

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2,
MUMBAI**

PRESENT

S. S. Garg
Presiding Officer

REFERENCE NO.CGIT-2/11 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M/S. AIRPORT AUTHORITY OF INDIA

1. The Airport Director,
M/s. Airport Authority of India
Chhatrapati Shivaji International Airport,
Domestic Terminal 1-B,
Mumbai – 400099.
2. The Secretary,
Security Guards Board for Greater Bombay & Thane
Districts, Rollers Pvt. Ltd. Compound,
LBS Marg, Bhandup West,
Mumbai – 400 078.

AND

THEIR WORKMEN.

The General Secretary,
Krantikari Suraksha Rakshak Sangathana,
180-C, 1st floor, Dharavi Kolivada, J.J. Keni Gali
Dharavi Road, Mumbai,
Mumbai – 400 017.

APPEARANCES:

FOR THE EMPLOYER(1) : Ms. Geeta Raju, Advocate
i/b M/s. Kini & Co.

(2) : Ms. Manjiri Joshi
Advocate

FOR THE WORKMEN : Mr. V. A. Thankachan
Advocate

Mumbai, dated the 7th September, 2021.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-11011/56/2004 – IR (M) dated 02.11.2004. The terms of reference given in the schedule are as follows :

“Whether Security Guards’ Board for Greater Bombay and Thane District’ is an “industry” under the provisions of Section 2(j) of the Industrial Disputes Act, 1947 ? 2. Whether there is an employer-employee relationship between the management of Airports Authority of India (IAD), Mumbai and Shri Chandrashekhar G. Achari, Security Guard ? 3. Whether Shri Chandrashekhar G. Achari, is entitled for full back wages for the period from 12.2.1998 to 28.2.2002 ? If so, from whom and what other directions are necessary in the matter ?

2. After the receipt of the reference, both the parties were served with the notices.

3. Union by filing Statement of Claim asserted that workman is a Security guard, who was registered in 1987 and was allotted to the Sahar Cargo Complex if First Party Employer by the Security Guards Board for Greater Bombay and Thane District located at Rollers Pvt. Ltd. Compound, LBS Marg, Bhandup West, Mumbai – 400 078.

4. According to workman, while he was being employer at the Sahar Cargo Complex of the first party employer at Sahar on 12.2.1998 was falsely accused

of theft and was removed from duty and dismissed w.e.f. 19.2.1998 and not paid any wages after 11.2.1998.

5. According to workman, he submitted written explanation on 5.3.1998, however on 30.3.1998, citing the reason as a non-reply to show cause notice; the workman was issued a dismissal order by the Board, without even an enquiry being conducted. According to workman, he was acquitted by the Order of the Court dated 27.12.2001 because he was prosecuted for theft. He corresponding with Security Board to reinstate as Security Guard with first party but first party employer refused to allow the workman to resume work and the board once again intervened and by way of hand-delivery send another letter dated 22.2.2002 once again directing that the workman be allowed to resume work. Subsequently thereto Mr. Achari was taken back on duty by the principal first party employer w.e.f. 1.3.2002.

6. According to workman, he applied for National Human Commission and RLC for reconciliation then this case is referred to this tribunal.

7. According to him union submit that there is no further grievance settlement procedure open to registered security guards to settle such disputes with regard to back wages.

In this way they pray that workman be paid full back wages for the period 12.2.1998 to 28.2.2002 with interest @ 12% to be recovered from party No.1

8. By filing Written Statement on behalf of first party No.1 they denied most material facts by asserting that union has no locus-standy to raise the Industrial

dispute through workman and this case is filed u/s. 2(k) of I.D. Act because outside union is not functioning in the premises of party No.1 but he admitted that workman was prosecuted with other 3 persons by Sahar Police station for committing offence of theft of property; punishable u/s. 380; read with section 34 of Indian Penal Code vide case No. 805/p/1998; which was filed in 22nd Metropolitan Magistrate Court, Andheri, Mumbai. He was arrested on 12.2.1998 and was remanded in the police custody as well as judicial custody upto 20.2.1998. He released on bail. In this period he was dismissed from service by the court and later on he was acquitted by the court.

