

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL

Mumbai

Present

JUSTICE RAVINDRA NATH KAKKAR
Presiding Officer

APPROVAL APPLICATION NO. CGIT-21 OF 2010
(Arising out of Ref.CGIT-1/ 52 of 2007

Parties: Air India Ltd., Delhi : Applicant
Vs.
Mrs. D.G.MAHURE : Opp. Party

Appearances:

For the Applicant : Mrs. Deepika Agrawal, Adv.
For the Opposite Party : Absent.

Mumbai, dated the 18th day of December, 2020.

JUDGMENT

- 1.. This is an Approval Application filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 for approval of order of Dismissal from service passed by the Air India Ltd against Mr. D.G.MAHURE.
2. The facts necessary for the disposal of the present approval application may be summed up as under:



3. The Opposite Party was appointed as Security Asstt.III iw.e.f. 01.02.1993 and was confirmed on 01.01.1996. The opposite party unauthorisedly remained absent for a period of 749 days from April 2007 to June 2009. He was asked to report for duty immediately, but he neither reported for duty nor sent any communication. The above act on the part of the opposite part amounts to misconduct under Clause No. 19(2) of Certified Standing Orders, and he was charged as under:

- (i) Willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior.
- (ii) Absence without leave which is not regularised for want of sufficient grounds or proper or satisfactory explanations, or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanations; or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanations; or absence from the workman's appointed place of work without permission or sufficient cause.
- (iii) Breach of any law, rules regulations or orders applicable to the establishment.

The above charge sheet was sent to the opposite party vide letter No. MAP/02.8/226 dated 16.06.2009 and called upon him to submit his explanation within seven days. The opposite party did not submit any reply to the chargesheet. The Competent Authority, therefore, decided to constitute an Enquiry Committee to enquiry about the charges levelled against him. The Enquiry Committee held its



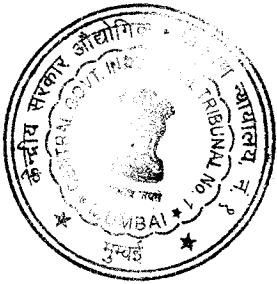
proceedings on 26.10.2009 and concluded on 11.01.2010 spread over 04 sittings. The opposite party did not participated in the enquiry. The Enquiry Committee, therefore, decided to proceed ex parte. The Enquiry committee submitted its report to the Competent Authority. The Competent Authority forwarded a copy of the Enquiry Committee's Report to the opposite party and called upon him to submit her 'Say' within 07 days of receipt of the letter. The Opposite party did not submit any reply. The Competent Authority after carefully going through the Enquiry Committee's report concurred with the findings of the Enquiry Committee. The Competency Authority also went through the past service/attendance record of the opposite party and observed that in the year 1999 he was charge sheeted for absence without leave and have been awarded the punishment of 'Censure'. Further, in the year 2001, he was again chargesheeted for remaining absence for 26 days and was awarded the punishment of "Withholding of two annual increments with cumulative effect without restoration at any stage". The Competent Authority did not found any extenuating factors warranting lesser punishment to the Opposite Party and, therefore, came to the conclusion that ends of justice would be met if the Opposite party is "removed from the services of the Company" as per clause 20 (e) (Major Penalties) of the Certified Standing Orders (amended) and passed an order of "Removal from Service" on 31.3.2010. The order of "Removal from service" was communicated to the opposite party with a cheque bearing No. 919019 dated 9.9.2010 for Rs. 17,219.00 being the wages for one month as required under section 33(2)(b) of the Act and filed the Approval Application before this Tribunal.




4. The compliance of Section 33(2)(b) of the Act is there in view of the payment of one month notice pay which is not found to be short in any manner in the eye of law.

5. After giving a conscious consideration of the evidence on record , I allow the Approval Applications against the opposite party filed under Section 33(2)(b) of the Act. However, in all fairness to the opposite party workman I would like to clarify that this order shall not, in any manner preclude the workman from raising an industrial dispute to challenge the legality and propriety of her dismissal and in case any such industrial dispute is raised and adjudicated nothing stated or observed herein shall operate as resjudicata against the workman and nothing stated or observed herein shall in any way be read to the prejudice of the workman. With the aforesaid observation the application for approval is granted.

6. Thus, this approval application deserves to be allowed and is hereby allowed. Order of dismissal is hereby approved from the date of filing this Approval Application.




(JUSTICE RAVINDRA NATH KAKKAR)

PRESIDING OFFICER