

**ID NO.264/2011**

February 09, 2023

Present: Sh. Vishwaranjan Kumar, A/R alongwith the claimant.  
Sh. Sunil Dutt, A/R for the AAI.  
Sh. Ramesh Thakur, A/R for DIAL.  
Sh. Sanjog Verma, Alongwith Sh. B.S.Kaushik, A/R for JAC Air Services.  
Sh. Kunal Mehta, A/R for Hawk Cargo.

The instant application is moved by one of the opposite parties in the industrial dispute matter of ***Workman Rajender and 12 others V. M/s JAC Air Services Pvt Ltd*** and others moved on behalf of M/s JAC Air Services Pvt. Ltd. dated 12.12.2022. The applicant seeks recall of order of the tribunal dated 16.11.2022 and prays to permit recall as witness the all 13 claimants (workmen) before the court for their examination on the charges labelled against them.

Vide the order of the tribunal dated 16.11.2022 the evidence of the opposite parties were concluded and the matter posted for final argument fixing dated 13.12.2022. The evidence of the applicant opposite party JAC has already been recorded pursuant to the order dated 25.01.2019 and the same was concluded vide the order dated 25.01.2019 of the tribunal. This said order is reproduced hereunder:

*Arguments on the preliminary issue head. Vide a separate order, domestic enquiry conducted by JAC Air Services (I) Pvt. Ltd. is held to be unfair and against the principles of natural justice. Having regard to the gravity of the allegations leveled in the charge sheet and the fact that JAC Air Services (I) Pvt. Ltd. has reserved it rights to adduce evidence in case domestic enquiry is held to be unfair and against the principles of natural justice, the case is now listed for evidence of the management of JAC Air Services (I) Pvt. Ltd. and for examination of the claimants of M/s Hawk Cargo Services Pvt. Ltd. for 19.02.2019. Let list of witnesses be filed by JAC Air Services (I) Pvt. Ltd. within two weeks.*

The industrial dispute no. 264/2011 was registered on the reference in the Section-10 made by the Appropriate Government (Government of India/Ministry of Labour) dated 18.08.2009 in following terms:-

*'Whether the action of the management of M/s HAWK Cargo Services Pvt. Ltd., New Delhi & M/s JAC Air Services Pvt. Ltd., New Delhi in terminating*

*the services of the workmen ( As per Annexure) w.e.f. the dates as mentioned against their names in the Annexure is just, fair and legal? What relief the concerned workmen are entitled to and from which date?'*

On 22.08.2012 on the basis of pleadings submitted by the respective parties to the industrial dispute following issues were framed:-

1. *Whether enquiry conducted by M/s JAC Air Services or other managements as the case may be, against the claimants was just fair and proper?*
2. *Whether action initiated by M/s JAC Air Services or other managements, as the case may be against the claimants amount to punishment for alleged misconduct, which ought to have been preceded by a domestic enquiry?*
3. *Whether the claims, filed by the claimants, are bad for misjoinder of parties? If yes, its effects.*
4. *Whether punishment awarded to the claimants commensurate their misconduct?*
5. *As in terms of reference.*

*No other issues is made out. Issue No.1 is treated as preliminary issue. Adjourned for evidence of parties on the preliminary issue for 26.09.2012. Management of M/s JAC Air Services or other management, as the case may be, shall conclude first.*

Obviously, as revealed from the proceeding that issue no. 1 was treated preliminary issue and the management of M/s JAC Air Services Pvt. Ltd. or other management were expected to conclude first. Subsequently on behalf of the present applicant M/s JAC Air Services Pvt. Ltd. affidavit of Sh. K. J. Rawtani had been tendered relating to the claim of the workman as evidence. Cross examination of the said witness could have been concluded after repeated adjournment by him. By order of the court the claimant's evidence was ordered to be recorded. With regard to which on 05.07.2016 the claimant Sh. Arvind Kumar and on 28.08.2016 Sh. Takdir Singh submitted their affidavit and their cross examinations was also recorded on respective dates.

