ID No. 63/2014
16th February, 2022.
Present:- Shri Inderjit Singh, Ld. A/R for the claimant alongwith claimant.
Shri Gautam Dutta, Ld. A/R for the management.

This order is intended to deal and disposed of the prayer made by the respondent/management for an order on the issue of loss of confidence at the instance of the management on the claimant. Argument was advanced at length on this issue by the Ld. A/R for the claimant as well as for the management. In order to deal with the issue it is necessary to look back to the back ground of the proceeding and orders passed by the Hon'ble High Court of Delhi and this tribunal on earlier dates.

The claimant was an employee of Air India Limited and working as Senior Traffic Assistant at Booking office, Safdarjung Airport New Delhi. Chargesheet of Misconduct was served on him and a domestic inquiry was conducted in the year 2003. At the end of the inquiry the Appropriate Disciplinary Authority passed an order of dismissal against the claimant w.e.f 22.01.2013. The workman preferred a departmental appeal challenging the order of punishment passed on 22.01.2013. But the appeal was dismissed by order dated 31.07.2013. Being dissatisfied he raised an industrial dispute before the Regional Labour Commissioner where a conciliation was held but failed. On receipt of the failure report he filed the present dispute before this tribunal invoking the provisions of section 2A of the ID Act. The respondent was summoned and after completion of pleadings issues were framed and this tribunal passed an order directing that the issue relating to fairness of the domestic inquiry be heard as a preliminary issue. Accordingly parties lead their evidence and advanced argument. The tribunal by order dated 10.08.2018 came to hold that the domestic inquiry against the claimant was conducted inviolation of the Principles of Natural Justice to the prejudice of the workman in an unfair manner. Resultantly the inquiry was found vitiated and the management who had already reserved its right to adduce evidence to prove the charge was called upon to adduce evidence and prove the charge against the claimant.

Being aggrieved, the management/respondent challenged the said order before the Hon'ble High Court of Delhi by filing WPC No. 475 of 2019. Another claimant having name Sanjay Kaura being in the same footing as of the present claimant, the management had also filed WPC No. 426 of 2019. The Hon'ble High Court in both the writ petitions passed a common order on 3rd July 2019 wherein it was directed that the Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of this direction. In the said order it was further directed that this tribunal

shall hear and decide the matter within 3 months from the date of order and consider the stand of the management /respondent who was the petitioner in the WPC with regard to the loss of confidence of the employer on the employee. Thus, the matter came up for argument on the issue before this tribunal. On different dates argument was heard and the final argument was advanced on 10th December 2021.

During the course of argument the Ld. A/R for the claimant Shri Inderjit Singh apprised this tribunal that when the matter came up before the Hon'ble High Court where challenge was made to the order of this tribunal passed on 10.08.2018, the Ld. A/R for the management strenuously argued that the kind of misconduct committed by the claimant has resulted in loss of confidence by the employer. It would be detrimental for the management to reinstate him in service. Thus, the Hon'ble High Court with a view to settle the dispute while safeguarding the interest of the workman directed that the management for the loss of confidence may consider for payment of compensation instead of reinstatement into service. On behalf of claimant consent was given for such a step to be taken by the management and accordingly the matter was remanded to this tribunal.

But during the hearing the Ld. A/R for the management strongly argued that the misconduct committed by the claimant being serious in nature directly affecting the goodwill of the business of the management, the later is neither interested for his reinstatement nor for the compensation. He thereby insisted that an order be passed by this tribunal as directed by the Hon'ble High Court for the loss of confidence of the management on the claimant. He further submitted that as per the regulation framed in terms of section 45 of the Air Corporation Act 1953 the management Air India has a right of terminating the service of an employee without assigning any reason or without conducting a domestic inquiry. In view of that power vested with the management the tribunal should consider the order of termination for loss of confidence as legal and justified even if the domestic inquiry is held to be unfair and vitiated.

To this the Ld. A/R for the claimant took serious objection and submitted that the domestic iniquity having been found as unfair, the management is required to prove the charge against the claimant by adducing evidence. He further submitted that the management cannot be allowed to blow hot and cold at the same time by initiating the domestic inquiry and saying that domestic inquiry is not required for termination of the job of the employer when it is the case of loss of confidence.

As seen from the pleadings and the record of inquiry produced by the management the inquiry was initiated against the claimant on

the charge of misconduct committed by him. The charge heads available on record shows that the said charges were framed for the misconduct define under clause 16(4), clause 16(16) and clause 16(43) of the standing order (Regulation) concerning discipline and appeals, applicable to the employees of the management. The said misconduct is violative of order 1 of the Regulation framed pursuant to section 45 of the Air Corporation Act 1953. Regulation 13 of the said regulation provides

> "The service of an employee may be terminated without assigning any reason to him/her and without any prior notice but only on the following grounds not amounting to misconduct under the standing orders namely:-
>
> a) if he/she is in the opinion of the company is incompetent and unsuitable for continued employment with the company and such incompetence and unsuitability is such as to make his/her continuance in employment detrimental to the interest of the company or if his/her continuance in employment constitutes, in the opinion of the company a grave security risk making his continuance in service detrimental to the interest of the company or if in the opinion of the company there is such a justifiable lack of confidence which, having regard to the nature of duties performed, would make it necessary in the interest of company to immediately terminate his/her services."

