

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

JUSTICE RAVINDRA NATH KAKKAR
Presiding Officer

APPROVAL APPLICATION NO. CGIT-1/12 OF 2013

Parties: Air India Ltd., Mumbai : Applicant

Vs.

Mr. Rahul Yadav : Opp. Party

Appearances:

For the Applicant : Mrs. Deepika Agrawal

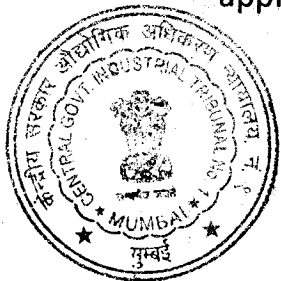
For the Opposite Party : Absent

State : Maharashtra

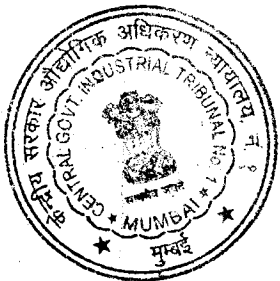
Mumbai, dated the 22nd day of January, 2020.

JUDGMENT

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



3. The Opposite Party joined Air India as a Trainee Cabin Crew w.e.f. 29.11.2004 in the Inflight Service Department and was appointed as a Cabin Crew w.e.f. 29.05.2005. The Opposite party remained absent without permission from 29.04.2009 and reported for duty on 19.02.2009 with a fitness certificate issued by Air India Medical Services Department and was assigned office duties till further notice. The opposite party again did not report for duty without intimation from 12.03.2009 and reported only on 30.03.2009 with a sick certificate issued by Air India Medical Services Department certifying sickness for the period from 12.03.2009 to 28.03.2009. Once again the opposite party remained absent from 09.4.2009 and submitted a sick certificate dated 23.04.2009 issued by Air India Medical Services Department certifying the sickness from 09.04.2009 to 28.04.2009. Thereafter the opposite party continued to remain absent, therefore letter dated 13.08.2009 and 01.10.2009 was sent to the opposite party to forward his sick certificate duly endorsed by the Medical Services Department. The opposite party reported to office with a certificate issued by the Medical Services Department certifying his sickness from 07.01.2010 to 20.01.2010 and the opposite party was assigned duty from 22.01.2010. The opposite party reported sick on 03.05.2010 and reported fit only on 07.05.2010. The opposite party once again reported sick from 07.06.2010. Thereafter the opposite party continued to remain absent without intimation. A letter dated 27.10.2010 was sent to the opposite party directing him to report to IFSTDC and Air India Medical Clinic with all his medical reports failing which further necessary action would be initiated in the matter. The opposite party reported to office on 23.11.2010 with a



fitness to resume duties effective 22.11.2020. However, the period from 07.06.2010 till 21.11.2010 was not regularized. The opposite party once again reported sick on 17.02.2011 and informed through Fax message that he had an ankle injury and was advised to take rest for a period of 15 days. Vide another letter dated 21.04.2011, the opposite party informed that he was not well and doctor had advised him rest for another 15 days. Again vide letter dated 07.05.2011, the opposite party informed that he was not well and the doctor had advised him rest for a further period of three weeks. In response to the above communications received from the opposite party, he was directed to contact Medical Services Department alongwith all relevant medical documents vide letter No. 27.06.2011. In response to the aforesaid letter the opposite party expressed his inability to report for duty vide letter dated 20.8.2011. The opposite party was directed to contact the Medical Services Department vide letter dated 12.09.2011 and 27.12.2011. In spite of acknowledging the letters, the opposite party did not comply with the instructions contained therein and did not regularize his leave. The Opposite party vide letter dated 10.01.2012, 20.02.2012 and 19.04.2012 expressed his inability to join duty. Vide letter dated 25.05.2012, the opposite party was once again directed to forward sick certificate duly endorsed by the Medical Services Department and regularize his leave but the opposite party did not comply with the directions. Thus, the opposite party has remained absent without permission intermittently for 1270 days from 29.04.2009 till 06.01.2010 , from 07.06.2010 till 22.11.2010, 17.02.2011 till date. The above alleged act on the part of the Opposite party constitute misconduct under the



provisions of the Certified Standing Orders (Amended) applicable to him and the Opposite Party was charged with the following:

Clause No. 19(2)(i): Willful insubordination of any lawful and reasonable order of superior;

Clause No. 19(2)(vi): Absence without leave which is not regularized for want of sufficient grounds or proper or satisfactory explanation; and

Clause No. 19(2)(viii): Breach of any law, rules regulations or orders applicable to the establishment.

