

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.

**ID NO. 119/2021**

**Date of Passing Order- 08<sup>th</sup> August, 2022.**

Between:

Ms. Manisha Thakur,  
T2-303, The Satya Hermitage, Sector-103,  
Gurgaon, Haryana-122006.,

Workman

Versus

1. Deutsche Lufthansa AG,  
Shared Services International India Pvt. Ltd.,  
Novotel Pullman Hotel, Commercial Block,  
Aerocity, New Delhi-110037.
2. Florian Hoser, Head of Corporate & Business Functions,  
Regional Management South Asia, Shared Services International,  
India Pvt. Ltd. Novotel Pullman Hotel, Commercial Block Aerocity,  
New Delhi-110037.
3. Namita Chowdhary Head- Human Resources, South Asia.  
Del B/NR- H Shared Services International India Pvt. Ltd.,  
Novotel Pullman Hotel, Commercial Block Aerocity,  
New Delhi-110037.

Managements

Present:- Shri Udit Gupta, Ld. A/R for the claimant alongwith claimant.  
Shri Suyash Srivastava, Ld. A/R for the management.

**ORDER**

The matter was posted to 3/08/2022 for evidence to be adduced by the applicant Manisha Thakur who has filed the present complaint invoking the provision of sec 33 A of The ID Act alleging that an Industrial Dispute pending between the parties the management changed her service condition in gross violation of the provision of sec 33 of The Act.

Before the applicant, who was present could tender her evidence, the management moved the application praying that the issues framed by order dated 2<sup>nd</sup> June 2022, certain facts raised by the management in the pleading were not taken in to consideration making it imperative for re casting of the issues. He thus submitted that two additional issues i.e

- (a) whether the claimant is a workman or not as defined under the ID Act or not
- (b) whether a just and proper inquiry was conducted against the complainant or not

need to be framed as the same are necessary in view of the pleadings and for complete adjudication of the matter.

The AR for the claimant preferred to argue on the petition without filing any written objection.

During argument the learned AR for the management pointed out that in the pleading the management has taken a pacific plea that the claimant is not a work man and the applicant has rebutted the same. Similarly, the management has pleaded that for the mis-conduct of the complainant leading to loss of faith a proper domestic inquiry was conducted and the complainant in her pleading has again disputed and challenged the fairness of the inquiry so conducted. The learned AR thus submitted that above two issues are relevant and necessary to be answered for complete adjudication of the matter.

The learned AR for the applicant counter argued that only those facts which are relevant for adjudication of a dispute when pleaded by one party and denied by the other is taken as the issue for that dispute. He also argued that the present petition is designed to delay the adjudication only.

There is no dispute on the legal proposition that a fact relevant to a particular dispute when asserted by one party and disputed by the adversary forms an issue.

Coming to the present proceeding, the claimant admittedly an ex employee of the management has come up with this complaint filed u/s 33A alleging that she is concerned in the industrial Dispute pending before this Tribunal registered as ID 197/2018, pursuant to a reference received from the appropriate Govt . That dispute is with regard to the general demand raised by the Lufthansa Cabin Crew Association. During pendency of that dispute the management in gross violation of the directives given under sec 33 of the ID Act initiated a domestic inquiry against the claimant and in an unfair manner concluded the inquiry and imposed the punishment of termination of service and communicated by letter dated 8<sup>th</sup> June 2021. Being aggrieved by the said action the present complaint has been filed. It is noticed from the pleading that the claimant has challenged the order of termination on two grounds, firstly for the unjust conduct and unfair procedure adopted during the inquiry and secondly, that the said domestic inquiry was conducted and the order of termination was passed by the management without taking prior permission of this Tribunal as provided u/s 33 of the ID Act. Management in the WS filed has disputed the stand of the complainant and now wants the issue on the fairness of the inquiry to be framed.

In several judgments including the case of **Blue Star Employees Union vs. Ex Officio Principal Secretary to Government, 92008)8 SCC 94** the Hon'ble SC have held:-

“ the essential requirement for maintainability of a complaint u/s 33A requires consideration of two aspects:-

- (i) whether there is any violation of sec 33
- (ii) whether the act complained of is justified or not.

Thus the Hon'ble SC have held that when the complaint is made u/s 33A and it is shown by the employee that the impugned dismissal is in contravention of sec 33 of the Act, the Industrial Tribunal has to adjudicate if the action taken by the employer is connected to the dispute pending or not. It has also been held by the Hon'ble SC in the case of **Reserve Bank of India vs. C A Dighe (1981) 3 SCC 545**, that the Tribunal should define the area of Dispute referred to it for adjudication under section 10 of the ID Act, before proceeding to consider whether the alleged alteration of the condition of service is connected to the Industrial dispute pending between the parties.

It is thus clear that the scope of sec 33A is only to determine if the impugned alteration is in regard to the matter connected to the Industrial Dispute pending and in contravention of the provisions of sec 33 of the ID Act. The scope of Sec 33A is never to adjudicate the correctness of the action taken or fairness of the domestic inquiry conducted. It would always be open for the parties to challenge fairness of the inquiry in which the other party can rebut the same. Hence there is no need for framing an issue with regard to the fairness of the inquiry even though the complainant, as a matter of reference to the context, has stated that the inquiry was not conducted fairly.

So far as the other proposed issue, if the complainant is a workman or not , the same stands covered under issue No 1 with regard to the maintainability of the proceeding and no separate issue need to be framed. The petition filed by the Respondent is accordingly rejected. Call on \_\_\_\_\_ for the complainant to tender her affidavit. Since advance copy of the affidavit has already been served on the respondent management, the later shall come ready for cross examination without fail.

Presiding Officer  
08/08/2022