

(2004) 12 DEL CK 0076
Delhi High Court
Case No: WPC 5564 of 2003

Capt. P.S. Thapar

APPELLANT

Vs

Delhi Development Authority
and Others

RESPONDENT

Date of Decision: Dec. 3, 2004

Acts Referred:

- Evidence Act, 1872 - Section 6

Citation: (2005) 116 DLT 541 : (2005) 79 DRJ 57 : (2006) 2 SLJ 219

Hon'ble Judges: Pradeep Nandrajog, J

Bench: Single Bench

Advocate: Huzefa Ahmadi, Ejaz Maqbool and Meenakshi Nag, for the Appellant; Mukul Rohtagi, Sr.Adv., Homa Chetri and Ravi Kini, for the Respondent

Judgement

Pradeep Nandrajog, J.

1.By way of the present petition, petitioner prays that mandamus be issued quashing the reports submitted by the enquiry committee on 6.4.2001 and 14.6.2001. Mandamus is also sought for quashing order dated 15.12.2001, by which order the disciplinary authority, considering the report dated 14.6.2001 and agreeing with the findings recorded by the enquiry committee imposed the punishment of "reduction of basic pay to the minimum in the grade without restoration" under the provisions of Air India Employees Service Regulations. Quashing of the order dated 23/29.4.2002 passed by the appellate authority rejecting the appeal filed by the petitioner against the order of the disciplinary authority has also been prayed for. Further order sought to be quashed is order dated 12/20.11.2002 dismissing another appeal filed by the petitioner to the Secretary and Director Corporation Affairs. Quashing of the letter dated 20/26.12.2002 is also prayed for. By said letter petitioner was informed that since petitioner was grounded as a result of disciplinary proceedings pending against

him, he did not have active flying duties for 150 days. Grievance is that petitioner's flying training was delayed due to the disciplinary proceedings and since the enquiry was to be quashed, petitioner's grounding must be held to be invalid and as a result letter dated 20/26.12.2002 be quashed.

2. Mr.Huzefa Ahmedi, learned counsel for the petitioner, during arguments launched a three pronged attack which requires to be noted at the inception for the reason, I would be referring to only such record as relates itself to the challenge laid.

3. Three-fold challenge was :-

(a) Enquiry was conducted in a casual manner resulting in denial of effective opportunity of defense. Purity of record was not maintained at the enquiry.

(b) Enquiry report is based on inadmissible evidence and Therefore not only the enquiry but all consequential orders require to be quashed, and;

(c) Principles of natural justice were violated.

4.Mr.Huzefa Ahmedi contended that singularly and cumulatively, each of the three challenge to the action of the respondents was enough to destroy the enquiry, its report and the orders passed pursuant thereto. It was also indicative of the mala fide attitude adopted by the respondents towards the petitioner contended the counsel.

5.Events go back to August, 2000. Petitioner, along with a group of pilots including Capt.M.S.Sandhu and Capt. H.P.S.Khalon were sent to London for stimulator training. The entire contingent was put up at Hotel Holiday Inn. On 25.8.2000, petitioner was, at the asking of the hotel management of Hotel Holiday Inn shifted to Hotel Jarvis. According to the petitioner it was the result of racial bias, in as much as petitioner had made complaints to the hotel management regarding the attitude of the service personnel. As would be noted from the charge against the petitioner, he was shifted as he had acted in a manner with certain lady employees, which acts amounted to sexual harassment. On return to India, petitioner was addressed a communication in which it was pointed out that it was reported to the management that during petitioner's assignment in London he had shown undue familiarity towards some of the ladies staff at the hotel to the point of causing them annoyance, as a result whereof, the hotel management was constrained to shift petitioner to another hotel. Petitioner was required to submit an Explanation of his conduct, within 3 working days from the date of receipt of the letter.

6.Petitioner responded on 5.9.2000. He denied the allegations. He stated that there were shortcomings in the facilities provided by the hotel such as refrigeration and air conditioning which he had brought to the notice of the Front Desk Manager and Sales Manager, both ladies. He also stated in his letter that he brought to their notice the attitude and behavior of the staff of the hotel towards the guests. He

stated that he was moved to a non air conditioned room. He told the management that Air India should be charged only non air condition rate and this triggered the hotel management to lodge a false complaint and move the petitioner out from the hotel.

7. On 12.9.2000, petitioner was served with a memorandum. As per the allegations in the memorandum, it was stated that petitioner had committed acts subservient of discipline or of good behavior and Therefore actionable under Regulation 61(1) of the Service Regulations. Petitioner was required to submit his Explanation within 7 days. Gist of the charge against the petitioner was that :-

(i) On 24.8.2000 he approached one Ms. Suzanne Abbott, room attendant, working in Hotel Holiday Inn, offering her money to come to his room No.515. Petitioner asked details regarding her personal life and also gave her his visiting card. As a result Ms. Suzanne Abbott and other staff members refused to work anywhere near petitioner's room.

