

Department, Indira Gandhi International Airport, New Delhi when his services were terminated illegally and arbitrarily by the opposite party on 13.07.2012.

2. It is further alleged in the statement of claim that despite good service record, the workman/claimant was issued a charge sheet dated 11.02.2003 to the following effects:

This is further to letter No.DED/1/22/1508, dated 7.12.2000 placing you under suspension.

That during the year -1999 you were working as Sr. Accounts Asst. at Bill Passing Section, IGI Airport, at IGI Airport, Palam, New Delhi. That while functioning as Sr. Accounts Asst., you (Sanjay Kaura), S/o Shri. P.K. Barthwal, Sr. Accounts Asst., Sukhbir Singh Sangwan, Sr. Traffic Asst., F.G. Runda, Sr. Traffic Asst., D.K. Kharbanda, a travel agent and Brijesh Kumar Gautam, Contractual Book binder with IAL made a plan in the year 1999 to take out the stock of CVDs unauthorisedly from TAL, CVDS Store and thereafter make illegal money by getting the ticket cancelled and refunded from the various IAL stations.

That you and Shri D.K. Kharbanda, travel agent received the Bundle of 100 blank manual TAL double sector tickets bearing numbers 058-2200208701 to 058-2200208800, which was taken out unauthorisedly by Shri P.K. Barthwal during last week of September, 1999 from CVD Store Palam by dodging the staff on duty.

That you and Shri D.K. Kharbanda, travel agent approached Shri F.G.Runda, Sr. Traffic Asst, IAL posted at Safdarjung Booking office and requested F.G. Runda to validate 100 stolen tickets bearing Sr. No. 0582200208701 to 058-2200208800 by putting the impression of Bradma ticket validator of Safdarjung Airport booking office. During the night hours passengers rarely visit booking office, accordingly F.G. Runda agreed to validate the tickets during night duty after assurance of a share in the refund amount. In the intervening night of 10/11.10.1999, You and Shri D.K. Kharbanda reached Safdarjung Booking office in the mid night when F.G. Runda was on duty. By avoiding the attention of the other IAL Staff on duty, F.G. Runda took out unauthorisedly the said bradma ticket validator marching out side booking office and all the hundred tickets were embossed by putting its impression. Thereafter the machine was put back at the same place. (from where you had taken it) by F.G. Runda.

That you and Shri D.K. Kharbanda requested Shri Arun Kumar Rao @ Baboo to write two tickets bearing Numbers 058-2200208701 and 058-2200208702 as per your directions, which were accordingly written by Shri Arun Kumar Rao @ Baboo. Other tickets were also got prepared by Shri D.K. Kharbanda with the help of one Parvin Bakshi. Thereafter Shri D.K. Kharbanda along with Shri Parvin Bakshi visited

booking. Office at Guwahati, Calcutta, Chennai, and Bangalore, from where refunds were obtained and in case of any problem manual tickets were got re-routed in order to obtain refund on the re-routed tickets.

That after obtaining refunds on some of the stolen tickets from various IAL outside Delhi, Shri D.K. Kharbanda met you and S/Shri P.K. Bhartwal, F.G. Runda, Sukhbir Singh Sangwan, Brijesh Kumar Gautam at Delhi, where amount obtained through refunds unauthorised tickets/ and re-routed tickets were distributed among you and the above said persons. Further Programme to obtain refund was also chalked out.

That you along with Sukhbir Singh Sangwan and Shri D.K. Kharbanda of S. Kaura, and you reached Mumbai on 16.11.1999 by flight IC-165 in the morning. IAL booking office, Santacruz Airport, Mumbai IAL ticket number 058-2200208762 incidentally prepared in the name presented the said ticket and refund of Rs. 13,640/- was obtained. Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda also obtained refunds by submitting tickets in their names.

That from Santacruz Airport, Mumbai you along with Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda visited IAL city booking office, Mumbai and presented IAL ticket Number 058-2200208739 to 058-2200208748 belonging to the lot of 100 tickets unauthorisedly taken out. After getting these tickets cancelled fresh re-routed tickets bearing number 058-2251821777 to 058-2251821786 were obtained.

That from Mumbai, you alongwith Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda reached Pune in the late evening on 16.11.1999 and stayed in Hotel Shrimaan, Pune. Next day i.e., on 17.11.1999, all three of you visited IAL booking office Pune from where refunds on ticket number 058-2200208788 to 058-2200208791 belonging to the lot of 100 tickets unauthorisedly taken out was obtained.

That you along with Shri Sukhbir Singh Sangwan and Shri P.K. Kharbanda visited Goa from were refund on ticket number 058-2200208792 to 058-2200208793, and 058-2200208768 were obtained in two Instalments.

That you also got refunded 2 IAL tickets bearing number 058-2251191177 and 058-2251191178 through Shri Brijesh Kumar Gautam. These tickets were presented at IAL booking office, Malhotra Building, New Delhi and refund was managed by Shri J.P. Rathi, Sr. Traffic Asst. who also happens to be close friend of you.

That when matter came to the knowledge of IAL authorities, an enquiry was taken up, with a view to shield yourself, with the help of Sukhbir Singh Sangwan and other certain employees of IAL, after finding suitable opportunity got replaced/destroyed relevant refund vouchers (RF-9) pertaining to IAL, Mumbai. That from the period June-1999 onward you have failed to maintain absolute integrity and devotion to duty and therefore you are hereby charged as under:-

That you dishonestly accepted blank IAL manual double sector tickets of the series 058-220-0208701 to 058-220-0208800 taken out by Shr. P.K. Barthwal unauthorisedly from the stock of IAL, got validated said tickets unauthorisedly by using the BRADMA validator machine of IAL, Safdarjung Booking Office with the help

of F.G. Runda, Sr. Traffic Assistant and Devender Kumar Kharbanda @ David, a travel agent in the intervening night of 10/11.10.9.

That you unauthorisedly thereafter got said tickets prepared with the Help of Arun Kumar Rao @ Baboo and D.K. Kharbanda etc, and deputed DEK. Kharbanda to obtain refund on the said tickets from various IAL booking offices.

That you visited (IAI Booking Offices at Mumbai, Pune and Goa etc. along with Sh. Sukhbir Singh Sangwan, Sr. Traffic Assistant, IAL New Delhi and D.K. Kharbanda, a travel agent in the second fortnight of November, 99 and obtained and managed refund unauthorisedly on the tickets connected to the lot of 100 tickets unauthorisedly taken out by Sh. P.K. Barthwal from the stock of IAL.

That you unauthorisedly accepted six IAL tickets connected to said lot, gave to his friend Sh. Sanjay Verma and got refund obtained from Safdarjung Booking office with the help of Sh. F.G. Runda.

That you unauthorisedly got refund on two IAL tickets related to the lot of 100 tickets through Brijesh Kumar Gutam from IAL Booking office, Malhotra Building, New Delhi which was got released by requesting Sh. J.P. Rathi who was posted as Sr. Traffic Assistant there.

That you unauthorisedly with the intention to conceal the gross misconduct committed by you got relevant refund vouchers (RF-9) destroyed and replaced from the record of Central Revenue Account (CRA), New Delhi when enquiry into the matter was taken up by the IAL and tries to scuttle the same.

That you, acted in a manner, dangerous and detrimental to the IAL which ultimately contributed and led to the loss of Rs. 6,67,390/- to TAL. Thus you committed gross misconduct.

