BOMBEY HIGH COURT

Manohar P. Kharkhar

Vs.

Raghuraj

Writ Petition No. 658 of 1981

(Deshpande, C.J. and Manohar, J.)

18.09.1981

JUDGMENT

Deshpande, C.J.

1. This petition under Article 226 of the Constitution of India, by the two petitioners, seeks to get the order of termination of their services dated 29th April, 1981 under Regulation 48 of Air India Employees' Service Regulations (hereinafter referred to as "the said Regulations") quashed. Petitioner No. 1 was the Director of Engineering and the head of the Engineering Department while petitioner No. 2 was Deputy Director of Engineering (Maintenance) and the head of the Maintenance Division in the service of respondent No. 2, Air India Corporation (hereinafter referred to as "the Corporation") on the date of the impugned orders. Petitioner No. 1 was promoted to the said post on 5th February, 1980 and was confirmed therein on 1st March, 1981. On the date of the impugned orders, petitioner No. 1 was aged 55 years while petitioner No. 2 57 years, their dates of birth being 7th November, 1925 and 24th April, 1924 respectively.

2. The petitioners were responsible for the maintenance of the aircrafts owned by the Corporation. Boeing 707 aircraft (hereinafter referred to as 'Makalu") had returned from Abu Dhabi to Bombay on 15th April, 1981. Makalu was earmarked for a special VVIP flight at the meeting of the engineers of the Corporation. The Prime Minister was to use it for her flight abroad during the period from 5th May, 1981 to 15th May, 1981 which fact was within the knowledge of the petitioners and a number of there engineering and security personnel. Makalu was due for P-3 checks on return from Abu Dhabi on 15th April, P. 3 checks involve large scale dismantling of the aircraft. It is virtually stripped open and/or its various parts and cables are exposed for inspection and testing. In this process of routine inspection on 17th April, 1981 all the cables were found in a satisfactory condition except for one elevator cable located under the floor board in the rear lavatory area. The said cable was found to have been slightly frayed. The notes of inspection recorded in the prescribed form indicated that some wires of this cable were

found broken as a result of normal wear and tear.

3. The Maintenance Division decided to replace the frayed cable. The routine inspection and rectification work of Makalu in terms of P-3 check continued on 17th and 18th April, 1981. No work could be done on 19th April, 1981, the same being Sunday. On 20th April, 1981 a new cable was installed in place of the said frayed cable. In the process of tensioning of the system for rigging the control, it was discovered that one of the four elevator cable could not be tensioned. The Maintenance Division decided to replace this second cable, suspecting that the same might have been stretched during the service. In the process of removal of this suspected stretched cable the same was found to have been badly damaged at the location above the wing centre section. The damage was found to consist of breakage of some of the wires and some strands coming apart. All control cable, therefore, were reinspected by the Maintenance Division. In the process of reinspection it was found that four more cables were damaged. Some were found to have been cut-damage at the points of cuts being fairly substantial. These four cables were also replaced. The report of the Maintenance Division disclosed that damage to these cables was due to intentional application of external force and not to normal wear and tear. This being found to be a clear case of sabotage, the petitioners themselves at once reported it to the Deputy Chairman of the Corporation, Shri Sharma and lodged first information report with the CBI on 26th April, 1981.

4. The case of the Corporation is that the damage to the cables caused by this act of sabotage had the effect of reducing their longevity. Had it remained undetected before the completion of the P3 check, there could not have been any opportunity to detect it at least for about six months when the aircraft would have been required to be similarly dismantled and stripped for the next P3 check. The aircraft could have crashed during any of the flights, during this period involving not only the loss of the aircraft but also the passengers and the crew it would carry, including the flight of the VVIP and her entourage. The news of intentional damage to the control cables was widely reported in the press as a result of which the reputation of the Corporation suffered severe damage. The petitioners as the Director of Engineering and the Deputy Director of Engineering (Maintenance) respectively were directly responsible for the maintenance of all the aircrafts and for ensuring safety of the passengers travelling therein, it being their duty to maintain the aircrafts in safe and airworthy condition and co-ordinate the functioning of other wing including the Security Division. The Engineering Department headed by the petitioners failed to take due care and precaution in respect of this aircraft Makalu on its being selected for VVIP flight on 16th April, 1981. The Corporation therefore, lost confidence in their suitability to hold such important posts of heading the departments, which were responsible for maintenance of the aircrafts in airworthy condition and to ensure the safety of the aircrafts as well as the passengers carried therein. Loss of confidence was the result of the negligence and failure to discharge duties culminating in the attempted sabotage of Makalu. On this account, the petitioners' services were terminated on 29th April, 1981. A decision of this effect was taken by the Chairman of the Corporation who recorded it in his note prepared earlier on that day itself.

5. This petition challenging the validity of the orders is filed in this Court on or about 6th May, 1981. The attack in the petition, at this stage, was concentrated mainly on the orders of termination being arbitrary and capricious and Regulation 48 itself being violative of Article 14 of the Constitution of India, it containing no guidelines for choosing between employees and employees and occasions and occasions for the contemplated action and also choosing to act under Regulations 42 to 44 (action for punishment for misconduct), 46 (compulsory retirement) and 48 (termination simpliciter) of the said regulations.
6. On 9th May, 1981 the Secretary of the Corporation, Narayanaswamy, filed an affidavit explaining the circumstances culminating in the termination of the services of the petitioners and showing cause against admission of the petition. The note of the Chairman preceding the issuance of the orders was referred to therein and a copy thereof was given to the petitioners on the date of admission on 13th May, 1981.

7. The petitioner, thereafter amended their petition by adding paragraphs 15A to 15N therein in the light of the note of the Chairman dated 29th April, 1981 and the affidavit of Narayanaswamy dated 9th May, 1981. In addition to the two points on which the termination order were initially challenged by these amendments, on the grounds amongst others, that (1) the note could not have been in existence before the issuance of the termination order and the same was an afterthought, (2) it was no part of the function of the Maintenance Department to prevent deliberate tampering of the aircraft machinery or offences involved therein, (3) the conclusions as to negligence of the petitioners were irrational and extremely unreasonable. The ordinary natural reaction should have been one of gratefulness towards the petitions, who detected the sabotage and atonce reported, (4) the allegations in the note are based on the ignorance of the Chairman as to the precise duties of the petitioners and the departments headed by them, (5) the allegations as to lowering of standards resulting delays in flights in the note were demonstrated to be untrue by the "Press Release" of the Corporation itself dated 3rd June, 1981 and published in the Free Press Journal, (6) the termination of the services of the petitioners was not bona fide, (7) the fact of both the petitioners being confirmed, a few months before the orders of termination, was demonstrative of the allegations being ill-founded, (8) "Makalu" was scheduled to fly to (i) Nairobi, (ii) Dubai, (iii) Singapore, (iv) Seychelles Salabury between 23rd April and 28th April, 2982 before the same was to be used for the Prime Minister's flight on 5th May, 1981 and the occasion to comply with the special instructions of Intelligence Bureau and the other precautions under the Security Manual could not have arisen till the said previous flights were completed and Makalu was finally ready for the VVIP flight.

8. It is then contended that (9) the finding of misconduct of the petitioners recorded in the note could not have been arrived at without following the procedure prescribed under Regulations 42 to 44, (10) the exercise of the powers under Regulation 48 is colorable aimed at avoiding recourse to Regulation 44 and the procedure required to be followed therefor, (11) the orders involved penal having regard to the circumstances in which the action was taken and the wide

publicity given, thereto in the newspapers, (12) the orders involved loss of benefits as to free medical and passage benefits available to them and their families as any other employee of the Corporation. No such orders could have been passed without hearing the petitioners in violation of the principles of natural justice and (13) respondent No. 1's service also is challenged.

9. The main facts stated in paragraphs 1, 2 and 3 above are sworn in the interim affidavit of Narayanaswamy dated 9th May, 1918 in paragraph 1 to 8 and reiterated in paragraph 4 to 11 of the affidavit in reply dated 18th July, 1981. The same are substantially admitted by the petitioners in paragraph 8 of their rejoinder dated 27th July, 1918 with a few modifications which constitute their defence. Respondent No. 1 Raghuraj also filed an affidavit is reply on 17th February, 1981 and asserting the facts stated therein, Both sides continued to file affidavits even during the course of hearing and we have thought it proper to admit them In the very first interim affidavit of Narayanaswamy dated 9th May, 1981 opposing admission and the earlier note dated 29th april, 1981 adverted to therein, it was made clear that sabotage to the aircraft Makalu selected for VVIP flight discovered on 20th April, 1981 and failure of the Engineering and Maintenance Departments to take normal and due security precautions for the safety of the aircraft and the passenger carried by it on, its being so selected on 16th April, 1981, was at the roof of the impugned orders. Surprisingly enough, the petitioners did not care to explain in the amended petition itself how the aircraft could not have been exposed to any such mischief after 16th April, 1981 and what steps were taken to ensure security measures against such mischief. The amended petition merely sought to disown any responsibility for such precautions and explanations were allowed to trickle in as and when the case developed. The defences of the petitioners to the charge of negligence in different subsequent affidavits can be summarized thus :

1. It was not the responsibility of the Engineering and Maintenance Departments to take care of the security measures, their obligation being to merely to ensure maintenance of airworthiness of the aircrafts. (Paragraph 15D, page 20B attributes total ignorance to the Chairman of the duties of the Maintenance Department.)
2. "Makalu" cannot be said to have been finally earmarked for the VVIP flight on 16th April, 1981. It was merely one of the three aircrafts intended to be kept ready for the flight of the VVIP (Paragraph 8 of the rejoinder dated 27-7-1981).
3. The question of taking security precaution in the manual of instructions of the Intelligence Bureau could not have arisen merely on such selection. The occasion for such security measures could have arisen only after its several other commercial flights from 24th April, or 2nd of May, 1981 were completed and the aircraft was finally earmarked and ready for VVIP flight.
4. Security precautions indicated in the Security Manual are not applicable to the situation in which the aircraft is stripped for P3 check and is kept in the hanger of the Air India. This is how the Manual has been understood by all the employees of the Engineering and Maintenance Department (Paragraph 16 of the affidavit dated 1-9-1981.)
5. Hanger area is always under the security guards, and no additional measures are called

for (Paragraph 16 of the affidavit dated 1-9-1981).

6. Other allegations not referred to in the 'note' dated 29th April, 1981 or the affidavit of Raghuraj are after thoughts and cannot be relied on to support the impugned orders, apart from the allegations themselves being false.

7. The respondent No. 1 could not have studied all the rules as to security and other documents and could not have formed the opinion claimed to have been formed by him in the note dated 29th April, 1981, particularly when he was not an engineer. The orders are the result of extraneous influence and considerations.

10. It will be convenient to quote from the affidavit in rejoinder of the petitioners. While disowning any liability to prevent any international damage to the aircraft the petitioners averred as follows in paragraph 7 of the rejoinder :

> "... As far as intentional damage is concerned, the duty of persons in charge of the maintenance and engineering department is no higher than that of any other employee of the Corporation which is to take all normal and avoidable steps to prevent such damage"

11. Paragraph 8 of the rejoinder dated 27th July, 1981 reads as follows

> "With further reference to paragraph 10 of the said affidavit, the statement that the said affidavit had been earmarked for V.V.I.P. flight is also not wholly accurate. The said aircraft was one of the two aircrafts likely to be used for the V.V.I.P. flight and question of final earmarking the same did not arise and could not have arisen till few days before the expected departure of the V.V.I.P. flight which was scheduled to be on 5th May, 1981".

11A. Narayanaswamy filed yet another affidavit on 31st August, 1981 after the hearing of the present case commenced on 24th August, 1981 Along with this affidavit he enclosed the Security Manual and certain other documents, particularly a copy of the letter dated 28th May, 1975 from the Director of Engineering to the Engineering Manager (QC & TS), which post was then held by petitioner No. 1 himself, with regard to the steps to be taken for security measures for the VVIP flights and ensuring co-ordination between the different wings. Some other documents also were filed. The production of the affidavits and documents was allowed by us in spite of objection of Mr. Setalvad who was also permitted to file rejoinder and documents.

12. With regard to the manner in which P3 checks are carried on, the petitioners assert that this is undertaken in the maintenance hanger in the maintenance area of the Corporation. The petitioners aver in paragraph 16 of the rejoinder dated 1st September, 1981 as follows :

> "..... and security personnel of Air India maintain a continuous twenty-four hour watch over that area. When aircrafts are to be subjected to a major inspection or a major check, they are kept within the Air India hangar. Once a 707 aircraft is brought within the

maintenance hangar the aircraft is docked, meaning the by that the aircraft is docked, meaning thereby that the aircraft is so maneuvered and a large steel structure already existing is so adjusted that maintenance and engineering personnel can have access to all parts of the aircraft such as the wings, engines, tail, cabin, etc."

13. In application of Security Manual to the maintenance area it is asserted in the following words in paragraph 16 of the same affidavit :

> "..... We further say that both of us who have been in service of Air India for many years and have had occasion to deal with the provisions of the security Manual, have always understood that these requirements do not have any application when aircrafts are parked within the maintenance hanger and as far as we are aware this is also the understanding of all our colleagues including the present incumbents of the posts held by us before the orders of termination were issued."