(ii) Petitioner attempted to get friendly with one Ms. Janice Puddephatt of the same hotel. Despite her refusal to entertain such behavior, petitioner continued to make unnecessary phone calls to her at the reception.

(iii) Petitioner tried to get friendly with one Ms. Zoe Bowen, asking her personal questions regarding her private life and harassing her to go out with him. One day, petitioner insisted on escorting her home. On her refusal, petitioner kept following her.

(iv) Petitioner wanted wake up call. He was explained as to how the system worked. Petitioner insisted that Ms. Debbie Hughes should personally go up to the room to awake the petitioner.

8. It was stated in the memorandum that the hotel staff brought all this to the notice of Capt. H.P.S. Khalon who was also staying in the hotel. Sales Manager of the hotel spoke to the petitioner. His attitude persisted and as a result he was evicted from Hotel Holiday Inn and shifted to Hotel Jarvis. It was brought out in the memorandum that the petitioner has caused damage to the image and reputation Air India.

9. Four complaints were made available to the petitioner. Same read as under:-

1. "Complaint from Room Attendant named Suzanne Abbott regarding one of the Hotel's Guest name Capt. Mr. PREET THAPAR, on the 24th August. He came up to her from his Room 515 and asked her into his room also offered her money to come in with him. He also asked about her details where she live so that he can pick her up. She refuses his offer. He then gave her his Business Card. He asked her whether she's by herself or she got a boyfriend. He also asked her if he can take her to town and do shopping or her. She refuses all of this and walk away. As a result of this Suzanne refuses to clean her Room from now on. She does not want to work on this

floor at all where he stays. Other member of staff refuses to go anywhere near his room.""

2. ""GUEST STAYING IN 515 WAS A LITTLE FAMILIAR AND I ASKED IF I WANTED TO JOIN HIM FOR DINNER. I SAID NO, IT WAS NOT COMPANY POLICY. HE ALSO MENTIONED HOW HE LIKED WALKING AND HE WOULD LIKE TO GO FOR A WALK.""

""I SUGGESTED HE GET A TAXI TO TILGATE WHERE HE COULD GO AND WALK AROUND LAKES and WOODS. HE PHONED DOWN OFTEN TELLING US HE WAS GOING OUT, CALLS WHICH WERE NOT NECESSARY ACTION TAKEN AND WHICH MADE ME FEEL UNCOMFORTABLE. SPOKE TO ALISON WHO I UNDERSTAND TOOK ACTION.""

3. ""FRIDAY NIGHT STANDING STARING AT THE DESK ASKING QUESTIONS ABOUT TILGATE. ZOE REPLIED IT WAS NICE. REASON ASKED PERSONAL QUESTIONS ABOUT HER NAME AND BIRTH DAY. THEN HE ASKED ZOE TO GO TO TILGATE WITH HIM ZOE SAID NO - KEPT ON AT HER ABOUT IT. ASKED IF SHE WAS MARRKED - DID NOT MATTER TO HIM. HE WANTED TO TAKE HER ANYWAY ZOE INSISTED NO!! HE SAID HE WAS GOING TO HIS ROOM BUT WOULD CALL HER LATER TO TALK MORE. SATURDAY MORNING 06.15/6.30 DOWN IN RECEPTION. QUESTIONING ZOE AGAIN. - WHEN FINISHING WORK/HOW GETTING HOME. STOOD WATCHING ZOE FROM OUTSIDE FIRE EXITE DOORS AND SET ON SOFA NEAR CAR RENALS STARING AT HER.""

4. ""RANG DOWN TO ARRANGE A WAKE-UP CALL, BUT AFTER EXPLAINING HOW THE SYSTEM WORKED WAS QUITE INSISTANT THAT I PERSONALLY GO UP TO HIS ROOM AND WAKE HIM.""

10. Petitioner, vide letter dated 16.9.2000 denied the allegations. Pertaining to the 4 complaints, petitioner replied as under:

""As far as the specific allegations are concerned, I have the following to state:-

On the evening of 24th August 2000, while going out for shopping to exchange some folders, I came across Ms. Suzanne in the corridor. Since it was time for the evening service, I told her not to disturb the books and papers lying around in my room while servicing it. I further asked her as to at what time the shops usually close. She told me that they close by about 6-6.30 pm. I gave her my business card when she asked what my name and room number was. It was an encounter of just about less than a minute and after that I left for shopping. When I returned late at night, my room was serviced as required. The further allegations made in the letter are false, unthinkable and distressing. I had spoken to Ms. Janice, the telephone operator, only once on phone while holding to be connected to the room service which was not responding either directly or through the operator. When she asked me if i had visited any places in Gatwick, I told he that there was no time to go anywhere since the training was tough and continuous. The only time that I get, I go for walks. She then told me that there was a beautiful park names Tilgate Park with

a lake and jogging track that was worth seeing. That was the only time that I spoke to her.