Your above acts, if proved, would amount to breach of Standing order 1 and misconduct within the meaning of Clause 16(4), 16(16), 16(43) of the Standing orders (Regulations) concerning Discipline & Appeals as applicable to you, which read as under:

<i>Standing Order 1:</i>	<i>Every employee of the company shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests, credit and prestige of the company.</i>
<i>Clause 16(4):</i>	<i>Theft, fraud and dishonesty, in connection with business or property of the company.</i>
<i>Clause 16(16):</i>	<i>Willful damage to any property of the Company.</i>
<i>Clause 16(43):</i>	<i>Abetment of or attempt.</i>

Evidence which is proposed to consider in support of the charge:

- 1. Evidence of Shri Ramesh Malhotra, Retd. Sr.Manager (Vigilance) and his oral evidence.*

2. *Evidence of Shri D.A. Singh, Retd. Sr. Manager(Vigilance) and his oral evidence.*
3. *Evidence of Shri J. Chandrahassan, Sr. Vigilance Asst. and his oral evidence.*
4. *Evidence of Dry Sushil Kumar Gupta: DSP, and his oral evidence.*
5. *Statement dt. 1.9.2000 of Shri Samar Singh and his oral evidences.*
6. *Statement dt.24.8.2000 and 30.10.2000 (5 Sheets) of Shri Sanjay Verma and his oral evidence.*
7. *Evidence of Shri Brijesh Kumar Gautam.*
8. *Evidence of Shri Pravin Bakshi.*
9. *Evidence of Shri Arun Rao Baboo.*
10. *Evidence of Shri J.P.Rathi.*
11. *Ticket No. 058-2200208763, 058-2200208739 to 058-2200208748, 058-2200208788 to 058-2200208791, 058-2200208792, 058-2200208793 and 058-2200208768.*
12. *Ticket No. 058-2251821777 to 058-2251821786, 058-2250960195, 058-2250960197, 058-2250960199, 058-2250960200, 058-2250960203, 058-2250960205, 058-2251191177 and 058-2251191178.*
13. *Any other evidence oral or documentary in support of the charge.*

You are hereby required to put in a written statement of your defence in reply to the above charges within seven days of receipt hereof. You are warned that if no statement is received from you by the undersigned within the time allowed, it will be presumed that you have none to furnish and order will be passed in your case accordingly.

You are further required simultaneously to inform the undersigned in writing whether you desire to be heard in person, and, in case you wish to examine or cross examine any witnesses to submit along with your written statement their names and addresses together with a brief indication of the evidence which each such witness will be expected to give.

3. The workman/claimant replied the above charge sheet denying charge of misconduct labeled over him. He challenged the enquiry

proceeding conducted by the enquiry officer that it was under the dictate and pressure of the management without application of his own mind. They did not permit him, help of a legal practitioner in the proceeding. Extraordinarily the enquiry was delayed which took 13 years from the time of incident of 1999 as the punishment order was issued on 13.07.2013. Even the appeal of the workman against the punishment order was dismissed vide a liconic and sketchy order on 21.08.2013, when the workman raised the industrial dispute in this regard before the Regional Labour Commission (Central) under section 2A of the I.D. Act, 1947, the management did not response to that due to which conciliation attempt was failed. Having no hope from the management the present application before the tribunal is moved wherein the validity, fairness and legality of the dismissal order dated 13.07.2013 is challenged.

4. The application of workman is contested, filing a written statement by the management, stating that the workman was rightly dismissed from service of the management. A valid and proper domestic enquiry was conducted prior to the dismissal ordering to the delinquent workman in accordance with the principle of natural justice workman was given due opportunity to defend him against the charges with which he was assigned. The written statement has

also describe in detail the responsibility of the post on which the workman/claimant had appointment and his conduct during his employment in conspiracy with some of the office bears and a travel agent which arraigned him which constitute charges of serious misconduct.

5. Vide order dated 28.05.2015 on the basis of pleadings of the contesting parties following two issues were framed:

- “1. *Whether the domestic/enquiry conducted by the management is not just & fair and is against principles of natural justice?*
2. *Whether termination of services of the claimant is legal and valid, as alleged?”*

6. It is further ordered that issue no1 which pertains to the domestic enquiry will be treated as preliminary issue and claimant to lead evidence on the above issue. Both the parties led their evidence.

7. The claimant submitted his affidavit as the statement in chief and cross examination by the management's representative, in turn the management produced its witness in chief and cross examined by claimant's representative. This would be pertinent to state that tribunal vide its order dated 09.02.2018 directed to read and

consider the statement of the said management witness 'Ashwani Sehgal' recorded in the case of co-delinquent workman F.G.Runda in I.D. No.76/2014. Arguments on the basis of material documents and evidence adduced before the tribunal heard with regard to the said issue No.1 and order passed by the CGIT on 10.08.2018.

8. The tribunal vide its order dated 10.08.2018 held that the domestic enquiry against the claimant was conducted violating the principal of natural justice to the prejudice of workman in an unfair manner. Consequent upon the above finding the tribunal further held that the order dated 13.07.2013 passed by the disciplinary authority dismissing the services of the workman cannot legally survive. With the above findings the tribunal further opined that the management should be given opportunity to adduce evidence on merit of the charges labelled against the workman in the charge sheet.

9. The management aggrieved from the aforesaid order of the tribunal dated 10.08.2018 impugned the same in writ petition WP(C) No.426/2019 Air India Ltd. V. Sanjay Kaura which was heard and decided with the WP(C)No.415/2019 filed against the same order of tribunal of the same date passed in the case ID no. 63/2014 F.G. Runda V. Air India Ltd., vide its judgment on 03.07.2019 Hon'ble

Delhi High Court made several observations hearing the learned counsel for both the parties.

10. The relevant para's 4,5 and 6 are carved out from the judgment on 03.07.2019 being reproduced here under with due regard –

*“4. Mr. Lalit Bhasin, learned counsel for the petitioner submits that these are clear cases of loss of confidence by the petitioner in the respondents and no inquiry was required to be conducted by the petitioner for the first instance as per the principles laid down by this Court in **State Bank of Travancore v. Prem Singh, 2019 SCC Online Del 8258** in which this Court, held that the employee can be terminated without inquiry in the case of loss of confidence. This Court further held that even if the inquiry was held to be bad, the employee is not entitled to reinstatement but only compensation.*

*5. Learned counsel for the petitioner submits that both these cases are squarely covered by the principles laid down by this Court in **State Bank of Travancore (supra)** and, therefore, even if the inquiry is held to be vitiated, the respondents are not entitled to reinstatement but only compensation. It is submitted that this submission is without prejudice to the petitioner's case that there has been no violation of principles of the natural justice. It is further submitted that the learned Industrial Tribunal be directed to hear the matter afresh in terms of the principles laid down by this Court in **State Bank of Travancore (supra)**.*

*6. Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in **State Bank of Travancore (supra)**. It is further submitted that the petitioner paid about Rs. 11,00,000/- to the legal representatives of similarly situated charge-sheeted person and the respondents claim parity with respect to the compensation paid to the legal representatives of the situated person.”*

11. Hon'ble the Delhi High Court with the above quoted observation in its judgment remanded back the matter to hear and decide afresh with the direction on 3.07.2019 in Para 8 of the judgment dated 03.07.2019.

*“Para- 8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in **State Bank of Travancore (supra)**. The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions.”*

12. The matter was heard afresh by the tribunal in the terms of the direction of the Hon'ble High Court and a detailed discussion is made for reaching at a conclude recorded in order of the tribunal date 16th February 2022. The tribunal disposed of the prayer of the management for an order on the issue of loss of confidence vide order of the same date the relevant is reproduced as under:

“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.”

13. Aggrieved from the above said order of the Tribunal dated 16th February 2022, the management again approached the Hon'ble High Court with WP (C) No.893/2022 and WP(C) No.8148/2022 for quashing set-aside the impugned orders. The grievances raised before the court that the tribunal over looked the

direction of the Hon'ble High Court of Delhi in its judgment and passed the impugned order without the Hon'ble High Court of Delhi stayed the impugned order dated 16.02.2022.