On 01 June, 2017 on the issue raised by the opposite parties M/s JAC Air Services Pvt Ltd and M/s Hawk Cargo and Airport Authority of India, Delhi International Airport Pvt Ltd. To adduced evidence pertaining to the domestic enquiry involved in issue no. 1 in the claim, the tribunal passed the following order: -

*Today matter was listed for examination of the claimant. However, it is noticed by this Tribunal that vide order dated*

29.08.2016 affidavits S/Shri Dalbir Singh Verma, Raj Kumar, Suresh Kumar, Takdir Singh and Sanjay Kumar were supplied to Sh. Abhayveer Sharma, A/R for Delhi International Airport Pvt. Ltd. However, Sh. Abhayveer Sharma has stated that he has not received copies of the above affidavits. Sh. Kunal Mehta, learned vice counsel for M/s Hawk Cargo has also stated that copies of the affidavits of the aforesaid witnesses have not been supplied to him by the A/R for the claimant.

It is further noticed that, in fact, evidence of M/s JAC Air Services (I) Pvt. Ltd. only has already been recorded and evidence of Airport Authority of India, Delhi International Airport (P) Ltd. and Hawk Cargo remain to be recorded. As per the ratio of law in the case of **UCO Bank V. Presiding Officer (ILR\_(1999) Delhi 331)**, when the issue pertains to domestic enquiry is treated as preliminary issue, it the workman who is required to adduce evidence first inasmuch as the findings have already been rendered during domestic enquiry against him and he is prima facie required to prove that the domestic enquiry conducted by the management is wrong and illegal. However, in this case, it is evident from the record that management was asked to adduce evidence first, as a result of which M/s JAC Air Services (I) Pvt. Ltd. has already adduced evidence. In view of this, learned A/Rs for the respective parties stated that let evidence of the claimant be recorded first, which would be in accordance with the principle of law settled in UCO Bank case (Supra).

Evidence adduced by M/s JAC Air Services (I) Pvt. Ltd. would be read in evidence. Evidence of the remaining managements, in view of the legal position discussed above, would be recorded after conclusion of evidence of the claimants. Now, the case is listed for evidence of the claimants on the preliminary issue for **06.07.2017**. Let copies of the affidavits of the claimants be supplied to the A/Rs of Delhi International Airport (P) Ltd. and Hawk Cargo atleast a week before the next date of hearing.

Persuant to the order dated 01.06.2017 Sh. Manoj Kumar, Vijay Pal, Mukesh, Jaktar Singh, Wazir Singh, Ran Singh, Rajender Kumar, Dharmendra, Anjani Kumar, Rajendra Prasad, Jag Pal, Sanjay Shokeen, Shiv Kumar (All Workmen) submitted their affidavit in evidence pertaining to the issue of domestic enquiry on

dated 06.07.2017 and were duly examined.

Ultimately after recording evidences of parties to the industrial dispute viz. the management and the workman concerned, vide order dated 25.01.2019 the domestic enquiry was held vitiated by the tribunal. Subsequent their to the employer the management were given opportunity to lead evidences to prove the charges with which the claimants were arraigned.

The established legal principle which is incorporated in the Indian Evidence Act 1872 is that burden of proving a fact lies on the person who desires a court to pass any order in his favor believing on the fact pleaded by him, this is called 'Burden of Proof'. In the present industrial dispute matter the burden of proof to prove the domestic enquiry conducted legally and genuinely was lying upon the management and likewise to prove the charges good in law as labelled against the workman (claimants) also lies upon the management. In deciding the issue no.1 the tribunal has recorded its finding as to the charges being imaginary and not believable therefore, the burden heavily lies upon the management to prove the charges to be true and actual in the context of the case. The delinquent employees who are arraigned with charges cannot be obligated to adduce negative evidence. Moreover, the claimant witnesses have already been examined with regard to the entire domestic enquiry including the charges labelled against them therefore, they cannot be recalled to be examined on the same on the wishes of the applicant/management. The management has adduce all evidences in respect of the charges even the other opposite party M/s Hawk Cargo has also led the evidences on charges therefore nothing left to be done by the workman and no any new fact has arisen in evidence upon which the claimant witness may be recalled in evidence.

Application moved by the management M/s JAC Air Services Pvt. Ltd. is nothing but a dilatory tactice. The order sheet reveals that the present applicant has not left any stone unturned in dilating the proceeding of the industrial dispute pending before the tribunal since 2011, adopting all hock and crock. Application dated 13.12.2022 moved on behalf of M/s JAC Air Services Pvt. Ltd. is therefore rejected. Put up for argument on 01.03.2023.

(Presiding Officer)  
February 09, 2023