14. It is further averred :

> "..... It is also not correct to allege that it is either the duty of Engineering personnel or the Engineering Department to intimate the nature of adequate security required to be applied in respect of a stripped aircraft undergoing P3 checks. A stripped aircraft undergoing P3 check is invariably within the maintenance hanger, which, as stated above, is always under continuous security and no question can, therefore, arise of any particular initiation of steps being required for the purpose."

15. It was further asserted :

> "..... The various special precautions mentioned are only applicable once the aircraft and the first stand by aircraft complete the last of the ordinary commercial flights before being positioned for undertaking a V.V.I.P. flight. The steps required to be taken to secure the safety of the aircraft as mentioned in the said circular taken only at that stage."

16. In this context, the petitioner sought to rely on the latter dated 4th February, 1981 under which an aircraft was required to be selected for to and fro flight of the President of Kenya from Kenya to India from 24th to 27th February, 1981 emphasizing how the letter does not indicate any security precautions contemplated there under and the same was consisted with their interpretation of the Security Manual.

17. Narayanaswamy filed affidavit on 4th September, 1981 to explain how such reliance was misplaced and enclosed therewith some more documents to show that requisition dated 4th February, 1981 was merely for selection of the aircraft. Selection of the aircraft was notified under the letter of 18th February, 1981 and a copy of it is shown to have been endorsed to the Security Manager, Santa Cruz.

18. It is on these pleadings that several questions raised in this petition are required to be adjudicated. One of the important questions is whether the services are terminated on account of any misconduct on the part of the petitioners. The answer turns on the true understanding of the reasons recorded by respondent No. 1 in his note of 29th April, 1981, claimed by him to have been drafted before the issuance of the orders as directed by him. It is necessary to analyse these reasons first. Though the geniuses of this note and its existence before the issuance of the orders is challenged, Mr. Setalvad argued exclusively on the hypothesis of its being genuine, and in point of fact, respondent No. 1 having recorded it before the termination orders were issued.

19. This note can be divided into seven parts :

(A) The first part refers to the First Information Report filed with the CBI by petitioner No. 1 regarding the attempt to tamper with the Makalu which was earmarked for carrying the V.V.I.P., the Prime Minister, and other members of her party to Geneva, Kuwait and United Arab Emirates and back.

(B) The second part deals with his conviction that there has been complete lack of control, watch and supervision from the point of view of maintenance checks, to be carried out on the aircraft and thoroughly lax security which have rendered possible the damages to the cables detailed in the First Information Report.

(C) The third part refers to the failure to meet the requirements of security measures contained in the special Instructions given by the Intelligence Bureau regarding the precautions to be taken for the protection of the President and Prime Minister during their visits abroad including journeys by Air India. Reference is made as to how the said instructions include details with regard to the inspection of the parts of the aircraft in advance of the flight and the security checks required to be findings as to utter slackness and dereliction of duty in carrying out the checks laid down, which, according to him, had led to the ominous situation of damage to the cables as detailed in the First Information Report.

(D) The fourth part refers to his intended action notwithstanding the pendency of the investigation by the CBI. In this part, respondent No. 1 expressed his view that the damage was caused on account of extreme inefficiency and utter carelessness on the part of the senior officers of the Engineering Department and Security Division in handling this matter.

(E) The fifth part refers to the lowering in the standards of the performance relating to maintenance of the aircrafts resulting in delays in the flights. He again repeats how the security arrangements are totally lax in the airport areas on account of which incidents of illegal trespass into the operational area and into the aircrafts had taken place.

(F) The sixth part refers to the proposed action by respondent No. 1 It indicates how he lost confidence in the ability of the senior officers of the Engineering Department and Security Division to run their Department and Division efficiently and to give proper

protection to the VVIPs during their journeys, and

(G) the seventh and the last part refers to the conclusion as to how in his opinion the continuance of the five named officers therein would not serve the interests of the Corporation and how termination of their services had become necessary. The petitioners are mentioned at serial Nos. 1 and 2 among such five officers.

20. The first question that arises for consideration is whether under this note the petitioners or any other officer are personally found guilty of "complete inefficiency, lack of control, watch and supervision and utter slackness and dereliction of duty". The entire Engineering Department and Security Division is in fact found to be so guilty. At any rate, the language of the first, second, third and fifth parts is unambiguous and leaves no manner of doubt that the finding is not against any particular officer or person. It refers to the utter inefficiency of the entire administration of the two wings. The findings in forth and sixth parts also are equally general though these refer to the inefficiency and utter carelessness of the senior officers of the both wings and resultant loss of confidence in them. The seniority is a relative term. It can cover in its sweep many senior officers. The thrust of the note is aimed at emphasizing utter inefficiency, etc., of the entire system and the officers heading it. The note must be read as a whole. The reference to the senior officers in these two parts appear to be too general to admit of reference to the petitioners or any particular officer.

21. Coming now to the seventh part, the petitioners and three other officers are expressly mentioned therein and that it refers to the petitioners admits of no doubt Respondent No. 1 claims to have lost confidence in them because of the inefficiency or carelessness adverted to in the earlier six parts. The petitioners and the other three appear to have been chosen by respondent No. 1 not so much because of their any direct act of commission or omission, but because of their being the heads of departments the functioning of which was found by him to be extremely poor under them. The petitioners are held liable because of their inability to do the needful. He appears to have lost confidence in their suitability to remain at the head because of the deficiencies in the functioning of the departments inter se. To sum up, the note is aimed at emphasizing the utter inefficiency of the administration under the named officers and his loss of confidence in their ability and suitability to be able to cope with the situation. In the affidavits, no doubt individual negligence of the petitioners is alleged, but it shall have to be read in the proper context. It is obvious that respondent No. 1 could not choose to remove all the seniors and bring the administration to a standstill.

22. The next question is whether this conclusion can be held to be arbitrary or capricious. How, the conclusion can be held to be arbitrary or capricious or fanciful, if it can be demonstrated either that no material whatsoever exists to warrant such a conclusion or even if any material exists no reasonable person would ever reach such a conclusion on the basis thereof. It is not disputed by Mr. Nariman that the record of the service of the petitioners by and large is found to be free from any blemish excepting for what was discussed in the correspondence between the

petitioner No. 1 and respondent No. 1 about the under-utilization of the personnel in the Engineering Department and delay in the flights caused by the deficiency in the planning of the said department. Whether the conclusion as to the loss of confidence in the petitioners and their unsuitability to head the departments under them can be said to be arbitrary or not, depends on what inefficiency and carelessness can be attributed to the personnel of their departments in handling of "Makalu" after the same was earmarked for the VVIP flight on 16th April, 1981.

23. That the Maintenance Division is a part of the Engineering Department and the Petitioner No. 1 was the head of that department and petitioner No. 2 was the head of Maintenance Division is substantially admitted in paragraph 5 of the rejoinder. Their direct responsibility for the safety and maintenance of the aircrafts is also expressly admitted though the responsibility for prevention of deliberate acts of sabotage is denied.

24. The first question would be whether Makalu was in fact selected on 16th April, 1981 for special VVIP flight or not, an attempt is made to tone down its importance by suggesting that it was not so earmarked but was only one of the three aircrafts so selected and there could still be one more occasion of its finally being so earmarked. The extracts of the minutes of the Daily Morning Progress Meeting, dated 16th April, 1981 filed by the Corporation demonstrate to the inaccuracy of the petitioners' such assertions. Makalu is expressly indicated to be the operating aircraft for the VVIP flight. Two other aircrafts no doubt are reserved to remain as "stand-bys", but much earmarking of two other aircrafts as stand-bys cannot affect Makalu being earmarked as the main aircraft for the VVIP flight and its plain implications. Such selection would at once attract the security precautions required and prescribed. What precautions are required to be taken in regard to two other stand-by aircrafts is not relevant once the distinction between such selection of any aircraft for VVIP flight and reservation as stand-by is borne in mind. The question of using anyone of the two aircraft for the VVIP flight could not have arisen till Makalu was found to be unavailable for some reason. It is obvious that the petitioners have made an attempt to give a twist in anxiety to trot out some excuse for the failure to do the needful.

25. The other assertion in this paragraph that any other occasion for final earmarking of the aircraft could arise is also misleading. In spite of several affidavits being filed in this case even during the course of hearing, no attempt is made to clarify what that occasion could be and how it is contemplated to be made known and under which rule.

26. The next question is what precaution can be said to have been called for by way of the security measure for the protection of VVIP in this case. Admittedly, this aircraft was undergoing P3 checking process in the normal course. It was not disputed before us that the process of P3 checking in respect of any aircraft is undertaken every time after completion of 1800 hours of flight involving a gap of about six months' period. It is also not disputed before us that in the process of P3 checking, the entire aircraft is dismantled and stripped and all its vital parts and cables are exposed for a period of three/four days during which the checking process continues. The assertion of the Corporation that no work is carried in the aircraft during nights and

intervening Sundays and it remains unattended during this time is not disputed as also the assertion that on Sunday, the 19th April, 1981 it remained so unattended. Importance of this assertion lies in the exposure of all its parts to the possibility of sabotage and tempering by those who could plan it. In the event of any such act of sabotage or mischief being done during this unattended period and the same remaining unnoticed for any reason before the panels are closed and unstripping process is completed, it can never be detected till the aircraft is stripped open again at the next P3 process of checking after about six months, and sabotage can have its fatal effects at any time during this period depending on its potentiality to cause fatalities.

27. Such sabotage can be prevented only by keeping a security watch over the stripped plane commensurate with risk involved in its such exposure during the P3 checking. Even ordinarily it would be the duty of the persons, in charge of the safety and maintenance of the aircrafts, and the passengers carried thereby, to ensure that the aircrafts or their parts are not exposed to the possibility of their being tampered with or interfered by anyone whomsoever. Exposure of aircraft during the process of P3 checking itself adds to much obligations. The duty in regard to the need for strict security precautions gets multiplied many more times, when before or during the P3 checking process, the aircraft is selected for the VVIP flight. Such selection by itself may operate as an invitation for mischief managers believing in the efficacy of sabotage and violence and terrorism for achieving their ends when the plane stands so stripped.

28. We have already seen how no checking work is carried on at nights and on Sundays during P3 checks, The aircraft thus remains unattended in its dismantled and stripped condition and is exposed to acts of sabotage by those who are interested in it or so disposed of. As indicated in Part 1 pages 1 and 2 of the Security Manual, level of security must be commensurate with the level of exposure to threat. The standard security measures at Page II-1 contemplate "ensuring adequate surveilliance over the aircraft" or "placing guards around the aircraft where necessary". Part I page 1 of the Security Manual indicates what is to be done when the aircraft remains unattended.

29. When P3 checking was under process after the Makalu was earmarked for the VVIP flight on 16th April, 1981, the obligation to take security measures must be deemed to have commenced right from the time of its such earmarking as the aircraft was stripped and all its parts were exposed to various potential threats and undectable sabotage. The intervening several other commercial flights to different countries before the Scheduled VVIP flight cannot be relevant to relieve such obligation to take the required security precautions, once it is borne in mind that damage caused to any part of the aircraft Makalu during P3 checking cannot be detected after the panels were closed and P3 again stripped for P3 checking after six months' period. The sabotage caused in this case could not have been detected even after those other flights were completed before 5th May, 1981, if it were not detected on 20th April, 1981. Mr. Setalvad could not satisfy us how such damage or mischief could have been detected if it had remained undetected before the P3 checking process was over and the panels were closed.

30. The manner in which the sabotage to the cables was discovered in this very case is a pointer as to how damage could remain undetected. Occasion to discover the damage to the second cable arose only when one other cable was found to have been frayed. It is only in the process or tensioning operation that the damage to the second cable was discovered. Damage to the other cables was detected only when reinspection was resorted to. There is much force in the contention of Mr. Nariman that detection of the damage was really fortuitous in the facts and circumstances of the case. The particular cable becoming frayed was itself a fortuitous circumstance and the damage could not have been detected, had the panels been closed and frayed cable had not caught the attention of the engineers there, who had completed the round of inspection and recorded their notes in the book concerned.

31. This contention of Mr. Nariman no doubt assumes that sabotage was caused before the 17th April. The note of 29th April, 1981 is not based on any such assumption. On the contrary, superficial reading of respondent No. 1's report to the Board of Directors dated 7th May, 1981 referring to the inspection notes of 17th April, 1981 may suggest as if no damage could have been caused till the 17th. The true position is that though the damage is admitted even by the petitioners to be the act of sabotage, there is no material today, nor any was in existence on the date the "note" dated 29th April, 1981 or the report dated 7th May 1981, to raise any inference of the sabotage having been caused either before or after 17th. Nobody can definitely hold on this material whether sabotage was caused before of after 17th April, 1981.

32. It is, however, not relevant if the acts of sabotage were committed before or after 17th and whether detection on 20th April was fortuitous or not. Security measures are always aimed at taking all possible precautions to prevent the sabotage. Its level always is required to be commensurate with the extent of potentialities of the possible mischief's. Such possibilities of detection of the mischief are always uncertain.

33. It, however, would be the safe inference that selection of the aircraft for use of the VVIP alone could have spurred this act of sabotage. We are unable to visualise any other motive for the miscreant, nor any was suggested in the course of arguments by the learned advocates. Even so, it is also not possible to hold positively that the Prime Minister or her entourage could be the target. No material is placed before us to conclude that such cutting of the cables could have resulted in the crash only after 5th May when the Prime Minister was to leave on this plane and not before during the course of other commercial flights or and after the Prime Minister's tour on 15th May, 1981. There are no means of verifying the calculation of the miscreants. All that can, however, be safely held is that crash could also have taken place during the Prime Minister's tour from 5th May to 15th May, 1981. And sabotage could have been indulged in only on aircrafts being selected for the flight of VVIP.