14. After hearing the consenting parties in the matter, the Hon'ble High Court of Delhi in para '5' of it's judgment dated 24.08.2022 in WP(C) No.8948/2022 and WP(C) No.8931/2022 made following observations:

“5. It is an accepted position that this order has not been challenged by either of the parties. The implications of the order dated 03.07.2019 as contained in para 8 in W.P.(C) Nos. 426/2019 and 475/2019 are as under:

- (i) The learned tribunal should have examined the matter afresh in term of the principles laid down by this court in State Bank of Travancore (supra). Thus, if the termination of the employees was found to be on the basis of loss of confidence of the management, in accordance with the principles laid down in State Bank of Travancore (supra), the claim of the claimants would be confined to only compensation and;*
- (ii) If the learned tribunal finds that the removal of the workmen was not on the loss of confidence and was not on the basis of the principles laid down in State Bank of Travancore (supra) then the tribunal would be proceeded with the recording of the evidence of the petitioner management for proving the charges against the claimants/workmen.”*

15. Further in Para 7 of the judgment dated 24.8.2022 it is observed that:

“7. However, it seems that the learned trial court has not gone in accordance with the directions of this court as contained in the order dated 03.07.2019 and therefore, the impugned order is liable to be set aside and is set aside”.

16. Following direction given to the Tribunal by the High Court which are content in Para 8 of the judgment on 24.8.2022.

“8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in State Bank of Travancore (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions.”

17. The order of the Hon'ble High Court dated 24.08.2022 was received to this Tribunal on 1st of September 2022 parties to this industrial dispute through their authorized representative appeared before the tribunal and agreed to submit their arguments on 22.09.2022.

FACTUAL MATRIX

18. As comes out from the pleading of the parties and the charge sheet issued for domestic enquiry of the ascent claimant/workmen with other co-delinquents the incident of taking out unauthorisedly the bundle of 100 tickets misusing his official position by the present claimant/workman and the other employees and outsiders involved with him in the conspiracy was taken cognizance by the Central Bureau of Investigation. A criminal case was lodged by it in the competent court. It is admitted that as the claimant in his statement of claim while assailing the charge sheet issued to him for the proposed domestic enquiry has pleaded that the charges levelled against him were identical with charges levelled by the CBI in criminal court vide FIR dated 24.05.2000. Further in the rejoinder to the written statement by the management the claimant has cited the statement of Dr. Sushil Gupta (MW30) who investigated the case on behalf of CBI in the capacity of Deputy SP, who deposed that, 'basically the case pertained to 100tickets which were stolen from the lot of 50 thousand tickets and the same were misutilised. In the course of the investigation it was found that all four charge sheeted employees namely Mr. P.K.Barthwal, Mr. Sanjay Kaura, Mr.

F.G.Runda and Mr. Sukhbir Singh in conspiracy with each other alongwith two private persons Mr. D.K.Kharbanda and Mr. Brijesh Kumar had been instrumental in committing theft.

19. This court passed its judgement and award by which vitiated the enquiry on the ground that the enquiry officer conducted the enquiry in violation of principle of natural justice, to the prejudice of the workman, as well as in an unfair manner, resultantly the order dated 13.07.2012 passed by the disciplinary authority cannot legally survive and sustain as held unfair and against the principles of natural justice. The tribunal further opined, an opportunity be granted to the management to adduce evidence on merit on charges as mentioned in the charge sheet. It clearly means that the enquiry was assailed on the technical grounds emerging from the step wise requirement which were found by the tribunal irregularly or unsatisfactorily complied with, like non production of all the witnesses during the enquiry, non-supply of all the document relevant to the enquiry.

EVIDENCE

20. On completion of pleadings for and on behalf of the respective parties to the industrial dispute, the tribunal preferred to frame the issues. The tribunal required the parties to file their documentary evidences exchanging copies thereof to each other. On 15/04/2015 as the order sheet of the case reveals one

Ranjan Jha, appeared for the management and filed, the copy of the enquiry proceedings alongwith documents taken into consideration in the enquiry which were taken on record. The copy of those were receive don behalf of the claimant on the same day by his AR Sh.Vijay Kumar. Singh the documents were voluminous, the parties were given further time to endorse thereon their admission or denial on 03, July 2015 and again on 06/08/2015. On 28/09/2015, the date fixed for framing issues, though the managements AR endorsed denial/admission of the documents filed by the claimant, but the AR for the claimant did not admit or deny any of the document of the management. After framing of the issue the claimant, himself offered his testimony by filing an affidavit of examination in chief. In its turn the management produced its officer in evidence, Sh.Ashwani Seghal, whose affidavit of examination in chief is on record, and was cross examined.

21. The management having been called upon had produced documentary evidence in the form of enquiry proceeding and the documents referred there in on affidavit providing, a copy thereof to the claimant. The parties were further called upon to admit or deny specifically each other's document, so produced before the tribunal. The management endorsed it's specific admission/denials on the documents produced in evidence by the claimant but claimant though throughout represented and present in the proceedings before the tribunal, despite opportunity given to him, did not endorsed his admission or denial on

the management's documents produced in evidence. He ignored and neglected to admit or deny specifically. It is established principle of law as to the "admissions" that every document which was called upon to admit, if not denied specifically or by necessary implication or not stated to be admitted by the party in their pleading, shall be deemed to be admitted. Hence in the present case, the enquiry proceeding and the documents referred therein shall be deemed to have been admitted and therefore shall be taken into consideration of the nature and of the charges levelled against the claimant.

22. When the tribunal allowed the management to produce evidence of charges in the domestic enquiry against the claimant and the management produced the document in support of the charges which had not been denied by the claimant, the same shall be treated as admitted, unrebutted piece of evidence and the tribunal may record its finding while adjudicating the industrial dispute it pertaining to dismissal of the workman (claimant of the present case) in consonance with the relevant pleadings of the parties in that regard.

23. The position of workman holding an office of trust and confidence by virtue of his appointment by the management. This is admitted fact that the claimant whenever was appointed in the year 1990 by the management and was working as Senior Accounts Assistant in Financial Department at Indira Gandhi International Airport, New Delhi. When he was dismissed from service with effect from 13/07/2012. This holding the office of trust from by the claimant

workman in the establishment management in admitted when need no further evidence.

24. This would further be relevant to state that the aforesaid first information report lodged by the CBI and the criminal proceeding running in criminal court were never challenged in any court of law. Alleging them false and fabricated against them. The statement of aforesaid management witness Dr. Sushil Gupta (MW30) is available in the record of enquiry proceeding and presented before this court also which prima-facie show and establish the fact of involvement of present claimant/workman. Acting misusing his official position of holding an office of trust when involved himself in theft, misappropriation and breach of trust to make wrongful gain for himself. Admittedly the domestic enquiry instituted subsequent to the lodging of the First Information Report by the CBI. This undoubtedly was sufficient to make reasonable apprehension in the minds of the authorities of the management in regard to the trust worthiness of the present claimant/workman. As such the fact continuing the loss of confidence of the employers (management) is pleaded and established by the management.

25. The management witness was produced before the tribunal on 30.03.2022 has stated on oath in the cross examination that he is aware of the misconduct committed by the claimant who has misused his official capacity, stolen and misused appropriated ticket of Air India unauthorisedly. Document in this aspect have already been placed on record and exhibited as MW1/2 to MW1/4. He

further says that it would be incorrect to suggest that these documents are no way relevant for the alleged misconduct against the claimant (workman). It is also wrong to suggest that having not been posted in the booking office the witness has no knowledge about the alleged incident and deposing falsely.

26. The documents above referred produced and proved by the management in support of their charges shall stand admitted by reason of their non denial. The original document relating to the culpable act of the claimant/workman in the incident are also with the knowledge of claimant/workman taken by the CBI in their custody and reserved for submission before the criminal court in criminal case pending there with regard to the incident. The CBI investigator in his statement had also stated the said fact before the tribunal as witness MW30 Dr. Sushil Gupta.

