**Reserved**

**AFR**

**Court No. - 19**

**Case :-** SERVICE BENCH No. - 2562 of 2016

**Petitioner :-** Wing Commander Rajesh Kumar Nagar
**Respondent :-** State Of U.P. Thru Prin.Secy.Civil Aviation, Lko.
**Counsel for Petitioner :-** Dineysh Agrawaal, Anupriya Agrawal, Hari Mohan Mathur, Rajani B Bajpai,
**Counsel for Respondent :-** C.S.C., Upendra Nath Mishra

**AND**

**Case :-** SERVICE BENCH No. - 7624 of 2017

**Petitioner :-** Wing Commander Rajesh Kumar Nagar
**Respondent :-** State Of U.P. Thru.Prin.Secy. Civil Aviation Lko.
**Counsel for Petitioner :-** Hari Mohan Mathur (H.M.M
**Counsel for Respondent :-** C.S.C

**Hon'ble Chandra Dhari Singh,J.**

1. Since both the petitions involve common questions of law and fact and co-relate to same person, therefore, both were connected with each other vide order dated 12.04.2017 rendered in Writ Petition No.7624 (SB) of 2017, hence both have been heard together and are being decided by this common order.

2. The writ petition No.2562 (SB) of 2016 has been filed with the following main prayer(s) :

   (a) Issue a writ, order, or direction in the nature of certiorari to quash the order dated 05.02.2016 passed by the respondent as contained in Annexure 10 to the writ petition.

   (b) issue a writ order or direction in the nature of PROHIBITION commanding the respondent from passing any order of Major Penalty under second Part of Rule 3 of the U.P. Government Servant (Discipline and Appeal) Rules 1999 and issue a writ order or direction in the nature of certiorari to quash the

charge-sheets dated 31.03.2014 and 16.05.2014 as contained in Annexure 1 and 2 to the writ petition along with any adverse order which may be intended to be passed by the respondent.

(c) issue a writ order or direction in the nature of mandamus commanding the respondent not to impose any penalty whatsoever in the light of the averments made in the writ petition.

(d) issue a writ order or direction in the nature of mandamus commanding the respondent to provide full salary, allowances and other emoluments with retrospective effect for the suspension period w.e.f. 04.08.2014 to 13.01.2016 with all consequential benefits and provide full salary for the subsequent period.

Subsequently, the writ petition no. 7624 (SB) of 2017 has been filed with the following main prayers :

i. issue a writ, order or direction in the nature of mandamus declaring the office memorandum dated 24.04.2014 issued by the State of U.P. as firstly ultra-vires to Rule 3(1) and 3 (2) of the 'Aircraft (Investigation of Accidents and Incidents) Rule 2012 secondly, ultra-vires to the U.P. Government Servant (Discipline and Appeal) Rules, 1999 and thirdly ultra vires to the Constitution of India.

ii. issue a writ, order or direction in the nature of mandamus commanding the respondent to quash the impugned order dated 25.04.2016 contained at Annexure 1 of the instant writ petition and honourably reinstate the petitioner.

iii. issue a writ, order or direction in the nature of mandamus commanding the respondent to provide full salary, allowances and other emoluments with all consequential benefits i.e. seniority and safeguard of promotional avenues etc.

iv. to award an exemplary cost of five crore rupees on the respondent State of U.P. on account of inflicting

mental pain, agony, humiliation, loss of honour, pride, opportunity to the petitioner besides also causing shrinkage of his piloting skill and denting his future prospects of employment in the aviation industry by a farce and misconceived inquiry instituted against him by the respondent.

3. Brief facts of the case are that the petitioner joined the Air Force through N.D.A. as Pilot in Transport Stream. On 14.01.2008, the petitioner was sent on to fly Aircrafts of the State of U.P. on deputation for a period of three years. which was extended for one year more. Later, after premature retirement from Indian Force, the petitioner was given the post of Pilot (Fixed Wing) on contract basis w.e.f. 01.08.2011 and subsequently, he was appointed on the same post on regular basis w.e.f. 22.12.2011.

4. The backdrop of filing the writ petition No.2562 of 2016 (SB) is that on 22.02.2008, the State Plane King Air C-90A V.T.-UPZ being flown by the petitioner met with an accident at Airstrip of Air Force Station Allahabad. After the investigation the DGCA New Delhi permitted the resumption of flight duties after imparting corrective/additional training.

5. On 31.03.2014, the respondents issued a charge-sheet against the petitioner for the incident dated 22.02.2008. The petitioner challenged the said charge-sheet by filing the W.P. No. 2562 (S/B) of 2016 (supra). After the inquiry proceedings, the petitioner has been terminated from the services vide order dated 05.02.2016 which has been challenged in the aforesaid W.P. No. 2562 (S/B) of 2016 (supra) by way of amendment.

6. The backdrop of filing the writ petition No.7624 (SB) of 2017 is that on 22.09.2012 the petitioner along with co-pilot Sri G.P. Singh were tasked to fly Premier 1A aircraft to Indira Gandhi International Airport Delhi from Lucknow. The aircraft met with an accident on Runway 27 at Indira Gandhi International Airport Delhi. At the time of the said accident, it is admitted fact that the said Aircraft was operated by the petitioner as Pilot in command. A technical investigation/enquiry of the said accident was conducted by the Aircraft Accident Investigation Bureau (for short 'A.A.I.B.'), Ministry of Civil Aviation, New Delhi and after the approval of the Central Government, the said investigation of the enquiry report dated 13.11.2013 was made available to the State Government by 'A.A.I.B.' and on the basis thereof, the D.G.C.A. New Delhi vide letter dated 08.01.2014 directed the State of U.P. to permit the flying duties to the petitioner after refresher/corrective training to the petitioner and allow normal flight duties to the petitioner.

7. The respondents have instituted the enquiry of both the incidents/accidents against the petitioner and they are running concurrently.

8. The respondent - State Government communicated the petitioner an office memorandum dated 24.04.2014 issued by Civil Aviation Department regarding institution of departmental enquiry under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules 1999 which was received by the petitioner on 29.04.2014. On 16.05.2014, the Inquiry Officer served a charge-sheet on the petitioner . The petitioner sent a preliminary objection to the tenability

and viability of the charge-sheet dated 16.05.2014 to the inquiry officer.

9. The petitioner received a letter dated 11.07.2014 regarding the change of the Inquiry Officer and one Sri Manoj Kumar Singh was appointed as Inquiry Officer in place of Sri Rahul Bhatnagar. On 04.08.2014, the petitioner was suspended. On 03.11.2014, again the Inquiry Officer has been changed and Mr. Anant Kumar Singh was appointed as Inquiry Officer. The Inquiry Officer asked the petitioner to file his reply within fifteen days vide notice dated 02.12.2014. The petitioner submitted his detailed reply to the Inquiry Officer vide his letter dated 08.12.2014.

10. The Inquiry Officer Sri Anant Kumar Singh has again been changed and another inquiry officer namely Sri K. S. Atoria was appointed. Vide letter dated 19.01.2015, he also asked the petitioner to file his reply. The Inquiry Officer Sri K.S. Atoria submitted the report to the respondent. The respondent issued the show cause notice dated 26.11.2015 along with the inquiry report to the petitioner. The petitioner submitted detailed reply dated 21.12.2015/ 06.01.2016 to the show cause notice dated 26.11.2015. The competent authority passed the impugned order dated 25.04.2016 removing the petitioner from the services with the consultation/consent of the U.P. Public Service Commission. The impugned order was served on the petitioner on 26.04.2016.

11. In Writ Petition No. 2562 (S/B) of 2016, both the charge-sheets dated 31.03.2014 & 16.05.2014 (related to aircraft accident of 2008 and of 2012) as well as the termination

order dated 05.02.2016 (related to aircraft accident of 2008) has been challenged.

In Writ Petition No. 7624 (S/B) of 2017, the termination order dated 25.04.2016 (related to aircraft accident of 2012) has been challenged.