34. Though not conclusive of the miscreants' actual motive, this factor is not irrelevant for

determining the liability of the Engineering Department to alert security immediately on the selection of this aircraft for VVIP on 16th April and proceed to co-ordinate the efforts of all the concerned wings to prevent the possible mischief. The only relevant factors in this behalf are, (1) selection of the aircraft for the use of the VVIP on 16th April, (2) exposure of the dismantled and stripped aircraft for acts of sabotage (3) the possibility of the acts remaining undetected in the visual inspection during the P3 checking process, and (4) the fatal consequences of the sabotage becoming effective before the occasion to dismantle the plane arises after at least six months.

35. It must not be ignored that loss of any other human lives is as important as the life of any VVIP and his or her entourage. Importance of selection of any aircraft for the use of the VVIP operates as an invitation to the miscreants, The loss of their lives bring shame and dishonor to the nation on the whole and adds to the damage to the reputation of the Corporation.

36. The contention of Mr. Setalvad that the petitioner's obligation was restricted to ensure airworthiness and otherwise fitness of the aircraft and not the security of the personnel travelling therein is untenable. Part VI of the Security Manual dealing with VVIP flights gives an indication as to what precautions are required to be taken. It requires strict precautions to be taken to ensure the safety of the VVIP flight. In Clause I of Part I of the Security Manual, this is what is observed :

> "It is the basic policy of Air India to consider safety first in all aspects of its operations, particularly as they relate to personnel and aircraft safety. In furtherance of this policy co-ordination among all operational levels is of paramount importance to achieve and maintain an effective prevention programme to minimize the possibilities of aerial piracy, sabotage, bomb threat, etc."
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> Part II of the Security Manual deals with "Standard Security Measures at All Times". Clause I deals with Aircraft Security. Sub-Clause (1) deals with unattended aircraft and under this head five precautions are indicated.
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> 36A. It is true that none of these measures expressly refer to the contingency when the aircraft is in maintenance hanger for P3 checking. We are, however, unable to see how application of precautions contemplated under (iii) to (v) could be excluded even to such a contingency. The claim of the petitioners that they owe no obligation with regard to the security is belied if one refers to Clause I of Appendix I of Part II of the Security Manual and the first paragraph providing that the Engineering and Ground Handling Departments are required to take action when aircraft remains unattended. The sixth paragraph therein reads as follows :
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> "All open access points should be inspected after an aircraft has been left unattended for a period of time; whether or not the aircraft is due to go out on a service."

This action is required to be taken by the Engineering Department as indicated in the column opposite thereto. We have already adverted to a letter placed on record by the Corporation. It is

written by the Director of Engineering on 28th May, 1975 of which petitioner No. 1 is one of the addresses. It expressly refers to the duties of the engineers to coordinate the services of all the wings including the duty to alert the security personnel.
The Security Manual merely contains broad guidelines and can never be exhaustive. The duty to maintain the aircraft in an airworthy condition includes duty alert the security personal to prevent any damage to any part when unattended and stripped. This obligation flows from their exclusive knowledge as to when the aircraft remains unattended and when its parts are exposed to the acts of sabotage. This obligation springs from the very nature of its work and exists independently of any rules. The assertion that the petitioners owe no duty to prevent offences is misleading. Offences can be committed in spite of all security measures. This cannot relieve them of the obligations to take security measures. The defense in this behalf is simply untenable.

37. The petitioners themselves relied on a letter dated 4th February, 1981 requiring selection of the aircraft for the use of another VVIP, President of Kenya. It was to fly during 22nd to 27th February, 1981. A copy of this letter is not addressed to the Security Division though it is addressed to several other authorities obviously because the aircraft was yet to be selected. The aircraft was selected under the letter of 18th February, 1981. A copy of it is expressly shown to have been sent to the Security Manager obviously to alert him for the needful. The assertion on Narayanaswamy that this aircraft was to fly on a few other commercial flights between 18th February and 22nd February, 1981 is not disputed by the petitioners. Yet the Engineering Department did not fail to inform the security personnel on 18th itself of the impending VVIP flight from 22nd February, 1981. This goes to belie the case of the petitioners that (i) it was not the obligation of the Engineering Department to inform the security officer for taking precautions, or (2) that and any subsequent earmarking is contemplated in the case of an aircraft once earmarked for VVIP flight after other commercial flights are completed by the said aircraft or (3) that occasion to inform the security personnel and to take necessary steps does not arise till all the other commercial flights ar completed and the aircraft becomes ready for the contemplated VVIP flight. The obligation to take security measures in the present case was all the more serious after Makalu being selected for VVIP on 16th April, 1981 as the same was being subjected to P3 checks during which all its interior parts were exposed because of its being stripped open. The security measures were all the more necessary when Makalu was liable to remain unattended during the night time and the whole of intervening Sunday.

38. The assertion of the petitioners that the place of the hanger in which Makalu was dismantled during the process of P3 checks is always subjected to the usual guard by the security personnel is in a way misleading for more than one reason. This is a belated defense taken in the rejoinder dated 1st September, 1981. The failure to refer to this plea in the first affidavit and amended petition or reply dated 27th July, 1981 in spite of the allegation of their failure to take due, usual and normal precautions in the first affidavit of Narayanaswamy dated 9th May, 1981 points towards its being an afterthought. They have also not indicated the details of the security usually undertaken for prevention of any mischief and extent of the care taken. In either case the usual

security cannot be said to be adequate when additional security was required to be taken after Makalu was earmarked for VVIP flight on 16th April, 1981 and aircraft was stripped and exposed to sabotage.

39. At the request of Mr. Nariman, we went through the relevant instructions issued by the C.B.I. for the protection of the President and the Prime Minister to which reference is made in the note of respondent No. 1 dated 29th April, 1981. With the consent of the learned advocates of both the sides, the relevant instructions were perused by us in the chamber in the presence of all the advocates. It is true that the said instructions do not specifically and directly cover the contingency where P3 checking is required to be undertaken after the aircraft is earmarked for VVIP flight. Clause 2 of Appendix I, however, does emphasis that the responsibility of the Aircraft Company or the Corporation to take all the necessary security measures during the testing and servicing is not relieved merely because police guards are required to be placed when the aircraft is parked at a place other than the Air Force Station. Now, it is true, as contended by Mr. Setalvad, that Clause 2 should be read with Clause 1. So read, contends Mr. Setalvad, such obligation of the Aircraft Company or the Corporation could arise only if the aircraft is parked for VVIP flight either at the Air Force Station or non-Air Force Station. This contention is plausible if the rules are so read superficially. However, Clause 2 is wide enough to cover the liability of the Corporation where the aircraft is exposed after the same is earmarked for VVIP flight to P3 check and where occasion to have next P3 checking is not likely to arise before the VVIP actually avails of the use of the said aircraft for the reasons discussed earlier.

40. If P3 checking process exposes the entire aircraft's machinery to the possibility of sabotage and if sabotage so caused during this process is incapable of being detected after P3 checking is over and the panels are closed and if VVIP is going to travel by it before the next process of P3 checking, the obligation of the persons in charge of the safety of the aircraft and the passengers travelling therein must be held to have commenced from the time when the process of P3 checking starts. In such cases, as soon as an aircraft is earmarked for VVIP flight, the fact that the said aircraft was to have undertaken some more extra flights during the intervening period can be of no relevance whatsoever if the next P3 process was not likely to be resorted to before the date scheduled for the VVIP flight. Failure to take the required precaution is clear evidence of negligence of the persons concerned. The gravity of negligence would necessarily vary from circumstances to circumstances. It is difficult to find fault with respondent No. 1 if sabotage caused to Maklu was found by him to have been facilitated by the negligence of the two departments and was considered by him to be fatal to the VVIP for whom the same was earmarked. The consequences could have been disastrous to the VVIP, her entourage and national honor and good name of its administration. It could have affected the reputation of the Corporation adversely in the world. Against this background, the claim of the Corporation that discovery of sabotage caused damage to its reputation cannot be said to be imaginary and baseless.

41. It is true that the Engineering Department had itself, at any rate, detected the said damage and to that extent, the technical officers and their staff do deserve some credit for the same. This by itself cannot, however, relieve it of its obligation arising from negligence and the consequences flowing there from. In either case, all this state of affairs could cause loss of confidence of respondent No. 1 in the heads of the departments concerned like the petitioners. The conclusions reached by respondent No. 1 cannot be said to be without basis such less arbitrary or capricious. It is not the function of the Court exercising its jurisdiction under Art. 226 of the Constitution of India to find out if the Court itself could have come to the said conclusion or not. All that its necessary to find out is whether respondent No. 1 could have reached the said conclusion on the material before him. It is not possible for us to hold that he could not have reached this conclusion in the facts and circumstance of the case. We are, therefore, not satisfied with the contention of Mr. Setalvad that the conclusion is capricious, arbitrary or perverse and no reasonable person could have reached such a conclusion.

42. It is true that a few months before the impugned orders, both the petitioners were confirmed in their posts. It was strenuously argued by Mr. Setalvad that confirmation in their high posts by respondent No. 1 was evidence of their being suitable and competent and loss of confidence against this background cannot but be held to be not only unfounded but capricious. The contention is plausible. The confirmation, however, can never be conclusive when more facts come to light later. The confirmations mostly follow as matter of course unless something very serious is found against the incumbent. The confirmations of high officers are not withheld ordinarily. Nor they, however, can prevent the Corporation from acting on the material that comes before it subsequently. In fact, subsequent events can also highlight the true dimensions of the deficiencies, if any, discovered and hinted at the time of confirmation. As discussed earlier, failure to take the required security measures involving lives of passengers or V VIP's in particular puts the entire Department in a very unfavorable color and exposes the Corporation itself to grave consequences. Earlier confirmations are far too inadequate to wipe them out.

43. It is true that apart from referring to the negligence in the matter of Makalu, the note of respondent No. 1 also refers incidentally to the lowering of standards resulting in the delays in flights. Mr. Setalvad placed strong reliance on the "Press Note" released on 3rd June, 1981 in which the Corporation claims to have brought down delayed departures from 52% in March, 1980 to 24% in March, 1981 by monitoring the flights, claiming further that the large percentage of the said 24% delayed departures was due to bad weather and ATC delays. Three performance sheets were also circulated to us by Mr. Setalvad in the course of arguments for the months of December, 1980 to March, 1981 indicating reduction in flight delays. This, according to Mr. Setalvad, demonstrates how one of the grounds of termination of services is non-existing, which by itself should be sufficient to quash the orders. Mr. Nariman tried to make a distinction between technical delays referred to in the Press Note and the sheets and the delays caused by the lack of planning by the Engineering Department adverted to in the "note" in support of his contention that allegations in the note remain unaffected.

44. We do not think it necessary to go into this question in detail. It will be enough in this context to refer to one letter of petitioner No. 1 himself dated 26th February, 1981 addressed to respondent No. 1. Petitioner No. 1 has, in fact, admitted delays in the flights and only tried to explain the same assuring that efforts would not be found lacking in planning and implementation of the aircraft movements. This admission, in the absence of any explanation, goes to fortify the contention of Mr. Nariman. In either case, we are unable to see why respondent No. 1 could not have relied on this admission at the time of writing the said note. Secondly, non-existence of one of the many grounds may have fatal effect on subjective detention orders, they can have no application to the termination order shown to have been based on objective assessments (see *Zora Singh v. J. M. Tandon*,). The context of the note also unmistakably indicate that flight delays played a minor part in making up respondent No. 1's mind to terminate the services, the main and dominating factor being the negligence of the Department in preventing sabotage to Makalu.

45. In the affidavits of Narayanaswamy and also in the affidavit of respondent No. 1, reference is made to two other deficiencies. One, with regard to under utilisation of the personal and the other, modification of the galleys referred to in the letter of respondent No. 1 dated 2nd April, 1981. Narayanaswamy's affidavit in reply also creates an impression that the petitioners actually allowed the aircraft to have a flight before enabling the CBI Officers to examine the same. We do not propose to deal with the same as these do not appear to be the basis of the note of 29th April, 1981.

46. It was strongly argued by Mr. Setalvad that it is not open for the the respondents to rely on anybody's affidavit when the said note is prepared by respondent No. 1 and the orders of termination are based on the said note. We are unable to see any reason why affidavit of a high-ranking officer of the status of Narayanaswamy actually in the know of things should not be relied on for elaboration of the points broadly indicated in the note of respondent No. 1. Secondly, and more importantly, we ourselves have not relied on any other circumstance apart from what is relied upon by respondent no. 1 himself in his said note. Respondent No. 1 also has filed an affidavit testifying to facts noted by him, apart from indicating the special circumstance in which the said note was prepared by him and finalised. The contention that respondent No. 1 could not have examined all the concerned rules, manuals and the records before preparing the note no. 29th April, 1981 appears to us to be devoid of substance, as also the reason in support of the contention that he was not an Engineer. The note is prepared after eight days of discovery of the sabotage by which time pros and cons of the issue must have been discussed threadbare amongst all the top officers. The allegation of the petitioners being made scapegoat at the instance of politicians is not supported by record.