Argument

27. Learned AR for the claimant/workman argued in the context of order of remand passed by the Hon'ble High Court of Delhi dated 03.07.2019 that on 19.10.2022 in Writ Petitions No. 8931/2022 & 8948/2022. It is submitted that these writ petitions were filed by the management assailing the order dated 16.02.2022 of the CGIT in which the management had suppressed the vital fact that it had already complied with the direction in the said order and produced Mr. Tarun Mathur on 30.03.2022 before this tribunal. The deposition of Mr. Tarun Mathur is available on the records of the case before the tribunal. The

management therefore is guilty of concealment, as such, being uncleaned is liable to be thrown out for this reason alone. The learned AR further argued that previously the management conducted enquiry against the claimant/workman which is dragged by him for considerable period of 19 years. However, when they found that it was not possible to prove the misconduct against the claimant/workman, they suddenly changed their goal post and adopted a totally new plea of loss of confidence on 03.07.2019 for the first time in the Hon'ble High Court. The said plea of loss of confidence was, therefore, neither bona fide nor legally permissible. Learned A.R. vehemently argued that in view of the case law propounded by the Apex Court in the case of *Kanhaiya Lal Agrawal V. Factory Manager, Gwalior, Sugar Factory (2001) 9 SCC 609*. The management had not fulfilled the essential norms set by the court that it is not pleaded and proved by the management that the workman was holding the post of trust and confidence 'and by abusing such position, committed such act which resulted serious misconduct and also that to continue him in service would be inconvenient to the employer or would be detrimental to the discipline and security of the establishment. He further impressed on the well settled law that what is not pleaded can not be proved and that a totally new plea is not permissible in law. Further it is argued that Hon'ble Supreme Court in the case of *Prabhakar V. Sericulture Department (2015) 15 SCC 1* that right not exercised for a long time shall be treated as non-existent.

28. Learned AR further argued that the burden of proof of the charges is on the employer as it is explained by the Apex Court in the case of *Delhi Cloth Mills V. General Wheel Company*. Management remained unsuccessful in discharging his burden the next argument of the learned AR is to give benefit of the parity as in the same matter the management itself granted the other charge-sheeted employees. The Sukhbir Singh Sangwan's legal representative who expired in December 2009 by paying the compensation. The present workman/claimant is denied. The doctrine of equity applies to all those who are equally placed, even persons who are found guilty. In his support learned AR referred the judgment of Apex Court in case of **Rajender Yadav V. State of M.P. 2013(137) FLR 239.**

29. Learned AR for the management further impressed on stated that the workman/claimant is not entitled to reinstatement but only compensation, which is also somersault as they have stated before the tribunal while submitting their written argument that the workman is not entitled for either reinstatement or entitled for back wages or any compensation. In this connection the learned AR further argued that the persistent efforts of the management has been to delay the proceeding in the present industrial dispute also violative of the right to life of the workman as mandated in the Article 21 of the constitution of India.

30. The learned AR impressed on that vis-a-vis the domestic enquiry in the matter the CBI has also prosecutes of the workman for serious offenses and no

charge have been framed in the said case even after 22 years.

31. Learned AR has relied on case laws propounded by the courts which are **2013 (137 FLR 239 Supreme Court)** in *Rajender Yadav V. State of M.P. and Kanhaiya Lal*.

32. On the other hand written submission of argument by the management is submitted. The learned AR for the management argued that the workman was senior traffic assistant at booking office and used to do the ticketing work. He alongwith Sh. D.K. Kharbanda, Travel Agent, Sh. Brijesh Kumar Gautam contractual book binder, take out of bundle of tickets, valued documents (CVDs) unauthorisedly from the store and make illegal money by getting the tickets cancelled and refunded from management's various airline stations. Thereafter an FIR was launched by CBI against the workman and other persons in conspiracy with him. The act of the workman is under the category of grievous misconduct. He emphatically argued that in view of the aforesaid misconduct the workman was suspended and charge sheeted, his reply was sought after getting relevant documents from the management. Further enquiry was conducted in accordance with principle of natural justice in practicality and fare play and in accordance with applicable standing orders of the management. The tribunal vitiated the aforesaid enquiry vide order dated 10.08.2018 and directed the management to lead evidence on the issue of misconduct. In the writ petition filed against the order the Hon'ble High Court disposed of petition vide order

dated 03.07.2019 and referred back the matter before this tribunal hear the argument on the issue of loss of confidence in view of the principle laid down in the case of *State Bank of Travancore V. Prem Singh* dated 10.04.2019 by Delhi High Court (Supra).

33. Learned AR for the management further argued that sufficient evidence on record which are prima facie evidences against the workman which establish dis honesty and misconduct on the part of workman therefore management had rightly terminated his services on the ground of loss of confidence. Learned AR submitted that they were in reasonable and strong apprehension of misappropriation, theft and fraud and breach of trust on the part of employee causing financial loss to the company, therefore his dismissal/termination is immune from challenge and accordingly neither reinstatement may be ordered nor any compensation is payable. In the present case the 100 tickets of the Airline were stolen and that financial loss of tune approximately Rs. 7 Lakh has been caused to the airline is admitted position. Also it is the case of the workman that CBI has filed a criminal case before the competent court on the same charges which is pending. During the course of investigation by CBI certain statement of CBI officers were recorded. Learned AR in the light of such admissions emphatically submitted that above factual position is sufficient to create reasonable doubt and apprehension regarding integrity of the employee, who was holding position of trust with the management. Lastly, the learned AR submitted

that in Para 6 of the judgment of Hon'ble High Court recorded the submission of the lead case of 2019 learned AR for the counsel for the workman that the claim of the workman would be confined to compensation only before the CGIT.

34. Reliance placed on the case laws propounded by the various courts including Apex Court which are as follows:

- 1. All India Institute of Medical Scientist V. O.P. Chauhan Manu/DE/0321/2007.**
- 2. Bharat Heavy V. Chandra Shekhar Air 2005 Supreme Court 2769.**
- 3. Air India V. Revallo Air 1972 Supreme Court 1342**
- 4. T.N.T.S. Corporation Ltd. & Oth. V. K.Meera Bai 2006 (2) S16255.**
- 5. Sidhu Vishmu Banvalkar V. Bank of India.**

DISCUSSIONS

35. Heard the learned authorized representative of the parties to the present industrial dispute at a considerable length and gone through their detailed and descriptive written arguments in the light of their pleadings and evidences responding there to. At the very outset the learned AR for the management Sh. Lalit Bhasin Adv. urged that presently the court is to confine the hearing and decide the matter in terms and context of the remand order passed by the Hon'ble High Court on 03.07.2019 in W.P.(C) No.426/2019 and W.P.(C) 475/2019. He impressed on the undertaking of learned AR for the claimant/workman (Respondent in the aforesaid Writ Petitions) to restrict his claim before the CGIT

to compensation only in view of the principle laid down in *State Bank of Travancore (Supra)*. The said submission of learned AR for the claimant/workman is recorded by the Hon'ble High Court in Para 6 of the order, read by the learned AR for the management is being reproduced herein below:

“6. *Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in State Bank of Travancore (supra). It is further submitted that the petitioner paid about Rs.11,00,000/- to the legal representatives of similarly situated charge-sheet person and the respondents claim parity with respect to the compensation paid to the legal representatives of the similarly situated person.*”

36. Learned AR for the claimant/workman opposed the contention made by the management and submitted emphatically that matter before the tribunal is remanded to here and decide afresh and no such undertaking as recorded in the order dated 03.07.2019 is given ever on behalf of the claimant. However, no correction or modification of the order in this regard is sought from and ordered by the Hon'ble High Court at the behest of the workman. The order of remand by the Hon'ble High Court is explicitly made by the Hon'ble High Court in order dated 03.07.2019. Para 8 of the order runs as under:

“8. *In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms of the principles laid down by this Court in State Bank of Travancore (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions.*”

37. For the reasons stated above this court shall proceed to decide the matter afresh in terms of the order of the Hon'ble High Court dated 03.07.2019 and on

the basis of principle laid down in the case of *State Bank of Travancore (Supra)*.