One morning when I was going for my walk, it was drizzling slightly. I asked Ms.Zoe, who was on duty at the reception, if I could borrow an umbrella. Since the Hotel did not have one, after a while, when it stopped drizzling, I went out for my walk. That was the only time I saw or spoke to her. It is reiterated that I never asked any personal questions nor did I try to cultivate any friendship with anyone at any time. All conversation was keeping in mind the dignity of staff especially the ladies. As far as booking of wake up calls was concerned, most of the time I kept my TV off. Therefore, I booked my alarms on phone only because the TV was either off or too annoying because it kept coming on for odd messages and was too glaring and loud when i came on. The request for the wake up calls does not require the operator to go up to the rooms. It was given on phones only mostly automatically. The question of asking the operator to come to my room to wake me up does not arise. It is surprising how all these episodes are made up with some ulterior motive. I am well aware that the hotel staff is not allowed to mix with the guests. Therefore, to say that I was trying to solicit the favor of the staff, or to offer them money for favors is totally baseless and distressing. You're a/m letter is the first e(sic)er mention of these allegations. I am surprised why such serious allegations were not brought to my notice earlier to be answered?

At no stage either the sales manager or Capt.H.P.S.Kahlon, the Addl.C.M., told me of any irregularities as mentioned in your letter. All this has been cooked up by the hotel staff after what I have mentioned in my previous letter and must be substantiated with unquestionable evidence by who so ever made these allegations failing which, I request you to take appropriate legal steps on my behalf to compensate me for the loss of my reputation.""

11. By order dated 21/29.9.2000 a three member enquiry committee was constituted.

12.Petitioner wanted to know whether the enquiry committed was constituted with or without considering his reply. By letter dated 30.9.2000 it was informed that petitioner"s reply was not found satisfactory and Therefore it was decided to hold an enquiry.

13.Since petitioner had not completed his profile training on the flying 747 stimulator, pointing out that a junior Capt. Mr.K.R.Singh had been sent for flight training, petitioner requested for being sent for practice training vide letter dated 11.10.2000. It was refused by the management. Refusal was conveyed under cover of letter dated 20/24.10.2000. Petitioner was communicated:-

You are hereby informed that pending completion of the enquiry referred to in the above office order, and disposal of the same by the appropriate disciplinary authority, your training is being held in abeyance. Your training will recommence as

soon as the disciplinary proceedings referred to are disposed off.""

14. First date fixed by the Enquiry Committee for conduct of proceedings was 24.10.2000. List of witnesses to be examined by the management, to prove the charge-sheet was supplied to the petitioner. Witnesses were :-

(a) Mr.P.K.Sadanandan AGM-Administration Operation Department.

(b) Capt.H.P.S.Kahlon, Junior General Manager (Air Safety)

(c) Capt.M.S.Sandhu.

15.Proceedings of the enquiry held on 24.10.2000 shows that Mr.P.K.Sadanandan was examined as the first witness of the management. He produced documents mentioned in the charge-sheet which were taken on record and marked as Annexures 1A, B and Annexures 2A to 2F.

16.Order further records that the petitioner objected to the documents being taken on record as they reflected the complaints of the 3 ladies referred to in the complaint as also some statement/complaint by one Ms.Alison Turner. Petitioner objected as to how, without examining the makers of these complaints/statement, they could be taken on record as exhibited documents. Proceedings further reveal that Capt.K.R.Singh brought as a defense Assistant by the petitioner was held to be disqualified but petitioner stated that proceedings may carry on, reserving right of the petitioner to call an employee to assist him at an appropriate time. Record of the proceedings held on 24.10.2000 shows that the petitioner cross-examined Shri P.K.Sadanandan. Purport of the cross-examination is directed towards extracting admissions from Shri P.K. Sadanandan that he had no personal knowledge; he had received the complaints which he had exhibited at the enquiry.

17. Petitioner sought shifting of the enquiry from Mumbai to Delhi. It was refused vide letter dated 2.11.2000.

18.On 3.11.2000 convenor of the enquiry committee, Capt.R.D.Bunsha, addressed a communication to the petitioner informing him that since at the proceedings held on 24.10.2000, petitioner had objected that the list of witnesses did not include the persons who had made the accusations against the petitioner, it was decided that enquiry would be held in London on 13th and 14th November, 2000 on which dates these individuals would be examined. Petitioner was informed that his itinerary and hotel arrangements would be intimated to him.

19. Further proceedings were conducted in London on 14.11.2000. Only witness examined was Ms.Alison Turner.

20.It may be noted that as per the chargesheet served upon the petitioner it was not a charge against him that he had indulged in any act Constituting sexual harassment qua her. Allegations were regarding alleged acts directed towards Ms.Suzanne Abbott, Ms.Janica Puddephatt, Ms.Zoe Bowen and Ms.Debble Hughes.

21. Ms. Alison Turner, in her deposition proved the fax/letters sent by her to Air India. She, in addition produced a written complaint from Ms. Suzanne Abbott and identified her signatures thereon. She deposed that Ms. Zoe Bowen had complained to her about petitioner's conduct which was brought by her to the notice of Capt. Singh who was the Capt. in charge at the Hotel. She deposed that she had herself spoken to the petitioner about the incident with the switch board operator (Ms. Debbie Hughes).