9. According to party No.1, board arranges disbursement of the wages of registered security guard on specific date subject to local direction then party No.1 paid to the board salary as well as allowance and board disbursed this amount to the registered security guards. According to party No.1 workman applied for Airport Director and other authorities for reinstatement to failure report dated 11.6.2004 was sent to the Government of India, Ministry of Labour, New Delhi; the copies of which were sent to the concerned parties. So case come before this tribunal.

10. It is admitted that party No.1 is a statutory body establishment under the provisions of Airport Authority of India Act, 1994 having its head quarters at Yashwant Place, Chanakyapuri, New Delhi – 110 021 and their branch office is at Chhatrapati Shivaji International Airport, Vile Parle (East), Mumbai – 400 099.

11. It is admitted that workman was prosecuted with other 3 persons by Sahar Police station for committing offence of theft of property; punishable u/s. 380; read with section 34 of Indian Penal Code vide case No. 805/p/1998; which was

filed in 22nd Metropolitan Magistrate Court, Andheri, Mumbai. He was arrested on 12.2.1998 and was remanded in the police custody as well as judicial custody upto 20.2.1998.

By filing reply they pray that this reference is answered in negative to the workman because workman did not entitle to any relief.

12. On behalf of party No.2, Security Guards Board they file written statement by asserting that reference is bad in law, not maintainable and workman has no authority or power to do so because party No.2 board is not an industry u/s. 2 (j) of I.D. Act. They have also asserted that they are not aware that said guard was registered with the board in 1987. According to them principal employer is responsible for the payment. They are only disbursing authority. They have also admitted that he was prosecuted for the theft after that he remanded in police custody then he was acquitted by the competent court. They denied that workman approached to the board to allow him report to work. But it is true that approaching the board to reinstatement him to the first party employer. It is also true that on 1.3.2002 the said guard was allowed to resume duty.

13. According to party no.2 workman not entitled for full back wages for 12.2.98 to 28.2.02 with interest from party No.2. So they pray that this reference is rejected against the party No.2.

14. Rejoinder filed by the workman denying the averments in written statement of party No.1 & 2. He asserted that all facts which is raised in statement of claim. According to workman he denied that the security guard did not keep approaching the board to allow him to report for work. According to him

if the reliefs prayed for in the reference are not granted, the workman will suffer prejudice and irreparable harm will be caused to him.

15. Party No.2 after filing written statement not participating further proceedings of the court so it remain ex-parte.

16. On the basis of pleading of both parties my predecessor framed following issues which are required to be determined in this case.

ISSUES

1. Is reference bad in law as Krantikari Suraksha Rakshak Sangathana has no locus-standi to raise dispute ?
2. Whether "Security Guards Board for Greater Bombay & Thane Districts" is an "industry" ?
3. Whether there is employer-employee relationship between Authority and Chandrashekar G. Achari ?
4. Whether concerned workman proves that, he was illegally terminated by Board ?
5. Whether concerned workman is entitled for wages from 12/02/1998 to 28/02/2002 with interest ?
6. If yes, from whom ?
7. What order ?

Reasons for decision :

17. Workman files written synopsis by raising same points with case laws in support of their statement of claim by asserting that "the first party company is a Public Ltd Company constituted under the Airport Authority of India Act, 1984

and worker covered by this reference has been employed by the First Party Company for carrying out its business and the dues payable to the workman concerned had been actively used by the 1st party in its business and earned huge profits out of its business. Therefore first Party Company is liable to pay the dues with interest @ 12% p.a. up to the date of payment to the worker concerned on his dues payable. The financial health of the first Party Company is very sound and this company can easily bear the burden of the demands of the worker.

