to have refreshment at the refreshment (sic). It was then announced at 3.25 P. M. that the flight to Calcutta will not proceed and that the air craft is grounded. No reason was given but on enquiry passengers were informed that there was some snag and that the plane can take off only when the Radio Engineer brought spares by IC 255 on 25.11.1972.

It was then understood that the real reason was not that stated above but because of the fact that Captain Shahi the pilot and Commander was under the influence of liquor and hence not in a fit state to operate the flight. In fact it was understood that but for co-pilot Mr. Mehrotra even the landing at Silchar would have been disastrous.

Such indiscipline may be tolerated to some extent from lower categories of staff who are not entrusted with work of responsible nature but this is inexcusable from a Commander of a plane.

I also made enquiries and understood that this is not the first occasion that this pilot has done this and that he had been grounded earlier for six months but managed to get back.

I have no doubt that other passengers will make similar complaints. It is my request that the maximum punishment should be given in case of such lapses and the pilot's licence should be cancelled. In the event such lapses are allowed to recur, the people would lose the confidence they are having in the Indian Airlines.

Mr. Ventakeshan and Mr. Banik were not examined as witnesses, though their statements were relied upon.

Further the fact that the papers demanded by the petitioner were not served, has not been denied. Some explanation is given which, to say the least, cannot be accepted. The report of the Air Traffic Control and other documents relating to the flight instructions etc. which were sought were very vital to the defence and should have been furnished. In my view, therefore, the cumulative effect of the foregoing is that the enquiry has not been conducted in a manner which could be said to be fair, proper and impartial.

At this stage, I am also feeling compelled to refer to Annexure 10, which is a very interesting document and gives an insight to the mind of the authorities. By this annexure, the petitioner was suspended and the ground for suspension was that when Captain C. B. Dhillon came to conduct the enquiry, a report was sent through Captain Dubey that the petitioner was unwell. A medical report was also filed of a private doctor saying that he is suffering from "Dangue fever" but it goes on to say that when the Medical Officer of the Corporation examined him, he was lying in an intoxicated condition. In other words, he was not suspended for his dereliction of duty but for his misdemeanour in pretending to be sick in bed, though inebriated. Surely, some dengue fever patient can also drink if he feels inclined and that was also hardly a ground for suspension, but this is entirely by the way. I have, therefore, no hesitation in holding on the grounds stated above that there have been violation of rule of natural justice in holding the enquiry against the petitioner without my making any line to line comment on the report. (Para 8)

9. On the question as to the procedure followed in the appeal the learned Judge observed as follows :

Coming to the first point regarding the appeal, the highest body of the Corporation, first of all, should have offered apologetic explanation for delaying the disposal of the appeal for seven years and had to be persuaded by the High Court to do so, to say the least, a sad state of indifference to the future of an employee of the Corporation. Examining the procedure to be adopted, it is not disputed that if the order of dismissal is passed by the Chairman of the Corporation, as in this case, the appeal lies to the Corporation, i.e., the Board of "Directors of the Corporation. As far as the petitioner's appeal was concerned, it was undisputedly heard and taken up for examination by a Sub-Committee of the Board who gave their findings on all the charges. I have already referred to one of their findings to show how infirm it was in regard to the furnishing of copies. The other findings had hardly any plausible nexus to the charge and have completely ignored the points raised by the petitioner in his defence and explanation given by him, though they were all mentioned in the memorandum of appeal. Be that as it may, on the procedure itself an examination by the Sub-Committee without valid and legal delegation of power is not envisaged. It has not been shown whether the Corporation could and did delegate its function to

the Sub-Committee. In that event, the Subcommittee could not be entrusted with the power of an appellate authority. Mr. Samir Kumar Ghose has brought Annexure 18 to his rescue by stating that this decision of the Sub-Committee was reviewed by the Board and they accepted the recommendations and, therefore, according to him, it will be deemed to be the decision of the Board itself. Surprisingly, however, the decision of the Board itself has not been filed before this Court. The production of this report in this Court was vital to enable the Court to assess whether the Board acted as an appellate authority or merely accepted the ipse dixit recommendation of the Sub-Committee. I have therefore, no hesitation in holding that the appeal was not heard in the manner prescribed in law.