22. Written complaint of Ms. Suzanne Abbott produced by Ms. Alison Turner states as under :-

{To my knowledge this is statement from S. Abbott and as far as I am aware is her signature} Statement from Suzanne Abbott (Room Attendant) regarding Mr. Thapar on 23.8.00. Capt. Thapar came up to me on the 5th floor corridor from his Room 515 and ask me what I was doing. I told him that I am working. He told me what time do I finish work as he is going to town. I told him that I will finish work until 8 P.M. He then said what do I do after work. I told him that I am going home. He said where do you live and I said that I live in Crawley. He demanded to know my address, and if I live by myself, I told him that I live with my boyfriend. He gave me his business card and introduced himself properly and invited me into his bedroom when I finished work. I said to him sorry but I can't. He then said to me I'll see you when I come back from town and he told me that he is in Room 515. I said no again to him and quickly walled off. He told me if I wanted to go shopping with him and if I needed money to come to his room, I said no and escaped.""

23. (Note in bracket is the notation by Ms. Alison Turner identifying signature of Ms. Suzanne Abbott.)

24. On 17.11.2000 petitioner wrote a letter making a grievance qua the record of proceedings held on 14.11.2000. Inter alia, petitioner pointed out that certain part of testimony of Ms. Alison Turner was found to be missing in the statement supplied to him. Petitioner also pointed out certain inaccuracies in the testimony, transcript whereof was sent to him.

25. On 29.11.2000, petitioner caused a legal notice to be served on Air India requiring proceedings to be held in Delhi. It was stated that it was not possible for the petitioner to take a defense assistant to London. Petitioner filed a writ petition being WP(C) No. 2352/2000 in the Bombay High Court. It was disposed of vide order dated 2.12.2000 on a concession made by Air India that it would make arrangement for travel and stay of the defense assistant.

26. The next sitting was held at London on 5.12.2000. Petitioner attended the hearing without a defense assistant. He enquired about the status of objections raised by him vide his letter dated 17.11.2000. Order was passed that these objections would be dealt with in due course. Petitioner thereafter proceeded to cross-examine Ms. Alison Turner.

27. Petitioner questioned Ms.Alison Turner on the issue of signatures of Ms.Suzanne Abbott on her alleged statement, noted in para 22 above. Question No.8 and the answer thereto are as under:-

Q.8. Is it correct that the statement starts as follows:- Statement from Suzanne Abbott (Rm.Att.) regarding Mr.Thapar on 23/8/2000? The signatures of ""Suzzane Abbott"" referred to by you is part of this sentence.


Ans. Yes, the statement is correct. It is her signature to the best of my knowledge.

28.On the statement in the purported handwriting of Ms.Zoe Bowen, when asked to authenticate and certify signatures of Mr.Zoe Bowen, witness answered that she was not there at the time of signing or writing of the statements but stated that to the best of her knowledge these were the signatures of Ms.Zoe Bowen. On being suggested that the statement was not in the handwriting of Ms.Zoe Bowen, witness replied that it was incorrect and offered to submit proof of authenticity. Witness, in cross-examination stated that Ms.Suzanne Abbott reported the incident to her superior in the house keeping department since she was not available on 23/8/00. She stated that Ms.Lucy Tupor was the superior person. She stated that Ms. Lucy Tupor handed over to her the statement of Suzanne Abbott and informed her of the incident.

29. On receipt of the transcript of the cross-examination of Ms.Alison Turner recorded on 5.12.2000, vide letter dated 12.12.2000 petitioner once again raised a grievance to certain omissions in the statement received by him.

30.Management thereafter examined Capt.H.P.S. Kahlon and Capt. M.S.Sandhu as witness of the management. Both witnesses did not support the case of the prosecution. They deposed that the hotel management had acted summarily. They stated that the attitude of the hotel staff towards Air India crew was indifferent. Capt.M.S.Sandhu stated that nature of complaints, if any, was never made known to him. He stated that Duty Manager General told him that house keeping staff had some complaints against the petitioner. He deposed that there were deficiencies in the services provided by the hotel. He stated that possibility of the petitioner being targeted as he had made complaints could not be ruled out.

31. Petitioner examined Capt.K.R.Singh as a witness who stated that the attitude of the staff was racist.

32.The Enquiry Committee examined the petitioner on 9.2.2001. Recording of evidence was concluded. Petitioner submitted his final statement, in writing on 14.2.2001. In the final statement, petitioner pointed out that testimony of Ms.Alison Turner was hearsay. She could not prove the alleged complaints. Her testimony vis--vis the complaint of Ms.Suzanne Abbott was shaky. Petitioner pointed out that the prosecution witnesses, other than Ms.Alison Turner had not supported the case of the prosecution. Deposition of other crew clearly showed that there was

atmosphere of racial discrimination in the hotel.

33. On 15.2.2001, petitioner requested that the enquiry was closed and he should be permitted to continue with the flying training. On 8/9.3.2001, petitioner was informed in response to his letter that flying training would commence, depending upon final report received from the enquiry committee.

