

**BEFORE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT NO-II, NEW
DELHI**

ID.No. 88/2016

Through-The General Secretary,
Indian Airport Kamgar Union (IAKU),
B-140, Pocket-A, INA Colony,
New Delhi-110023.

Comp. No. 06/2017

Indian Airports Kamgar Union,
Through it's General Secretary,
B-140, Pocket-A, INA Colony,
New Delhi.

VERSUS

The Chairman,
Airports Authority of India,
Rajeev Gandhi Bhawan, Safdarjang Airport,
New Delhi-110003.

Appearance

For claimant: None

For respondent: Sh. Vaibhav Kalra and Ms. Neha Bhatnagar, Ld. ARs

AWARD

These are the two cases filed by the same workmen against the same respondent. One is the reference sent by the appropriate government and the other has been filed U/s 33A of the **Industrial Disputes Act (hereinafter referred as an Act)**. Having common respondent and same cause of action, these cases are taken together for disposing off their cases.

Now, come to first case i.e. ID No. 88/2016, where the appropriate Government has sent the reference refer dated 28.11.2016 to this tribunal for adjudication in the following words:

“Whether the action on the part of the management of Airport Authority of India in not framing and implementation of transfer/posting policy and introduction of Staff Quarter Rules as per the provisions of AAI Act, 1994, is legal and justified? If not, what relief are the employees entitled to?”

After receiving the said reference, notice was issued to both the parties. Both the parties have appeared. Claimant/union has filed the claim statement, stating that claimant union is a registered Trade Union under the Trade Unions Act 1926, operating in the establishments of Airports Authority of India (hereinafter called as Authority) representing more than 5200 workers of AAI throughout the country and has been acting and functioning for the welfare and interest of the employees of Airports Authority of India. G. A. Rudrappa is General Secretary of the Claimant Union and authorized to file the present Statement of Claim. Respondent management, Airports Authority of India, is a Public Sector statutory Autonomous Undertaking created through an Act of Parliament i.e. Airports Authority of India Act, 1994. Respondent is responsible for creating, developing, upgrading, maintaining and managing Airports and Air space and navigation and landing parking of aircrafts in India.

Management had framed the Transfer Policy from 01.03.2000 for its employees without following established procedure of law. On 23.05.2003, management had framed the Airports Authority of India (General Condition of Service and Remuneration of Employees) Regulations, 2003 also without following the established procedure of law. The Airports Authority of India have been created through Airports Authority of India Act, 1994 by repealing two pre-existing Acts i.e. International Airports Authority Act, 1971 and National Airports Authority Act, 1985, thereby by merging two erstwhile Authorities which were called International Airports Division (IAD) and National Airports Division (NAD). The workmen of these two divisions were being governed by their independent service regulations and as per section 18(2) of the AAI Act the officers and employees were supposed to be governed by the service regulations of the AAI. Hence, these employees of IAD and NAD continued to be governed by the service regulations of erstwhile authorities even after one year as mandated U/s 18(7) of AAI Act. The petitioner union submitted a letter to the management on 15.04.2014 to frame a legally valid Transfer Policy, stating that there is no legally valid Transfer Policy framed as mandated under section 42 of the Act. The Petitioner also stated therein that the transfer of the employees are being made in a very arbitrary and unlawful manner and consequently Industrial disputes are being raised one after another, resulting in a wastage of resources. Furthermore, it was stated that clause 7 of the Airports Authority of India (General Conditions of Service and Remuneration) 2003, provided for the transfer of employees anywhere in India, though Airports Authority of India (General Conditions of Service and Remuneration) 2003 is also neither a legally valid nor a legally valid Transfer Policy of the Respondent and same