12. With the aforesaid background, Sri Prashant Chandra, learned Senior Counsel assisted by Ms. Radhika Singh, learned Counsel for the petitioner has submitted that the respondents have abruptly issued a charge sheet at a belated stage against the petitioner for the incident dated 22.02.2008 on 31.03.2014 ignoring the fact that the petitioner was not in employment of the State Government at the relevant date but he was on deputation from Indian Air Force. It also ignored the fact that on 22.12.2011, the State Government has permanently appointed the petitioner, thus nothing remained against him.

13. It is also submitted that a deputationist continues to be governed by the rules of his/her parent department and is deemed to be under disciplinary control of his/her parent department unless absorbed permanently in the transferee department, therefore, the borrowing department i.e. State Government had no jurisdiction to take any disciplinary action against him.

14. It is also submitted that the charge-sheet dated 31.03.2014 is highly belated by six years. The petitioner was neither repatriated nor any recommendation for any action was made against the petitioner to the I.A.F. (the parent department) from the State of U.P. (the borrowing department) but on the other hand, vide order dated 22.12.2011, the petitioner was permanently appointed by

the State of U.P. on the post of Pilot (Fixed Wing). After the appointment there, remained nothing to be investigated against the petitioner. Thus, the disciplinary action taken against the petitioner in respect to aircraft accident of 2008 is illegal, arbitrary and an abuse of the process of law.

15. It is submitted that in the instant case, there is delay of six years in serving the charge-sheet. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time.

16. It is also submitted that the incident of the year 2008 was investigated by the DGCA, New Delhi and instead of recommending any action against the petitioner, he was allowed to resume flight duties after certain refresher/corrective training. The law does not permit to inquire the matter again, hence the entire action of respondents deserves to be quashed.

17. Sri Chandra, learned Senior Counsel has further submitted that the petitioner, in the year 2012, was on the duties as Pilot in Command of the Premier 1-A Aircraft and the second Pilot of the said Aircraft was Captain G.P. Singh. The Aircraft took off from Lucknow for Delhi IGI Airport on 22.09.2012 at around 10:30 a.m. It is submitted that the entire flight was under command of the petitioner but at the time of landing, when it was around 30-35 ft from ground, the Aircraft got caught in an unusual phenomena of 'Wake Turbulence' and as a consequence impacted the runway with unusual rate of descent and attitude. The inevitable impact happened in a flash of seconds and the

petitioner could do nothing to safely maneuver the aircraft thereupon but post impact on the runway displayed an exceptional skill and expertise in preventing the aircraft from losing direction and balance thereby preventing it from becoming a ball of fire.

18. It is submitted that the impugned order of removal dated 25.04.2016 of the petitioner from services on the post of Pilot has been passed at the first instance making apportionment of blame and fixing of liability on the petitioner on account of negligence solely having based it on the investigation report of 'AAIB' dated 13.11.2013 which had no such finding by the Ministry of Civil Aviation (for short 'MCA') through 'AAIB' as per Rule 11 of the Aircraft (Investigation of Accidents and Incidents) Rules 2012 (for short 'Rules 2012).

19. It has been submitted by the learned Senior Counsel that Rules 3(1) of 'Rules 2012' provides that the sole objective of such an investigation of accidents and incidents shall be prevention of accidents or incidents and not to apportion blame and liability. Therefore, the respondents prima-facie misconceived the investigation report and passed the impugned order in colourable exercise of power specially when Rule 3(2) unequivocally provides that such an investigation, as aforesaid, shall be separate from any judicial or administrative proceedings to apportion blame or liability. Learned Senior Counsel submits that the impugned order is thus, void ab-initio and nullity. It is submitted that the office memorandum dated 24.04.2014 is manifestly ultra virus on the ground that it is contrary to Rules 3(1) and 3(2) of the Rules 2012 and also contrary to

the U.P. Government Servant (Discipline and Appeal) Rules, 1999 (for short 'Rules 1999')

20. It is further submitted that after receiving the impugned charge-sheet, the petitioner had requested the first Inquiry Officer for supply of the necessary records but the same has not been supplied to the petitioner for submitting the reply to the show cause notice issued to the petitioner. The inquiry officer has also not obtained the records of the 'AAIB' report. It is submitted that the respondent decided to hold inquiry in the accident of Premier 1A Aircraft without taking the contents of the 'AAIB' Report in correct prospective and he has made out the case against the petitioner taking the selective observations from the 'AAIB' report. It is also submitted that while awarding the major penalty of removal from services to the petitioner, another co-pilot Sri G.P. Singh and Sri Pragyesh Mishra were completely let off from the responsibility of the said alleged accident. It is also vehemently submitted that the entire inquiry against the petitioner is illegal, arbitrary and violative of the principal of natural justice. It is also submitted that for conducting the inquiry, the single inquiry officer was appointed under the said office memorandum who was neither a technically qualified person nor trained to conduct any inquiry of technical nature related to the field of aviation and also he did not include any member having expertise of holding such an inquiry. Learned senior counsel also submitted that four inquiry officers have been changed, which is clear cut abuse of the process of the law and the reply which has been submitted by the petitioner was also arbitrarily

ignored and not properly deliberated before passing the impugned order.

21. Learned Senior Counsel Sri Prashant Chandra also submitted that the respondents in the incident of 2012 passed an order of removal of the petitioner from the services of Pilot (Fixed Wing) on 25.04.2016 after allegedly taking approval of the UPPSC on 24.02.2016. It is submitted that in this order, the respondent awarded the same punishment, which was awarded in the first incident of 2008 without application of mind in a mechanical and stereo type manner. It has also been submitted that the 'AAIB' is the authorized agency which concludes its inquiry on 13.11.2013 in which the real cause of the incident/accident has been given, which has been totally ignored by the inquiry officer with the malafide intention. It is submitted that in the said inquiry of 'AAIB' no role was attributed to the petitioner for causing of the accident on 22.09.2012. Learned Senior Counsel submitted that the departmental inquiry conducted by the respondent is ultra vires not based on any proper evidence and discriminatory in nature. It is submitted that the petitioner ought not to have awarded any punishment instead he should have rewarded for saving six human lives due to his sheer and skill and expertise on the Aircraft in the event of unavoidable circumstances. It is submitted that as regards the huge financial loss of the State of U.P., if any, it was due to sheer negligence on the part of the State itself inasmuch as it did not insure the Aircraft with a authorized insurer as the aircraft was involved in a high risk activity of flying. Learned Senior Counsel submits that in view of the facts and circumstances, the impugned order passed by

the respondent is bad in law and contrary to the provisions as established by the Hon'ble Apex Court as well as by this Hon'ble Court. Thus, the same is liable to be quashed and the writ petition is liable to be allowed.

22. Per contra, Sri Pratyush Tripathi learned Standing Counsel vehemently opposed the submissions of petitioner for the State has vehemently opposed the submissions of counsel for petitioner and submitted that the DGCA has conducted the detailed inquiry into the accident of 2008 in which the aircraft "King Air C- 90" got completely destroyed at Allahabad. In the inquiry report of DGCA dated 16.11.2009, it was found that the mistake of pilot was the main cause of accident and categorically recommended *"action as deemed appropriate be taken against the Pilot for the lapses as indicated in the findings"*

23. Learned Standing Counsel for the State also submitted that when petitioner was appointed by the State Government, the matter regarding the Allahabad accident of 2008 was under consideration and the same was not finalized prior to his induction in the State Government. Subsequently, after rejection of his objection to the DGCA's report and submission of a three member committee of the State Government regarding implementation of said report of DGCA, he was charge-sheeted. Therefore, it is not permissible for him to escape from his responsibility of facing the inquiry by raising the objection in respect of delay or being a deputant at the time of accident because in the technical inquiry carried out by the DGCA, he was found primarily responsible for causing complete damage

to the State Aircraft due to negligence and lapses caused by him.