34. Petitioner wrote letters praying that he be permitted to resume flying training or the enquiry committee be requested to submit the report at the earliest as due to non-furnishing of the report, petitioner was grounded.

35. Enquiry report was submitted on 6.4.2001. It was not made available to the petitioner. Unexpected events happened. Capt.H.P.S.Kahlon and Capt.M.S.Sandhu who were examined as witnesses of the management and had not supported the case of the management, wrote letters on 14.5.2001 to the management. In the letters they stated that they would like to retract from their statement. They stated that contrary to what they had deposed before the enquiry committee, they were fully aware of what had transpired at the hotel. They wrote that the petitioner had indulged in activities which were detrimental to the image and reputation of Air India.

36. Management reopened the enquiry and directed the enquiry committee to re-examine Capt.H.P.S.Kahlon and Capt.M.S.Sandhu.

37. On 1.6.2001, petitioner demanded that enquiry report dated 6.4.2001 be furnished to him. He wrote that Capt.H.P.S.Kahlon and Capt.M.S.Sandhu were pressurized to change their statement.

38. Without supplying the petitioner a copy of the report submitted, enquiry committee proceeded to re-examine Capt.M.S.Sandhu and Capt.H.P.S.Kahlon.

39. On 8.6.2001, supplementary statement of Capt.P.S.Thapar and Capt. H.P.S.Kahlon was recorded. In their examination in chief, both indicted the petitioner. They stated that they were aware of the petitioner's activities when he was staying at Hotel Holiday Inn and were aware of the complaints made against him.

40. It may be noted that by the time supplementary Statement of Capt.P.S.Thapar and Capt.H.P.S.Kahlon was recorded on 8.6.2001, both had retired and were on contract employment with Air India. Petitioner, put question in cross examination regarding status of their contract and the two being in such position that management could manipulate them. Capt.P.S.Thapar was also sought to be cross examined on the point that he was involved in a flying accident and due to this his contract was in jeopardy. The enquiry committee disallowed these questions and same were not answered. The questions and answers, as also what was ordered by the enquiry committee is as under:-

A. Cross-examination of Capt.P.S.Thapar.

Q. Capt.Sandhu, you are a retired Captain from Air India and were flying on contract basis. What is the status of your contract now?

A. I refuse to answer since the question is irrelevant to this matter under inquiry.

Q. Are you presently given flight duties?

A. My answer remains the same. There is no relevance as far as the inquiry is concerned.

Q. Is it true that presently you are not flying and your contract to fly is either current, threatened to be cancelled or is in jeopardy?

A. My answer remains the same.

Q. Your initial statement was made on 18th January 2001 and your letter to Director-Operations retracting your initial statement was written on 14th May 2001, almost 5 months later. This also happens to be almost six weeks after the submission of the Enquiry Report dated 6th April, 2001. Can you please explain this long delay?

A. As far as submission of enquiry report is concerned, I have no knowledge. However my earlier statement of 18th January 2001 was made with the sole intention of saving and protecting your (Capt.Thapar"s) professional interests and to get you out of the mess which was created during your stay at the hotel Holiday Inn. Lately I realized that whatever I had stated earlier was against my conscience and was playing continuously on my mind. Thus I decided to state the true facts.

Q. Do you know that giving a false statement before an enquiry committee is a criminal offence and an offence under Air India Service Regulations?

a. The Convenor intervened at this stage and disallowed the question on the grounds that this was not the matter under investigation and this was not the matter the enquiry was about and it was not necessary to enquire into Capt.Sandhu"s knowledge of rules and regulations.

Q. Capt.Sandhu, is it true that between 18th January 2001 and 15th May 2001 you had a flying accident of tail scraping and also on medical grounds your contract to fly is in jeopardy?

A. The Convenor again disallowed the question on the grounds of irrelevance.

Q. Capt. Sandhu, did Capt. H.P.S. Kahlon and you consult, discuss and plan before your wrote the letter dated 14th May, 2001.

A. This is not relevant. However, no such thing on this nature was discussed and done.

Q.Capt.Sandhu, presently you are not flying and your contract is not valid. The motivation behind your statement dated May 14, 2001, is your keenness to get back

the contract and monetary benefit. Hence you are making this false statement. Is this correct?

A. The Convenor disallowed the question because it was irrelevant and repetitive.

Q. As a contract pilot you earn money only when you are flying. To give or not to give flights to you is solely at the discretion of the Management. Is this correct?

The Convenor disallowed the question for the same reason as for the previous question.

B. Cross Examination of Capt.H.P.S.Kahlon.

Q. Capt.Kahlon, you are a retired pilot flying on contract basis.

A. Yes.

Q. Is it true that as a contracted pilot, your line earnings are based on the flight duties that you perform and that there is no protection of shortfall payment?

The Convenor intervened to state that the question had no relevance to the matter under investigation and disallowed the question.