The Opposite Party was called upon to submit his written explanation to the aforesaid charges within 7 days of receipt of the letter No. IS/Ry/290 dated June 17, 2013 but the opposite party did not submit any written explanation. The Competent Authority, therefore, decided to hold an enquiry into the charges leveled against him and informed the Opposite Party vide letter No. IS/Ry/372 dated 13.07.2013. The Competent Authority forwarded to the opposite party a copy of Office Order No. IS/CON-9/Ry/373 dated July 13, 2013 constituting Enquiry committee. The Enquiry committee commenced its proceedings on July 19, 2013 and concluded on August 02, 2013 spread over 03 sittings. The Opposite Party neither participated in the enquiry proceedings nor informed his inability to attend the same. The Enquiry Committee forwarded a copy of the ex parte proceedings held on 02.08.2013 and asked him to submit his final statement but the opposite party did not made any final statement. The Enquiry Committee submitted its report dated August 22, 2013 to the Competent Authority. The Competent Authority forwarded a copy of the

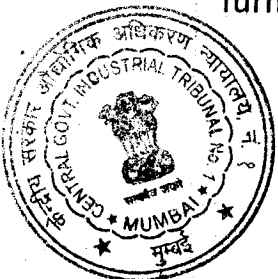


Enquiry Report to the Opposite Party and asked him to submit his SAY on the findings of the Enquiry Committee within 7 days of receipt of the same. The Opposite Party did not submit any reply. Taking into account the seriousness of the misconduct committed by the Opposite Party, the Competent Authority proposed to award the major penalty of "Removal from Services: as per Clause 20 (e) of the Certified Standing Orders (Amended) applicable to the Opposite Party and asked him to submit his written explanation within seven days of the receipt of letter No. IS/RV/498 dated September 06, 2013. The envelope containing the said letter has been returned by the postal authorities with the remarks "Refused to Take". In view of the above, Competent Authority awarded the punishment of "Removal from Service" on the Opposite Party as per Clause No. 20 Major Penalties (e) of Certified Standing Orders (Amended) applicable to him. The order of Removal from Service was communicated to the opposite party with a cheque bearing No. 948451 dated 04.10.2013 for Rs. 25,929.00 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. Notice sent to the Opposite Party by Registered Post AD at his Agra address has been received back with the postal remark "Refused". It is evident that despite service of notice on the opposite party having been deemed to be sufficient by refusal as noted in the Order dated 11.9.2014, the opposite party has not put in appearance in the present matter and, therefore, by order sheet dt.03.12.2015, this Tribunal directed that the proceedings be held ex parte.



5. Mrs. Deepika Agrawal, learned counsel for the applicant has filed the affidavit of Y.B.Kurne in support of the record and proceeding of the domestic enquiry.
6. Heard Mrs. Deepika Agrawal, learned counsel for the Management and perused the approval application, the enquiry proceedings and consequential orders passed. The opp. Party unauthorizedly remained absent for period of 284 days from 31.08.2012 and thereafter remaining absent till 06.9.2012 and further reporting sick on 07.09.2012 and did not report for duty till date. The opp. Party was charged under the provisions of the Certified Standing orders (Amended) applicable to him. An enquiry committee was constituted to enquire into the charges and he was communicated about the constitution of the enquiry committee. The opp. Party did not attend the enquiry which was spread over 03 sittings. The enquiry report was sent to him for his 'Say' but he did not give any reply. The Competent Authority proposed to award the punishment of 'Removal from Service' and asked him to file his "Say". The opp. Party did not submit his 'Say'. The order of Removal from Service was communicated to the opposite party with a cheque bearing No. 948451 dated 04.10.2013 for Rs. 25,929.00 being the wages for one month as required under section 33(2)(b) of the Act and filed the Approval Application before this Tribunal.
7. In the circumstance of the case, I find that the enquiry held was legal, fair and proper. This Tribunal is satisfied that all the efforts were made by the management to inform the workman at each stage of the enquiry. Every effort was made to provide him opportunity to defend him and also to furnish his explanation but the workman did not availed the opportunity



given to him. From a perusal of the averments made in the Approval Application (which have not been contested by the Opposite Party), the enquiry report and the enquiry proceedings, I am satisfied that before awarding punishment to the Opposite Party, proper enquiry has been conducted in accordance with the Principles of Natural Justice and in accordance with the Standing Orders applicable to the Opposite Party. From a perusal of the findings recorded by the Enquiry Committee in its Report, I am further satisfied that the findings recorded by the Enquiry Committee are based on legal evidence, and the same cannot be said to be perverse or illegal. There is nothing on record to show that the punishment of "Removal from Services" has been awarded to the Opposite Party in order to victimize the Opposite Party or by way of Unfair Labour Practice nor the same can be termed to be disproportionate in view of such long unauthorized absence.

8. I accordingly grant this approval ex parte. However, in all fairness to the workman, I would clarify that this order shall not preclude the workman from raising an industrial dispute challenging the legality, correctness and propriety of the punishment imposed upon him and in case such a dispute is raised and adjudicated eventually, nothing contained herein shall be read to the prejudice of the workman. With the aforesaid observations, the application is granted ex parte and approval is accorded to the action taken by the management in removing the Opposite Party workman from service.



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TRUE COPY

Sd/-
(JUSTICE RAVINDRA NATH KAKKAR)
PRESIDING OFFICER

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Secretary to the Court
Central Government Industrial
Tribunal-cum-Labour Court No. I
Mumbai