47. It is then contended that the impugned orders are made by respondent No. 1 in colourable exercise of powers and are, therefore, liable to be quashed. This contention cannot be appreciated

without the premises supposed to be underlying it are verified. The contention assumes that the impugned termination of services if founded on misconduct and though not disclosed in the innocuous order, the truth of it can be verified by going behind the orders and examining the note of respondent No. 1 relied on in this Court According to Mr. Setalved, the petitioners are found to be guilty of utter carelessness and negligence and not the departments under them and the acts and omissions adverted to in the note amount to misconduct under Regulation 42. The termination of the services so viewed amounts to dismissal and such a punishment covered by Regulation 43 could not have been imposed without show cause notice and enquiry in compliance with Regulation 44. Making easy recourse to Regulation 48, and avoiding compulsions of Regulation 44, in these circumstances amounts according to Mr. Setalvad, to colourable exercise of power.

48. Now, Regulation 44 merely prevents the Corporation from imposing any punishment contemplated under Regulation 43 without following the procedure indicated therein. Punishments are enumerated in Regulation 43. The said punishments can be inflicted only for sufficient reasons, meaning in the context, on proof of misconduct as defined under Regulation 42. In other words, the occasion to impose punishment under Regulation 44 for any act or omission of any employee can arise if the same amounts to misconduct under Regulation 42. The two orders passed by respondent No. 1 by themselves do not contemplate imposing punishment. These are order of termination simpliciter. The question of any misconduct or any punishment therefor and following of the procedure for imposition thereof under Regulation 44 cannot, therefore arise.

49. That the Court has power to go behind these order admits of no doubt. Going behind the said order is meaningless exercise unless something hidden from the eyes can be traced therein. We have examined the note exhaustively. The services of the petitioners, even on going behind the order and analysing the note, are found to have been terminated for loss of confidence as to their suitability to hold the concerned posts. Sheer unsuitability or unfitness to held office is not a misconduct in its generic sense or in its artificial meaning under Regulations 42. Regulations 42 to 44 of the Regulations, therefore, can have no application. We have already indicated how the note specks of utter inefficiency and carelessness in general of the two Departments as a whole and not of individual negligence of anyone. Confidence in the petitioners' suitability no doubt is lost due to such over all inefficiency of the departments under them. The conclusion would not be different even if it is assumed that the note contemplates finding the petitioners guilty of gross inefficiency and carelessness. Inefficiency by itself does not amount to misconduct in its generic sense. If any authority is needed to support this view, it will be enough it reference is made to the Supreme Court judgment, Union of India, J. Ahmed, [1979-II L.L.J. 14] Such negligence does not fall even under the enlarged conceptions of the misconduct under different clauses of Regulation 42.

50. Mr. Setalvad and Mr. Desai could draw our attention only to sub-regulation (xii) of

Regulation 42 of the said Regulations. "Habitual negligence" or "Neglect of works" amount to misconduct under this sub-regulation. Even on the assumption of there being a finding of the petitioners to be negligent in the note it is still far from "Habitual negligence" to attract sub-regulation (xii). Secondly, "neglect of work" is not the same thing as negligence on any particular occasion or in the discharge of any duty. It is, therefore, not possible to spell out any allegation or finding of such "neglect of work" in the finding recorded under the note. Moreover, on a fair reading of the note of record as a whole, it can be found that the slackness and dereliction of duty, etc., are alleged against the Engineering Department as a whole. The fault that is imputed to the petitioners consists of their inability to cure those defects of the department as a whole. It is after having noticed this crucial inability on the part of the petitioners as the two senior-most officials who head the Department that respondent No. 1 has lost confidence in the petitioners. In a sense, this is inefficiency - inefficiency in the matter of delivering the goods. But this is a far cry from the concept of misconduct contemplated by Regulation 42. As discussed earlier, the only real finding against the petitioners is that respondent No. 1 has lost confidence in the petitioners "to run their department and division efficiently" and to give "proper protection to the VVIPs. during their journeys abroad". The termination order, therefore, cannot be said to have been connected with any misconduct. Such termination orders not falling under Regulation 42 or 46 can be easily passed under Regulation 48. Any question of colorable exercise of power cannot arise in the present case.

51. Even if it is assumed for the purpose of argument that the petitioners are found to be guilty of misconduct under the "note", the order can still not be said to have been founded thereon. It is well-settled that services of an employee can be so terminated, even when he is suspected to be guilty of misconduct or is so found in preliminary enquiries of various types, if the employee does not possess any right to the post or the employer possess right to so terminate under the service contract or service rules. Probationers, temporary servants or servants officiating in higher positions in Government service are held to have no right to the posts they hold, as also the Government servants reaching the age at which compulsory retirement is permissible under the service rules. At best, the alleged misconduct in such a case can be said to have been the motive and not the basis or foundation of the said orders, it being founded on the right to so terminate the services independent of the misconduct. The question becomes complicated only when in spite of the servant having no right enquiry is initiated but dropped later. But we are not concerned with that set of circumstances.

52. It is necessary; however to ascertain if the petitioners can claim to have any right to the posts which they held on the date of the termination orders. Mr. Setalvad and Mr. Desai relied on their (1) being confirmed in their posts, and (2) being entitled to remain in service till the age of retirement fixed under Regulation 46(3) and irremovability from service by way of punishment without proof of misconduct under Regulation 44, in support of their contention that they must be held to have right to the the posts till the date of retirement, Reliance is placed on the ratio of the judgment of the Supreme Court in the case of *Moti Ram Deka v. N. E. Erontier Railway*[1],

53. Mr. Nariman, on the other hand, contends that rights of even any confirmed employee under Regulations 44 and 46 are subject to the employer's rights to terminate his services according to the exigencies without assigning any reason under Regulation 48. According to him, cases of Government servants like Motiram Deka stand on different footing because of the protection of the overriding constitutional provision of Article 311. This contention appears to us to be formidable. Under the ordinary law of master and servant, no servant can claim any security of tenure. The provisions of the Industrial Dispute Act do afford some protection to the workmen covered by the Act. Article 311 of the Constitution also affords some such security to Government servants. The word "removal" was broadly construed in Moti Ram Deka's case to include not only removal by punishment but also removal simpliciter contemplated under Rules 148 and 149 of the Railway Servants Rules referred to therein. This overriding provision enable the railway servant Moti Ram Deka to claim Rules 148 and 149 to be ineffective against the constitutional guarantee of Art. 311 under the majority view and, therefore, claim to remain in service till the age of retirement. This ratio cannot apply to the present case in the absent of application of Art. 311 or analogous provision. Regulation 44 of the said Regulation, in the first instance, is differently worded from Art. 311. Secondly, Regulation 44 cannot have any overriding effect on Regulation 48 such as Art. 311 could have on Rules 148 and 149 of the Railway Rules. Under the harmonious construction of

[1][1964-II L.L.J. 467]

the two Regulations, Regulation 48 would be as effective as Regulation 44. Cases falling under Regulation 48, of termination simpliciter, if other valid, would remain unaffected by Regulation 44. The fact that the employees of the Corporation enjoy some status does not enable them to have the protection of Art. 311. The petitioners are not even protected by the security afforded by the industrial jurisprudence. The petitioners, therefore, cannot claim any right to the post in the same manner in which any Government servant can claim. The ratio of Moti Ram Deka's case is thus inapplicable to the employees of the Corporation.

54. Even the employees in Industrial Establishments cannot claim absolute security of tenure. The model standing orders framed under the provisions of Industrial Employment (Standing Orders) Act, 1946, invariably contain a provision authorizing employers terminate services according to the exigencies in addition to the power to remove by way of punishment in terms of findings in disciplinary proceedings. The words 'Industrial establishment' have been defined in Section 2(e) of this Act of 1946, adopting the definition of the said words in Section 2(ii) of the Payment of Wages Act, 1936. The said definition in the Payment of Wages Act has been amended from the year 1965 to include under sub-cl. (aa) of Section 2(ii) thereof, even air transport service, such as the one provided by the respondent No. 2 Corporation in this case. The Legislature thus can be said to have recognized the employees' rights to terminate their employees' services available to them under the ordinary law of master and servant without the existence of misconduct in suitable cases even while extending protection to them. In some case it is made expressly clear, as under the explanation to Regulation 42, that termination of services

simpliciter would not amount to termination by way of misconduct or punishment. Such statutory fiction is raised to put the matter-beyond controversy. This will clearly show that no employee can claim any service tenure for a particular number of years of security thereof excepting when the same is protected by the provision like Art. 311 of the Constitution of India or provisions analogous or to the one under several labour legislations made available under the judicial precedents under the Industrial jurisprudence.

55. It can also be said to be somewhat relevant to bear in mind in this context that the employees of the Corporation also are entitled to resign without assigning any reason under Regulation 49 in the same manner in which the Corporation can terminate the services of its employees under Regulation 48 of the said Regulations, This right of the Corporation is not thus without some mutuality. The affidavits filed on behalf of the Corporation show that about 500 employees resigned during the period of the last five years notwithstanding the dislocation caused thereby to its work.

56. Mr. Nariman drew our attention to the several judgments of the Supreme Court in which even the Government is found entitled to terminate the services of its servants if the terms of the contract or service rules so permit notwithstanding the protection of Art. 311 to them and acts of some misconduct or other is found to have motivated the action. Reference to the leading Judgments of the Supreme Court in *Shyamlal v. State of U.P*[2]*.,* decided by a Bench of five Judges, *Purushottam Lal Dhingra v. Union of India*[3]*,* decided by a Bench of five Judges, *State of Bombay v. Saubhagchand Doshi*[4]*,* decided by a Bench

[2][1954-II L.L.J. 139] [4] AIR 1957 SC 892

[3][1958-I, L.L.J. 513]

of five Judges and *Ram Gopal v. State of M.P*[5]*.,*decided by a Bench of three Judges would be sufficient in this context. In Doshi's case, as in Shyamlal's case, the Government servant was found to be guilty criminal breach of trust in the preliminary enquiry. Rather than hold enquiry and prove the misconduct, the Government chose to exercise its available right under service Rules to retire him compulsorily. The order was upheld was upheld by the Constitution Bench of the Supreme Court making a distinction between the foundation and motive for such removal. At page 895, the Supreme Court observed as follows :

> "Indeed, in Shyamlal's case the Government did give to the officer concerned, notice of charges of misconduct and inefficiency and called for his explanation, though a formal enquiry was not held. In providing that no action would be taken except in case of misconduct or inefficiency, R. 165-A only made explicit what was implicit in Note 1 to Art. 465-A. The fact to the noted is that while misconduct and inefficiency are factors that enter into the accounts, where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held and there is no duty to hold an enquiry is only for the

satisfaction of the authorities who have to take action, in the case of dismissal or removal, they form the very basis on which the order is made and the enquiry thereon must be formal, and must satisfy the rules of natural justice and the requirements of Art. 311(2).

57. It is, however, emphasized in this and other cases that such order founded on the absence of right to the post should not cast any stigma on the servant. The same rule is held applicable to the probationer having no right to the post in Ram Gopal's case (supra) whose misbehavior with a girl and acceptance of bride discovered in the preliminary enquiry led to the termination of his probationary service as a civil Judge. Another Constitution Bench in the case of *Jagdesh Mitter v. Union of India*[6], decided by a Bench of five Judges reaffirmed the same rule of law and held that it was open to the Government to terminate the probationer's service having no right to the post even when misconduct spurs the action. The order was struck down in this case as it by itself cast stigma. This view is affirmed in a Supreme Court in *Samsher Singh v. State of Punjab*[7], though the actual order was struck down, it being passed in breach of the relevant Rule 9 under which probationers could not be removed without opportunity to show cause against the alleged unsuitability and the High Court having got the misconduct probed through the Vigilance Commissioner of the Government, Delhi, rather than probe itself and the allegations being found by the Supreme Court to be frivolous. At page 480, the Court observed :

> "... The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an enquiry and may simply discharge the probationer with view to giving him a chance to make good in other walks of life without

[5][1970-I L.L.J. 367] [7][1974-II L.L.J. 465]
[6][1964-II L.L.J. 418]

stigma at the time of termination of probation."

58. The same principle of followed by the Supreme Court in *R.S. Sial v. State of U.P*[8]., decided by a Bench of two Judges and *State of U.P. v. Ram Chandra*[9], decided by a Bench of three Judges in the case of reversion from officiating higher posts to the substantive lower post and in the case of temporary servant in the case of *Bombay Municipality v. P.S. Malvankar*[10] decided by a Bench of two Judges in which the employee was removed from service in exercise of the power under clause analogous to Regulation 48 herein. The principle is reaffirmed in the latest case of the Supreme Court in ***State of*** *Maharashtra v. V.R. Soboji*[11], decided by a Bench of two Judges and *Oil & Natural Gas Commission v. Mr. S. Iskander Ali*[12], decided by a Bench of three Judges.

59. The basis of all these decision is that an employee can be removed from service without holding an enquiry into allegations of misconduct if either the employer possesses such a right of removal under the contract or the service Rules or the employee does not possess any right to the post held by him. It is no doubt held in many of these cases that the innocuous wording of the order is not conclusive and the Court can find the truth of the matter by going behind the order to

find if the order is intended to be punitive and is passed in breach of the procedural safeguards. This could obviously be to verify if the charges were not trumped up and termination simpliciter was not being resorted to just to cover it up, and such power was not being abused. Going behind the order can be of no practical use where question of abusing such power is not involved. Samsheer Singh's case is itself indicative how enquiry is not "must" in every case.