Q.Capt.Kahlon, you made a statement nearly five months ago and now you are making a totally contradictory statement which is also about two months after the Enquiry Committee submitted its report. Is it correct that you are making this statement under duress?

A. In the statement which I made earlier the sole aim was to protect you (Capt.P.S.Thapar) and Therefore I decided now to reveal the facts.

Q. Capt.Kahlon, would it be correct to state that you are making this contradictory statement now to protect and safeguard your contract, contract and financial of both your close friend Capt.Sandhu and you.

A. Irrelevant.

Q. Capt.Kahlot, did Capt.Sandhu and you consult, discuss and plan to make the statement dated 14th May 2001?

A. Capt.Sandhu had given his statement earlier and I had made the statement later on after giving a thorough thought about the matter.

Q. Did you consult each other?

A. No.

Q. When did you first know that there was a problem between the housekeeping staff and me?

A. The day you were being shifted from Holiday Inn to Jarvis.

Q.During your earlier statement, you were serving pilot with protection of your job and earning. Now you are a retired pilot on contract without shortfall protection for earnings and with an exit clause of termination of contract with one month's notice?

The convenor disallowed the question on the grounds that it was irrelevant.

Q. Were you present when any of the alleged events concerning me and the housekeeping staff took place?

A. No.

Q. Did you at any time acquire from the four alleged complainants about the truth of any of the allegations against me?

A. No.""

41. Enquiry committee submitted supplementary report dated 14.6.2001.

42. In the report dated 6.4.2001, the enquiry committee recorded as under :-

""A scrutiny of the evidence of Capt. Sandhu and Capt.Kahlon shows that a substantial part of the evidence is devoted to absolving Capt.Thapar of any wrong doing and to blaming the hotel for a summary and vindictive action against him. Either they knew about the complaints against Capt.Thapar or they did not. If they did, then they were making false statements. If they did not, then their evidence is not material.

Under the circumstances, the Enquiry Committee is inclined to disregard the statements of Capt. Kahlon and Capt. Sandhu before the Committee in their entirety.

A lot of emphasis has been laid by Capt. Thapar on the written complaint of Ms.Suzanne Abbott, deeming it a fake document and hence not to be relied upon. The Committee would like to make the observation that the genuineness of the document does not make its contents untrue. Capt.Thapar while questioning the legality of the written complaint in his letter dated January 19, 2001, (Annexure A14 Pages 64 to 69) has not contradicted the complaint per se. There is no reason to doubt the fact that Ms.Abbut made a complaint about Capt.Thapar to her supervisor, Ms.Lucy Tupour.""

43. In the report dated 14.6.2001, the enquiry committee recorded as under:-

""During his cross examination of the witnesses, Capt.Thapar, by asking leading questions, attempted to make out a case based on coercion of the witnesses by the Management of Air India into retracting their earlier statements before the Enquiry Committee by withholding of their contracts. This could not be sustained by any material evidence and was also denied by the witness.

The Committee would like to point out the fact that one of the witnesses already had a two year contract and was Therefore not vulnerable to coercion. It may be recalled that in its main report, the Enquiry Committee had set forth reasons why the testimony of the two witnesses, Capt.M.S.Sandhu and Capt. H.P.S. Kahlon, had to be disregarded. The relevant portion of the report is reproduced hereunder :-

""A scrutiny of the evidence of Capt.Sandhu and Capt.Kahlon shows that a substantial part of the evidence is devoted to absolving Capt.Thapar of any wrong doing and to blaming the hotel or a summary and vindictive action against him. Either they knew about the complaints against Capt.Thapar or they did not. If they did, then they were making false statements. If they did not, then their evidence is not material.""

The Committee feels that their assessment was correct and that the witnesses knew more than they had admitted earlier to the Committee. Their motives for making incorrect statements, viz. to save Capt.Thapar from trouble, had been suspected by the Committee but could not be established at that time.

In his supplementary final statement dated June 12, 2001, Capt.Thapar has further attempted to strengthen his case of coercion of Capt. Sandhu by adding the theory of a fresh conspiracy between Capt.Sandhu and Capt. Kahlon to prove the case against him. While it is evident from the almost identical nature of the letters dated May 14, 2001, written by Capt.Sandhu and Capt.Kahlon, and the similarity of their statements before the Enquiry Committee, that they have discussed and consulted each other on the matter, it is not justifiable to raise such consultation to the level of a conspiracy.

Attention is drawn to para 2 of the Capt.Thapar's additional final statement dated June 12,2001, where he has stated that between the original statements of the witnesses and May 2001, Capt.Sandhu was involved in an incident which entailed taking him off flight duties. The Committee wishes to point out that the incident occurred on November 12,2000, which was before Capt. Sandhu's original statement of January 2001. Capt.Thapar's allegation that some of his questions were not recorded by the Committee is incorrect. His questions were recorded, but disallowed either because they were leading irrelevant or assumed facts not brought out during the enquiry.