10. Being aggrieved by the same, this appeal has been filed by the Corporation. After hearing the learned Advocate General for some time in support of the appeal and in view of the nature of the judgment and that this appeal is a re-hearing of the writ petition, we asked the Learned Counsel for the respondent in the appeal, who was the writ petitioner, to formulate his points in support of the writ petition and the judgment. Learned Advocate for the writ petitioner challenged the enquiry proceedings resulting in the impugned order of punishment and also the appellate order on the following grounds : Firstly, it was submitted that the impugned order was in violation of the principle of natural justice. In support of this contention, it was contended as follows :

(1) The two passengers, on whose complaints the enquiry was started, were not examined during the enquiry, though the written complaints made by them were relied upon in the enquiry proceedings.

(2) No effective cross-examination of the witnesses could be made because the statements made by the persons concerned before the enquiry stage was not supplied to the petitioner earlier.

(3) The "snag report" was not given to the petitioner.

(4) Some persons were examined as witnesses, whose names were not furnished in the list of witnesses.

(5) The petitioner was deprived of the assistance of the "helper" which was at first allowed but thereafter withdrawn.

(6) There was non-compliance of Rule 27 of the Discipline and Appeal Rules.

11. The main ground of challenge was that the order passed was bad because no reason was given by the Board. It was next submitted that the Board was the appellate authority and it could not delegate its power of hearing of the statutory appeal to any Subcommittee. It was further submitted that no personal hearing was given to the petitioner at the appeal stage.

12. In support of his contentions, reliance has been placed on the following decisions *State of Madhya Pradesh v. Chitaman Sadashiva Waishampayan* (A.I.R.

1961 S.C. 1623), Kamta Pandey Vs. State of Bihar and Others, . Bhagat Ram Vs. State of Himachal Pradesh and Others, .

13. In the State of M. P. v. Chintaman (supra) it was observed (in para 10) as follows

Mr. Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondent the Enquiry Officer was merely exercising his discretion, and, as such, it was not open to the High Court to consider the propriety or the validity of his decision. In support of this argument he has referred us to the decision of the Patna High Court in Dr. Tribhuwan Nath Vs. The State of Bihar and Another, . In that case the public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry made by it against the said officers and the Enquiry Officer had rejected his prayer. When it was urged before the High Court that the failure to supply the copy of the said report constituted a serious infirmity in the enquiry and amounted thereby to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument, and held that the officer was not entitled to a copy of the report unless that report formed part of the evidence before the Enquiry Commissioner and was relied upon by him. "When, however, the report was not at all exhibited in the case, nor was it referred to, nor relief given by the Commissioner", said the High Court, "there was no meaning in contesting it, and consequently absence of opportunity to meet its contents involved no violation of constitutional provisions". In our opinion, this decision cannot assist the appellant's case, because, as we have already pointed out, the documents, which the respondent wanted in the present case, were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court to consider whether the constitutional requirements of Art. 311 (2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relied flow from the exercise of discretion vested in the Enquiry Officer. The Enquiry Officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity, it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311 (2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the Enquiry Officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of

Law. As Venkatarama Aiyar, J. has observed in *Union of India v. T. R. Verma*, 1958 SCR 499 507 : (S) AIR 1957 SC 882 885) "stating broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them." It is hardly necessary to emphasize that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the Enquiry Officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the "view taken by the High Court and in the present appeal which has been brought to this Court under Art. 136, we see no justification for interfering with it. In this connection it would be relevant to refer to the decision of this Court in *Khem Chand V. Union of India*, 1958 SCR 1080 1096 : (AIR 1958 SC 300 307) where this Court has emphasised the importance of giving an opportunity to the public officer to defend himself by cross-examining the witnesses produced against him. (para 10)

In the case of *Kamta Pandey Vs. State of Bihar and Others*, , it was held.