With a view to examine the case before this tribunal of reinstatement of the claimant/workman Mr. Sanjay Kaura in service of the management with back wages and other consequential benefits, the tribunal has to evaluate whether termination of the workman is done on the basis of loss of confidence of the management. Further when it is found that the service of the workman is terminated by reason of loss of confidence the claim of the workman to compensation. In the direction issued by the Hon'ble High Court the tribunal is given liberty, in case the termination is not found on the basis of loss of confidence and in accordant with the principle laid down in the case of *State Bank of Travancore (Supra)*, to proceed for recording of the evidence of the management. For the aforesaid purpose it would be pertinent to reproduce under the principle laid down by the Hon'ble High Court in the case of *State Bank of Travancore (Supra)* which are as follows:

“31. When an employee acts in a manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation can be awarded.

32. The plea of 'loss of confidence' by the employer has to be bona fide. Loss of confidence cannot be subjective. It has to rest on some objective facts, which would induce a reasonable apprehension in the mind of the management regarding the trustworthiness of the employee and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. Otherwise, a valuable right of reinstatement to which an employee is ordinarily entitled to, on a finding that he is not guilty of any misconduct, will be irretrievably lost to the employee.

33. The bona fide opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, is final and not subject to review by the industrial adjudication.

34. *In case of misconduct resulting in loss of confidence, the employer is not bound to hold any inquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee. The employer, in its discretion, may invoke the power to discharge simpliciter for loss of confidence while dispensing with inquiry into the conduct of the workman. The departmental inquiry in such a case is not necessary.*

35. *The reinstatement of an employee terminated for loss of confidence cannot be ordered even if the inquiry held by the employer has been held to be bad.*

36. *The reinstatement of an employee terminated for loss of confidence for involvement in a criminal case cannot be directed even if the employee is able to secure a acquittal or discharge in the criminal case.*

37. *The reinstatement has not been considered desirable in cases where there have been strained relationship between employer and employee. The reinstatement is also denied when an employee has been found to be guilty of subversive or prejudicial activities. The Courts have also denied reinstatement in cases where long time has lapsed or where the industry itself has become sick.”*

38. In view of the aforesaid above narration of the context and pleading in the present matter, I proceed further as follows:

Loss of Confidence

When the court or industrial adjudicator may go behind the order of punishment or dismissal to interfere.

In *Murugan Mills case (1965) 2 S.C.R. 149* the Apex Court has observed, ‘The right of the employer to terminate the services of his workman under the standing order, which amount to a claim to hire and fire the employee as the employer pleases and those completely negative security of service which had been secured to industrial employees. When the matter came before the Supreme Court in the case of management of **U.B.Dutt & Co. V. Workmen of U.B.Dutt & Co. 1962 Supplement. 2 S.C.R 822**, when the view taken by the labour appellate tribunal was approved and it was held that even in a case like the

present the requirement of bona fide was essential and if the termination of service was a colourable exercise of the power or as a result of victimisation or unfair labour practice, the industrial tribunal would have the jurisdiction to intervene and set aside such termination. The form of the order in such a case is not conclusive and the tribunal can go behind the order to find the reason which led to the order and then consider for itself whether the termination was a colourable exercise of unfair labour practice. If it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice, it would have the jurisdiction to interfere and set aside such termination.

What does 'Loss of Confidence' mean in termination of the service of the workman?

It means a break down in trust and confidence often cited as reason for dismissal termination linked or the finding of misconduct. For example that in the light of misconduct an employer has lost confidence in the employee to such an extent that, it is not possible that he can be retained in service any more.

39. In the present case the workman admittedly was appointed as Account Assistant on **25.04.1990** in Finance Department, Northern Region (Indian Airline Ltd.). Admittedly the workman (Mr. Sanjay Kaura) was holding an office of trust being Senior Account Assistant. In such capacity and official position in the year 1999, he alongwith his colleague Mr. F.G.Runda, (Senior Traffic

Assistant), Mr. D.K.Kharbanda, (Travel Agent), Mr. Brijesh Kumar Gautam, (Contractual Book Binder) of the management made a plan to take out stock of cash valued document (CVDs) unauthorisedly from the CVD store of airline. The present workman referred herein above is said to receive a bundle of 100 blank manual double sector tickets which was taken out unauthorisedly by the co-employee Mr. P.K.Barthwal, Senior Account Assistant during the week of September 1999 from DVD Store Palam by dogging the other staffs on duty. The present workman alongwith Mr. D.K.Bathwal, Mr. D.K.Khardanda, approached Mr. F.G.Runda posted as booking office and requested him to validate aforesaid 100 stolen tickets by putting the impression of Bradma ticket validator of Safadarjung, Airport Booking office. Further in the intervening night of 10/11 October, 1999 the present workman and Mr. D.K.Kharbanda reached Safdarjung Office in the mid night when Mr. F.G.Runda was on duty. By avoiding the attention of the other Airline Staff on duty Mr. F.G.Runda took out unauthorisedly the Bradma ticket validator machine outside the booking office and all the 100 tickets were embossed by putting its impression. Thereafter claimant/workman unauthorisedly kept the said tickets to obtain refund from various Indian Airline offices, visited booking offices at Mumbai, Pune and Goa etc. with Mr. Sukhbir Singh Sangwan and Mr. D.K.Kharbanda and obtained refund unauthorisedly. Finding prima-facie the involvement of the present workman and other co-accused and co-delinquent employees (his colleagues) in the plan and conspiracy which being a serious act of misconduct he was

suspended vide order dated 07.12.2000 and thereafter was issued a charge sheet vide memo dated 11.02.2000. An domestic enquiry was launched against him. The charge sheet is reproduced in the opening portion of this judgment. An interim reply dated 24.09.2003 was submitted by the workman with prayer to provide copy of the relevant document. He was provided the requisite documents then he submitted his reply on 04.08.2003. The reply was not found satisfactory therefore the competent authority of the management decided to hold an enquiry into the charges labelled against the workman. The enquiry was conducted jointly alongwith the other co-delinquent employees named above in the enquiry officer after taking on record evidences adduced before him concluded and submitted his report with finding that the workman is guilty of the charges labelled against him. Workman submitted his submission before the competent authority who considered the same and found no merit in his claim. Concurring with the finding of the enquiry officer a show cause notice was issued to the workman proposing imposing the punishment of dismissal from service of the company without terminal benefits. The workman replied the same also after the consideration of the reply the competent officer confirmed the punishment. Appeal when preferred by the workman against the punishment order against the order dated 13.07.2012 of the competent officer the same will rejected. It is argued by the learned AR for the management that it is clear from the aforesaid sequence of the facts that the workman was dismissed from the services of the management company after conducting a valid and proper domestic enquiry in

accordance with the principle of natural justice, equity, fair play and in accordance with the provisions of applicable standing order.

40. This would be relevant here to point out that above incident of taking out the bundle of 100 tickets, misusing his official position by the present claimant/workman and the other employee's and outsider's involvement with him in the conspiracy was taken cognizance by the Central Bureau of Investigation. An criminal case was lodged by it in the competent court. The claimant in his statement of claim while assailing the charge sheet issued to him in the domestic enquiry has pleaded that the charges labelled against him were identical with charges labelled by the CBI in criminal court vide FIR dated 24.05.2000. Further in the rejoinder to the written statement by the management the claimant has cited the statement of Dr. Sushil Gupta (MW30) who investigated the case on behalf of CBI in the capacity of Deputy SP, who deposed that, 'basically the case pertained to 100 tickets which were stolen from the log of 50 thousand tickets and the same were misutilised. In the course of the investigation it was found that all four charge sheeted employees namely Mr. P.K.Barthwal, Mr. Sanjay Kaura, Mr. F.G.Runda and Mr. Sukhbir Singh in conspiracy with each other alongwith two private persons Mr. D.K.Kharbanda and Mr. Brijesh Kumar had been instrumental in committing theft.

