Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 103/2018

Date of Passing Award- 16.02.2022

Between:

Shri Bhagwati Prasad Dobhal
S/o Shri Keshwanand Dobhal — Workmen
C/o Village- Chamund, PO-Tharadi,
New Tehri, Tehri Garhwal,
Uttaranchal- 249001.

Versus

The CMD, Air India Ltd.,
Alliance Air House, at-113,
Gurudwara Rakabganj Road,
New Delhi-110001. — Management

Appearances:-

Shri Vijaypal (A/R)	For the claimant.
None for the management (A/R)	For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s Air India Ltd., Alliance Air House, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-11012/09/2018 (IR(CM-I) dated 31/05/2018 to this tribunal for adjudication to the following effect.

> "Whether the action of management of M/s Air India through Air Transport Services Ltd. (ALATSL) over termination of services and nonpayment of dues to Shri Bhagwati Prasad Dobhal Kiran, working as Casual CSA at Jolygrant Airport, Dehradun since July 2017 is legal, proper and justified?
>
> (ii) if not, what relief the concerned workman is entitled to and from which date? And also what other directions are necessary in this regard?"

The claimant of this proceeding has challenged his illegal termination from service by the management.

The facts stated in the claim statement in short is that he is a graduate and had joined in Air India Air traffic services limited as a Customer Service Agent (CSA) as a casual employee. He was posted at Jollygrant Airport Dehradun and was working there in the said capacity w.e.f 01st March 2015. He was discharging his duty with utmost satisfaction of the employer and working for 08-10Hrs in a day. During his employment the employer had never expressed dissatisfaction or any disciplinary action was ever taken against him. On 05.03.2016 the CMD of the management Air India had visited Dehradun Airport and all the casual employees including the claimant had met him to ventilate their grievance with relation to regularization of service. The CMD assured that appointment of all the casual employees will be confirmed in AIATSL payroll by end of March 2016 and they will be given an official letter in that regard. The claimant and all other causal employees thus sent their resume to the General Manager (commercial) of AIATSL. On 06th and 7th August 2016 the management conducted a selection process for recruitment of ground handling staff in Dehradun Airport for AIATSL. The claimant had applied for the Selection. Though helpers were selected without any proper selection process and given offer letters unconditionally and without any age limit the claimant was not selected on the ground that he has crossed the upper age limit for selection. He was not even allowed to participate in the process. He was also informed that the upper Age Limit for appointment in the post of helper in AIATSL is 28 years. But to his utter dismay persons aged more than 50 and even retired persons were appointed for the posts. The claimant has named Shri Shahjahan and Raje Singh as two such persons aged more than 50 years who got appointment against permanent post. The claimant, in the month of august 2017 was orally terminated from service. At the time of termination he was not paid the duty pay for the month of July 2017. No notice for termination notice pay, or termination compensation, was paid to him. Though juniors to the claimant were allowed to be selected as permanent employees, his candidature was not considered. No seniority list was displayed by the management before termination of the service of the claimant. Thus, alleging that the management has grossly violated the provisions of section 25F, 25-G and 25-H of the ID Act the claimant has prayed that for the hostile discrimination meted out to him, he should be reinstated into service with continuity of service, full back wages alongwith all consequential service benefits from the date of termination of service. He has also prayed for grant of litigation expenses by the management. It is the further stand of the claimant that since the date of termination he is regularly approaching the management to take him back into duty but no action has been taken. He is totally unemployed since the date of termination. The application filed by him before the conciliation officer could not yield fruitful result for the adamant attitude of the management. Hence, the appropriate government has referred the matter for adjudication.

Notice was sent to the management for its appearance and filing of written statement. Despite sufficient service of the notice the management did not appear and has been proceeded exparte by order dated 14th January 2019. Thus, the points in view of the statement of the claim for adjudication are:-

POINTS

1. Whether the service of the claimant was illegally terminated by the management in gross violation of the provisions of section 25F, 25-G and 25H of the ID act.
2. If so to what relief the claimant is entitled to.

During the hearing of the proceeding the claimant testified as WW1 and proved the documents which have been marked in a series of WW1/1 to WW1/8. The claimant had also filed another petition under section 11(3) of the ID Act calling the management to produce certain documents which are not in his possession but material for adjudication of his claim. A notice to that effect was duly served on the management. After receipt of the notice, on 26.09.2019 one official of the management had appeared without the documents and she was clueless about the proceedings and the orders passed by this tribunal. Since, the said official had not brought any document as called for and the management had already been set exparte his presence could not be marked on record.