is pending for adjudication in a dispute before Central Government Industrial Tribunal No.1 at Karkardooma Court Complex, New Delhi. Petitioner Union also wrote a letter to Respondent on 12.05.2014 citing the glaring issues involving the Transfer Policy of the Respondent. It was stated that on one hand Respondent had circulated a Transfer Policy vide letter dated 25.11.1999 and on other hand continued to apply pre-merger Transfer Policy of International Airports Authority of India vide order dated 26.08.2002. On 12.09.2014, the petitioner union sent a notice of strike to the respondent stating that respondent is paying no heed to demand of petitioner to frame a legally valid, just and fair Transfer Policy and Staff Quarter Allotment Rules. Petitioner workman submitted that the Hon'ble High Court of Madras in WP No. 8923/2015 in Indian Airports Kamgar Union (Petitioner union) V/s Airports Authority of India & Ors in the writ petition filed by the petitioner union praying for directions for preventing the respondents from giving effect to the order of transfer of Sh. G. Venkataswamy, branch Secretary of the petitioner union, order without obtaining permission of Hon'ble Tribunal, in violation of Section 33 of the I.D Act, 1947, since there was an Industrial Dispute pending before the Central Government Industrial Tribunal related to the justifiability of the process of transfer adopted by the Transfer Committee and that too when G. Venkataswamy was a protected workman. It was pronounced by the Hon'ble Madras High Court in the judgment that the employee was a protected workman, It was pronounced by the Hon'ble Madras High Court in the Judgment that the employee was a protected workman, and this issue was directly related to the dispute which was pending before the Industrial Tribunal, and therefore, the management was mandatorily required to seek approval from the Tribunal before effecting the transfer of the employee.

Petitioner Union had filed an application on 15.12.2015 for declaration of its Office Bearers as Protected Workmen for the year 2015-16 and submitted that they had sent an application to management on 10.03.2015, but the management failed to declare the office bearers as protected workmen within 15 days of the receipt of the list. Sh. Tej Bahadur, the Asstt. Labour Commissioner, passed order on 15.12.2015 for declaration of 48 office bearers as protected workmen including Mr. Sanjay Kumar Singh. Petitioner union had sent a notice of Agitation including strike dated 25.05.2016 to management stating that respondent had transferred 146 workers vide its office order F No. AAI/AT/FS/F-60/2016-EW/1569-1614 dated 20.05.2016 and vide another order No. AAI/RHQ-NR/AT/FS-60/Attachment/ EW/ 2016/1555-1568 dated 20.05.2016 had transferred workers for four months on an attachment basis, and these orders are based on whims and fancies and indicative of malpractices and were contrary to even illegal Transfer Policy of respondent. He submitted that there was no provision for posting of any worker on attachment basis to a different establishment located distantly without payment of TA/DA for the period of attachment, protected workmen were being transferred during the pendency of conciliation and adjudication proceedings regarding the issue of Transfer Policy in violation of Section 33 of the Act. on 20.06.2016 Sh. Yashpal Tyagi, Deputy Chief Labour Commissioner (C) sent a letter stating that conciliation proceedings have taken place regarding the dispute between the management and the petitioner Union In regard to strike notice dated 23.09.2014, the Hunger Strike from 06.10.2014 and the indefinite strike from 13.10.2014. it was stated that the dispute pertaining to framing and introduction of legally valid and just Transfer Policy and staff Quarter Rule in accordance with established procedure of law i.e. as per provision of either

as per section 42 of the Act or Industrial Employment (Standing order) Act remained unresolved and hence the conciliation proceeding ended in failure on 03.05.2016. Respondent management on 23.06.2016 sent a letter to the ALC (C) stating that regarding the protected workmen, the Respondent management had requested to the petitioner Union to forward some document in order to examine the issue regarding declaration of protected workmen for the year 2016-17. Petitioner Union during the conciliation proceedings on 04.07.2016 produced the Judgement dated 01.12.2015 of the Madras High court, passed in a similar case for declaration of protected workmen. The petitioner Union contended that the Respondent management had not responded to their request for declaration of protected workmen within 15 days from the date of submission of the request, and therefore all the workmen were deemed to be protected workmen as per list. It was recorded that Respondent management had issued a transfer order naming three of workmen from the list of protected workmen including Mr. Sanjay Kumar Singh-1. Petitioner Union sent a letter dated 26.07.2016 to the ALC (C) stating inter alia that the list of the office bearers of the Union to be declared protected workmen had been sent to the Respondent management vide letter dated 10.03.2016 and since the management had raised no objection within 15 days from the date of receipt of the list, the listed workmen stood automatically recognized as protected workmen. The Petitioner Union also reaffirmed that a dispute on the issue of protected workmen under Rule 61 (4) of the Industrial Dispute (Central) Rules, 1957 had been raised and was pending before the ALC (C). Respondent management had transferred three deemed protected workmen including Sanjay Kumar Singh, Rajwinder Singh and Lakhbir Singh during pendency of the dispute. Respondent management sent a letter dated