41. This would further be relevant to state that the aforesaid first information report lodged by the CBI and the criminal proceeding running in criminal court

were never challenged in any court of law. Alleging them false and fabricated against them. The statement of aforesaid management witness Dr. Sushil Gupta (MW30) is available in the record of enquiry proceeding and presented before this court also which form strong prima-facie evidence of to establish the fact of involvement of present claimant/workman of acting and misusing his official position while holding an office of trust. It is also prima-facie established that he involved himself in theft, misappropriation and breach of trust to make wrongful gain for himself. Admittedly the domestic enquiry proceeding was launched subsequent to the lodging of First Information Report by the CBI. This undoubtedly was sufficient to make reasonable apprehension in the binds of authorities of the management in regard to the trust worthiness of the present claimant/workman. As such the fact constituting the loss of confidence in the employer's (management) mind is pleaded and established by the management.

42. The aforesaid matter of criminal misconduct was subjected to domestic enquiry and ultimately the service of workman/claimant was terminated in punishment with no terminal benefits. This tribunal has vitiated the enquiry technically on the basis of non-observing the principles of natural justice and fair play, thereafter called upon the management to prove the charge of misconduct. The management in compliance of the order of the tribunal produced Mr. Tarun Mathur on 20.03.2022 to establish and prove the misconduct. Learned AR for the workman submitted that the management in its writ petition no. 8931/2022

and writ petition no. 8948/2022 before the Delhi High Court to impugn the order dated 16.02.2022 passed by the CGIT suppressed the vital fact that it has already complied with the direction of the tribunal to produce witness so as to prove misconduct. The management pleaded the ground why the further evidence as to misconduct of the workman/claimant is impossible to adduce because several witnesses examined during the enquiry might have superannuated from service or some of them might have died or settled outside Delhi. Further in criminal proceeding filed by the CBI which is still pending in Rohini District Court Delhi, most of the original of the documents relied upon by the management have been taken by the CBI for the purpose of criminal trial and therefore are not available with the management to prove the misconduct before the tribunal afresh. Accordingly, it would not be passable for the petitioner to prove the misconduct afresh against the workman/claimant after such a long time as most of the witness and document relied upon may not be available.

43. Learned AR for the workman/claimant argued that the plea of loss of confidence was taken for the first time in the Hon'ble High Court by the management on 03.07.2019 was therefore neither bona fide nor legally permissible at all.

44. Sometime in case a employer is not able to prove a charge of misconduct against the workman, either because clear evidence is not available against him, or because the charges cannot be establish due to the sensitivities involve in the

matter (for example cases involving sexual harassment). Such cases often involve situation where an employer is said to have lost the confidence in the worker, i.e. the employer no longer had the confidence to retain worker in employment. Learned A.R. for the workman/claimant in support of his argument with regard to the plea of loss of confidence which taken by the management, is not bonafide, has relied on the case of **Kanhiya Lal Agarwal V. Factory Manager (Supra)** in Para 12 the Apex Court led on conditions to be satisfied for concluding that the employer has validity lost confidence in the emerged viz.

1. Whether the worker is holding a post of trust and confidence
2. Whether by abusing such position the worker commit acts which result in forfeiting the same.
3. Whether to continue the worker in service would be embarrassing and inconvenient to the employer or it would be detrimental to the discipline or security of the establishment ?

The above stated all the issue aspects must be present to refuse reinstatement on the ground of loss of confidence. The fact of loss of confidence cannot be established based on the subjective opinion of the management. The important is that, the management should be in a position to prove objective fact that led to a different inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee.

45. In the preceding paras it is discussed that in the pleadings of the claimant the fact of his holding an office of trust and confidence is admitted this need not

to be by evidence proved the by virtue of his bearing the office as Senior Accounts Officer in commercial division of the management establishment has being lawful custody and possession of the air tickets, is also admittedly proved from the nature of his official position he held. The second condition that the worker by abusing such position committed an act of taking out the air ticket unauthorisedly also to admission with regard to the CBI enquiry and investigation deemed to be nor denied specifically and shall amount in charges of theft of air tickets unauthorisedly validating them with the other colleagues and getting them cancelled for refund and making thereby wrongful gain for themselves with some other outsider like Traveling Agent, etc. The FIR, investigation and police report with charges labelled can this regard had not been challenged in any court of law. Thus, it is sufficient to prima-facie establish that workman committed an act in detriancnt to the establishment of this employment. A reasonable apprehension emerged in the minds of management authorities that their act would be detrimental to the discipline and security of the establishment also. Thus, the case law cited by the claimant/workman namely **Kanhaiya Lal Agarwal (Supra)** does not help him in any manner.

‘Disciplinary Enquiry’ necessity, effect of it’s being vitiated.

46. The established legal principle is that the institution of a disciplinary enquiry against the workman though, may help the employer in establishing their bonafide before a court of law and assist them in proving the charges relating the

loss of confidence made against the workman, however, there have also been cases where no disciplinary enquiry was carried out, yet the employer had been permitted to present fact before the court of law to help them prove that their decision to terminate the workman for loss of confidence was just and valid.

47. In the present case the management had instituted an enquiry in respect of the incident, to enquiry the Charges labelled against the workman alongwith some other colleagues and outsiders who committed the incident in the intervening night of 10/11 October 1999. The management with all bonafide tried to make a preliminary enquiry. Concurrently the CBI had also made investigation and labelled charges with regard to the theft, fraud, dishonesty and willful damage to the property of the management. The workman alongwith other colleagues was also issued charge sheet and when reply was not found satisfactory taken decision to hold enquiry into the charges. The delinquent employees were subjected to joint domestic enquiry therefore it ran from 22.08.2003 till 14.06.2006 and delay was caused by reason of the transfer of enquiry officers also. On resumption of charge by the new enquiry officer the proceeding moved ahead from 16.05.2007 and final submission of the report of the enquiry officer was forwarded to the workman and other delinquent employees in November 2008. Ultimately the enquiry officer found the workman guilty vide his report dated 14.09.2010. The delinquent workman

moved representation which is considered by the competent authority who dismissed the same on 12.10.2010.

48. This court earlier had answered the issue No.1 and vide its award has vitiated the enquiry on the ground that the enquiry officer conducted the enquiry in violation of principle of natural justice, to the prejudice of the workman, as well in an unfair manner. Resultantly the termination order dated 13.07.2012 passed by the disciplinary authority cannot legally survive and sustain therefore held unfair and against the principal of natural justice. The tribunal further opined, an opportunity be granted to the management to adduce evidence on merit to charges as mentioned in the charge sheet. It clearly means that the enquiry was vitiated on the technical grounds.

49. The management witness produced before the tribunal on 30.03.2022 has stated on oath in his cross examination, “he is aware of the misconduct committed by the claimant who has misuse his official capacity and stolen air tickets of Air India unauthorisedly. Document in this aspect has already been placed on record and exhibited as MW1/2 to MW1/4. He further stated that it would be incorrect to suggest that these documents are no way relevant for the alleged misconduct against the claimant (workman). It is also wrong to suggest that having not been posted in the booking office he has no knowledge about the alleged incident and is deposing falsely”. In fact, in preceding portion of this judgement, I had already discussed about the papers neither admitted nor denied

by the claimant/workman when they were produced before the tribunal for recording admission or denial with regard to their genuineness. The claimant/workman or his authorised representative had not made such endorsement which might be willful and with ulterior motives. Therefore, the document produced by the management in support of their charges shall stand admitted by reason of their non denial. The original document relating to the culpable act of the claimant/workman in the incident are also with the knowledge of claimant/workman taken by the CBI in their custody and suggestion for submission before the criminal court in criminal case pending there with regard to the incident. The CBI's investigating officer in his statement had also stated the said fact as witness MW30 Dr. Sushil Gupta.

