***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 649-50/2005

Date of Decision: 19th March, 2008

AIRPORTS AUTHORITY OF INDIA & Another ... Appellants
Through: Ms. Anjana Gosain, Advocate

versus

RAJBIR SINGH SOLANKI ..... Respondent
Through: Mr. M.K. Gaur with Mr. U. Srivastava and Mr. D.S. Yadav, Advocates

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? Not necessary
2. To be referred to the Reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

Per Thakur, J (oral)

Aggrieved by an order of dismissal passed against him the respondent appealed to the prescribed Appellate Authority. That appeal was dismissed by an order dated 28th April, 1994. The petitioner then filed writ petition No. 5545/1993 challenging the order of his dismissal from service as also the order passed by the Appellate Authority whereby his appeal was dismissed, inter alia contending that the Authority who had passed the order of dismissal was not competent to do so under the service regulations. A learned Single Judge of this Court

found favour with that submission. The single bench noted that in terms of the Service Regulations governing the service conditions of the petitioner-respondent herein, it was the Executive Director of the International Authority who was competent to pass an order on the basis of the enquiry conducted against the petitioner. Since the order of dismissal had been passed by the Airport Director, the same could not be sustained observe the Court. The writ petition filed by the petitioner - respondent herein was, accordingly, allowed and the order of his dismissal from service set aside together with the order passed by the Appellate Authority. Liberty was, however, given by the learned Single Judge to the Executive Director (Personnel) to pass a fresh order in his capacity as the Disciplinary Authority after affording to the petitioner an opportunity to represent against the Enquiry Authority. The learned Single Judge directed as under:-

> "Impugned order dated 18.08.1992 is set aside. Order in appeal dated 28.04.1994 is also set aside. It would be open for the Executive Director (Personnel) to pass a fresh order in his capacity as the disciplinary authority. Since petitioner has with him the report of the enquiry officer, should the respondent wish to proceed further, petitioner would be granted an opportunity to represent against the report of the enquiry officer. It would be open to the disciplinary authority to pass appropriate orders for continued suspension of the petitioner or to treat the period post 18.08.1992 till

> date of whatever kind, but as per service regulations. Should the respondent chose not to proceed further petitioner would be reinstated in service with 50% back wages but continuity of service for all other benefits. Needful decision to be taken within six days from today."

The present appeal assails the above order. Having heard learned counsel counsel for the parties at some length and having perused the record, we are of the view that the order under appeal does not suffer from any error of law or jurisdiction. The learned Single Judge was in our opinion perfectly justified in holding that since the service regulations provided for the Executive Director (Personnel) to be the Disciplinary Authority of the petitioner, any order of punishment against the petitioner could be passed only by the said authority and not by the Airport Director, no matter the post of Airport Director was comparable to that of the Executive Director (Personnel). It is common ground that the Regulations do not provide for the Airport Director functioning as the Disciplinary Authority of the petitioner who was at the relevant point of time attached to the headquarters. It is also a common ground that for such of the employees as are attached to the headquarters, the Regulations provide for the Executive Director (Personnel) to be the Disciplinary Authority. That being the case the order

passed by the Airport Director was evidently contrary to the Regulations and if we may say so, incompetent. The learned Single Judge was, therefore, right in setting aside the said order and so also the order passed in appeal by the prescribed Appellate Authority.

Learned counsel for the appellant then argued and this Court ought to direct the Executive Director (Personnel) to pass a fresh order on the subject. We see no reason to do so. Whether or not a fresh order should be passed is a matter which is now in the discretion of the employer/competent Disciplinary Authority. All that, we need say is that the Executive Director who is the competent Authority shall have the liberty to pass a fresh order which liberty has already been reserved to him by the order passed by the learned Single Judge. To that we see no reason to add any further direction or observation. In the result this appeal fails and is hereby dismissed, but in the circumstances, without any order as to costs.

T.S. THAKUR, J

SIDDHARTH MRIDUL, J

March 19, 2008
ns