After considering all the evidence, the Committee feels that their previous conclusion; viz. that the charges against Capt. Thapar are proved, has been further strengthened by the fresh statements of Capt. M.S.Sandhu and Capt. H.P.S.Kahlon. No material evidence has been produced by Capt. Thapar to substantiate his case of coercion of Capt. Sandhu and Capt. Kahlon by the Management or to prove that the statements of the witnesses are false.""

44. The disciplinary authority, considered the 2 reports and vide order dated 27/30.6.2001 inflicted the punishment of : "Reduction of basic pay to the minimum of

the present grade with cumulative effect".

45. On 18.7.2001, petitioner was permitted to recommence his command training on B 747-200/300 aircraft. In other words, grounding order was revoked.

46. Petitioner was inflicted the penalty without following the procedure prescribed under the service rules, in that, petitioner was not called upon to furnish his comments on the report of the enquiry. In his appeal against the penalty order, petitioner raised said ground. Vide order dated 28.9.2001, the appellate authority set aside the penalty order on limited ground that petitioner was not given an opportunity to represent against the reports. The disciplinary authority rectified said defect. Petitioner was given an opportunity to make his submissions against the report of the enquiry committee. The disciplinary authority reconsidered the matter in light of petitioner's submissions. Vide order dated 15/19.12.2001, it rejected the submissions made by the petitioner and ordered:

""Ends of justice will be met Capt. Thapar is awarded the punishment of reduction of basic pay to the minimum in the grade without restoration.""

47 Further appeals, failed. Order passed by the disciplinary authority was maintained.

48. During arguments, Sh. Mukul Rohtagi, learned senior counsel appearing for Air India, frankly conceded that questions put to Capt. P.S. Thapar and Capt. H.P.S. Kahlon when their supplementary statement was recorded on 8.6.2001 were relevant and being disallowed, testimony of the 2 may be ignored. Shri Mukul Rohtagi, limited his submissions on the testimony of Ms. Alison Turner.

49. In view of limited defense of Air India taken during arguments, all other issues raised by the petitioner during arguments became inconsequential. Whether deposition of management witnesses recorded in India was a correct or incorrect transcript becomes a non issue as I am ignoring the testimony of all witnesses except Ms. Alison Turner. Denial of defense assistant becomes irrelevant, in this context, since admittedly petitioner was allowed benefit of defense assistant at expense of Air India when enquiry was conducted at London. It may be noted that petitioner chose not to take one.

50. Fulcrum of the arguments of Mr. Huzefa Ahmadi, learned counsel for the petitioner was that enquiry was shifted to London so that management could examine the complainants. For reason best known to the management, the complainants were not examined. Their statements and complaints could not be used against the petitioner. Counsel relied upon [Sur Enamel and Stamping Works \(P\) Ltd. Vs. Their Workmen](#) . Counsel further submitted that Ms. Alison Turner was admittedly not an eye witness. It was impermissible to convict the petitioner on the basis of sole evidence which was hearsay evidence. [Central Bank of India Ltd. Vs. Prakash Chand Jain](#), were relied upon. Counsel further argued that as held in [Sukhar](#)

[Vs. State of Uttar Pradesh](#), registered is a necessary ingredient for relying on hearsay evidence.

51. Per contra, Mr. Mukul Rohtagi, learned senior counsel for Air India, relying on [State of Haryana and Another Vs. Rattan Singh](#), urged that in a domestic enquiry, hearsay evidence was admissible. Relying upon [K.L. Shinde Vs. State of Mysore](#), counsel urged that strict rules of evidence do not apply to domestic enquiry.

52. The foremost objection to treat hearsay evidence as admissible evidence is that its veracity cannot be tested by subjecting the maker of the statement to cross-examination. However, law does not shut out said evidence. For example, in cases of dying declarations. Section 6 of the Evidence Act also admits as admissible evidence, subject to registered this kind of evidence.

53. At a domestic enquiry, position is a little wider qua admissibility of hearsay evidence. In Rattan Singh's case (supra), it was held :

""4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halbsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept.""

54. Thus, (a) all material which is logically probative for a prudent mind is good evidence. (b) Hearsay evidence is good evidence provided it had reasonable nexus and credibility. (c) Hearsay evidence subject to it qualifying (a) and (b) would be, by itself sufficient to sustain a finding at a domestic enquiry. (d) Underlying principle was whether the evidence was such that on fair commonsense, worldly wisdom

and as man of understanding would understand, it was acceptable

55. Judgment relied upon by learned counsel for the petitioner in *Sur Enamel and Stamping Works Ltd.* (supra) is not applicable inasmuch as in said case no evidence was lead by the management. The two workmen, Manik and Dirinchi were examined. They were confronted with the reports of their Supervisor and other persons. These reports were obtained at the back of the two workmen. Inquiry Officer recorded that the workmen were unable to explain as to why these persons would be making the reports against them falsely. Upholding the order of the Industrial Tribunal which had quashed the enquiry report, Hon"ble Supreme Court held that statements recorded previously could not be used in the manner they were used. Observation of the Hon"ble Supreme Court that unless makers of this statements were not available for cross-examination, reports had no value, has to be understood in the facts of the case. It was not a case where issue of hearsay evidence was raised, much less was in issue.