60. The case of employees of the Corporation, such as the one under consideration do not stand on any different basis. As seen earlier, like probationers and temporary Government servants, employees of the Corporations also do not possess any security of tenure, their right to remain in service being defensible by the act of the Corporation permissible under Regulation 48 thereof. If, therefore, the Corporation chooses to act under Regulation 48, and the action is not mala fide, arbitrary or capricious, the question of its having acted in colorable exercise of the power cannot and does not arise.

61. Mr. Setalved and Mr. Desai strongly relied on the ratio of the Supreme Court judgments in *L. Michael v. Johnson Pumps Ltd*[13]*.,* decided by a Bench of three Judges and *Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha*[14]*,* and contended that, where misconduct spurs the action, by passing the procedural safeguards and making recourse to any provision like Regulation 46, would amount to colorable exercise of power. In these cases, services were terminated by reference to the analogous provisions of the Standing Orders claiming merely loss of confidence. When required to justify termination before the authorities on reference under the provisions of the Industrial Disputes Act, the employees had to disclose what the reasons were. Michael was alleged to have passed on secret information to the business rivals while participating in an illegal strike was shown to be the reason in the Michael's case, the allegation was found to be non-existent, while mens rea of the workmen participating enmass strike was found to be absent in Gujarat Steel Tubes' case by the Supreme Court. The Court did express difficulty in recognizing any distinction of

[8][1974-I L.L.J. 513] [10][1978-II L.L.J. 168] [12][1980-II L.L.J. 155]
[9][1977-I L.L.J. 200] [11][1979-II L.L.J. 393] [13][1975-I L.L.J. 262]
[14][1980-II L.L.J. 137]

substance between cases in which misconduct is claimed to be merely a motive and others were misconduct is claimed to be the foundation. The decisions in both the cases give an impression that termination, without regular enquiry, amount to colourable exercise of power even if the employer is possessed of it under the contract or the rules, where misconduct spurs the Act. These cases, no doubt, do strike a discordant note, at any rate, apparently.

62. It is, however, pertinent to note that the employer can justify such termination even when spurred by the undisclosed acts of misconduct, when challenged on reference under the Industrial Dispute Act. The Labour or Industrial Court then has to adjudge the truth or otherwise of the misconduct on merits, even if no enquiry was held or enquiry if held was found to be defective. The Supreme Court did find on merit in both these cases that terminations were unjustified and did not quash the terminations merely because no enquiry in the misconduct was held. The

decision of the Supreme Court on whether action on loss of confidence under provision analogous to Regulation 48 was good or bad is, therefore, on the fact of it of an academic nature and obiter. Secondly, the Bench consisted of three Judges, one learned Judge in Gujarat Steel Tubes case having dissented on merits. Firstly, we are bound by the ratio of the cases decided by the Constitution Benches referred to and larger Bench of seven Judges in Samasher Singh's case the majority view of which is expressly affirmed in that very case by the same learned Judge Krishna Iyer, in paragraph 160 of his exhaustive concurring judgment, who has delivered judgments in both the cases. The same learned Judge, i.e., Krishna Iyer, J. could not have intended to lay down the law differently in these two cases without expressly saying so and without reference to larger Bench. On the contrary, affirmation of the earlier ratio of Supreme Court Judgments in the cases of the *Workmen of Sudder Office v. The Management*[15], and *Air India Corp. v. Rebellow*[16], and discussion in paragraph 20 in Michael's case shows that far from unsettling the earlier law, the Court in Michael's case wanted merely to emphasize that the doctrine of "loss of confidence" has not substituted the doctrine of "colourable exercise of power" (see paragraph 19). The termination of service for unsuitability of the employee for the job, by recourse to provision such as Regulation 48 in Rebello's case is upheld. Unsuitability is proved by us to be the basis of termination in the present case also. The ratio of Rebello's case is approvingly referred to in Michael's case. In paragraph 68 of the judgment in Gujarat Steel Tubes' case also, several judgments upholding the right to terminate services in exercise of such analogous provision is distinguished by the learned Judge including the ratio in Samsher Singh's case (supra) and the Judgment in Bombay Municipality's case (supra). In the case of *Manika M. Karanade v. State of Mah*[17]., one of us (myself) had occasion to note how Michael's case does not seek to unsettle the earlier law on this point.

63. Termination simpliciter if permissible under the contract or service rules such as Regulation 48 herein, is thus legal and is not vitiated merely because misconduct spurs it. Inadvisability of holding enquiry for any good reason by itself cannot make exercise of such power colorable or otherwise mala fide. Requirement to prove the existence of good reason in the Court, if challenged, is held to be adequate safeguard against the abuse of such power.

[15][1971-II L.L.J. 620] [17][1980-I L.L.J. 309]

[16][1972-I L.L.J. 501]

64. To sum up, the acts or omissions alleged against the petitioners do not amount to misconduct. Even if it is assumed to be so, the same are not the foundation of the impugned orders.

65. It was next argued that in either case, the orders are panel as they involve civil consequences. It is urged that such termination deprives the petitioners and their wives air passage benefits and medical facilities which were available to them after retirement during their life time and also prevents them from encashing their accumulated leave. Mr. Nariman filed a note indicating that there was some doubt as to whether the petitioners could claim the said benefits or not as of right. In this note, however, he accepted the claim of the petitioners to all these heads in disregard of what true effect of the relevant rules is and without prejudices to the legal contentions of the petitioners on the validity of the impugned orders on the basis of the supposed losses of these

benefits. This note of Mr. Nariman is not thus relevant to the point raised. Suffice it to note that service rules or regulations do not contemplate extending these benefits when the services are terminated under Regulation 48. The loss of such benefits is implicit in the loss of the job itself. Validity of the loss of benefits is closely linked to the validity of termination itself. No right can be said to have been accrued to the petitioners in this behalf, as such benefits could have been claimed only in the event of their being allowed to remain in service till their age of superannuation or the age which enables the Corporation to retire them compulsorily. Right to the same cannot be said to have accrued to the petitioners, when right to continue in service itself is defensible. It is well-settled that employees cannot claim any right other then what are conferred under the Service Rules. The question of the petitioners claiming any such benefits and their being deprived thereof as a result of the orders under Regulation 48 really cannot arise. The contention, to our mind, is misconceived.

66. Mr. Setalved, however, contends that in either case, through the impugned order per se do not contain any stigma against the petitioners, the time at which the terminations have taken place and the publicity given thereto in the newspapers and the comments thereon by several newspapers, have caused damage to their reputation and lowered them in the eyes of the public at large. He, therefore, contended that the said orders could not have been passed without following the principles of natural justice at least broadly if not in detail. The answer to this question will depend upon as to whether stigma can be said to have been passed against the petitioners in the present case. The order per se do not contain any stigam. The note recorded by respondent No. 1 dated 29th April, 1981 also, as discussed earlier, does not contain any stigma. Loss of confidence by itself is never held to be a stigma. Now, it is true that as result of the publicity of the termination orders and the circumstances in which the same were passed, an impression is likely to be created in the minds of the public that the petitioners were guilty of some blame-worthy act and termination of their services was the result of such an act or omission on their part. Can the belief created in the minds of the public at large because of the circumstances under which the orders are passed be said to constitute a stigma as understood in the service jurisprudence ? It is difficult to hold that it does. Our attention was not drawn to any principle or authority to support this contention. Such an impression is also likely to be created when the services of probationers or temporary employees are terminated and when employees are compulsorily retired. Compulsory retirement involves adjudication of a person that he was outlived his utility. This impression is inevitable even if the order of compulsory retirement does not say so. Notwithstanding all this, an order of compulsory retirement, if permissible under the Service Rules, is never held to involve any stigma. It is pertinent to note that occasion to publish the contents of the note dated 29th April, 1981 arose when the respondents were called upon the justify the orders on the petitioners challenging in the Court. Reaction of the public and the press depending upon various extraneous factors can have no relevance to the point.

67. Even if the said order are held to be involving some stigma or penal in any manner, the Corporation would still not be under any obligation to follow the principles of natural justice

while taking action under Regulation 48. Regulation 48 vests the Corporation with a power to terminate the services of its employees without assigning any reason. Through this Regulation does not dispense with the existence of reasons, it does dispense with "assigning" thereof. The word "assign" is a term of variable import and Mr. Setalvad did draw our attention to its dictionary meaning. In our opinion, the context and collocation alone can furnish key to the true import and meaning of the said word. The provision of Regulation 44 and the Schedule of clauses referred to therein contem plate elaborate procedure of framing of a charge enquiry and final statement and reasons in support thereof. In other words, disclosure of the reasons is indispensable for the procedure required to be followed under Regulation 44 and the connected Schedule. The words "without assigning any reason" in this contest can only mean not only that no reasons are required to be disclosed, but no charge is required to be framed and no other procedure contemplated under Regulation 44 is required to be followed. The authority not to assign or disclose any reason will be illusory, if the right of the delinquent employee (1) to know the charges and (2) an opportunity to explain and refute by leading evidence and know the conclusion of the authority is accepted without which principle of natural justice cannot be followed. The authority not to communicate either of the things implies deprivation of the employee of such principles of natural justice. It is well - settled that where a statute expressly excludes the application of the principles of natural justice, the right thereunder cannot be claimed by any one affected thereby. The grievance, therefore, that the principles of natural justice were not followed is illfounded. M. Desai's contention that only "assignment of reasons" part of the nature justice is excluded and not the hearing obligation is liable to be rejected for these very reasons. Mr. Setalvad and Mr. Desai drew our attention to a passage from the judgment of the Supreme Court in the case of *Sukhdev Singh v. Bhagatram*[18] indicating the need to follow the principles of natural justice before the dismissal of an employee by any statutory corporation. Firstly, the dismissal is not the same thing as termination. Secondly, these observations can have no application where a statute such as Regulation 48 excludes application thereof by implication or by express words.

68. It is then contended that the Chairman, respondents No. 1, had no authority to terminate the services, at any rate, of the petitioner No.

> 1. A faint attempt to challenge respondent No. 1's appointment as Chairman was not pursued when the Government powers to that effect under Section 4 were found to have been duly exercised. Mr. Nariman did not rely on the provisions of the Instrument of Delegation of Administrative Powers, on which reliance was placed by the Corporation in its affidavits as also in its reply to the summons for

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> discovery. It does not expressly refer to the powers of the Chairman, though the Managing Director is authorized there under to terminate services of certain rank of officers which does not include petitioner No. 1. The Corporation must alone be held to be competent to take action under Regulation 48 in the absence of reference to anyone

else as competent to act under Regulation 48.

69. Mr. Nariman placed reliance on a resolution passed by the Corporation in the year 1962 to show that the Chairman could exercise the powers of the Corporation in respect of all the five employees. Two resolution were passed at a meeting of the Board held on 16th April, 1962. The extracts of the resolutions are placed on the record. We are concerned with the second resolution. It permits the Chairman to exercise the ordinary powers of the Corporation when any emergency arises and report about it to the Corporation as soon as possible. This wide power conferred on the Chairman includes obviously his power to remove the officers of the rank of the petitioners also.

70. Two facts must be established before termination by the Chairman in exercise of this power can be held to be valid. The first is, the existence of any emergency and the second is, the reporting of such action to the Corporation as soon as possible. It was not disputed before us that after passing the order on 29th April, 1981 the Chairman did place the two communications before the Board on 7th and 15th May, 1981. The copies are placed on the record. Both these communications not only report the termination of the services of the five offices, but also elaborately indicate the circumstance in which the cables of Makalu were discovered to have been deliberately tampered with and the serious consequences that could have followed had the same not been detected. One condition thus can be held to have been satisfied.

71. The question whether any emergency existed or not and the opinion he formed thereon indicated in the reports was essentially a matter for the Chairman to decide. He has indicated the facts in the note and his assessment thereof. The only question is whether it is capricious or arbitrary. Mr. Setalvad End Mr. Desai contended that there was no such emergency as to justify dispensing with the meeting of the Board. It is not possible for use to dismiss the assessment of the Chairman as arbitrary or fanciful. It is not in dispute that damage to the cables was the result of the act of sabotage. It also cannot be denied that this sabotage could not but have far-reaching implications including danger to the lives of not only of the passengers travelling in the commercial flights that were to be under taken between 24th April and 2nd May, 1981, but also to the life of the VVIP, i.e., the Prime Minister and her entourage. It is not clear from the record as to when precisely the fatal effect of the sabotage could have resulted. Mr. Nariman made a statement at the Bar that an expert committee indicated that it was not possible to make any estimate of the precise time or period in this behalf. It could have become effective before or after or even during the course of the flight of the Prime Minister herself, the calculations of the miscreants being not assessable. This report is not placed on the record. There is, however, some reference to such effect in paragraph 5 of the report dated 7th May, 1981 made by respondent No. 1 to the Board. Reference to it has been made in the affidavits sworn before us. Paragraph 5 there of does assert that "..... if the damage had not been detected in time, this could have resulted in the crash of the aircraft after a lapse of some time". Suffice it to note that this does not exclude the risk of damage to the aircraft or risk to the lives of the VVIP and her entourage. Even the loss

of lives of several other passengers on the aircraft is an important as the loss of life of the VVIP of members of her entourage, dislocation of the life of the nation and danger to the honour of the nation being the addition factors in the case of the latter. In either case, it could have caused damage to the good name and reputation of the Corporation and to the confidence of the public in its capacity to assure safe travel. They very publication of new could shake such confidence. Some immediate action was obviously called for to restore the shaken confidence. The aircraft was to be used by the VVIP on 5th May and same immediate assurance to the Government about its capacity to ensure safe travel was indispensable. Continuance of the petitioners at the head of the two wings could have been considered to be hazardous from this point of view. If against this background the Chairman thought this to be a case of emergency, no fault can be found with the same. The contention that removal is just an attempt to make the petitioners scape-goats at the instance of politicians must be dismissed as being highly speculative in the face of these facts. In view of this, the Chairman cannot be said to have no power to terminate the services of the petitioners. The competency to terminate the services of petitioner No. 2 was not challenged before us by Mr. Setalvad.