During course of argument the Ld. A/R for the workman argued that this a classic case of unfair labour practice and related victimization of poor employee by the employer. He also submitted that the claimant as a witness has stated that he worked for the management continuously for more than 240 days in the calendar year preceding to the date of termination but the management never complied the provisions of section 25F, 25G and 25H of the ID Act at the time of alleged retrenchment. Placing reliance in the case of **Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda Supreme Court 2009(13)SCALE636** he submitted that when the claimant gave oral evidence about 240 days work done by him without supported by any document, the burden shifts on to the management to disprove the same as a casual employee hardly gets access to the documents of the management. Adverse inference is bound to be drawn against the management. The Ld. A/R for the workman further argued that the documents filed by the claimant coupled with his oral evidence, clearly proves that he had worked for more than 240 days in the establishment of the management preceding to the date of termination. But for better clarification of the issue he had filed an application invoking the provisions of section 11(3) of the ID Act. The management having ample knowledge about the said application and the prayer made therein intentionally failed to produce the documents. Describing the termination of the service of the workman as illegal unjustified, arbitrary, discriminatory and violative of the

Principles of Natural Justice he argued for reinstatement of the claimant into service.

Point NO.1

The oral evidence adduced by the claimant clearly shows that he was working as a Casual Customer Service Agent w.e.f 01.03.2015 and the payment was made to him as a Muster roll employee. He had worked uninterruptedly till August 2017. To support this oral evidence the claimant has filed certain documents. The documents so filed include the copy of the document containing details of the commercial and engineering staff engaged by the management and the name of the claimant finds place at serial no. 5. He has also filed the photocopy of the register of employment and the amount of remuneration paid maintained in the office of the management containing the days of the work, duration of the work done by the claimant on day to day basis. The register contains the signature of the occupier acknowledging discharge of duty by the claimant. He has filed the copies of the said register maintained in the year 2017 and marked as exhibit WW1/6. The photocopy of the security pass issued to him has been marked as WW1/8. On the basis of these documents the claimant has asserted to prove that he was working in the establishment of the management till the date of his termination and had completed work for more than 240 days in the calendar year conferring temporary status on him. It has further been stated that before his termination the management was under the obligation of complying with the provisions of section 25F, 25G and 25H of the ID Act. The employer since had defaulted to do so the order of termination is illegal and liable to be setaside.

Now it is to be seen if the claimant of this proceeding was subjected to unfair labour practice. Unfair labour practice as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employee a workman as badli, casual or temporary and to continue him as such for years with the object of depriving him of the status and privilege of permanent workman amounts to unfair labour practice. In this case as indicated above the management has not filed any WS nor any dispute has been raised to the facts stated in the claim petition. The oral and documentary evidence adduced by the claimant clearly proves that he was working as a Casual Customer Service Agent w.e.f 01.03.2015 and the management on 06th and 7th August 2016 took up an exercise for selection and recruitment of ground handling staff in Dehradun Airport for AIATSL. On completion of the selection process the persons working as casual workers were given appointment as regular employees. But the claimant was left out from the said procedure without assigning any good ground. The only reason assigned is that he has crossed the upper age limit for such selection which is 28 years. No document except the oral evidence of the claimant in this respect is available on record. In his oral testimony the claimant has pin pointed that two persons namely Shri Shahjahan aged about 56 years and Shri Raje Singh aged more than 60 years were allowed to join

the management as permanent FTC by such selection whereas the candidature of the claimant was not considered. Thus, the claimant has stated that he was made a victim of hostile discrimination.

On behalf of the claimant another document has been filed and marked as WW1/7. This document is the photocopy of the official register maintained by the management which contains the name of the employee, employee no. designation, date of joining, date of birth and date of posting etc. The said document also contains the information if the said person is in the pay roll of AIATSL. This document at serial no. 14 contains the name of the claimant and describes him as casual worker. The date of joining has been noted as 1.03.2015 and his date of birth as 04.07.1982. From this information it is evidently clear that the claimant at the time of the selection held on 06th and 7th August 2017 was 34 years old. Perhaps for this reason and as he had crossed the upper age limit of 28, his candidature was not considered. But it is surprising to note that a person named Ashwini kumar at serial no. 9 having the date of birth as 20.09.1982 was allowed to join on 12.12.16 as a permanent employee in the post of customer service agent and his employee no. has been mentioned therein. Similar is the case in respect of Yogesh Kumar handy man who being born on 01.07.1983 was allowed to join as a permanent employee on 10.03.2016. Shahjahan Mugle Azam handy man born on 01.09.1962 was allowed to join as a permanent Handy man on 10.03.2016. Devendra Singh Nyal at serial no. 24 of exhibit WW1/7 is another person whose date of birth is 03.07.1982and he was allowed to join as a permanent Handy man on 10.03.2016.It is not understood why the claimant was discriminated from being employed on the ground of over age.