24. It is submitted that the petitioner has neither disowned the occurrence of the aviation accident nor refused to admit the fact that at the time of accident it was the petitioner who was flying the aircraft. The petitioner also did not challenge the technical inquiry report submitted by the Air Safety Expert of DGCA wherein lapses of the Pilot were reported to be the main cause of accident.

25. It is also submitted that Hon'ble Apex Court in case of **State Bank of India and others Vs Narendra Kumar Pandey (2013) 2 SCC 740 (relevant paragraph 22 and 23)** has held that if the charges born out from the documents, kept in normal course of business, no oral enquiry is necessary to prove those charges.

26. It is also submitted that the petitioner failed to prove the procedural irregularity or violation of principals of natural justice in the enquiry; however, if at any stage if it is found by the Hon'ble Court that any procedural irregularity is there, the respondents submits that the matter is liable to be remanded back for the completion of the enquiry from the stage of such defect and the petitioner has no right to be reinstated in service; as per the law settled on the subject matter, in case of **Chairman Life Insurance Corporation of India and others Vs A. Masilamani, reported in (2013) 6 SCC 530 (relevant paragraph 16).**

27. Learned counsel for the State has further argued that on 22.09.2012, the Plane/Aircraft of the State Government Premier1-A (B.T.-U.P.N.) met with an accident during the course of landing at Indira Gandhi Airport, New Delhi. It

is submitted that at that time of the said accident, the said Plane/Aircraft was operated by the petitioner as a Pilot in Command. The technical investigation/enquiry of the aforesaid accident was conducted by the "A.A.I.B." Ministry of Civil Aviation, New Delhi and after the approval of the Central Government, the said investigation/enquiry report dated 13.11.2013 was made available to the State Government by the 'A.A.1.B.'

28. Learned counsel appearing on behalf of the State has submitted that after examination of the aforesaid investigation/enquiry by the 'A.A.I.B.', the petitioner was prima-facie found guilty for the aforesaid accident of the State Plane, hence a departmental enquiry was constituted against the petitioner under Rule 7 of Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, vide office memorandum dated 24.04.2014 in which Mr. Rahul Bhatnagar, the then Principal Secretary, department of Sugar Industries and Cane Development was appointed as inquiry officer and after the transfer of Mr. Rahul Bhatnagar, Mr. Manoj Kumar Singh, the then Principal Secretary, Secondary Education was appointed as inquiry officer vide office order dated 11.07.2014. Later, Mr. Manoj Kumar Singh joined in the Central Government on deputation then Mr. Anant Kumar Singh, the then Principal Secretary, Pashudhan, Matsya Evam Dugdh Vikas was appointed as inquiry officer vide office order dated 03.11.2014. After sometime, Mr. Anant Kumar Singh also went on deputation in the Central Government then, Mr. K. S. Atoria was appointed as inquiry officer vide office order dated 19.01.2015. The charge-sheet was prepared against the petitioner vide office order dated 16.05.2014, which

was served upon the petitioner along with the report of 'A.A.I.B.' dated 13.11.2013.

29. Learned counsel for the State has also submitted that there were two departmental proceedings running against the petitioner due to which the petitioner was kept under suspension vide order dated 04.08.2014. The petitioner submitted his defence by means of letter dated 29.04.2014 and the petitioner had also submitted his reply to the charge-sheet dated 16.05.2014 vide letters dated 29.04.2014, 23.06.2014, 27.06.2014 and 08.12.2014. The main contentions in the said reply was that the unusual condition of weather was the responsible factor for the said accident and he is not at fault for the same. It is submitted that the Inquiry Officer vide letter dated 11.08.2015 has given an opportunity of personal hearing to the petitioner and fixed a date on 25.08.2015. It is also asked by the Inquiry Officer to the petitioner that the petitioner may submit the additional reply or the additional documents in addition to his earlier reply, if he wants so. The petitioner has written a letter to the inquiry officer in which he has requested that he may be given an opportunity of personal hearing on 14.08.2015 in place of 28.05.2014 and on his request, the date of personal hearing was fixed on 14.08.2015. It is submitted that the petitioner appeared before the inquiry officer and submitted the additional reply, which was taken into consideration by the Inquiry Officer. It is also submitted that during the course of inquiry proceedings, all the papers/documents available with the department were made available to the petitioner and the inquiry was completed by the inquiry officer in

accordance with law and submitted the inquiry report dated 10.11.2015 to the State Government.

30. Learned counsel for the State has submitted that as per the inquiry report, the charges levelled against the petitioner were found to be proved and he was found guilty. Therefore, a show cause notice dated 26.11.2015 was issued to the petitioner, which was served upon the petitioner on 01.12.2015 and the petitioner was given three weeks time to submit his reply to the show cause notice. The petitioner submitted his reply to the show cause notice vide letter dated 21.12.2015 and also he has given a representation dated 23.12.2015 to the State Government. The petitioner has again submitted another representation dated 05.01.2016 to the State Government and the same was forwarded to the disciplinary authority for consideration and taking decision.

31. Learned counsel for the State has submitted that the reply and representations submitted by the petitioner were not within the time as prescribed in the show cause notice. It is submitted that on 14.01.2016, the entire file of the petitioner was submitted before the Hon'ble Chief Minister as he was the then Minister of the Department for taking the necessary approval. The matter was also sent to the U.P. Public Service Commission vide letter dated 04.02.2016 for necessary consultation/consent as required under the provisions of the U.P. Public Service Commission (Limitation of Function) Regulation 1954 as amended from time to time and also required under Rule 16 of the 'Rules 1999'. The consent from the U.P. Public Service Commission was received to the State Government

by letter of U.P. Public Service Commission dated 24.02.2016 after which the decision was taken for the removal of the petitioner from the service which does not disqualify for further employment vide order dated 25.04.2016.

32. Learned counsel for the State has vehemently submitted that earlier a disciplinary inquiry was also conducted against the petitioner with respect to an accident took place at Allahabad, which resulted into major penalty against the petitioner. It is also submitted that at the time of passing of the aforesaid punishment order dated 25.04.2016, the petitioner was not in service. Learned counsel for the State has submitted that the inquiry conducted by the 'A.A.I.B.' was not for deciding the liability of anybody or to punish anybody but it was for searching the reasons behind the particular accident so that the occurrence may not be repeated in future. It is also submitted that in the technical inquiry conducted by the 'A.A.I.B', it was found that the handling of the Aircraft by the Pilot was a contributory factor to the accident. Further, after examination of the investigation/inquiry report of the 'A.A.I.B.', the petitioner was prima-facie found guilty for the aforesaid accident of the State Plane, hence the enquiry was conducted against the petitioner under the 'Rules 1999' and after conducting the enquiry against the petitioner in accordance with law, the petitioner was found guilty for the accident of the State Plane, therefore, the punishment order dated 25.04.2016 was passed and the petitioner was removed from the services. It is submitted that there are no illegality in the enquiry and the enquiry was conducted as per the prescribed procedure established in the statute as well as in

accordance with the law settled by the Hon'ble Apex Court and also of this Hon'ble Court. During the enquiry, the principle of natural justice has been followed and all the documents/materials which were necessary for submitting the reply by the petitioner were served upon the petitioner. There were no lacuna in the enquiry conducted by the State under the Rules 1999. Finding was very clear that the petitioner was found guilty and due to his negligence, the said accident had taken place. Learned counsel for the State has submitted that the instant petition being devoid of merit is liable to be dismissed.

33. Counter and Rejoinder Affidavits have been exchanged between the parties and I have heard both the parties at length and gone through the pleadings/materials on record.