72. Three other officers removed from service in terms of the note of the Chairman dated 29th April, 1981 have also challenged the orders in the writ petitions posted for hearing along with this petition. As the circumstances giving rise to the termination are the same, we allowed their advocate Mr. Desai to argue on the common questions of law arising in this and in those three petitions. After his arguments on these questions of law were over, Mr. Desai indicated that he has also raised one more question in his petitions about the validity of the appointment of respondent No. 1 as the Managing Director of the Corporation. Invalidity of appointment as Managing Director, according to Mr. Desai, vitiates the orders of termination passed against his clients. Petitioner No. 2 is also removed by respondent No. 1 as the Managing Director. We could notice that the invalidity, if any, could not but affect the termination of petitioner No. 2 in this case also. We therefore, through it proper to hear him, though Mr. Setalvad did not raise any such point. Mr. Nariman was fair enough to produce some more material at the instance of Mr. Desai.

73. This contention in this case is discovered later to be of an academic nature. Respondent No. 1 held to dual capacity of the Chairman and the Managing Director and the orders are purported to have been passed by him in both the capacities. The Corporation, no doubt, delegated its power of termination of the services of the officers of the rank of petitioner No. 2 in this case and the three petitioners in other writ petitions to the Managing Director under the Instruments of Delegation. It is, however, well-settled that such delegation does not denude the Corporation of its powers to terminate the services itself at any time (see *Godavari S. Parulekar v. State of Maharashtra*,) decided by a Bench of five Judges. Such power could be exercised by its Chairman in emergency under the resolution of 1962 adverted to earlier. If the termination of service of petitioner No. 1 by the Chairman is valid, termination of service of the other petitioners also by the Chairman in exercise of the power of the Corporation under 1962

Resolution would be valid.

74. Even if the appointment of respondent No. 1 as Managing Director is found to be legally defective for some reason, the doctrine of de facto enunciated by the Supreme Court in its judgment in *Gokaraju Rangaraju v. State of A.P.*, will be applicable to the present case. According to the ratio of this case, the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the act of officers de jure. Mr. Desai tried to distinguish this case on the ground that the Court was concerned in that with the validity of the acts of the Judges whose appointments were subsequently discovered to be invalid. Mr. Desai contends that such acts stand on different basis and the doctrine evolved in respect of their acts can have no application to the acts and omission of the public servants and particularly of the employees of the Corporation such as respondent No. 2 in the present case. Through the question directly arising in the Supreme Court pertained to the judgment of Judges whose appointment was found to be invalid, the ratio is based on broader principles and the Court has extensively referred to the several cases in support of this view in which the effect of invalid appointments of public servants was considered and it was held that their acts would be valid notwithstanding the invalidity attached to their appointment under consideration. The doctrine of de facto, therefore, cannot be said to be restricted to the invalidity of the appointment of Judges alone but is wide enough to cover the appointment of public servants discharging public duties.

75. Now, it is true that the Managing Director of respondent No. 2 is not a Government servant. We are, however, unable to made a distinction for this limited purpose between the Government officers discharging public duties and the officers of the Corporation discharging public duties even though appointed by the Government for carrying out the function of the Corporations. The fact that functions of the Corporation are of commercial nature can not make any difference to the source of appointment and nature of their duties. They are covered by the definition of "public servant" enunciated in Section 21 I.P.C. The fact that such Corporation are liable to be equated with "State" for the purpose of Art. 12 of the Constitution of India and the employees of such Corporations happen to hold the status and their services are regulated by statutory rules in this behalf, goes a long way to make their acts and omissions akin in quality to the acts and omission of Government servants.

76. The public inconvenience in the invalidity of the appointment of the Managing Director of such a Corporation is as great as in the case of any public servant. The Supreme Court in this very case has affirmed the ratio of the judgment of the Andhra Pradesh High Court In *I.R. Sons v. State of A.P.*. The question in the said case was whether the acts of the members of the Market Committee, a statutory Corporation of the same nature of which respondent No. 2 happens to be in the present case, were valid when election of some of the members of the Market Committee was found to be invalid. The de facto doctrine was made applicable the acts and omissions of such directors of the acts and omissions of such directors of even the Market Committee. We are

unable to see any reason why the doctrine of de facto should not be made applicable to the Director of the Corporation when the same is made applicable in Andhra Pradesh case to the members of the Market Committee. It is true that in that case, the validity of the levy imposed by the Market Committee was challenged. But the challenge to the levy was based on the ground that the Committee at the time when the levy was sanctioned, consisted of members who were discovered to have not been duly elected. The validity of the levy was thus incidentally in question and the oral question was whether the acts and omissions of the members of the Market Committee whose election was found to be invalid could be saved by the doctrine of de facto.

77. Mr. Desai drew our attention to Section 6 of the said Act. The said section seeks to cure the defect when resolutions are passed during the vacancy in or any defect in the constitution of the Corporation. Mr. Desai contends that insertion of a positive provision like Section 6 implies that validation of invalid acts of other nature was intended to be excluded. In the first place, we do not see any reason why Section 6 itself should not apply to the impugned orders in the present case which are sought to be invalidated because of the Managing Director not being appointed in valid manner. The supposed invalidity in the appointment of the Managing Director appears to us to be as much a defect in the constitution of the Corporation as any other defect therein. Secondly and more importantly presence of such provision does not necessarily lead to the legislative intent to exclude the doctrine of de facto, resource to which is ordinarily made in public interest to prevent dislocation of work and inconvenience to the public. Our attention was also drawn to Section 290 of the Companies Act dealing with the effect of illegal or irregular appointment of the Directors on the Board. Suffice it to note that the Companies Act has no application to respondent No. 2 Corporation and adoption of one mode for validation in one enactment cannot be a pointer towards inadvisability of resorting to some other mode in a different context. Thus all the contentions with regard to the invalidity of the appointment of the Managing Director must fail.

78. In view of the above, any decision on the question of invalidity is really not necessary though affidavits and documents were permitted to be filed in the course of hearing. We may, however, give indication of the points urged in support of the contentions. Mr. Desai's attacks are three-fold and can be summarized thus :

1) Respondent No. 1 was past 58 on the date of his appointment on 20th March, 1980. No such person could have been legally appointed when all employees are liable to retirement at the age of 58;
2) One B. S. Das was already holding the post of Managing Director from 7th February, 1979 till he retired on 7th February, 1981 No other person could be legally appointed as Managing Director during the subsistence of his appointment.
3) The Corporation has not passed any resolution appointing respondent No. 1 as the Managing Director.

79. Mr. Nariman's answers to these points can be summarized thus :

1) The Regulations framed by the Corporation under Section 45(2)(b) providing for the conditions of service of officers and employees covered by Section 8 (1) of the Air Corporations Act do not directly apply to the Managing Director and Officers covered by section 8(1) and proviso thereof. They are covered by the rules framed by the Central Government under Section 44 of the said Act. Rule 58D of the Air Corporations Rules, 1954, however, makes the Regulations applicable to the Managing Director also. However, the language of the Rule 58, etc., is extremely anomalous and shall have to be applied as far as it is possible. Regulation 49-A contemplates appointment of retired employees and on contract basis. Regulation 2(2) prevents the application of the Regulations to employees on contract basis. All this would show Regulation 46 would not apply to respondent No. 1.

2) A. Authority to appoint "A" Managing Director under Section 8(1) must include authority to appoint more than "a" as singular includes plural under the General Clauses Act.

2) B. B. S. Das went on long leave from 12th March, 1980 and eventually resigned on 7th February, 1981. He was not thus on duty. Appointment of respondent No. 1 as managing Director must be held to be during leave vacancy. The facts that it is not mentioned in the order cannot invalidate the order.

3) A. The office of the Chairman became vacant on P. C. Lal's retirement on 31st January, 1980. B. S. Das was authorised to discharge his functions. But he also went on leave on 12th March, 1980. The office of the Chairman was, therefore, vacant from 12th March, 1980 till 20th March, 1980 when respondent No. 1 was appointed. In the absence of Chairman to fix the date and the agenda no meeting of the Corporation could take place. The Government owning all the shares and it having invested money had to step in and appoint the Managing Director on 28th March, 1980.

B. Under the notification dated 30th August, 1974, of the Central Government, the mode to appoint Managing Director in all such public undertakings entirely owned by the Government was prescribed. Bureau has to select Managing Director. This was to be considered by the Minister of the Central Government concerned and selection is to be approved by the cabinet sub-committee. The Corporation is left with no choice in the matter. The decision of the Corporation being formal, not clearing it at the meeting is merely an omission to comply with the form. Mr. Nariman relies on Section 34 of the Act to support the authority of law for such notification.

C. The Board has indicated its acquiescence by expressly authorizing the respondent No. 1 to act as its M.D. under several resolutions. Such resolutions are placed on the record.

80. Mr. Setalvad and Mr. Desai then challenged the validity of Regulation 48 itself, the powers conferred there under being unguided, ancanalised and absolute and, therefore, the provision being violative of Art. 14 of the Constitution. The argument in this behalf is two-fold. It is firstly

contended that it enables the Corporation to pick and choose between its employees and employees and occasions and occasions and terminate their services without any known or predictable basis. Regulation is thus claimed to be suffering from excessive delegation Secondly, it is argued that Regulation 44 contemplates inflicting punishment on the employees for any act or omission amounting to misconduct after the guilt is established on following the procedure prescribed therefore. As against that, Regulation 48 contemplated terminating the services indirectly involving identical consequences without being required to prove the charges with an opportunity to the employees to disprove the same. Regulation 48 does not lay down any guidelines to determine the choice between the two courses, though one is harsher than the other. In support of this contention, the judgment of Sawant, J. In Miscellaneous Petition No. 1663 of 1975 dated 20th July, 1979 (hereinafter referred to as "Muley's case) is relied on. Sawant J., did uphold the contention to the above effect covering the first part and adjudged Regulation 48 to be so void. Appeal No. 380 of 1979 against the said judgment by the Corporation is also placed for hearing along with this petition. Reliance also was placed by Mr. Setalvad and Mr. Desai on the judgment of the Supreme Court in Writ Petition Nos. 3045 of 1980 with nos.1107, 2458 and 1624-28 dated 28th August, 1981 decided by a Bench of three Judges (hereinafter referred to as "Air-hostesses" case") in addition to certain other judgments of the Supreme Court.

81. Before we discuss the case law on the point, we think it convenient to analyse Regulation 48. It reads as follows :

> "48. Termination :
> The services of an employee may be terminated without assigning any reason, as under :
> a) of a permanent employee by giving him 30 days' notice in writing or pay in lieu of notice;
> b) of an employee on probation by giving him 7 days' notice in writing or pay in lieu of notice;
> c) of a temporary employee by giving him 24 hours' notice in writing or pay in lieu of notice."
> The Regulation permit termination "without assigning any reason". We have already indicated how the word "assign" in this context, means disclosure of the reason to the employee concerned. Now assignment of reason is one thing and existence thereof is quite another. Thus Regulation 48 merely dispenses with the discolours of reasons under the three contemplated contingencies and not the existence thereof. It is difficult to conceive of any authority, equated with "State" under Art. 12 of the Constitution and bound by the constitutional guarantee in Part III of the Constitution, being authorized to terminate the services of its employees without reason or do any act arbitrarily. Even prior to such statutory Corporation being equated with the State, Corporation fell within the definition of an industrial establishment under the Industrial Disputes Act. As such termination of services of large number of its employees was liable to be tested by the Tribunals and authorities under the Act. Regulations framed initially in 1959 could never

have intended to authorize arbitrary termination.

82. Secondly, the power under Regulation 48 cannot be exercised in the vacuum. The employees are appointed under Section 8 of the Act for enabling the Corporation to discharge its functions under Section 7 thereof efficiently, i.e., of providing safe, efficient, adequate, economical and perfectly co-ordidated air transport services and exercise its powers to develop the transport services to the best advantages and provide service at reasonable charges. In fact, the preamble of the Act itself indicates as to how the said Act was meant for better provisions for the option of the air transport services The condition of service formulated by the Corporation in exercise of powers under Section 45(2) (a) of the said Act are again meant "for the administration of the affairs of the Corporation and for carrying out its functions." Section 9 requires the Corporation to carry out its duties vested in it by the said Act on "business principles". Any occasion to use the power of terminating the services of an employee can only arise when acts and commissions of the employee concerned militate against such discharging of the functions and duties. This can happen only when the purpose of the appointment is found to be frustrating. Implicit in the requirement of the existence of reason for termination, is the requirement that such reasons must have nexus with the object for which the employees are appointed under Section 8 of the Act. The choice as to the occasion and the employees and the procedures is to be dictated only by the administrative requirement of the Corporation and the same shall have to be based on good faith to withstand its permissible scrutiny and review in the Court under Art. 226 of the Constitution. If Regulation 48 is read in isolation, one is likely to get an impression as if the power to terminate can be used by the Corporation at the sweet will of its officers without being required to be guided by any relevant consideration. If, however, Regulation 48 is read along with the function as indicated in Section 7 of the said Act for the efficient carrying out of which employees are appointed in terms of Section 8 thereof, and the object for achieving which the Regulation are framed under Section 45 (2) (b) of the said Act, it would at once be clear that the powers cannot be said to be so uncanalised and unguided.