18. On the contrary management party no.1 denied his demand in written argument as per written statement in which he raised material point for non-maintenance for present reference with support of case laws. He also asserted that first party no.1 is registered with the Board, and since then the board is allotting and realloiting the security guards to the First Party No.1 Company. The registered security guards allotted to the First Party No.1 Company is always governed by the scheme and they have no right whatsoever to claim any wages or other service condition with the First Party No.1 Company. He also asserted that workman is removed from 19.2.1998 from their services and sent back to the board.

In this way they pray that they are not entitled to pay any back wages to the workman and present reference liable to be dismissed. They relied on case law i.e. **Krantikari Suraksha Rakshak V/s. B.S.N.L. – 2008 – Supreme Court of India.**

19. Workman relied on case i.e. **Krantikari Suraksha Rakshak Sanghatana, Thane V/s. Security Guards Board for Greater Bombay and Thane District and Ors. – 1997 – LAB.I.C. – 2117 Bom.**

20. Now I want to see the legal position.

1. **Krantikari Suraksha Rakshak Sanghatana, Thane V/s. Security Guards Board for Greater Bombay and Thane District and Ors. – 1997 – LAB.I.C. – 2117 Bom H.C.**

Following principles are laid down.

“A security Guard cannot be left in the wilderness to find out his employer if he intends to remedy a wrong done to him. If such wrong creates a situation which will affect his basic conditions and the wage structure as protected by the said Act, a person responsible for the same, could be styled as an employer and if the test of master and servant relationship is applied for the purpose of remedying the wrong done to such a Security Guard, a person who is responsible.”

“Power of withdrawal of Security Guard – cannot be exercised arbitrarily.”

“Such guards are already employed in a particular factory where such expertise is not required, it would be within the discretion of the Board to withdraw such Security Guard and re-allot him to factory where the expertise and special knowledge of such Security Guard would be helpful. A situation may arise when administrative

exigencies may necessitate the reshuffling of the Guards..... Such reshuffling on the administrative exigencies may entail withdrawal of a Guard from one establishment and allot him to another. The Board should take care that such reshuffling of Guards should not be as far as possible against the desire and wishes of the said Security Guards and more.”

“The Security Guard should be placed under suspension or inquiry proceedings should be started. If a Security Guard is willing to be re-allotted to any other establishment under the Scheme then the Board may not proceed with the inquiry as contemplated under Cl. 31. However, on being made aware of complaint of indiscipline or misconduct, etc. the Security Guard controverts the same and insists upon holding an inquiry, the Board shall not withdraw the services of the said Security Guard without following the procedure of inquiry as contemplated under Clause 31.”

2. **Krantikari Suraksha Rakshak Sanghatana V/s. Bharat Sanchar Nigam Ltd. & Ors. – 2008 – Supreme Court of India – decided on 25.08.2008.**

Following principles are laid down.

In Security Guards Board V/s. State of Maharashtra MANU/SC/0700/1987 : (1988) 1 LLJ 146 SC, it was held that “the provisions for seniority, promotion and transfer in Clause 16 of 1981 Scheme would be rendered ineffective and would cause great harm to guards if they were denied the benefits of common

pool seniority and promotion merely because of a fortuitous allotment in the particular principal employer. The other two grounds relation to Contract Labour (Regulation & Abolition) Act, 1970 (in short 'Contract Labour Act') and the rules framed thereunder.”

In case of Krantikari Suraksha Rakshak Sanghatana V/s. S.V. Naik 1993 (1) CLR 1003, it is held that “the Act was a self contained and complete code and unreported judgment of Justice P.B. Sawant as he then was and Justice M.P. Kania dated 15.1.1988 in Writ Petition No. 1172 of 1987 held that the Act is a special statute which not only prevails over the Contract Labour Act but further that the Act also prevails because of Article 254 (2) of the Constitution.”