34. Two issues are involved in Writ Petition No.2562 (S/B now S/S) of 2016 which are as under :-

1. *Whether the services of an employee on deputation can be terminated by the borrowing department on the allegation of misconduct or negligence during service ?*
2. *Whether unexplained inordinate delay in framing charges would amount to violation of principles of Natural Justice and vitiate the entire disciplinary proceedings ?*

The third issue is involved in both the Writ Petition No.2562 (S/B now S/S) of 2016 and 7624 (S/B now S/S) of 2017 which is as under : -

3. *Whether the preliminary inquiry report/fact finding report can be relied upon by the disciplinary authority to terminate the services of the delinquent employee on the ground of the misconduct or negligence ?*

35. For adjudication of the aforesaid issues, the Rules and orders relevant to the instant case are as follows:

36. Under the 'Rules 2012' the objective of investigating an accident or incident has been provided. The relevant rules germane to the issue are being extracted here in below:-

*"3. Objective of the investigation of accidents and incidents.*

*(1) The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents and not to apportion blame or liability.*

*(2) Any investigation conducted in accordance with the provisions of these rules shall be separate from any judicial or administrative proceedings to apportion blame or liability.*

*8. Aircraft Accident Investigation Bureau.—*

*(1) For the purposes of carrying out investigation into accidents, serious incidents and incidents referred to in sub-rules (1), (2) and (4) of rule, the Central Government shall set up a Bureau in the Ministry of Civil Aviation known as the Aircraft Accident Investigation Bureau of India and appoint such number of officers familiar with aircraft accident investigation procedures and other persons, as it deems fit from time to time.*

*(2) The Aircraft Accident Investigation Bureau shall function under overall supervision and control of Government of India, Ministry of Civil Aviation.*

*(3) The Aircraft Accident Investigation Bureau shall discharge the following functions, namely: —*

*(a) obtaining preliminary report under rule 9 from any person or persons authorised either under sub rule (1) of rule 9 or under sub rule(2) of rule 7;*

*(b) assisting the Central Government in setting up of Committee of Inquiry and formal investigation under these rules;*

*(c) to facilitate the investigation and administrative work of the Committees and Courts, whenever necessary.*

*(d) processing of the reports of Courts and Committees of Inquiry received by the Central Government, which includes –*

*(i) forwarding of the reports to the States for consultation under sub rule (1) of rule 14;*

*(ii) forwarding the report made public by the*

*Central Government under sub□ rule (2) of rule 14 to the States as required under Annex 13;*

*(iii) forwarding the report made public by the Central Government under sub□ rule (2) of rule 14 to ICAO if the mass of the aircraft involved in accident or incident is more than 5,700 kg;*

*(e) follow□up the recommendations made by Courts and Committees of inquiry and to ensure that are implemented by the concerned agencies;*

*(f) to process cases for a resolution by the Central Government of disputes between the Bureau and any agency regarding implementation of a recommendation;*

*(g) to formulate safety recommendation on the basis of safety studies, including induction of new technology to enhance safety, conducted from time to time.*

*(h) establish and maintain an accident and incident database to facilitate the effective analysis of information on actual or potential safety deficiencies obtained, including that from its incident reporting systems, and to determine any preventive actions required;*

*(i) to process obligations of the Central Government under Annex 13 to the Convention relating to International Civil Aviation signed at Chicago on the 7th day of December, 1944 as amended from time to time; and*

*(j) any other functions, which the Central Government may ask the Bureau to perform from time to time under these rules.*

*(4) The Aircraft Accident Investigation Bureau may, by notification in the Official Gazette, and with the previous approval of the Central Government, make procedures, not inconsistent with the provisions of the Act to carry out the purposes of these rules and the functions referred to in sub□rule (3).*

*(5) In particular, and without prejudice to the generality of the foregoing power, such procedures may provide for all or any of the following matters, namely:—*

*(a) the persons required to notify the accidents and incidents;*

*(b) the notifications of accidents and serious incidents to International Civil Aviation Organisation and the States for participation in the investigation;*

*(c) the investigation of aircraft accident and incidents;*

*(d) the format of preliminary and reports of*

*Committee of Inquiry and Formal Investigation conducted under these rules;*

*(e) the consolidation and follow□up of safety recommendations made by the Committee of Inquiry and Formal Investigation with the agencies required to Page 9 of 15 implement the recommend-ations and require action taken reports from these agencies; and*

*(f) Any other matter subsidiary or incidental to aircraft accident and incident investigation. "*

37. The objectives as are contained in Rule 3 of the Rules is to provide only for prevention of accidents and incidents and no enquiry or investigation is done to apportion blame or liability. In fact, it is specifically provided under Rule 3(2) of the Rules that any investigation conducted in accordance with the Rules shall be separate from any judicial or administrative proceedings to apportion blame or liability. It is thus clear that an investigation made for analysis by 'AAIB' is not for ascertaining the fault, blame or liability but only for the purposes of using the report for utilizing it for safety purposes and to prevent a re-occurrence.

38. The 'AAIB' is attached to the government of India, Ministry of Civil Aviation and discharges the function as have been prescribed under Rule 8(3), which indicates that it does not conduct any investigation or inquiry for ascertaining delinquency of any person.

**Issue No. 1 is dealt as follows :**

39. A 'deputationist' is an employee who has been assigned to another department from his/her parent department. The law regarding employees on deputation is well settled. As regards the matter of disciplinary control, the **Hon'ble Apex Court in State of U.P. v. Ram Naresh Lal, (1970) 3 SCC 173** has observed that a deputationist continues to be

governed by the rules of his/her parent department and is deemed to be under the disciplinary control of his/her parent department unless absorbed permanently in the transferee department.

40. In **Kunal Nanda v. Union of India, (2000) 5 SCC 362**, it was further observed by Hon'ble Supreme Court that the basic principle underlying deputation is that the person concerned can always and at any time be repatriated back to his parent department. Therefore, a deputationist stands on an altogether different footing than a direct recruit of the Organisation/Department. A deputationist can be repatriated back to his/her parent department and in cases of misconduct, necessary action can also be initiated against him/her as per the conditions of service governing his/her parent department.

41. In the case of **K. Kanagasabapathy Vs. City Supply Officer, Civil - (1978)1 MLJ 184** the Madras High Court observed that the disciplinary proceedings were initiated by the borrowing department after the employee was repatriated to the parent department and it was held that after the employee had left the borrowing department and had gone back to the parent department, officers of the borrowing department had no jurisdiction to take any disciplinary proceeding against him. It is held that the power is made available to the borrowing department only so long as the concerned officer is serving in the said department but not after he gone back to the parent department.

42. In the case of **B.L. Satyarthi v. State of M.P., 2014 SCC OnLine MP 5735**, Madhya Pradesh High Court held the

action taken by the borrowing department i.e. Madhya Pradesh Rajya Van Vikas Nigam for initiating departmental enquiry in the matter is unsustainable once the employee was repatriated back to the parent department.

Thus, in the light of the aforesaid discussions, the issue no.1 is answered accordingly to the effect that the services of an employee on deputation cannot be terminated by the borrowing department, in case of any negligence or misconduct, he can only be repatriated to his parent department along with the report about his conduct.

**Issue No. 2 is dealt as follows :**

43. In **State of Madhya Pradesh v. Bani Singh and another reported in 1990 (Supp) SCC 738**, the Supreme Court had comedown heavily against the laches on the part of the employer in conducting departmental enquiry and after finding out that there was no satisfactory explanation for the inordinate delay, held that it would be unfair to order departmental enquiry to proceed further.