83. The question of attracting of Art. 14 of the Constitution of India cannot arise unless the persons affected are shown to be similarly situated. Now, in matters of administration, it is difficult to conceive of two employees of the Corporation being similarly situated in all respects. Exigencies of administration being unpredictable, wide discretion is always required to be vested in the officers to deal with the same after indicating the object and purpose of the employment to deal with different situations differently. Discretionary powers cannot be held to be always discriminatory. Variety of administrative considerations are bound to be weighed while taking action under Regulation 48. There may be a case of unsuitability of an employee whose acts and omissions may not amount to misconduct of any kind within its conception under Regulation 42. Even in cases where acts and omissions amount to such misconduct, it may not be physically possible to prove the charges to the hilt, even when the competent officer concerned is satisfied that the employee is in fact guilty. This can happen when no written record of misconduct cannot be safely relied on to support the truth through and through. This can also happened where

advisability of taking action contemplated under Regulations 43 and 44 is open to doubt having regard to large interests of the Corporation and the employees.

84. Under the age old law of master and servant, a servant could be removed on loss of confidence in him without anything more. The modern complex life makes it necessary to ensure security of the tenure to the servants whose contribution to the production and services is recognized to be as important as the capital and management. It is not without reason that even while modifying the law of master and servant and protecting the servant by preventing his dismissal by way of punishment without enquiry and an opportunity to the delinquent to disprove the charge, the Legislature has not though it proper to dispense with altogether the master's right of terminating the service after notice of a month or so. Such discharge without any finding of any misconduct enables the employee to turn a new page in his life and save the reputation of himself and the employer in suitable cases.

85. Thus even when the Industrial Employment (Standing Orders) Act, 1946, was enforced in the year 1946, the model standing orders introduced provisions therein both for dismissal by way of disciplinary action and termination of service by giving one month's notice or payment of one month's wage in lieu thereof. Such provision in the model standing orders made in the said Act of 1946 merely recognised this age old right of the master to hire and fire with certain limitations Regulation 42 and 44 on the one hand and Regulations 48, of the side Regulations, on the other, are virtually on par with the provisions of the model standing orders. We have been earlier how the air transport service has also been included in the definition of the words "Industrial establishment" under the Industrial Disputes Act, at any rate, from 1965 onwards. Such provisions are based on the hypothesis that such termination may prove to be a boon to the employer and employee in many case and the question of any one mode being harsher than the other would not arise. All this will go to show how the provision of Regulation 48 is not an innovation but has its origin in the legislative evolution in this branch of law of master and servant. This will be one of the relevant factors to be borne in mind while considering its validity by reference to Art. 14. The validity of such a provision in the service rules of Government servants is upheld by the Supreme Court in the earliest Shyamlal's case and the latest Saboji's case supra to the extent to which it is not inconsistent with the overriding constitutional provision of Art. 311.

86. We have also seen how Regulation 49 permits the employees also to resign without giving any reason by giving some day's notice. The right conferred is thus not one sided. We have adverted earlier in paragraph 55 to the averments in the affidavits of Narayanaswamy mentioning that under Regulation 49, which gives corresponding right to the employees to resign, about 500 employees had given their resignations. What is significant is that in the said affidavit it is further mentioned how sparingly this power under Regulation 48 is exercised by the Corporation only on six or seven occasions since December, 1959 as against about five hundred instances of resignation under Regulation 49 in the last five years.

87. It is true that in Muley's case Regulation 48 is held to be discriminatory and therefore, void. After careful analysis of the different connected chapters of the Regulations and different factors, Sawant, J, recorded his conclusions to the said effect as follows :

> "... The authorities have an uninhibited choice in that behalf and their action falls beyond the pale of challenge. Even an authority desiring to make use of its powers honestly has no guidance in the said Regulations as to when a resort to one rather than to the other power be made. Not to say of the abuse of the power. The consequence of placing this untrammelled power in the hands of the authorities is that an employee can be asked to go home for no reason whatsoever, and the tenure of the services of the employees is made dependent upon the passing whims and vagaries of those in authority for the time being. There is therefore, no doubt that the power conferred by cl. (a) of the impugned regulation being unguided and uncanalised is capable of being used arbitrarily and also unreasonably".

88. With respect several assumptions made in these conclusions do not appear to us to be correct. We have already indicated how existence of relevant reasons is sine quo non for exercising power under Regulation 48. Failure of the Corporation to indicate reasons in Muley's case cannot affect the true interpretation on Regulation 48. It is not noticed that the required guidelines can also be traced from the preamble and Ss. 7, 8, 9 and 45(2) of the Act. The choices of the Corporation under Regulation 48 shall have to be dictated by the purpose of the appointments and needs and exigencies of its administrations, otherwise the orders would be ultra vires of Regulation 48. The Corporation would not be able to exercise the powers arbitrarily, without exposing it being struck down in judicial review to which it is open, because of its being "State" under Art. 12 of the Constitution. Guarantee of tenure of service is not held out by the Regulations. The question, therefore, of its being eroded cannot arise. Such security can only be the creature of contract of service and no citizen can claim it as of right under any constitutional provision, unless, of course, the provisions of Art. 311 are attracted.

89. The learned Judge has relied as the ratio of Moti Ram Deka's case to assume that employees of the Corporation are entitled to some such security of tenure. We have already indicated how the ratio is based on the guarantee afforded by Art. 311 of the Constitution and how absence of any such security of tenure. Effect of such orders under Regulation 48 on the supposed security of services is thus wholly irrelevant.

90. The Supreme Court judgment in Ram Gopal's case and a few other cases were brought to the notice of the learned Judge. He distinguished their ratio on the ground of servants therein being probationers or temporary. We have seen how the employees of the Corporation cannot claim any security of tenure under the scheme of the Regulation and their services stand on no better footing than the services of the probationers and temporary servants. The wording of Service

Rule 12 in Ram Gopal's case is substantially analogous to that of Regulation 48. The challenge to the validity of Rule 12 being violative of Art. 14 was repelled by the Supreme Court holding that it was impossible to determine before hand all the circumstances in which discretionary powers of termination of services for the expediency and administrative reasons shall have to be exercised. The ratio is directly applicable to Regulation 48 also once it is noted that the Regulations do not offer any security of service.

91. The learned Judge has referred to the Supreme Court judgment in *M/s. Pannalal Binjraj v. Union of India*[19], decided by a Bench of five Judges as also to its another judgment in *Menaka Gandhi v. Union of India*[20], decided by a Bench of seven Judges. In Pannalal's case (supra), the Court upheld the apparently unguided powers to transfer case of the assesses reference to the object of the Income-tax Act being merely collection of taxes. In Menaka Gandhi's case, the Court traced the guidelines from the words of the section "in the interests of general public." The judgment of Sawant, J., does not indicate why the guidelines for the exercise of power under Regulation 48 cannot be similarly traced in the preamble of the Act and provisions of other sections as discussed earlier. With respect, we are unable to agree with the view indicated in Muley's case on this point.

92. On this view of the learned Judge, even cls. (b) and (c) of Regulation 48 would also become void. The learned Judge did not deal with the same because no such question was raised. But the provision such as cls. (b) and (c) can be found in several enactments of daily references. It would be difficult to hold the same to be void.

93. Strong reliance was placed by Mr. Setalvad and Mr. Desai on the recent judgment in Air Hostesses' case. The validity of Regulation 47 was under attack before the Supreme Court while that of Regulation 48 is challenged before us. The discretion to extend the age of retirement under Regulation 47 can be said to be as unguided as the discretion to terminate the services under Regulation 48. Mr. Setalvad and Mr. Desai contend that the fact that the Supreme Court did not think it possible to trace the policy of the law and

[19] AIR 1957 SC 397

[20] A.I.R. 1978 SC 597

guidelines for the action of the Managing Director under Regulation 47 from the preamble and Ss. 7, 8, 9 and 45(2) of the said Act is demonstrative of the impossibility of culling out such guidelines therefrom for the purpose of Regulation 48 also in the present case. Rather than tracing any guidelines and policy from the preamble and different sections of the said Act, their Lordships held that Regulation 47 vested uncontrolled, unguided and absolute discretion to extend or not to extend the age of retirement in the case of Air Hostesses after 35 years. The words "at the option" were found to be the source of vice in this context. The contention of the learned advocates that these observations of the Supreme Court make the preamble and the sections inapplicable for the validity of Regulation 48 is, at any rate, apparently plausible.

94. Two points, however, are important on which stress was laid by Mr. Nariman. In the first

instance, notwithstanding there observations, Regulation 47 is not struck down by the Supreme Court as being void. The words "at the option" in Regulation 47 in the case of extension to Air Hostesses can be said to be equally offending in the matter of extension contemplated in the cases of Receptionist and other employees of the Corporation. The judgment does not say a word about the effect of their views on their claims. The above reasoning is availed of by the Supreme Court merely to support its earlier conclusion that Air Hostesses were contemplated to be given extensions on their being medically fit upto the age of 45 years under the Scheme of the Regulations. This, according to their Lordships, was the "spirit" of the Regulation and this real intention of the marks of the Regulations was not carried out by the language used. The discussion of the defects in phraseology is aimed at this end. The very fact that the Supreme Court required the Corporation to read it down as indicated in the judgment shows that the Supreme Court did not think it necessary to adjudge it as void. There was then no occasion for the Supreme Court to find if any guidelines could be ascertained from the other provisions of the Act. The judgment does not thus contain any ratio as such which can be of any assistance in deciding the present controversy.

95. Mr. Setalvad drew our attention to the several passages form the judgment of the Supreme Court in *Jyoti Pershad v. Union Territory of Delhi*[21], decided by a Bench of five Judges. The Supreme Court divided the provisions of law into four categories (page 1603) possibly involving the breach of equality in violation of the Art. 14, of the Constitution, viz., (1) a provision itself expressly applying unequally to persons or things similarly situated involving a direct violation of the said Art. 14, (2) a provision not directly operating so unequally but enabling an unequal or discriminatory treatment to be accorded to persons or things similarly situated due to absence of any guidelines anywhere in the Act and, therefore, violative of Art. 14, and of the Constitution, namely, (3) a provision itself not furnishing any guideline but laying down the policy and indicating the rule or the line of action expressly in other parts of the Act, which should serve as a guidance to the authority and (4) as a provision as above, the guidelines for the effectuating of which can be traced from the implications of other parts of the Act.

96. We are concerned, in the present case, with the categories (2) to (4). Category (3) may be eliminated from consideration as Regulation 48 is not a provision indicating any express guidelines or policy to regulate wide discretion conferred thereunder. The only question is whether the legislation, namely, the Act falls in the category covered by cl. (2) or the category covered by cl. (4). It will be convenient at this stage itself to note that

[21] AIR 1961 SC 1602

policy can be traced even from the Act, if the rules and regulations framed thereunder are silent and the provision of a rule or regulation is impugned on the ground of such excessive delegation. The answers will depend on whether the impugned legislation does not lay down any policy or disclose any tangible or intelligible purpose impliedly if not expressly. In the event of answer being in the negative, the impugned provisions of the Act, Rule or Regulation permitting such discrimination is liable to be struck down as being violative of Art. 14 as indicated in cl. (2). We have, however, indicted, while analysing Regulation 48 how the policy of the law and the

guidelines can be traced in the present case from certain provisions of the Act. This case is clearly governed by cl. (4) above.

97. In the case before the Supreme Court, the question was whether Section 19 of the Slum Areas (Improvement and Clearance) Act disabling a decree-holder from executing a decree for eviction of a tenant from any building in a slum area without the permission in writing of the competent authority was violative of Art. 14. Sub-section (2) of the said section provided for an application in a prescribed form, while sub-section (3) provided for the hearing of the decree-holder and the judgment-debtor and granting or refusing of such permission. Sub-section (4) provided for the recording of reasons when such permission was intended to be refused. The section by itself gave no guidelines when to grant or refuse such permission. This power of the competent authority was alleged to be violative of Art. 14 of the Constitution for want of guidelines. After making reference to its judgment in Ram Krishna Dalmia's case. , decided by a Bench of five Judges and to several other leading cases on the point, the Supreme Court laid down the above guidelines. The Court then examined the scheme of the said Slum Areas Act, of which Section 19 was a part, and held that notwithstanding the apparent wide language of Section 19 the provision cannot be said to be involving any excessive delegation in that the other provisions of that Act and the preamble gave a sufficient indication of the circumstances in which permission should be granted or permission should not be granted. Regulation 48 in the present case, in our opinion, stands the tests laid down in this case.