50. In ***K.L.Tirapathi V. State Bank of India and others. (1984 (1) SCC 43)***

on Para 29,33,34 this Hon'ble Court has held: -

“29. We are of the opinion that Mr. Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr. Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant

rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in "On Justice" by J. R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase "audi alteram partem" which was first formulated by St. Augustine (*De Duabus Animabus*, XIV, 22, J. P. Migne, PL. 42, 110).

33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

34. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the informations given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity or personal hearing. His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty. Indeed it may be mentioned that he was really consulted at every stage of preliminary investigation upon which the charges were based and upon which proposed action against him has been taken, In that view of the matter, we are of the opinion, that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because the evidence was not recorded in his presence or that the materials, the gist of which was communicated to him, were not gathered in his presence. As we have set out hereinbefore, indeed he had accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness of the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given explanation namely, he was over-worked, he had consulted his superiors and sought their guidance, his conduct has not actually, according to him caused any financial risk or damage to the Bank concerned. Therefore, in our opinion, in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation of the principles of natural justice. Had he, however, denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving

information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore.”

Standard of proof

51. In the departmental enquiry, the standard of proof required in a departmental order enquiry differs materially from the standard of proof required in a criminal trial. The Supreme Court in the cases **Union Of India V/s Sardar Bahadur (1972 SLR SC 355); State of Andhra Pradesh V/s Shree Rama Rao (AIR 1963 SC 1723) and Nand Kishore Prasad V/s State of Bihar (1978 (2) SLR SC 46)**, has held:

“A disciplinarily proceeding is not a criminal trial and that standard of proof required in a disciplinarily enquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial”.

52. The established and settled position of law is that the mode, extent and standard of proving the charge in domestic enquiry is quite different than that in the criminal proceeding. In the domestic enquiry the mode, extent and standard of proving the charge is only to show and established them by means of prima facie evidences, admission and absence of denial of particular fact. Whereas in criminal proceeding the prosecutor is heavily burdened to prove the charges by its own evidences beyond all reasonable doubts. In the present case there are sufficient prima facie evidences of the happening of incident of air tickets having been stolen misutilised for wrongful gain by the accused person. In the criminal case lodged by the CBI in criminal court their complicity is also investigated in the offence therefore they were labelled with charges under relevant sections of

IPC. One of those accused is the present workman/claimant (Mr. Sanjay Kaura) whose claim is under consideration before this tribunal. There is no possibility to exhibit the original documents relating to offence as well to prove the misconduct with the help of them beyond all reasonable doubts in the domestic enquiry. Moreover, the prima facie evidences relating to offence unrebutedly create an inference of culpability as well as complicity of the workman/claimant from whose custody and possession the tickets were taken out from the office of the management establishment. The incident is not denied, the criminal case lodged by CBI in the court is also not denied. The complicity and involvement in that criminal case is also not challenged in any court of law to quash the same by the workman/claimant. It is also not denied that the workman/ claimant Mr. Sanjay Kaura alongwith co-accused in the criminal case are labelled with relevant charges in the criminal court. As such non-compliance if any of the principle of natural justice are not shown by the claimant of nature that must cause some real prejudice to the delinquent workman. In absence of any denial as to the facts, above allegations having been not disputed by the delinquent workman shall be presumed to have happened, which may be treated sufficient to raise apprehension, suspicion as to the doubtful integrity and with regard to the character and honesty of the workman/claimant in the mind of management authorities. Moreover, the enquiry proceeding, though may have been conducted not at standard parameter of the principle of natural justice shall not be termed to be malafied or aimed to victimise the workman/claimant by termination of

service. In loss of confidence is proved the defective enquiry or no enquiry at all may be an impediment for an employer is terminating the service of the delinquent employee.

53. In Air India Corporation, ***Bombay V. Rebellow Air 1972 Supreme Court SC 1343***. The employer terminated an employee with immediate effect. When the matter brought before the Supreme Court, the employer submitted that it has lost confidence in the employee due to a great suspicion regarding the complainant's private conduct and behaviour with an Air Hostesses employed by the employer. It is pertinent to note that the employer had not carried out any disciplinary enquiry against the employee in question. The Supreme Court held them-

“Once bona-fide loss of confidence is formed, the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, its bona-fide is in over opinion final and not subject to review by the industrial adjudicator. Such opinion may legitimately in view the employer to terminate the employee's services; but such termination on more rational ground be considered to be misconduct and must therefore they held to be permissible and immune from challenge.”

54. The management in compliance of the order of the Tribunal dated 16.02.2022 produced it's witness before the Tribunal namely Mr. Tarun Mathur (MW1) on 30.03.2022 who stated that in the year 1999 the claimant/workman was approached by Mr. F.G.Runda (Senior Account Assistant), Mr. D.K. Kharbanda (Travel Agent), Brijesh Kumar Gautam (Contractual Book Binder) at Safdarjung booking office and requested by them to validate 100 stolen tickets by putting the impression of Bradma ticket validator of Safdarjung booking

office. Mr. F.G.Runda for assurance of monetary gain unauthorisedly took out the said Bradma ticket validator alongwith aforesaid persons during the intervening night of 10/11 October, 1999 from the Safdarjung booking office of the management Air Line. The further stated that Mr. Sanjay Kaura (the present workman), Mr.Sukhbir Singh Sangwan, Mr. Brijesh Kumar Gautam acted to get illegal monetary gain by cancelation and refund of stolen tickets. This witness when cross examined, stated that I was not present when the conversation between the claimant and other wrong doers happened, but I was posted during that period in my office in terminal one. It is fact that I do not have personal knowledge but know everything in official, capacity.

55. The workman in his statement of claim has admitted that he was working as Senior Account Assistant in financial department, Indira Gandhi International Airport, New Delhi at the time of his illegal, unjust, obituary and wrongful dismissal with effect from 13.07.2012. In the claim statement nowhere, he had stated about his place of posting during the incident in question in respect of which the charges are labelled upon him in the enquiry as well as in FIR lodged by CBI. However, he has admitted that the alleged incident took place in the year 1999. The claimant has not disclosed his place of posting during the period of incident in the year 1999, in the intervening night of 10/11 October on the other hand the management witness produced before the tribunal on 30.03.2022 to prove the misconduct committed by the claimant/workman, very clearly and

unambiguously has stated that the workman Mr. F.G.Runda was approached by the other delinquent colleagues in the enquiry including the present claimant as well as co accused in the CBI case was approached at his work place Safdarjung booking office and requested by them to validate 100 stolen tickets by putting the impression of Bradma ticket validator of Safdarjung booking office. The witness MW1 Mr. Tarun Mathur is not cross examined by the claimant/workman on this statement. In his reply dated 04.08.2003 as against the show cause letter dated 21.07.2003 also he has not rebated his presence in official capacity at the place of incident. In the Indira Gandhi International Airport; booking office therefore his presence at the place of incident is strongly possible. However, the fact of complicity in the plan/conspiracy to commit the offence is subject to the proof in the criminal court on reliable evidences. So far as the incident and place of incidence as well as posting of the workman/claimant is concerned it stands admitted by the claimant himself for want of denial on his part. This was sufficient to create a reasonable apprehension as to the involvement of the claimant in the incident with the charge of which he is assigned in the domestic enquiry is prima-facie established which led to his termination from service. The claimant/workman thus is proved to have been terminated from service of the management by reason of loss of confidence in him. It is immaterial at this stage that the enquiry proceeding is vitiated by the tribunal.

56. The Apex Court in *Indian Airline V. Prabha G. Tanadan Air 2007*

Supreme Court 548 has held that ‘loss of confidence cannot be subjective but must be based on objective facts which would lead to definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved. Hon’ble Apex Court in the case of *State Bank of India and Another V. Bela Bagchi & Sons (AIR 2005 SC 3272)* held that ‘even if from the misconduct of the employee the employer does not suffer any financial loss, then also he can be removed from service on the ground of loss of confidence.’ It is further held by the Apex Court in *A.P.S.R.T.C. V. Raghuda Shiva Shankar Prasad, Air 2007 SC 152 that* - ‘It is settled legal proposition that in a case of misconduct of grave nature like corruption, theft, no punishment other than the dismissal may be appropriate.