44. In **State of Punjab and others Vs. Chaman Lal Goyal, reported in 1995 (2) SCC 570**, the Hon'ble Supreme Court held as follows:

> *"9.Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of*

*bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing... "*

45. In the case of **Union of India vs. Ashok Kacker, 1995 Supp (1) S.C.C. 180,** no doubt, their Lordships have observed that it is open to the delinquent to file his reply to charge-sheet and raise all objections and also invite the decision of the disciplinary authority thereon. In this case also, no other details have been furnished such the date of occurrence, steps taken by the Government etc. In such circumstances, I am of the view that both the decisions relied on by the Government Pleader are not helpful to their case. I have already stated that even according to the 2nd respondent, the alleged irregularities had taken place in the year 1982 and even after receipt of the report from the Vigilance and Anti- Corruption, Pondicherry Government in the year 1993 the impugned charge memo was issued only on 5.11.97. The inordinate and unexplained delay vitiates the impugned charge memo and the same is liable to be quashed. As observed by Their Lordships of the Supreme Court in State of Punjab and others v. Chaman Lal Goyal, 1995 (2) S.C.C. 570, the disciplinary proceedings cannot be initiated after a lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of

administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. Here, in our case, the petitioner has raised a plea that the delay is likely to cause prejudice to him in defending himself. If such plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. I have already stated that the first charge states that the petitioner did not disburse cash from January, 1982 and, as rightly contended by the learned counsel for the petitioner, not even the period is mentioned clearly and like-wise, the statement that cash book was not maintained properly is a bald statement. Further, the nature of the charges relate to day-to-day activities of disbursement of cash and maintenance of registers, which are routine affairs, hence the unexplained delay of 15 years cannot be accepted. It would be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring authority to support his case. Even If he could summon their presence, it would be a doubtful proposition whether they would be in a position to remember that happened more than 15 years back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross- examine the witnesses to be examined on the side of the second respondent in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the

department or the petitioner. Under these circumstances and on the facts and circumstances disclosed, I hold that the un-explained inordinate delay will constitute denial of reasonable opportunity to the petitioner to defend himself that it would amount to violation of principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. By weighing all the factors both for and against the petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances".

46. In the instant case, the aircraft accident took place on 22.02.2008 and the respondents issued charge sheet on 31.03.2014, which is highly belated by six years. At the time of accident petitioner was the employee of Indian Air Force and was working in services of State Government on deputation. After the accident, the petitioner was neither repatriated nor any recommendation for any action was made against the petitioner to the IAF (the parent department) from the State of U.P. (the borrowing department ) but on the other hand, the D.G.C.A. permitted the resumption of flight duties to petitioner after corrective training and also vide order dated 22.12.2011, the petitioner was permanently appointed by the State of U.P. on the post of Pilot (Fixed Wing). Therefore, after the appointment/absorption, there remained nothing to be investigated.

47. The submission of the learned Counsel for State is that when petitioner was appointed by the State Government, the matter regarding the Allahabad accident of 2008 was under consideration and the same was not finalized prior to

his induction in the State Government. I have gone through the record and do not find the explanation satisfactory to condone the gross delay of 6 years in issuing charge sheet as it makes the task of proving the charges difficult and is thus not also in the interest of justice. Delayed initiation of proceedings is bound to give room for allegations of bias, mala-fides and misuse of power. Such delay is likely to cause prejudice to the delinquent officer in defending himself. Therefore, the delay and laches on the part of the employer in conducting departmental enquiry without any satisfactory explanation for the inordinate delay are sufficient to vitiate the entire disciplinary proceeding. Thus, the disciplinary proceeding against the petitioner in respect to aircraft accident of 2008 is illegal, arbitrary and an abuse of the process of law. Thus, the issue no. 2 is answered accordingly.

**Issue No. 3 is dealt as follows.**

48. The incident in question was thoroughly inquired and analyzed by the 'AAIB' and a preponderance report was prepared for the purposes as provided in the Rules. After the preparation of the report dated 13.11.2013, an order dated 24.04.2014 was passed setting up a departmental inquiry against the petitioner by the State of U.P. and a charge-sheet dated 16.05.2014 was served upon the petitioner on 18.06.2014. The charge-sheet contains charges against the petitioner is the reproduction of the various portions of the report of the 'AIIB'. The Inquiry Officer Sri K.S. Atoria, Principal Secretary, P.W.D. reached on the conclusion, as recorded in para 7 of the impugned order, which reads as under :

''7– जॉच अधिकारी की जॉच आख्या एवं श्री नागर द्वारा दिये गये अभ्यावेदन का गहन परीक्षण किया गया। परीक्षणोपरान्त यह पाया गया कि :–

(1) देश में हुई विमान दुर्घटनाओं की तकनीकी जॉच हेतु प्राधिकृत भारत सरकार की जॉच एजेन्सी ए0ए0आई0बी0 द्वारा दिनांक 22.9.2012 को हुई राज्य सरकार के विमान की दुर्घटना की जॉच रिपोर्ट दिनांक 13.11.2013 के प्रारम्भ में अंकित प्रस्तावना में कहा गया है कि "This document has been prepared based upon evidences collected during the investigation, opinion obtained from the experts and laboratory examination of various components. The investigation has been carried out in accordance with Annex. 13 to the Convention on International Civil Aviation and under the Rule 11 of Aircraft (Investigation of Accidents and Incidents), Rules 2012 of India. The investigation is conducted not to apportion blame or to assess individual or collective responsibility. The sole objective is to draw lessons from this accident which may help to prevent such future accidents or incidents." उक्त से स्पष्ट है कि यह तकनीकी जॉच ए0ए0आई0बी0 द्वारा दुघ र्टना के लिए दोषी पायलट आदि के दायित्व निर्धारण या दुर्घटना के दायित्व हेतु अनुशासनिक/दण्डात्मक कार्यवाही के उद्देश्य से नहीं की गयी हे अपितु इस दृष्टि से की गयी है कि दुर्घटना के कारणों को खोजा जाय ताकि इन कारणों का समाधान करके इस प्रकार की दुर्घटनाओं की भविष्य में पुनरावृत्ति रोकी जा सके।

(2) उक्त तकनीकी जॉच दिनांक 13.11.2013 में यह कहा गया है कि प्रतिकूल मौसम आदि के कारण प्रश्नगत दुघ र्टना घटित नहीं हुई थी। यह भी कहा गया है कि उड़ान से पूर्व जो विभिन्न प्रकार की औपचारिकताएं एवं परीक्षण नियमानुसार आवश्यक होते हैं, वे भी विधिवत पूर्ण किये गये। जॉच के प्रस्तर 2.4 पृष्ठ–31 पर "Pilot handling of the aircraft" शीर्षक के अन्तर्गत कहा गया है कि ".... From the above it is evident that after crossing the runway threshold and prior to flaring the aircraft, the pilot in the process of aligning the aircraft on the center line of the runway made last minutes erections and in the process could not adequately flare the aircraft, which resulted into a heavy touchdown. Hence handling of the aircraft by the Pilot is a contributory factor to the

accident." जॉच के प्रस्तर–3.2 पृष्ठ–33 "Probable cause of the accident" शीर्षक के अन्तर्गत कहा गया है कि After crossing the runway threshold, the pilot made corrections to control the drift and in the process of aligning the aircraft to the centre line of the runway could not flare out the aircraft adequately, which resulted into a heavy touchdown.

(3) इस प्रकार उक्त तकनीकी जॉच में विमान दुर्घटना दिनांक 22.9.2012 के लिए पायलट की असावधानियों को Contributory factor पाया गया है।

(4) उक्त तकनीकी जॉच के परिप्रेक्ष्य में पायलट द्वारा लैण्डिंग के समय बरती गयी असावधानियॉ, जो विमान दुर्घटना का कारण बनी, के लिए पायलट के विरूद्ध अनुशासनिक/विभागीय कार्यवाही का दायित्व एवं एक मात्र प्राधिकार राज्य सरकार का है, जिसके अधीन अपचारी अधिकारी श्री आर0के0 नागर द्वारा पायलट के रूप में अपनी सेवाएं दी जा रही है और जो दुर्घटना के समय विमान का पायलट–इन–कमाण्ड के रूप में परिचालन कर रहे थे और जिन्हें राजकोष से वेतन प्राप्त हो रहा है।

(5) तद्नुसार राज्य सरकार ने उ0प्र0 सरकारी सेवा (अनुशासन एवं अपील) नियमावली, 1999 के नियम–7 के अन्तर्गत कार्यालय–ज्ञाप दिनांक 24.4.2014 के द्वारा श्री नागर के विरूद्ध विभागीय कार्यवाही संस्थित की है, जो पूर्णतया नियम संगत और विधिसम्मत है।