Perhaps keeping this regulation in view the Ld. A/R for the management argued that the management has the power of terminating the service of the claimant for loss of confidence on account of the misconduct committed by him. but the only and strong objection of the claimant is that the management having not adopted or invoked Regulation 13in first instance and since opted for a domestic inquiry, now cannot take the stand that the service of the claimant was justifiably terminated for loss of confidence.

The Ld. A/R for the management has relied upon the judgments of the Hon'ble Supreme Court in the case of **Air India Corporation vs. V. A. Rebflow and another reported in AIR 1972SC 1343** and in the case of **Indian Airlines vs. Prabha D Kanan decided in appeal (CIVIL) 4767 of 2006,** to argue that the management has the power to dismiss an employee for loss of confidence, without conducting a domestic inquiry.

In the case of workman of **M/s Firestone Tires and Rubber company of India vs. Management and others, 1973 SCR(3)587** the Hon'ble Supreme Court have held that:-

> "The tribunal u/s 11A can consider the question of guilt as well as of punishment. It can also alter the punishment imposed by the employer."

While discussing the judgment of **workmen of Motipur Sugar Factory Pvt. Ltd. vs. Motipur Sugar Factory Pvt. Ltd., 1965 SCR(3)588** the Hon'ble Supreme Court in the case of Firestone referred supra have further held:-

> "When an employer had held no inquiry as required by the standing order, it was not open to him to adduce evidence before the tribunal for the first time and justify the order of discharge. This contention was rejected and it was held that if the inquiry was defective or no inquiry had been held, as required by the standing order, the entire case would be open before the tribunal and the employer would have to justify, on evidence as well that its order of dismissal or discharge was proper. There is no provision either in the Industrial Employment (Standing Order) Act 1948 or in the Industrial Dispute Act that an order of dismissal or discharge is illegal if it is not recorded by a proper and valid domestic inquiry. Therefore, the contention that such an inquiry being illegal, the tribunal has now u/s 11A no alternative but to order reinstatement could not be accepted. Moreover, the industrial dispute act cannot be differently applied to the employees who are governed by the Standing Order Act and those who are not governed by it. The expression "materials on record" occurring in the proviso to section 11A cannot be confined only to the materials which were available at the domestic inquiry. On the other hand the materials on record in the proviso must be held to refer to the materials on record before the tribunal. They take in (i) the evidence taken by the management during the inquiry (ii) the above evidence and in addition any further evidence led before the tribunal (iii) evidence placed before the tribunal for the first time in support of the action taken by the employer. The expression fresh evidence has to be read in the context in which it appears. The tribunal for the purpose of determining the question of misconduct or punishment or leave to be granted to the workman has to act only on the basis of the materials on record before it and cannot call for fresh evidence as an appellate authority can normally do."

In Para 40 of the said judgment of Firestone referred supra the Hon'ble Supreme Court after analyzing all earlier judgments have further held that before imposing the punishment an employer is expected to conduct a proper inquiry in accordance with the provision of Standing Order, if applicable and Principles of Natural Justice. The inquiry should not be an empty formality. When a proper inquiry has

been held by an employer and the finding of the misconduct is plausible conclusion flowing from the evidence, adduced at the said inquiry, the tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified when the finding arrived at in the inquiry are perverse or the management is guilty of victimization, unfair labour practice or malafide. The tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no inquiry has been held or after the inquiry conducted by the employer is found to be defective.

In this case by order dated 10.08.2018 the tribunal has already formed an opinion about the defects in conduct of the domestic inquiry and found the same unacceptable. That means there is no material before this tribunal to adjudge the legality of the punishment inflicted by the management on the claimant workman.

Furthermore, when the management opted to conduct a domestic inquiry and not to proceed under Regulation 13 empowering the management to terminate the job of the employee without any inquiry, at this stage when the domestic inquiry has been found to be unfair and vitiated, it cannot press the provision of Regulation 13 into service. If this stand of the management would be allowed the same would amount to giving the opportunity to the management of switching over from one procedure to another when its earlier action was found defective to the advantage of the workman.

The argument advanced by the management to accept the order of termination for the loss of confidence without asking for further evidence to prove the charge is thus held not acceptable under law and the same is rejected.

Since it is an extremely old matter pending since 2014 and the service of the workman was allegedly terminated in 2013 it is felt proper to take up the matter on an early date without further delay. The management is thus called upon to adduce evidence to prove the charge against the claimant positively on 14th march 2022. It is made clear that no adjournment shall be allowed to the management for adducing evidence beyond that date.

Presiding Officer
16th February, 2022.