56. Similarly, decision in *Prakash Chand Jain's* case (supra) is also not applicable for the reason that the Supreme Court noted that one Nand Kishore was examined as a witness by the management. In his deposition, management did not prove an alleged previous statement made by him to one Vazirdar. Nand Kishore's previous statement allegedly made to Vazirdar was sought to be established through the testimony of Vazirdar. It was in this context that the Hon"ble Supreme Court observed that the previous statement allegedly made by Nand Kishore could not be admitted in evidence.

57. Decision in *Mukul Rani Varshnei's* case again is not applicable as it related to a regular civil suit.

58. As observed in *Rattan Singh's* case, law that is applicable at a domestic enquiry is well settled, but the facts and circumstances of a case may differ when the application of law is called for.

59. Hearsay is used in many senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. A distinction must be drawn while dealing with issue of hearsay. Whether "A" said something to "B" is a matter of fact which "B" can depose to, namely, that "A" said something to him. This is not hearsay. The facts and information stated by "A" to "B" as told by "B" would be hearsay.

60. Submission of counsel for the petitioner that at a domestic enquiry, it is impermissible to sustain a charge only on the basis of hearsay evidence is accordingly rejected.

61. Learned counsel for the respondent urged that adequacy or inadequacy of evidence cannot be gone into in these proceedings. Counsel urged that this Court cannot re-appreciate the evidence.

62. It is true that this Court is not to re-appreciate the evidence nor can this Court go into the sufficiency or insufficiency of evidence, but the issue whether at all, evidence on record, treated as correct, establishes the charge can certainly be gone into. A finding based on no evidence, is no finding in the eyes of law. Further, was the enquiry fair to the petitioner can be gone into.

63. Decision of the Supreme Court in Rattan Singh's case would reveal that hearsay evidence was held to be admissible for the reason, makers of the statement, (the passengers), that Rattan Singh had charged them fare but had not issued the tickets, were not readily available. It is further to be noted that the rule of registered, though not stated, was kept in mind by their Lordships while dealing with hearsay evidence. Their Lordships noted the evidence of Chaman Lal, Inspector of the Flying Squad, was to the effect that when the squad stopped the bus, 4 passengers were found without tickets and they claimed that they had paid the fare. It is relevant to note that evidence was contemporaneous of the acts.

64. In the decision [Gentela Vijayavardhan Rao and another Vs. State of Andhra Pradesh](#), their Lordships of the Hon^{ble} Supreme Court observed :-

""15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of registered recognised in English Law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" that it becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible u/s 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however, slight it may be, which was sufficient enough for fabrication then the statement is not part of registered.""

65. Deposition of Ms. Alison Turner would reveal that she deposed that Ms. Zoe Bowent and Supervisor of Ms. Suzanne Abbut told her of the misdeeds of the petitioner. She deposed that she spoke to Captain Thapar on the issue. She sought to prove the complaints by stating that they were in the handwriting of the maker.

66. Her evidence pertaining to complaint made by Ms. Suzanne Abbut would reveal that she deposed to its authenticity by identifying the signatures of Ms. Suzanne Abbut at a place where the name of Suzanne Abbut was written. Reference to para 22 above would show the absurdity in the testimony of Ms. Alison Turner. No reasonable person would sign in the middle of a sentence.

67. Issue of hearsay evidence has to be determined on case to case basis. defense of the petitioner was that there was a racial bias. Petitioner professes the Sikh faith. In my opinion, the complainants were liable to be subjected to cross-examination, as

defense of the petitioner was that the complaints were motivated.

68,Air India shifted the enquiry to London so that the complainants could be examined. For reasons best known, Air India did not examine the complainants. It is not the case of Air India that the complainants had ceased to be in the employment of the hotel. It is not the case of Air India that the complainants were not available.

69. Admissibility of hearsay evidence cannot be an escape route not to bring on record primary evidence. It cannot be a softer route made available to the management. Of course, where the maker of the original complaint is not available or cannot be produced in evidence, hearsay evidence would be good evidence.

70.In the facts and circumstances of the case and specifically the defense taken, coupled with the fact that the complainants were available for examination, it has to be held that petitioner could not be convicted on the basis of hearsay evidence alone. It has to be held that petitioner was denied a fair defense.

71.Grievance of the petitioner to his grounding has to be rejected for the reason that the charges, if proved, were serious. It is permissible for an employer not to avail the services of an employee pending enquiry. I do not find any illegality committed by the management to ground the petitioner pending enquiry.

72.Writ petition is disposed of quashing the reports of the Inquiry Committee dated 6.4.2001 and 14.6.2001. Order dated 15.12.2001 imposing the punishment on the petitioner is quashed. Orders dated 12/20.11.2002 and 22/26.12.2002 dismissing the appeals are quashed. Petitioner would be entitled to consequential benefit of fixation of his salary and other allowances as they existed prior to passing of the impugned orders which have been quashed.

73. No costs.