

CASE NO.:
Appeal (civil) 6049-50 of 1999

PETITIONER:
Swadesh Pal Baliyan

RESPONDENT:
Air Force Commanding-in-Chief & Anr.

DATE OF JUDGMENT: 01/11/2004

BENCH:
Y.K. Sabharwal & D.M. Dharmadhikari

JUDGMENT:
J U D G M E N T

Y.K. Sabharwal, J.

The appellant, a corporal in Indian Air Force was removed from service in exercise of powers under Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969 by order dated 30th June, 1998. The writ petition filed by the appellant challenging his removal has been dismissed by a Division Bench of the High Court by the impugned judgment. The appellant is in appeal on grant of leave.

The facts in brief are that in March, 1994 snags were noticed in 14 aircrafts, as a result, the aircrafts could not be used for flying for two days. The appellant was charged for causing damage to the said training aircrafts. The appellant belongs to electric trade. In substance, the allegations, in so far as the appellant is concerned, were that he had damaged the electric system by breaking wires as a result whereof the aircrafts could not be used for flying.

The findings recorded in the court of inquiry were that number of wires were found broken on 25th and 26th March, 1994; the breakages appeared to be fresh and found to be the result of deliberate action on the part of some individual; the appellant had worked on all the 14 aircrafts on 24th and 25th March, 1994 and was held responsible for breaking the aircrafts' wires thereby rendering various aircrafts' systems non-functional. In the opinion of the court of inquiry, the appellant was directly responsible for these acts of sabotage. As a result of the aforesaid enquiry, a notice dated 4th July, 1994 was issued to the appellant to show cause why he may not be dismissed from service. The validity of the said notice was challenged by the appellant in a writ petition. By order dated 28th November, 1994, noticing that the appellant had not been supplied enquiry officer's report before issue of the notice dated 4th July, 1994 and the same was supplied on 13th September, 1994 subsequent to the filing of the writ petition, the notice dated 4th July, 1994 was set aside. Issues were kept open enabling the appellant to file appropriate reply to the enquiry report and directing that on such reply, it would be open to the respondent to pass appropriate order in accordance with law. It appears that on the recommendations of the court of inquiry, a notice dated 24th February, 1995 was issued to the appellant to show cause why he should not be dismissed from service. The appellant was granted 10 days' time to reply to the notice dated 24th February, 1995. By order dated 3rd May, 1995, noticing that the appellant had failed to file reply even after lapse of a considerable time, the appellant was informed that he had been dismissed from service on 1st May, 1995. This resulted in appellant filing before the High Court another writ petition (WP No.4905/95) challenging the dismissal order. The main argument urged before the High Court was that the appellant was entitled to show cause notice at two stages; the first when the enquiry officer submitted his report, the appellant should have been issued a show cause notice to explain why the report of the enquiry officer

should not be accepted and the other on receipt of the explanation, if the disciplinary authority comes to the conclusion that innocence of the employee is inconsistent with the report of the enquiry officer, proposing the nature of penalty. The High Court noticing that admittedly no show cause notice had been issued to the appellant to explain why the enquiry officer's report should not be accepted, held the dismissal order dated 3rd May, 1995 to be illegal, in terms of judgment dated 10th April, 1996. The order of the learned Single Judge was, however, set aside in an intra court appeal and the writ petition remitted for fresh decision. Writ Petition No.4905/95 was finally disposed of by learned Single Judge in terms of the judgment and order dated 28th October, 1996. It was noticed in the judgment that a second enquiry had been held in respect of the same incident to find out whether other persons were also involved in doing damage to the aircrafts wherein appellant was again examined. The contention urged was that if the two enquiry reports are read together, it would be seen that both pertain to same incident pointing out that in first enquiry appellant was held guilty and in the second other persons were found to be involved but were left with a reprimand. The contention urged was that failure to take into account both the reports had caused prejudice to the appellant. While setting aside the dismissal order dated 3rd May, 1995, learned Single Judge permitted the appellant to furnish his explanation to the show cause notice. The respondents were directed to give the appellant an opportunity of being heard and pass a fresh order on consideration of the appellant's representation.