03.08.2016 stating therein that Sanjay Kumar Singh-1 should be relieved from Varansi with immediate effect, with the instructions to report to Amritsar. That on same day the Petitioner Union sent a letter to the Respondent management that any further order passed for transfer of Sanjay Kumar Singh, otherwise would amount to unfair labour practice under provisions of I.D. Act, 1947, but, respondent denied to pass any further order for transfer of Sanjay Kumar Singh, submitted that as per transfer policy only eight workmen were declared as protected workmen and only the workmen from recognized union were given exemption from transfer and there was no exemption to protect workmen of an unrecognized union. Respondent management ought to abide by the Section 33 (3) of the I.D Act, 1947, which prohibits alteration of the conditions of service of a protected workman during the pending conciliation proceeding. Respondent management was directed by the conciliation officer to submit its final stand. It has been decided to defer the relieving order dated 03.08.2016 till further orders. Conciliation proceeding was resulted into failure. Hence, he has filed the claim before this Tribunal with the prayer to direct management to frame proper Transfer Policy and Staff Quarter Rules as per the provisions of Airport Authority of India Act, 1994.

Respondent has filed the WS. He denied the averment made in his claim statement. He submits that claim petition is devoid of merit as it raised by un-recognised union of the management. He also submits that claim is not maintainable and deserves to be dismissed.

After completion of the pleadings, following issues has been framed vide order dated 09.10.2018 i.e.:-

1. Whether the claim is not legally tenable in view of the various preliminary objections?
2. In terms of the reference.

Now, come to the second case i.e. Composite No. 06/2017 where the workman have stated that management of authority have attempted to change the condition of service of Office Bearers, of the claimant Union, namely Sh. Sanjay Kumar Singh, Sr. Supdt. (FS), the Branch Secretary of the claimant Union at Varanasi from Varanasi to Amritsar, Sh. Rajvinder Singh, Sr. Supdt. (FS), the Organising Secretary at Amritsar from Amritsar and Sh. Lakhbir Singh, Sr. Supdt. (FS), Branch Vice President, Amritsar, from Amritsar to Dehradun Airport are neither routine transfer nor on the basis of any exigency.

As per provision of Section 33 of the Act during pendency of any conciliation proceedings before a Conciliation Officer or a Board or any proceedings before a Labour Court or Tribunal or National Tribunal in respect of Industrial Dispute, no employer shall change condition of service without express written permission of the Authority before which proceedings are pending. Management of Authority is attempting to change the condition of service of workmen.

After completion of the pleadings of Section 33, following issues has been framed vide order dated 09.10.2018 i.e.:

1. Whether action of the management in transferring the office bearers of the claimant union namely Sanjay Kumar Singh-1, Rajvinder Singh, Lakhbir Singh From Amritsar to Dehradun and relieving order dated 25.10.2016 of Sh. Sanjay Kumar Singh-1, amount to

unfair labour practice and are in violation of the provisions of the ID Act.

2. If so, to what relief the claimants are entitled to?

These cases are listed for cross-examination of the witness whose affidavit had already been filed, however, since long, nobody has been appearing on behalf of the claimant to substantiate their claim. Counsel for the respondent had stated that the Ld. Additional District Judge vide order dated 25.02.2022 had restrained the witness Mr. Rudrappa from using in any manner the letter head, stamps, seals, logo and the name of the plaintiff union in respect of business/affairs/activities of the said union. He further submits that since then, neither the AR of the claimant union has been appearing nor produced any witness.

In view of the facts on record that claimants have not been appearing since then to substantiate their claim. Their claim has been resulted into failure. Consequent thereto, their claim stand dismissed. Awards are accordingly passed. Copies of these awards are sent to the appropriate government for notification as required under section 17 of the ID act 1947. Files are consigned to record room.

Date: 20.11.2024

ATUL KUMAR GARG
Presiding Officer.
CGIT-cum-Labour Court-II