(6) उक्त विभागीय कार्यवाही हेतु कार्यालय ज्ञाप दिनांक 16.4.2014 द्वारा गठित आरोप–पत्र में विभिन्न आरोप उन निष्कर्षों के आधार पर निरूपित किये गये हैं जिन्हें ए0ए0आई0बी0 की जॉच रिपोर्ट दिनांक 13.11.2013 में स्थापित किया गया है। इसी लिए उक्त रिपोर्ट दिनांक 13.11.2013 को आरोप–पत्र के साथ मुख्य साक्ष्य के रूप में स्थान दिया गया है और आरोप–पत्र के साथ अपचारी अधिकारी को उपलब्ध कराया गया है।

(7) अपचारी अधिकारी ने अपने अभ्यावेदन में ए0ए0आई0बी0 की जॉच रिपोर्ट दिनॉक 13.11.2013 के कई निष्कर्षों के विरूद्ध तर्क देते हुए इन्हें चुनौती दी है और जॉच समिति के अध्यक्ष श्री जोसेफ की भूमिका पर प्रश्न चिन्ह लगाये हैं, के सम्बन्ध में स्पष्ट करना है कि उक्त जॉच ए0ए0आई0बी0 भारत सरकार द्वारा सम्पन्न करायी गई है और इसके निष्कर्षों की स्थापना के सम्बन्ध में राज्य सरकार के स्तर से करायी जा रही विभागीय

अनुशासनिक जॉच में स्थिति स्पष्ट किये जाने की प्रासंगिकता नहीं है। इस सम्बन्ध में ए0ए0आई0बी0 द्वारा की जा रही जॉच के समय ही अपचारी अधिकारी को अपनी बात उनके सम्मुख रखनी चाहिए थी।

(8) राज्य सरकार द्वारा अपचारी अधिकारी श्री आर0के0 नागर के विरूद्ध जो विभागीय/अनुशासनिक कार्यवाही की जा रही है वह भारत सरकार की एजेन्सी ए0ए0आई0बी0 द्वारा की गई तकनीकी जॉच दिनांक 13.11.2013 का पुनरावलोकन नहीं है। अपितु उक्त जॉच दिनांक 13.11.2013 के विभिन्न आधारों पर पुष्ट निष्कर्षों के परिप्रेक्ष्य में दुर्घटना के लिए उत्तरदायी पायलट के विरूद्ध अनुशासनिक कार्यवाही किया जाना है। अपचारी पायलट राज्य सरकार के कार्मिक हैं। नियमानुसार एवं निर्धारित प्रक्रिया के अन्तर्गत भारत सरकार की जॉच रिपोर्ट प्राप्त करके राज्य सरकार अपने कार्मिक के विरूद्ध नियमानुसार किसी दोष/आरोप के लिए कार्यवाही हेतु स्वतंत्र एवं अधिकृत है।

(9) प्रतिकूल मौसमी परिस्थितियों के कारण विमान के दुघ र्टिनाग्रस्त होने के सम्बन्ध में अपचारी अधिकारी का तर्क न तो ए0ए0आई0बी0 की रिपोर्ट दिनांक 13.11.2013 से पुष्ट होता है और न ही मौसम सम्बन्धी इस प्रतिकूलता के दृश्यमान होने के सम्बन्ध में काई अन्य प्रकार का प्रमाण सामने आया है।

(10) प्रश्नगत जॉच में जो भी उपलब्ध कागजात अपचारी अधिकारी द्वारा मांगे गये उन्हें उपलब्ध कराया गया है।

(11) राज्य सरकार द्वारा प्रश्नगत विभागीय जूच ए0ए0आई0बी0 की जांच आख्या दिनांक 13.11.2013 में प्राप्त तकनीकी निष्कर्षों के परिप्रेक्ष्य में संस्थित की गयी थी। आरोप पत्र का गठन भी उक्त तकनीकी निष्कर्षों के आधार पर हुआ है। जॉच अधिकारी द्वारा प्रश्नगत जांच में उक्त तकनीकी निष्कर्षों के आधार पर गठित आरोपों की सत्यता/प्रमाणिकता का समुचित परीक्षण किया गया है और इन आरोपों को सिद्ध/प्रमाणित पाया गया है। इस प्रकार अपचारी अधिकारी का यह कथन स्वीकार्य नहीं है कि प्रश्नगत जांच के लिए नामित जांच अधिकारी को वायुयान संबंधी जांच के लिए तकनीकी ज्ञान से युक्त/प्रशिक्षित होना चाहिए।

(12) वायुयान के दुर्घटना की ए0ए0आई0बी0 की जांच आख्या दिनांक 13.11.2013 में संबंधित साक्षीगण का समुचित बयान और उसका परीक्षण किया गया था। राज्य सरकार

द्वारा की गई विभागीय जांच में पुनः इसकी आवश्यकता नहीं थी।

(13) जहॉ तक भारत सरकार द्वारा की गयी विभागीय जांच की पोषणीयता का प्रश्न है, राज्य सरकार यथा आवश्यकता अपने नियंत्रणाधीन कार्मिकों के विरूद्ध विभागीय कार्यवाही हेतु पूरी तरह अधिकृत है। विभागीय जॉच के समय अपचारी अधिकारी राज्य सरकार के नियंत्रणाधीन कार्मिक थे।

(14) ए0ए0आई0बी0 की जांच रिपोर्ट दिनांक 13.11.2013 भारत सरकार द्वारा राज्य सरकार को किसी कार्यवाही हेतू अग्रसारित नहीं की गयी है अपितु राज्य सरकार ने डी0जीसी0ए0 से खरीदा है अतः राज्य सरकार इस रिपोर्ट के परिप्रेक्ष्य में कोई कार्यवाही नहीं कर सकती। अभ्यावेदन में अपचारी अधिकारी द्वारा उठाये गये इस बिन्दु के संदर्भ में स्पष्ट करना है कि राज्य सरकार ने निर्धारित प्रक्रिया के अनुसार उक्त जांच रिपोर्ट प्राप्त की है। रिपोर्ट प्राप्त करने के लिए निर्धारित प्रक्रिया का अनुपालन करने के कारण राज्य सरकार का अपने नियंत्रणाधीन कार्मिक के विरूद्ध कार्यवाही करने का अधिकार समाप्त नहीं हो जाता अपितु नियमानुसार राज्य सरकार अपने कार्मिक के विरूद्ध कार्यवाही हेतु स्वतंत्र एवं अधिकृत है।

(15) राज्य सरकार द्वारा की जा रही जांच में जांच अधिकारी ने अपचारी अधिकारी को अपने बचाव का पर्याप्त अवसर दिया है। उनके द्वारा प्रश्नगत जांच विधिवत सम्पन्न की गयी है। उन्होंने बचाव में दिये गये अपचारी अधिकारी के उत्तरों, अन्य साक्ष्यों, बयानों, आरोपों और अन्य संबंधित अभिलेखों का तथ्यपरक विश्लेषण करके अपने निष्कर्ष निष्पादित किये हैं। अतः यह कहना कि उनमें ज्ञान और विशेषज्ञता का अभाव है तथा उन्होंने पक्षपात पूर्ण ढंग से जांच सम्पन्न की है, स्वीकार्य नहीं पाया गया।

(16) देश में हुयी मुख्य विमान दुर्घटनाओं में डी0जी0सी0ए0 द्वारा की गयी तकनीकी जांच के उपरान्त किसी प्रकार की विभागीय अनुशासनिक कार्यवाही न किये जाने का दृष्टांत देकर यह तर्क देना कि प्रश्नगत विमान दुर्घटना के संदर्भ में राज्य सरकार दोषी पायलट के विरूद्ध अनुशासनिक कार्यवाही नहीं कर सकती, स्वीकार्य नहीं है। राज्य सरकार अपने कार्मिक के विरूद्ध नियमानुसार किसी दोष/आरोप के लिए कार्यवाही हेतु स्वतंत्र एवं अधिकृत है।