98. Strong reliance was placed by Mr. Setalvad and Mr. Desai on the judgment of Supreme Court in *State of Punjab v. Khan Chand*[22], decided by a Bench of five Judges. In that case, the Validity of East Punjab Movable Property (Requisitioning) Act, 1947, was challenged as being violative of Arts. 14 and 19 of the Constitution of India. By a majority of 4 : 1 the said Act was held to be violative of both Arts. 14 and 19 of the Constitution of India. That Act was indeed a short enactment consisting not more than two main sections, The validity of the Act depended on true interpretation of Section 2 of that Act which enabled officers mentioned therein to requisition movable property of any citizen when found to be "necessary" or "expedient", The majority found that the Act therein, (1) did not provide for any object or purpose of the requisition, (2) did not even require the authority to specify the purpose of requisition, (3) did not indicate any principles on which compensations was determined and (4) did not even indicate if powers were intended to be exercised only in any emergency or special contingency. This is why that Act was found to be void by the majority. The majority referred to its earlier judgments in Pannalal's case (supra) and (2) *Harishankar Bangla v. State of M.P*[23]*.,*

[22] AIR 1974 SC 543

[23] AIR 1954 SC 465

decided by a Bench of five Judges, (2) *Sri Ram Ram Narain Medhi v. State of Bombay*[24]*,* decided by a Bench of five Judges and (3) *P.J. Irani v. State of Madras*[25]*, A* indicating how the guidelines in all these cases were ascertainable from preamble and other provisions of the relevant Act and now the same are not ascertainable from the preamble and other provisions of the impugned Act in the said case. We have already indicated how guidelines can be easily traced in the instant case

from the preamble and Ss. 7, 8, 9 and 45(2) of the said Act. The present case thus clearly falls within the ratio of three judgments of the Supreme Court om Harishankar Bangla's, Shri Ram Ram Narain Medhi's, P. J. Irani's Pannalal Binjraj's and Jyoti Pershad's cases (supra).

99. Mr. Setalvad also relied on the judgment of the Supreme Court in *State of Mysore v. S.R. Jayaram*[26], decided by Bench of five Judges. In that case, second part of Rule 9(2) of the Mysore Recruitment of Gazetted Probationers Rules, 1959 was found to be violative of Arts. 14 to 16. The impugned rule not only did not furnish any guidelines when candidates of higher merit should be allotted to inferior cadre, but was destructive of rules which required the list of candidates to be arranged in the order of merit. The ratio is irrelevant to the situation here. The ratio is cannot be of any assistance as the provision is held therein to be violative of Art. 19 and not of Art 14.

100. Reliance also was placed by Mr. Setalvad on the judgment of the Supreme Court in the case of *Hari Chandrsards v. Mizo district Council*[27], decided by a majority of two to one.

101. Mr. Nariman, on the other hand, relied on the judgment of the Supreme Court in Ram Gopal's case (supra) discussed earlier. It is true, as contended by Mr. Setalvad that the discussion of the points therein is very brief. Even so, the fact that the Supreme Court repelled the challenge to the validity of identically worded Rule 12 cannot be ignored. It clearly shows that wide discretion in such administrative matters is indispensable as exigencies thereof are unpredictable. Mr. Setalvad contends that the judgment is still not authority for the twofold attack raised in this case. This is not factually correct. Even probationers are entitled to protection under Art. 311. The question raised was, (1) can the services of the probationers be terminated by recourse to Rule 12 when misconduct was at the back of the mind ? and (2) there any guidelines in Rule 12 to indicate when and for which category of employees the Rule would be invoked ? The point was overruled.

102. Mr. Nariman also relied on the judgment of the Supreme Court in *M/s. Pannalal Binjraj v. Union of India*[28], decided by a Bench of five Judges. We have already made reference to this earlier in different contexts. Section 5(7A) of the Income-tax Act authorised the Income-tax Commissioner to transfer the case of an assessee from one Income-tax Officer to another even when he happens to reside within the area of the former. The section did not give any guidelines indicating under what circumstances such transfer of the case should be made. Section 64 of the Income-tax Act required the Income-Tax Officer to assess an assessee in place in which he resides or the place of his principal business where he carries on his business at more than one place. The assessee complained that the transfer order was in breach of his right under Section 64 and such wide and unguided powers were violative of Art. 14 of the Constitution. The attack was

[24] AIR 1959 SC 459 [26] AIR 1968 SC 346 [28] AIR 1957 SC 397
[25] I.R. 1961 S.C. 173 [27] AIR 1967 SC 829

repelled by the Supreme Court by holding that the Income-tax Commissioner
has to exercise his discretion by reference to the paramount consideration of exigencies of tax collection. It was also held that the right involved is of a minor character and in every case it did not involve any fundamental right and the policy and objection of the enactment has got to be ascertained from the preamble as also from other provisions of the Act. Every test laid down in this case is applicable to the case under consideration. It will be pertinent to note that right to hold any post with any employer is not a fundamental right.

103. Reliance also was placed on the judgments of the Supreme Court in *Commissioner of Sales Tax, M.P. v. Radhakrishnan*[29], decided by a Bench of three Judges and *R.R. Verma v. Union of India*[30], decided by a Bench of two Judges. Suffice it to note that the impugned provisions were worked as Regulation 48 and their validity is upheld by the Supreme Court by ascertaining the guidelines from other provision of the Act. In *M. Chhagganlal v. Greater Bombay Municipality*[31], decided by a Bench of seven Judges, the Supreme Court affirmed the view of this Court that Section 105 of the Bombay Government Premises (Eviction) Act, 1955, does not contemplate any harsher remedy and, therefore, it is not violative of Art. 14. At page, 2022, their Lordships have summarized the legal position. Some interesting relevant discussion can be found in the judgment of Bhagvati, J., from page 2036 onwards in which several earlier cases of the Supreme Court are referred to show how guidelines and policy of law can be ascertained from other parts of the Act. These passages support the contentions of Mr. Nairman.

104. Mr. Setalvad relied on the judgment of Das Gupta, J., in Moti Ram Deka's case. Rules 148 and 149 of the Railway Rules were challenged as being violative of Art. 14 on two grounds. One, that no other category of Government servants was subject to such termination provisions as railway employees were under the Rules and the second that the Rules suffered from excessive delegation. Gajendragadkar, J., speaking for himself and other three Judges held the Rules to be violative on the first ground and did not feel it necessary to deal with the second ground. Subbaroa, J., in his concurring judgment held to the same effect. Das Gupta, J., however, invalidated the rule on the second ground and agreed with the conclusion of the majority. Shah, J., on the other hand, upheld the validity of the rules overruling both the points. Mr. Setalvad contends that even if the opinion of Das Gupta, J., is not shared by any other Judge, it is still an opinion of a Judge concurring with the conclusions of the majority and it is binding on the High Court though obiter and one other learned Judge held to the contrary. There are two answers to this point. First such a judgment is held not to be a judgment of the Supreme Court, in the case of *M/s. Jit Ram Shiv Kumar v. State of Haryana*[32], second column) decided by a Bench of two Judges. Secondly and more importantly, the judgment on the Railway Rules cannot be direct and binding authority for deciding the validity of Regulation 48 herein.
105. Our attention was drawn to the several other judgments by the learned advocates appearing on both sides. We do not think it necessary to refer to them, as identical principles have been quoted and discussed therein. The main and the real question is as to whether the required guidelines and the policy of law can be ascertained from the

[29] AIR 1979 SC 1588
[30][1980-II L.L.J. 152]
[31] AIR 1974 SC 2009
[32] AIR 1980 SC 1285

preamble and other provisions of the Act where relevant provision of the section or the rule or the regulation by itself does not furnish any guidelines. There seems to be unanimity on the question that the provision would be violative of Art. 14 only when such guidelines cannot be so ascertained. The difference of opinion really centres round as to whether in respect of a particular provision of the Act, Rule, etc., such guidelines can, in fact, be ascertained from the enactment concerned as a whole or not. Khan Chand's case (supra) is illustrative of a situation where the Supreme Court could not so cull out the guidelines or the policy of law, While Jyoti Pershad's case (supra) is an instance where absence of guidelines in a provision could be made up by recourse to the preamble and other section of the enactment. For reasons discussed earlier, Regulation 48 shall have to be read with the preamble of the Act and Section 7, 8, 9 and 45(2) thereof under which the Regulation are framed. The question to when and against which employees the powers under Regulation 48 should be exercised and whether the case falls under Regulation 42 and whether if justifies any departure from Regulation 42 to 44 and whether summary action under Regulation 48 is called for, shall have to be decided by reference to the overall interests and needs of the Corporation, the exigencies of its administration and the capacity and efficiency of the personnel involved. Challenge to the impugned orders by reference to Art. 14 of the Constitution must, therefore, fail.

106. To sum up, all the attacks on the constitutional and legal validity of the impugned orders terminating the services of the petitioners under Regulation 48 must thus fail. Though no reasons are assigned in the impugned orders, the orders nonetheless are found by us to have been based on good and relevant grounds. The orders, therefore, cannot be quashed as being without any reasons much less as being arbitrary or capricious. Reasons were not disclosed in the said orders in terms of such requirement of the mandate of Regulation 48 itself. Non-disclosure appears to have been aimed at protecting the reputation of both the employees and the employees Corporation, the actual publicity and import thereof in the peculiar facts and circumstances of this case being irrelevant for analysis of the basic scheme. Reasons disclosed to this Court when the validity of the impugned orders was challenged to enable this Court to comply with its constitutional obligations under Art 226 of the Constitution and to verify that the citizens are not dealt with unfairly or in breach of any law.

107. The cutting of the cables of Makalu is admitted even by the petitioners to be an act of sabotage, which could admittedly have disastrous consequences to the lives of the passengers, had it remained undetected. Such a sabotage could be caused only when Makalu was stripped and panels were removed and the cables were completely exposed to the possibility of such mischief in the process of P3 checking. It was not disputed that such a damage could have remained undetected till another process of P3 checking was undertaken after about six months or after the completion of 1800 hours of flight, had it not been detected on 20th April, 1981 before the panels were closed and P3 checking process was completed.

108. We are not satisfied with the petitioners' case that such damage could easily have been detected before the replacement of the panels and that detection was not necessarily fortuitous as alleged by the Corporation. We have discussed in detail how sabotage was detected in the course of reinspection and when tensioning and regging process was necessitated on the replacement of a frayed cable fraying of which alone having been detected in the routine check up on 17th April, 1981, when all the cables were found in a satisfactory condition as indicated in the record of inspection notes of 17th April itself. Liability to take security measures immediately on the aircraft being selected for VVIP on 16th April, 1981 would remain unaffected even if the detection of the sabotage was held as not being fortuitous, as already discussed in detail earlier.

109. Admittedly, security was not alerted even when "Makalu" was selected for the use of the VVIP at the Morning Progress Meeting of the engineers of 16th April, 1981 by which time the process of P3 checking had started on its return to Bombay on 15th April, 1981. The petitioners' disowning of any obligation to do so is found by us to be incompatible with their duties as engineers incharge of maintenance to ensure safety of the aircraft and its passengers by co-ordinating the services of all concerned wings as laid down in the Security Manual as also under the instructions of the Intelligence Bureau when earmarked for VVIP. The defence set up by the petitioners of (1) disowning such obligations (2) pretending as if the aircraft was not finally earmarked for VVIP flight contrary to the plain wording of the minutes of the meeting of the 16th April, 1981 indicating such earmarking of Makalu expressly, (3) claiming such obligations to arise only after the completion of other commercial flights till the date of the VVIP flight, (4) belatedly disclaiming the application of Security Manual to the maintenance area when the aircraft is in the hangar and (5) vaguely suggesting that it was looked after by the guards without indicating the extent of such measures during unattended hours all betray as attempt to find some excuse or the other to cover up the lapse. This defence is belied by what they had earlier done on 18th February, 1981 when the aircraft was selected for another VVIP flight. They had alerted the security even though it was scheduled for three/four other commercial flights between 18th and 22nd February, 1981, on which date the aircraft was to leave Bombay for bringing the President of Kenya. The nature of P3 checking and the gap of period during which the aircraft continued to be exposed and unattended during nights and Sundays and the possibility of damage or risk to the aircraft militates against such defences being tenable.

110. The required checking and precautions for VVIP aircrafts are desired to meet the possibility of occasions being abused by anti-social and anti-national elements believing in the efficacy of sabotage and violence for achieving their ends. We have seen now because of the stripping of Makalu, P3 checking process could afford opportunities for undetectable acts of sabotage during the crucial period of three/four days when the aircraft remains unattended during nights and on Sunday. The potentiality of such mischief is the basis of these precautions. The fact that Makalu was to undertake four or five other commercial flights to different destinations and that there was no certainty of VVIP being the victim of such sabotage is not relevant to the negligence in failing to alert the security immediately on selection of the Makalu of VVIP flight. Loss of anybody's

life or property is as important as the life of VVIP and the accompanying personnel, national reputation in the case of the latter being an additional factor. Potentiality of such mischief on the aircraft being earmarked for VVIP is relevant in such cases and not the actual fatality depending on the calculations of the saboteurs. Obligation to take precautions arises from the very nature of risk involved independently of any such rules.

111. It may appear strange that negligence in one instance should be allowed to be so decisive in affecting the entire career and life of the employees at this late stage in life. But, incidents like these expose the glaring deficiencies in the administration capable of having far reaching implications to the public and the nation. This puts the previous lapses, if any, detected earlier, into different perspective and damnation altogether. The gravity and seriousness and far-reaching implications of what was detected can hardly be under-estimated. This can tend to undermine the confidence not only of the VVIP's but of the public at large in the efficiency of the system and the ability of the Corporation to guarantee safe travels. No fault could be found in the circumstances, if respondent No. 1 lost confidence in the ability of the petitioners to keep up with the situation and in their suitability to hold the high posts which they held till then. The challenge to the impugned orders is untenable.

112. In the result, the rule is discharged. In the circumstances of the case, there will be no order as to costs.
Order Accordingly.