57. In the case of, *L. Michael & Another V. M/s Sons India Ltd. Air 1965 Supreme Court 661 (1975 S.C.R. (3) 489)*. The Apex Court held that ‘Need less to say’, the Apex Court recognised the power of the tribunal to go behind the form of the order, look at its substance and as such authorises to masquerade termination, if in reality it cloaked a dismissal for misconduct as a colourable exercise of power by the management.....On the facts of the *Air India case (Supra)* the court concluded that it was not possible to hold this order to be based on any conceivable misconduct. Special difference was made to the grave suspicions regarding the complainant’s private conduct with Air Hostesses. Where no misconduct is firmed, the action and the delicate

unstupidity for the job vis-a vis a young women in employment in the same firm is strongly suspected, resort to termination simply cannot be criticised as a malafide machination. In that background the action was held to be bonafide and the overall unsuitability laid to a loss of confidence in the employee. Not that the loss of confidence lagged exalted as a ground but the special circumstances of the case exalted by face in this charge simpliciter.

58. In the present case before this tribunal where the workman/claimant was dismissed from services in the background of criminal act like theft, misappropriation of stolen ticket, wrongful gain, fraud, breach of trust and conspiracy is bona fide and not to victimise the delinquent workman/claimant by his dismissal. There are sufficient materials in addition to the criminal prosecution against the workman/claimant, accomplice colleagues and other co accused to infer their complicity in the incident which reasonably led in domestic enquiry and to the punishment for misconduct. The management establishment has suffered loss not only monetary but to their credibility in out world with the regard to their services rendered to the public. Loss of confidence of the employer establishment emerged since the very inception, in the facts and circumstances of the case, which raised apprehension in the minds of employer that it would be embracing and detrimental to retain the workman/claimant anymore in the service of management establishment.

Reinstatement?

59. When this Tribunal has reached at finding that in the background of admitted and proved facts and circumstances, the action of management is bona fide and the overall unsuitability and unworthyness led to the loss of confidence in the workman/claimant, this tribunal does not find justification to order reinstatement of the workman in services of the management with all consequential benefit. However, in the Hon'ble High Court parties to this industrial dispute, through their learned counsel agreed to restrict the claim before the tribunal to the extent of compensation only. It is pertinent to note that when a workman is dismissed/terminated/discharged from services for misconduct resulting into the loss of confidence it would be important in consideration over the claim of reinstatement and compensation both. In the present case this tribunal has concluded that the termination of the workman resulted from his misconduct, consequently disinclines to order reinstatement. Even if a workman is cleared of charges relating to misconduct, if the matter involves loss of confidence the courts would be disinclined to order reinstatement.

Retrenchment compensation if may be granted ?

60. Whether termination due to loss of confidence amounts to retrenchment ?
- Before going into the discussion on the issues of compensation it shall be pertinent to reproduce the definition of Retrenchment as provided in

section 2(o) and the provision of retrenchment compensation in provision of section 25F of the Industrial Disputes Act, 1947 (in brief the I.D. Act).

2 (o) "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

2*[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

"25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay² for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government³ or such authority as may be specified by the appropriate Government by notification in the Official Gazette]".

- Obviously the aforesaid stated provision of I.D.Act excludes and excepted the case of terminations as punishment. Moreover the I.D.Act defines the term retrenchment in an expansive manner to mean termination by the employer of the service of workman for "any reason whatsoever". The Apex Court in the case before it titled as **Hari Prasad Shiva Shankar Shukla V. A.D.Divakar (1951 (1) SCR 121)** ruled that "for any reason

whatsoever". Covers only instances involving discharge of surplus labour or staff by the employer, termination of work as for any other reason would not constitute retrenchment and consequently the provision of section 25 G and 25H does not apply. Accordingly a workman dismissed for loss of confidence would not be able to claim retrenchment compensation or right of reemployment under the employer in accordance with I.D. Act.

61. Further the workman whose act and conduct resulted into loss of confidence in him in the mind of employer is made the basis of termination of his services as punishment on 13.07.2013 is held valid, bona fide and just by this court. Therefore, he does not deserve to the compensation in terms of back wages and other allowances after that.

62. The claimant/workman in his claim statement and also in written argument has impressed upon the benefits of parity as the legal representatives of one of his co-delinquent late Sukhbir Singh Sangwan were granted compensation in terms of the money to the tune Rs.11,00,000/-, but the present claimant/workman instead of treated equally with similarly situated Sukhbir Singh Sangwan in the present matter is denied to grant compensation. The benefit of parity with the legal heir of co-delinquent late Sukhbir Singh Sangwan died in December 2009, before the conclusion of enquiry how may be granted to the present workman who is alive and punished with termination of his services on 13.07.2012. Sukhbir Singh Sangwan died before the conclusion of enquiry and was not inflicted with the punishment of termination of service till then. Here

is no justification to give benefit of parity to the present workman with LR's of the deceased co-delinquent Sukhbir Singh Sangwan. The case law referred by the claimant/workman in *Ram Dev Singh V. Union of India (2009 (121) FLR 131)* (Delhi High Court) does not apply, as the facts, circumstances and issues involved are different in the present case.

63. Learned AR for the workman/claimant Sh.Inderjit Singh in the course of arguments relating to the issue of compensation impressed on the dilatory tactics adopted by the employer in the enquiry of the incident in issue. In the present matter the incident dated 10/11 October 1999, was enquired in very slow manner. The management issued charge sheet in the year 2003, in as much as more than 11 years were consumed in conclusion of the enquiry. Almost 15 years from the commission of the incident were elapsed in conclusion of the enquiry which ultimately culminated into the termination of services of the workman/claimant. It is also impressed that on bringing the dispute in the adjudicatory process before the industrial adjudicator by the claimant in the year 2014, the industrial dispute though promptly raised the management strategically dragged on the proceedings for almost further 9 years. The learned AR argued that the claimant/workman must be compensated in terms of money for the loss of time valuable for the life and livelihood of the claimant and his family member. Compensation must be given for the mental trauma and harassment. Learned AR for the management/opposite party strongly opposed the claim to the

compensation on the ground of dilation of enquiry and a long period consumed in the industrial adjudication, as the present workman/claimant also contributed in dilation of the enquiry proceeding this way or that way on various grounds, because he knowing very well the nature of his misconduct was afraid of any possible adverse result in the enquiry.

64. After hearing the learned AR and on perusal of the enquiry proceeding, I found that sometime delay in enquiry proceeding occasioned due to change of enquiry officer in the course of proceeding. It had also been found that adjournments were sought by the delinquent workman also. Since domestic enquiry was being conducted and substituted by the department through the enquiry officer appointed in accordance with standing order. The expeditious disposal was in the hands of the enquiry officer who should not have proceeded the enquiry loosely granting repeated adjournment. In the aforesaid circumstance none of the parties to the enquiry proceeding deserved to be blames for delaying tactics solely. Therefore, compensation on the ground of dilation of enquiry proceeding for a considerable long period as much as 13 years may not be granted by this tribunal on account of physical sufferance, mental trauma, embarrassment and harassment.

AWARD

Reasons and discussion made here in above the overall fact and circumstances are such that the termination of services of present

workman/claimant Sanjay Kaura is legal and valid on the basis of loss of confidence. The claimant/workman is not entitled to be granted any relief either reinstatement with back wages to any extent or compensation in terms of money in lieu thereof. The claim is here by rejected. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice Vikas Kunvar Srivastava (Retd.)
Presiding Officer

Date: 31.05.2023

Vanshika Saini