(17) राज्य सरकार द्वारा अपने कार्मिकों के मध्य पक्षपात किये जाने का आरोप असंगत एवं अप्रासंगिक है।

(18) अपचारी अधिकारी द्वारा उठाये गये बिन्दु कि ए0ए0आई0बी0 की जांच आख्या दिनांक 13.11.2013 में निहित निष्कर्षों में अंकित शब्दावली "Error of judgment" आदि को राज्य सरकार के स्तर से की जा रही जांच में ''लापरवाही और असावधानी'' के आरोप के रूप में किस आधार पर अभिकथित किया गया है, के संबंध में स्पष्ट करना है कि ए0ए0आई0बी0 की जांच आख्या दिनांक 13.11.2013 के निष्कर्षों के समग्र आकलन/परीक्षण करने के उपरान्त राज्य सरकार द्वारा की जा रही जांच में आरोपों का गठन किया गया है।

(19) दुर्घटना ग्रस्त विमान के बीमा आदि के संबंध में उठाये गये बिन्दुओं में अपचारी अधिकारी द्वारा ऐसा कोई कथन नहीं है, जिससे उनका दोष कम होता हो।

(20) यह भी स्पष्ट करना है कि राज्य सरकार द्वारा प्रश्नगत विमान दुर्घटना में दोषी पायलट श्री नागर के विरूद्ध संस्थित विभागीय जांच में आरोप पत्र के गठन का मुख्य आधार ए0ए0आई0बी0 की जांच आख्या दिनांक 13.11. 2013 के निष्कर्ष है और आरोप पत्र के साथ मुख्य साक्ष्य के रूप में उक्त रिपोर्ट दिनांक 16.1102009 को मान्यता दी गयी है। अपचारी अधिकारी द्वारा ए0ए0आई0बी0 की जांच के निष्कर्षों पर प्रश्न चिन्ह लगाना और यह कहना कि राज्य सरकार द्वारा की जा रही विभागीय जांच में नामित जांच अधिकारी द्वारा ए0ए0आई0बी0 की जांच के निष्कर्षों को यथावत् स्वीकार करना उचित नहीं है, आधारपूर्ण एवं संगत प्रतीत नहीं होता है। यदि ए0ए0आई0बी0 की जांच के किसी निष्कर्ष पर अपचारी अधिकारी को आपत्ति थी तो उन्हें उक्त जांच के दौरान ही अपनी बात ए0ए0आई0बी0 के जांच अधिकारी के सम्मुख रखनी चाहिए थीं।

(21) इस प्रकार अपचारी अधिकारी द्वारा अपने अभ्यावेदन में उठाये गये बिन्दुओं में ऐसा कोई कथन नहीं हे, जिससे उनका दोष कम होता हो।''

49. From the material placed, this Court finds that from the very initial stage, the authorities were influenced by the findings returned in preliminary enquiry. Law is settled that the employer can always conduct preliminary enquiry in order to ascertain correct facts and in case the allegations against the employees are found to have substance, then a regular disciplinary enquiry has to be

instituted. Since the preliminary enquiry is merely a fact finding report, therefore, its object is merely to form an opinion as to whether a formal enquiry in the matter is required to be conducted or not.

50. Once the decision is taken by the authorities to institute regular disciplinary proceedings then findings in the preliminary enquiry report ordinarily is not to be relied upon. In case such a report is to be relied upon then the delinquent employees has to be confronted with such materials, and only after hearing their version in the matter that such a report could be relied upon. Any other course followed would clearly be a violation of principles of natural justice.

51. In the facts of the present case, once the decision was taken to institute regular disciplinary proceedings against the petitioner and charge-sheet was issued, the enquiry officer was expected to have independently examined the evidence collected during the course of disciplinary proceedings and return its finding as to whether charges against the employees are made out.

52. In the instant case, it appears that the State Government is pre meditated and malafide, which is substantiated by a frequent change of the inquiry officers, who could align with the wishes of the authorities. The petitioner has not been given proper opportunity to submit the reply of the show cause notice as he has not been supplied the relevant documents for the preparation of the reply.

53. A recent decision of the Apex Court in **H.P. State Electricity Board Ltd. Vs. Mahesh Dahiya, passed in Civil Appeal No.10913 of 2016**, has been pleased to refer

to and rely upon a previous decision of the A**pex Court in M.V. Bijlani Vs. Union of India and others, (2006) 5 SCC 88** to observe as under:-

> *"24. ..... On the scope of judicial review, the Division Bench itself has referred to judgment of this Court reported in M.V. BIJLANI VERSUS UNION OF INDIA AND OTHERS (2006) 5 SCC 88. This Court, noticing the scope of judicial review in context of disciplinary proceeding made following observations in para 25: "It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."*
>
> *25. The three Judge Bench of this Court in B.C. CHATURVEDI VERSUS UNION OF INDIA AND OTHERS 1995 (6) SCC 749 had noticed the scope of judicial review with regard to disciplinary proceeding. Following observations have been made in paras 12 and 13:*
>
> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to*

*determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case." "13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re- appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India V. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could issued."*

*26. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated*

*02.04.2008 the Disciplinary Authority-cum-Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/ reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority-cum-Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained.*

*27. In view of the above discussion, we are of the view that present is the case where the High Court while quashing the punishment order as well as Appellate order ought to have permitted the Disciplinary Authority to have proceeded with the inquiry from the stage in which fault was noticed i.e. the Stage under Rule 15 of Rules. We are conscious that sufficient time has elapsed during the pendency of the writ petition before learned Single Judge, Division Bench and before this Court, however, in view of the interim order passed by this Court dated 31.08.2015 no further steps have been taken regarding implementation of the order of the High Court. The ends of justice be served in disposing of this appeal by*

*fixing a time frame for completing the proceeding from the stage of Rule 15.*

*28. We having found that principles of natural justice have been violated after submission of the inquiry report dated 29.12.2007 all proceedings taken by the Disciplinary Authority after 29.12.2007 have to be set aside and the Disciplinary Authority is to be directed to forward the copy of the inquiry report in accordance with Rule 15(2) of Rules 1965 and further proceedings, if any, are to be taken thereafter. "*

54. In **State of U.P. Vs. Shatrughan Lal and Another**, **(1998) 6 SCC 651.** The relevant paragraphs of the judgment is reproduced as under:-

*"It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself."*

55. Reliance is also placed upon a decision of this Court in **Chandrika Yadav Vs. State of Uttar Pradesh and others, passed in Writ Petition No.55836 of 2005**, in which following observations have been made:-

*"From the order of disciplinary authority and the pleadings of the counter affidavit, it is evident that the preliminary enquiry was conducted in the matter and various materials as well as the findings of the preliminary enquiry have been relied upon by the*

*disciplinary authority. It is well settled law that findings and materials of the preliminary enquiry cannot be relied upon in the disciplinary proceeding if the delinquent was not associated with preliminary enquiry. Admittedly, in the present case, petitioner was not given any such opportunity. It is a trite law that object of the preliminary enquiry is to satisfy the employer itself that a disciplinary proceeding can be conducted against an employee. Its purpose is to collect the facts. Once the employer is satisfied on the basis of the materials and report of the preliminary enquiry that disciplinary proceeding may be initiated in terms of the relevant service Rule, the delinquent is placed under suspension, and a copy of the charge-sheet and other documentary evidences relied upon in support of the charges are served upon him.*

*It is noteworthy that if in the disciplinary proceeding the department wants to rely on some materials of preliminary enquiry, it is necessary to supply a copy of said materials to the employee. Reference may be made to the judgement of the Supreme Court in the case of Employees of Firestone Tyre and Rubber Co. (Private) Ltd. v. The Workmen, AIR 1968 SC 236. In a recent judgement in the case of Nirmala J. Jhala v. State of Gujarat and another, (2013) 4 SCC 301, the Supreme Court had the occasion to deal with the scope of preliminary enquiry at length. The observations of the Supreme Court in Nirmala J. Jhala (supra), which are relevant to the present controversy, read as under:*