Learned Counsel raised certain questions as to the persons being examined in course of the proceeding, Jogendra Rai, Bishwanath Rai and Munilal Sah, whose names were not specifically mentioned in the first information report as persons who accompanied the informant when he went to the Police Station with the cost and in whose presence the petitioner was alleged to have demanded an illegal gratification of the sum of Rs. 50/-. The first information report (annexure 1), however, shows that a general statement was made that apart from the names of the persons mentioned therein, others also arrived. It is difficult to say if the persons mentioned above were the other person who came to the place of occurrence and accompanied the petitioner to the police station. Learned Counsel, however, raised a shorter question to the effect that on the 27th of March, 1964 the petitioner filed an application before the presiding officer holding the proceeding that he should be supplied copy of the statement made by Asarfi Rai before Thakur Ram Chandra Singh, Sub Inspector of Anti-Corruption Department, on foot of which he started the investigation and gave a report against the petitioner.

That document, however, was never supplied to him. It is a case, therefore, which is covered by the decision of the Supreme Court in *State of Madhya Pradesh v. Chintaman Sadashiva*, AIR 1961 SC 1623. This document was necessary to enable the petitioner to cross-examine Asarfi Rai properly in course of the proceeding with reference to the statement he might have made to the Anti-Corruption Sub-Inspector, which was his statement at an early stage. It was

necessary that this document should have been supplied so that the falsity of the statement made by Asarfi Rai in course of the proceeding might be established by proper cross-examination on behalf of the petitioner. In our opinion, this is a reasonable request and necessary in the interest of justice that the petitioner might cross-examine Asarfi Rai. This is more so because it was brought to the notice of the officer-in-charge of the enquiry, Shri B. Mahton, that the case of Asarfi Rai before the criminal Court ended in acquittal, the learned Magistrate holding that the complainant was not able to establish that the cow belonged to him.

In any view of the matter, the statement made by Asarfi Rai at the earlier stage was a very necessary material to enable the petitioner to cross-examine him in course of the proceeding. The same not having been done, the case is fully covered by the decision of the Supreme Court in the above case followed by another decision of this Court in *Ramjanam Singh v. State*, MJC No. 811 of 1964, decided by Hon'ble the Chief Justice and K. K. Dutta, J. on the 16th August, 1966 (Pat.) That being the position, it must be held that the order of dismissal of the petitioner (annexures 9 and 10) as above also the report (annexure 7) must be quashed. (Para 4)

14. The learned Advocate General appearing on behalf of the appellant - Corporation, has made the following submissions. He has submitted that so far as the order in appeal is concerned, no specific point was raised in the writ petition challenging the authority of the Board to delegate the matter to the Sub-Committee. On the other hand, the respondent has accepted such position and he had merely complained that no personal hearing was given at the appeal stage. It was submitted that if such point had been specifically taken in the petition, as sought to be done for the first time in appeal, then apart from anything else, the Corporation would have been in a position to offer some explanation as to the circumstances under which it was so done and whether any objection was taken by the petitioner at that stage. On the merits he has submitted that it was open to the Board to delegate such power to a sub-committee in view of section 40 (1) of the Indian Airline Corporation Act, 1953, which provides as follows :

(1) Each of the Corporations may appoint a Committee or Committees consisting of some or any of its directors with or without the addition of any officer or employee of the Corporation and delegate any of the functions and powers of the Corporation to such Committee or Committees and may limit the exercise of such delegated authority to any specific area.

As far as the personal hearing at the appeal stage is concerned, he has submitted that it was not necessary. In this connection he has relied on the following decisions, *F.N. Roy Vs. Collector of Customs, Calcutta*, and *Prafulla Kumar Mazumdar Vs. Inspector General of Police and Others*, .

In any view of the matter it was submitted that even if it is held that the power

to hear the appeal could not be delegated by the Board to a Committee, the Board having subsequently ratified the report of the Committee, it has become their own decision and the reasons given by the Committee has become their own reasons. Accordingly, the appellate order cannot be challenged on the ground that it was not decided by the Board as such.

15. On the the question of principle of natural justice learned Advocate General has produced and drawn our attention to the records of the enquiry proceedings to show that there is no merit in these contentions. In this connection he has submitted that the main allegations against him having been admitted by the petitioner, the petitioner had to justify his action and the explanation given by the petitioner in respect of his conduct was not accepted by the Enquiring Officer or in the appeal. In this connection it was pointed out that no witness was produced on behalf of the petitioner. In support of his contention, he has relied on the following decisions, *State of Andhra Pradesh V. Chitra Venkata Rao*, A. I. R. 1975 S. C. 2115 and *State of Haryana and Another Vs. Rattan Singh*, .