The appellant submitted his explanation dated 30th May, 1998, inter alia, stating that the two reports are diametrically opposed to each other and run counter to the other. A confessional statement had been made by the appellant in response whereof, the stand taken by the appellant in his explanation was that the Presiding Officer had threatened him of dire consequences and warned him that he would not be allowed to meet his family members unless the confessional statement is given and, thus, apprehending danger to his wife and children, blank papers were signed by him against will and coercion on the direction of the Presiding Officer and it is only thereafter he was released from close arrest. The explanation was not accepted and the order of removal from service was passed which the High Court has declined to interfere.

Learned counsel for the appellant contends that the second enquiry report exonerates the appellant, it runs contrary to the first enquiry report and, therefore, the removal of the appellant is unsustainable. The submission is that the High Court without examining these vital aspects has dismissed the writ petition mainly on the ground that the judicial reviewability in such matters is very restricted having regard to the discipline required to be observed in a disciplined force like Air Force. In respect of confessional statement learned counsel reiterated the stand taken by the appellant in his explanation dated 30th May, 1998.

We have heard learned counsel for the parties and perused the material on record. It is not necessary to examine the stand taken in relation to the confessional statement since even in answers given by the appellant during the course of enquiry, he admitted the factum of having caused the damage. The motive behind breaking many wires given by the appellant was that he was fed up with doing extra work and wanted to bring down the serviceability of the aircrafts. It appears from the tenor of the questions and answers that the respondent was not satisfied that the appellant alone was responsible as repeated questions were put to him that it may not be possible for one person to cause such a damage. The appellant, however stuck to his stand that it was so possible. He could show as to how he could do it alone. In view of these admissions, the question whether the confessional statement was made under threat or coercion pales into insignificance. We may, however, note that the confessional statement was retracted substantially on 30th May, 1998 despite the first enquiry report having been admittedly supplied to the appellant on 13th September, 1994. Learned counsel for the appellant though having not placed on record a copy of the writ petition read therefrom few lines to show that certain averments had been made about appellant's having signed some blank documents. In view of the

admissions during enquiry as aforesaid, it is not necessary to examine in depth, the bald and vague allegations in the explanation submitted more than 4= years later reiterating the confession.

There is also no substance, on the facts and circumstances of the case, that the two enquiry reports run counter to each other in so far as the appellant is concerned. The first enquiry report found appellant directly responsible for the acts of sabotage. That report, however, did not find the involvement of any other person despite the stand of the respondent as above noticed that probably it was not possible for one person to cause the damage. The terms of reference of second enquiry show that it was ordered to ascertain the involvement of other persons. The appellant was permitted to participate in the second enquiry in view of the requirements of para 790 (a), (b), (c) and (e) of the regulations of the Indian Air Force. In the second enquiry, the appellant appeared as a witness and admitted that he was the only electric trade man in the morning on the tarmac, other electric trade persons must have gone for battery collection and rectification of other snags. In the second enquiry, the direct evidence in respect of involvement of others was not available but from the circumstances the court of inquiry came to the conclusion that the pattern of snags suggested that they would have intimate knowledge about it. According to the second report, a group of individuals carried out the damage. There was not question of second enquiry finding out the guilt or involvement of the appellant. The indirect involvement of others was found. In so far as Flight Lt. A. Prasad is concerned, his involvement was in respect of not maintaining proper documents and supervising the same. The second report recommended disciplinary/administrative action against four officials and administrative action against three including Flight Lt. A. Prasad. On the facts and circumstances of the case, Flight Ltd. Prasad being member of earlier court of inquiry is of no relevance. It does not appear that any prejudice has been caused to the appellant on that account. His involvement was to the extent of not maintaining proper documents and supervising the same. It is not possible to accept the contentions that the second enquiry report exonerated the appellant. That was not even within the scope of the second enquiry.

The charge against the appellant was of a serious nature having regard to the force in which he was employed. There is no error in the impugned judgment of the High Court which rightly declined to interfere with the order of removal passed against the appellant.

Having regard to the aforesaid, there is no merit in the appeals and they are dismissed accordingly.