“Union had unsuccessfully come up with the very same pleas and the orders had attained finality. Issue cannot be permitted to be indirectly raised in the manner done. The Act and the schemes make it clear that they apply only to security guards who are “Pool Security Guards”. As stated earlier the Act and the Scheme clearly constitute a complete and self contained code which covers private Security Guards. Section 1 (4) of the Act and various provisions of 1981 and 2002 Schemes make it clear that the arguments that the guard once allotted with the Principal employer he becomes the direct and regular employee of the principal employer is without any substance. As rightly noted by the High Court the provisions of the Act and the statute make it clear that the Board’s power of

allotment carries with it the implicit and inherent power to recall, re-allot and transfer a guard from one principal employer to another. It needs no emphasis that the power to appoint carried with it the inherent power to terminate. Therefore, the power to allot necessarily carries with it the inherent power to re-allot or cancel the allotment. It is also seen that both under the 1981 and 2002 Schemes certain clauses provide for transfer of guards. It is also significant that under both the Schemes there is provision for continued supervision, control, disciplinary powers and powers of termination vested in the Board.”

21. Now I want to see the evidence of this case.

On behalf of workman they examined himself WW-1 and in support of his evidence he examined other two witnesses Mr. R.K. Kamble and Mr. C.L. Vidhate. On the contrary management examined his witness Sr. Manager [Cargo] Mr. S.P. Gaonkar. Now I want to evaluate so-called independence witnesses.

Mr. R.K. Kamble support his version in chief examination and also prove the document Ex.17 which is a copy of Log book. But in his cross examination he admitted that he has no personal knowledge about this case. But “Manager told me not to allow Chandrashekhar for duty. Manager has not told me the reason why he should not be allowed for work.” According to him his Sangathana used to represent security guards. It shows that he have no personal knowledge but he have knowledge that manager did not want to allow present workman to

resume his duty. It also appears that he is working as a Security Supervisor at Sahar Cargo Complex.

Shri C.L. Vidhate, WW-2 also admit in his cross examination that he was Secretary of the said union but according to him union does not represent employees of the airport. He also admitted that workman was security guard and board dismissed Mr. Achari i.e. workman. He also admitted that payment of wages is to be made to Mr. Achari through board. In this statement he remain un-rebutted.

22. Now I want to see the workman evidence.

He prove Ex. 17/3, Ex. 17/4, Ex. 17/5, Ex.36, Ex.37 & Ex.39 in his chief examination and also prove other documents Ex.42, Ex.73. But in his cross examination he admitted that board terminate the services of the security guards after receiving the letter from airport authority. He also admitted that he was not given any appointment letter by the airport authority. Airport authority used to pay salary to the board then board used to pay salary to him. He also admitted that board used to fix the salary and supply uniform and boots etc. which is required for the duty. He also admitted that board used to investigate the case in the case of any mis-conduct by the security guard. He also admitted that Ex.37 show cause notice issued by the board and he gave reply Ex.38.

23. Now I want to see the management evidence Shri S.P. Gaonkar, Sr. Manager Cargo [MW-1].

In his chief examination he support the version of defence taken by the management but no witness examined on behalf of security guard board but they file their W.S. Mr. S.P. Gaonkar in his cross examination admitted that at that time Log book is maintained by the Duty Manager. He also admitted that document Ex.17 is signed by erstwhile Dy. Manager Mr. Arvind Dubey. Now he is retired. He also admitted that workman Shri Chandrashekhar was reported for duty but he was not allowed to resume his normal duty by the authority. He also admitted that Ex.36 is leave application but he did not know whether Mr. Chandrashekar was on leave from 12.2.98 to 24.2.98. But according to him this application given to cargo dept.

MW-1 Mr. S.P. Gaonkar is admitted that wages and benefit of security guards is paid by the principal employer through board. He also admitted that security guard is working under the control of principal employer through Sr. Security Manager. He also admitted that document Ex.17 is signed by Dy. Manager Mr. Arvind Dubey. In this statement he remained un-rebutted in cross examination. It appears that he gave statement on the basis of records of the management. In his cross examination para – 32 admitted that Hon'ble High Court revoked the order of dismissal passed by the board so registration in board as security guard was restored after order of Hon'ble High Court. So he approached the board for admitting him for duty in February 2002.