16. Mr. Basudev Prasad, Learned Counsel appearing on behalf of the writ petitioner, has disputed the contentions of the learned Advocate General and in the connection he has relied on an English decision in *Lapointe v. L' Association De Bienfance ET De Retraite De LA Police De Montreal*, 1906 Appeal Cases 535.

DECISION

17. We shall take up the question of validity of appellate order first. We are of the opinion that the order, which was passed in the appeal in this case, was valid and within jurisdiction. In view of Section 40 (1) of the Act it was open to the Board to delegate this power to the sub-committee. In any view of the matter, in the present case there was ratification by the Board as such and in view of such ratification by the Board the order of the Sub-committee and the reasons given by them, became the order of and reasons given by the Board. As long as the final decision is by the appropriate authority, the fact that some preliminary enquiry was left to some other body, does not affect the validity of the appellate order. So far the question of personal hearing at the appeal stage is concerned, in our opinion the question of giving a personal hearing at the appeal stage cannot and does not arise. It may be pointed out that there is no such provision in the Rules also Accordingly, we are of the opinion that the appellate order cannot be challenged on the ground that it was invalid on this ground.

18. So far the alleged violation of the principle of natural justice, so far as the enquiry proceedings is concerned, it seems that sometimes the principle of natural justice is sought to be invoked in a manner which makes it principle of "unnatural" justice. On the general principle of natural justice we may refer to the following decisions.

19. In the case of *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, it was stated as follows :

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finial nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter. (Para 13)

20. In the case of K.L. Tripathi Vs. State Bank of India and Others, it was held as follows :

The Supreme Court had the occasion to deal with the question of general principle of natural justice in the case of a disciplinary enquiry. It was urged in that case that the requirement of rule 50 was not complied with. It was submitted that the materials against the appellant were gathered in his absence and was not allowed to cross-examine the witnesses, evidence against him was not recorded in his presence. It was submitted that reasonable opportunity under the rules required that materials against a person should not be gathered behind his back and he should be given an opportunity to cross-examine, if necessary, the persons who had supplied the materials or given evidence against him.

Accepting the contention of the Learned Advocate that rules of natural justice implied an opportunity to give evidence in respect of the charges or to deny the charges against him, it was observed as follows :

In respect of an order involving adverse or penal consequences against an officer or an employee of statutory Corporation like the State Bank of India there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence.

Stating that the principle of natural justice would depend on facts and circumstances of each case, it was held that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principle of natural justice merely because the evidence was not recorded in his presence or that the materials gathered, gist of which was communicated to him, were not in his presence. In that case it was pointed out that all actions against a party which involve penal or adverse consequence must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable

to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons and it was reiterated that the rules of natural justice are flexible and cannot be put to any rigid formula.

21. In the case of Union of India and Another Vs. Tulsiram Patel and Others, it was held as follows :

The Supreme Court was considering the second proviso to clause (a) of Article 311 (2) of the Constitution. In this connection, the Supreme Court dealt with the general principle relating to the rule of natural justice. After referring to various decisions of the English Courts and Supreme Court, it was observed as follows :

The rule of natural justice with which we are concerned in these Appeals and Writ Petitions, namely, the *audi alteram partem* rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanations thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses, who are to give evidence against him, examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative Inquiry.

Though the two rules of natural justice, namely, *memo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless, not statutory rules. Each of these rule yields to and changes with the exigencies of different situation. They do not apply in the same manner to situations which are not alike. These rules are not cast in a right mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is concerned.

It was held that ordinary principles of natural justice should be kept flexible and must be adapted to the circumstances prevailing in any particular case. It must depend on the facts and circumstance of a given case, the framework of the law under which the enquiry is held and the constitution of the tribunal or enquiry body appointed for that purpose.

22. Keeping these decisions in mind we shall deal with the question of alleged violation of the principle of natural justice in this case. Before that we may point out that the findings of facts cannot be challenged in the writ petition. There cannot be any appraisal of evidence. There cannot be any attempt to find out any error of fact. In the facts of this case, the order cannot also be challenged on the ground of being perverse.