The other limb of argument advanced to prove unfair labour practice is that the claimant had worked for more than 240 days in the preceding calendar year of termination and at the time of termination the provisions of section 25F, 25G, 25H were not complied by the management. Citing the judgment of Director of Fisheries referred supra the Ld. A/R for the claimant submitted that the claimant on the basis of his oral evidence has discharged the primary burden in this respect. Though the burden had shifted to the management, the later has failed to disprove the claim of the claimant. From the record it is seen that the claimant had called for the documents from the possession of the management to prove this aspect of his claim. Though the notice was properly served and an official of the management had appeared before the tribunal on 26.09.2019 the documents were not produced. The Hon'ble Supreme Court in the case of Director of Fisheries referred supra have clearly held that the employee always lacks access to the documents maintained by the employer. Once, the workman gives oral evidence about 240 days work done by him it is for the management to disprove the same being the custodian of the documents. In this case the management has failed to discharge the burden. Thus, this tribunal accepts the stand of the claimant that he had completed 240 days work in the calendar year preceding to his

termination but the management committed illegality for not complying the provisions of the Id Act at the time of termination.

The Hon'ble Supreme Court in the case of **Jasmer Singh vs. State of Haryana reported in 2015(1)SCALE360** have held that:-

> Issuance of neither notice nor notice pay and payment of retrenchment compensation to appellant were not complied with –Therefore, Labour Court had correctly held that termination of services of workman was illegal – Finding of fact that workman had worked for more than 240 days in calendar year and termination order was void ab initio in law for non- compliance of sections 25F (clauses (a) and (b), 25G, and 25H of Act- Therefore, Industrial Tribunal-cum-labour Court had rightly set aside order of termination of services of workman and awarded order of reinstatement with continuity of service and full back wages.

In this case it is the grievance of the claimant that before his termination neither the seniority list was displayed nor the Principle of Last come first go was followed. No notice of termination, notice pay, or termination compensation was paid to him. The Ld. A/R for the claimant thus, argued that the tribunal has ample power to interfere with the action taken and set aside the order of termination. In the case of **Delhi Cantonment Board vs. CGIT reported in 129(2006) DLT 610** the Hon'ble High Court of Delhi have held that there is no distinction between permanent employee and a temporary employee. Termination of service of the temporary employee without complying the provisions of section 25F is illegal. Thus, from the oral and documentary evidence placed on record and considering the same on the basis of the Principles decided in the above mentioned cases decided by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi the one and only conclusion is that the claimant was subjected to hostile discrimination on the ground of over age and unfair labour practice was meted out for non compliance of the provisions of section 25F, 25G and 25H of the Id Act. This point is accordingly answered in favour of the claimant.

POINT NO.2

Now it is to be seen if the claimant is entitled to the relief sought for and this tribunal has power to grant the same. In the case of **Hari Nandan Prasad and another vs. Employer I/R to Management FCI reported in (2014)7SCC190 the Hon'ble Supreme Court** have held that the power conferred upon the Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and also regulates the right of the parties and enforcement of the award and the settlement. Thus, the Act empowers the adjudicating authority to give relief which may not be permissible in common law. Here is a case, where as indicated above the

workman has been victimized on account of unfair labour practice by the management. In his oral testimony the claimant has stated that since the date of termination he is unemployed and has not been gainfully employed anywhere. The post for which he was aspirants has been filled up by other persons whereas the candidature of the claimant was not considered without any bondafide reason. Hence, keeping the situation in view it is felt proper to issue a direction to management to reinstate the claimant in service as the termination of his service is in violation of the Principles of Natural Justice and procedure laid down under the Id Act. The Hon'ble Supreme Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors. (2013)10SCC 324** have held that:-

> The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measure in terms of money. With the passing of an order which has the effect of serving the employer employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the Principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

Keeping this principle in view it is felt proper to give a direction to the management for reinstatement of the claimant into the post of casual CSA and regularize his service on the date the other persons were appointed as

regular employees pursuant to the selection held on 06th and 7th August 2016. He shall be paid the full back wages and be granted the benefit of continuity of service with other consequential benefits. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The management is directed to reinstate the claimant in the post of casual CSA and regularize his service on the date the other persons were appointed as regular employees in the said post pursuant to the selection held on 06th and 7th August 2016. He shall be paid the full back wages as arrear and be granted the benefit of continuity of service with other consequential benefits. Since, the claimant has alleged that his earned salary for the month of July 2016 was also not paid and the same has not been controverted, it is also directed that the management shall pay him the earned salary for July 2016. No order is passed with regard to the overtime dues claimed by the claimant as no evidence has been placed on record in that regard. The management is further directed to complete the exercise with regard to the reinstatement, regularization and payment of back wages within 3 months from the date of publication of the award failing which the amount accrued in favour of the claimant shall carry interest @9% per annum from the date of accrual and till the actual payment is made. No order is passed with regard to litigation expenses. Copy be supplied to the parties and the record be consigned in the record room.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
16th February, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
16th February, 2022.