

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL

Mumbai

Present

JUSTICE RAVINDRA NATH KAKKAR
Presiding Officer

APPROVAL APPLICATION NO. CGIT-4 OF 2011
(Arising out of Ref.No. 32 of 2007

Parties: Air India Ltd., Delhi : Applicant
Vs.
Mrs. J.M.Sawant : 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 Mrs. J.M.Sawant.

2. The facts necessary for the disposal of the present approval application may be summed up as under:



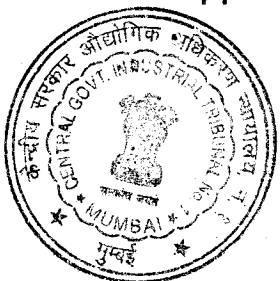
3. The Opposite Party was appointed as Cleaner in the Engineering Department w.e.f. 01.02.1993 and was confirmed on 01.8.1993. She was promoted as Technician's Asst. II w.e.f. 01.02.2000. The opposite party was not reporting for duty since 29th October 2007 till she was called upon to resume duty with satisfactory explanation vide letter No. AOD/EST-23F/070 dated 25.01.2008. Even though the opposite party resumed duty on 31.01.2008, she did not submit any explanation for her absenteeism. She remained absent for a period of 293 1/2 days during the period from 01.04.2006 to 31.03.2008. The above act on the part of the Opposite party of remaining absent without leave/permission, refusing to accept letter of her absenteeism constituted misconduct as per provisions of Certified Standing Orders applicable to her and was charged under the following clauses of the Certified Standing Order.

- 19((2)(i) "Willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior."
- 19(2)(vi) "Absence without leave which is not regularised for want of sufficient grounds or proper or satisfactory explanations".

The opposite party did not submit any reply. Therefore, an Enquiry Committee was constituted to investigate in the charges levelled against the Opposite Party and the same was communicated to the Opposite party, vide order No. AOD/EST-23F/935 dated October 21, 2008. The Enquiry Committee held its proceedings on 19.11.2008 and concluded on 14.08.2009 spread over 07 sittings. The opposite party did not participated in the enquiry. The Enquiry Committee submitted



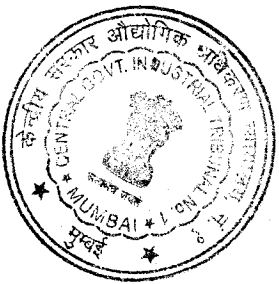
its report to the Competent Authority dated 31.3.2009. The Competent Authority forwarded a copy of the Enquiry Committee's Report to the opposite party and called upon her to submit her 'Say' within 03 days of receipt of the letter. The Opposite party did not submit any reply. The Competent Authority observed that the Enquiry Committee had neither dealt with the Charge of "Wilful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of the superior". The Competent Authority, therefore, asked the Enquiry Committee to give its findings on the above charge as well on 15.06.2009. The Enquiry committee held its proceedings on 28.07.2009 and 14.08.2009. The opposite party did not participate in the enquiry proceedings and once again held its proceedings ex parte. The Enquiry Committee submitted its report to the Competent authority. On 05.10.2009. The Competent Authority forwarded a copy of the enquiry report to the opposite party and called upon her to Sumit her say within 7 days of receipt of the letter. The opposite party did not submit any reply. The Competent Authority, once again gone through the reports of the enquiry committee and proceedings of enquiry and observed that based on the evidence adduced before it, the Enquiry Committee has established and concurred with the findings of the Enquiry Committee and awarded the punishment of "Removal from the services of the Company". The order of "Removal from service" was communicated to the opposite party with a cheque bearing No. 923294 dated 23.2.2011 for Rs. 19,941.00 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.



Sd/-

(JUSTICE RAVINDRA NATH KAKKAR)

PRESIDING OFFICER