23. The question of compliance of the principle of natural justice depends on the facts and circumstances of each case. In this particular case, we are of the view that sufficient opportunity was given to the writ petitioner and the principle of natural justice and fair play were fully complied with. It cannot be expected that the Enquiring Officer will conduct the proceeding like an ordinary court of law and follow the same procedure.

24. On the question of two passengers not having been examined even if we proceed on the basis of that on their complaints, the action the Corporation initiated, merely because the said two passengers were not examined during the enquiry did not vitiate the proceeding. As already stated, the first charge related to technical matters relating to the flying of aircraft. The other charge is regarding the delaying of another flight. The bare facts were admitted and justification was pleaded. Moreover, though in the opening words of his "conclusion" it was mentioned by the Enquiring Officer that their statements were considered, upon a careful scrutiny of the reason given for finding the petitioner guilty of charges, we do not find that any reliance was placed on any part of their statements. Further it has not been shown to us that at any point of time during the enquiry the petitioner made any specific prayer for production of those two passengers so that he could challenge their statements. Accordingly, there is no merit in this contention.

25. We are not also satisfied that merely because pre-enquiry statements were given to the respondent at the spot, accordingly there could be no effective cross-examination or that it amounted to violation of the principle of natural justice. From the records of the proceedings placed before us, we find that full opportunity was given to the petitioner to defend himself. Further, it does not appear that any such complaint was made by the petitioner at any stage of the enquiry. Accordingly, we reject this contention.

26. So far as the snug report is concerned, no specific point has been taken to his effect in the writ petition. It has not been pointed out to us that any such point was taken during enquiry. Accordingly, on this ground the proceedings cannot be challenged.

27. We are not satisfied that only because some persons were examined as witnesses during the enquiry, whose names were not furnished in the list of witnesses supplied earlier, does not vitiate the proceedings. There is no provision for giving the list of witnesses. It was (sic) given but it did not prevent the authority concerned from examining any other witness of named in the list. In

this context it may be pointed out that no objection to this effect was used by the respondent at any point of time. Their evidence was taken on records and the petitioner was given an opportunity to cross-examine them. Accordingly, there is no merit this contention.

28. On the question of withdrawal of (sic) there is no such point taken in the petition to that effect, obviously because this intention is totally unfounded and baseless. The helper was allowed. The records of (sic) show that full opportunity was given to be petitioner to defend himself. As it is recorded in the records of the proceedings was asked at the very outset by the Enquiring Officer as to whether during the process and progress of the enquiry he could take the help from a friend in his defence or he would defend the case himself (sic) which he replied that he would defend (sic) case himself but requested to allow one (sic). Dubey of Calcutta base. The Enquiring Officer recorded that the "friend" shall of answer or try to explain any question or (sic) of such questions which has been put to Capt. Shahi direct or to any witness. On the 7.3.73 immediately on the resumption of the afternoon session, the writ petitioner informed the Enquiring Officer that Capt. Dubey, his "friend", has gone on a flight; however he wished the enquiry to continue and would continue to defend himself. Accordingly, he cannot be allowed to make any grievance now. There is no merit in this contention.

29. Regarding the alleged non-compliance of Rule 27 of the Discipline and Appeal Rules we do not find that there was any such noncompliance. There is no merit in this contention.

30. Accordingly, we are of the opinion that there is no merit in any of the contentions raised in support of the writ petition. The judgment of the learned Single Judge was not justified.

31. Accordingly, we allow the appeal, dismiss the writ petition and uphold the order of dismissal and the order passed by the appellate authority in the appeal. Before we conclude the judgment, we must record our dissatisfaction regarding one aspect of the matter. There are serious lapses on the part of the Corporation regarding the disposal of the statutory appeal. As pointed out, the appeal was preferred in the year 1973, but the same was not disposed of for a number of years. As a matter of fact, the appeal was not disposed of until the High Court by its order passed in April, 1980, gave direction to that effect. It is a statutory body, a Government of India Undertaking. There is a statutory provision of appeal and the appeal was filed and it should have been disposed of within a reasonable time. We strongly condemn the conduct of the Corporation for their inaction in disposing of the appeal until they were given directions to that effect by the Court.