24. On going above discussion I come to conclusion that security board dismissed his services but his registration was restored by the Hon'ble High Court. Workman fails to prove that from 12.2.98 to 24.2.98 he remained on leave

or not. It is also proved that erstwhile Dy. Manager Mr. Arvind Dubey did not allow workman to resume his duty. Principles laid down in above case law, it shows that workman or board did not compel to any security guard to resume his duty in party No.1. It also appears that Security Guards Board has right to allot or re-allot the establishment and he has also power for disciplinary action. In this way in my humble opinion Board come in purview of Industry under section 2(j) of I.D. Act. It also appears that union have locus-standi to raise this dispute.

25. Hon'ble High Court also held that Security Guards Board have also power to change the establishment or to re-allot another establishment. But he follow principle of natural justice as defined under clause 31 of the said Scheme. Hon'ble High Court also held that service condition of Security guards is not affected in long situation and also held that responsible establishment could be styled as employer. But workman fails to prove that he is entitled to wages from 12.02.1998 to 28.02.2002 because it also include leave period from 12.02.1998 to 24.02.1998. Log book copy dated 19.02.1998 show that he was refused to resume the duty on cargo so in my humble opinion he is not entitled any wages after 19.02.1998 from principal employer Party No.1. But it appears that there is dispute of wages between the Security Guards Board and workman. So firstly Security Guards Board decides the entitlement of the wages then he pay to the workman.

26. So In my humble opinion workman did not entitle to any back wages for the period from 12.2.1998 to 28.02.2002 from principal employer but security board is entitle to pay wages as per law he entitled after deducting leave period from 12.02.1998 to 24.02.1998 upto non-resuming duty i.e. 19.02.1998. It is also observed that workman suffering from 1998 and this reference is pending from

2005. It is also appear that Security Guards Board is not appear after filing W.S. and he did not give any evidence in this case. Learned Advocate of workman argued that Security Guards Board is not interested to assess the court so he pray that some immediate relief must be granted to the workman from the principal employer. This argument was opposed by the management Learned advocate. Considering these and principle laid down in case law **Krantikari Suraksha Rakshak Sanghatana, Thane V/s. Security Guards Board for Greater Bombay and Thane District and Ors. – 1997 – LAB.I.C. – 2117 Bom H.C**, Hon'ble High Court held that, "A security Guard cannot be left in the wilderness to find out his employer if he intends to remedy a wrong done to him", my humble opinion is that some immediate relief can be given to the workman for doing complete justice.

27. Hence order.

ORDER

- 1. Union Krantikari Suraksha Rakshak Sanghatana has locus-standi in this case to raise this issue.**
- 2. Security Guards' Board for Greater Bombay and Thane District' is an "industry" under the provisions of Section 2(j) of the Industrial Disputes Act, 1947.**

3. *There is no employer-employee relationship between the management of Airports Authority of India (IAD), Mumbai and Shri Chandrashekhar G. Achari, Security Guard.*
4. *Shri Chandrashekhar G. Achari (workman) is not entitled for full back wages for the period from 12.02.1998 to 28.02.2002 from principal employer i.e. Airport Authority of India. But workman entitled to immediate relief i.e. Rs.1 lakh from principal employer after one month from publication of award in official gazette.*
5. *Security Guards Board decides workers dispute of old back wages from 12.2.1998 to 28.02.2002 within 3 months from publication of award in official gazette. Workman is entitled to back wages from Security Guards Board. Security Guards Board has right to adjust this amount from old back wages of the workman.*

- 6. Principal employer may recover above Rs.1 lakh with interest from the Security Guards Board after paying this amount to the workman and workman and principal employer also entitled 6% per annum interest from concerned person.**
- 7. If Security Guards Board fails to decide old wages within 3 months, workman has right to raise this dispute before RLC or proper forum.**

Date: 07.09.2021

Sd/-

(SHYAM. S. GARG)
Presiding Officer/Link Officer
CGIT-2, Mumbai