> *"45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice."*
>
> > *"47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry."*

*"51. There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant-accused or Shri C.B. Gajjar, Advocate, had been exhibited in regular inquiry. In the absence of information in the charge-sheet that such report/statements would be relied upon against the appellant, it was not permissible for the enquiry officer or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. [Vide S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379; D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259; and Mohd. Yunus Khan v. State of U.P., (2010) 10 SCC 539)"*

*"52.2 The enquiry officer, the High Court on administrative side as well as on judicial side, committed a grave error in placing reliance on the statement of the complainant as well as of Shri C.B. Gajjar, Advocate, recorded in a preliminary enquiry. The preliminary enquiry and its report loses significance/importance, once the regular enquiry is initiated by issuing charge-sheet to the delinquent. Thus, it was all in violation of the principles of natural justice."*

*"52.4 The onus lies on the department to prove the charge and it failed to examine any of the employees of the court i.e. stenographer, Bench Secretary or peon attached to the office of the appellant for proving the entry of Shri Gajjar, Advocate in her chamber on 17-8-1993."*

*In the present case, no such procedure has been adopted by the respondents as the disciplinary authority has relied upon the preliminary enquiry but there is nothing on the record to indicate that said materials of the preliminary enquiry were supplied to the petitioner. Along with the counter affidavit the respondents have not filed the alleged statement of petitioner's wife Smt. Genda Devi or Smt. Seema Devi. Learned Standing Counsel also could not point out any material from the records produced by him, from which it can be established that the petitioner has contracted second marriage with Smt. Seema Devi. There is no evidence on the record to the said effect. Merely some letters purportedly written by the petitioner to Smt. Seema Devi cannot establish the relationship of husband and wife. Petitioner has denied that those letters were written by him and the department has not established that those letters were written by the petitioner. Even if those letters are assumed to be correct and written by the petitioner, a perusal thereof do not establish that there was a relationship of husband and wife between them.*

*After careful consideration of the facts and circumstances of the case as well as the submissions advanced by the learned Counsel for the parties, I am of the view that the disciplinary proceeding conducted against the petitioner is vitiated on the ground of violation of principles of natural justice and as such, the orders passed by the disciplinary authority, appellate authority and revisional authority dated 07th May, 1997, 31st August, 2003 and 28th March, 2005 respectively (annexures-1, 5 and 7 respectively to the writ petition), impugned in this writ petition, cannot be sustained and are hereby quashed. The matter is remitted back to the disciplinary authority to conduct a fresh enquiry in the matter after serving a copy of the charge-sheet upon the petitioner.*

> *The enquiry may be conducted and completed in accordance with the law as expeditiously as possible preferably within a period of four months from the date of communication of this order. Petitioner is directed to cooperate in the enquiry and he will not take unnecessary adjournments."*

56. A plain reading of the observation made by the Inquiry Officer in the impugned order, as quoted above, and relevant case laws, it is clear that the said observations were made on the basis of fact finding report of 'AAIB' in respect of the incident/accident. After plain reading of the finding of the report, it is also not clear as to what was the main factor for the said incident/accident of the Aircraft as no specification/specific detail has been given in the said report. It is also not clear from the report that the pilot erred in making last minute corrections or that there was any negligence in following the due procedure.

57. In the instant case, the Inquiry Officer has solely relied upon the preliminary enquiry report of the 'AAIB' and 'DGCA' and he has not applied his independent mind while preparing the charge-sheet. The sole objective of 'AAIB' report was to find the cause of Air accident and not to fix the liability of Pilot or any other crew member. The DGCA has also directed the State of U.P. to permit the flying duties to the petitioner after refresher/corrective training to the petitioner and allow normal flight duties to the petitioner but the State Government instead of providing additional/corrective training thereby violating the mandate of 'AAIB' report and defying the explicit order of DGCA of corrective training, terminated the services of the petitioner. The petitioner has also not been supplied the

relevant documents for submitting the reply to the show cause, hence the adverse conclusion if drawn against the petitioner in absence of the supply of the relevant documents vitiate the entire disciplinary proceedings. Thus the issue no. 3 is answered accordingly.

58. While adjudicating the case in hand, I have discussed some causes for the air accidents. One of the main causes of air accidents is 'wake turbulence'. The legal aspects of the 'wake turbulence' problem are discussed in **Philip Silverman, Vortex Cases : At a Turbulent Crossroads, 39 J. Air L. & Com. 325 (1973)** which defines wake turbulence as a movement of air behind an aircraft. It is invisible to pilot and controller alike. It is not predictable since it is subject to ambient wind; its effect and strength will differ with the size, flap configuration, weight and speed of the aircraft producing it. It develops when air rolls up off the wingtips of an aircraft in flight due to the pressure differentials above and below the wing surface, forming two counter-rotating cylindrical vortices which are commonly called wake turbulence. It is much more severe than "prop wash,"' and can induce an aircraft to roll beyond its control capability. Some measurements have shown peak velocities of the tangential air movements surrounding a vortex core to be as high as 224 feet per second-or 133 knots.

59. In ***Sanbutch Properties v. United States, 343 F. Supp. 611 (ND Cal 1972)*** it has been observed that an experienced pilot flying into San Francisco International Airport crashed when he encountered wake turbulence. The controller had given no warning." The court, in finding for

the Government, discussed the relative duties of the controller and the pilot: (a) Had a duty to be aware of the hazard of wake turbulence; (b) Had a duty to be aware of the procedures recommended for avoidance of wake turbulence, and was aware of them; (c) Had a duty to obtain all available information concerning the flight, including weather and wind information; (d) Had a duty to comply with authorizations, clearances and instructions of Air Traffic Control; and (e) Had a duty to operate the aircraft. If the controller has a reasonable basis to give an advisory, he should give it.

60. According to Journal of Air Law and Commerce, Volume 39 | Issue 3 wake turbulence is invisible to pilot and controller alike and is not predictable since it is subject to ambient wind. It develops when air rolls up off the wingtips of an aircraft in flight due to the pressure differentials above and below the wing surface, forming two counter-rotating cylindrical vortices which can induce an aircraft to roll beyond its control capability. It is also not a case of the respondent/ state that the petitioner has ignored any warning about the wake turbulence given by Air Traffic Controller. In fact, the controller did not give any warning to the petitioner about wake turbulence. Therefore, I do no find any negligence on the part of the petitioner.

61. In view of the above, it is apparent that the enquiry has not been conducted in accordance with law and the petitioner was not afforded with the proper opportunity to defend himself and refute the charges efficiently. The enquiry is vitiated and is not sustainable in the eyes of law. Not only

the proceedings are bad on account of placing of reliance upon the report of preliminary investigating authority but it also appears that authorities had already made up their mind to dismiss the petitioner from service, even before any opportunity was given to petitioner to submit their reply against the conclusions and findings. In such circumstances, the proceedings are vitiated from the stage of submission of enquiry report and all subsequent proceedings including passing of the orders of dismissal from service, therefore, cannot be sustained and are liable to be quashed.

62. Accordingly, the impugned order dated 05.02.2016 contained at Annexure 10 of Writ Petition No. 2562 (S/B now S/S) of 2016 and order dated 25.04.2016 contained at Annexure 1 of Writ Petition No. 7624 (S/B now S/S) of 2017 are hereby quashed. A writ of mandamus is also issued directing the respondents to reinstate the petitioner in service with all consequential service benefits, however, the petitioner is not entitled for any back wages on the principle of "No Work No Pay". The entire exercise shall be completed within a period of six weeks from the date production of a copy of this order. However, the department is not precluded to initiate inquiry strictly as per the procedure prescribed in accordance with law.

63. The Writ Petition No. 2562 (S/B now S/S) of 2016 and Writ Petition No. 7624 (S/B now S/S) of 2017 are allowed. No costs. Pending applications, if any, stands disposed of.

**Order Date :- 14.07.2021**
VNP/-

**[Chandra Dhari Singh,J.]**