**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT DELHI NO.1 NEW DELHI.**

**ID NO. 264/2011**

Sh. Rajinder Kumar and others through The Contract Mazdoor union, B-57, Gali No. 9, Raja Puri, Uttam Nagar, New Delhi-110059

Claimants…

Versus

1. M/s JAC Air Services Pvt. Ltd.
   The General Manager,
   International Cargo Terminal, IGI Airport,
   New Delhi-110037

2. The Chairman,
   Airport Authority of India,
   A-Block, Rajiv Gandhi Bhavan,
   Safdarjung Airport,
   New Delhi-110003

3. M/s DIAL, IGI Airport,
   New Delhi

4. M/s HAWK Cargo Services Pvt. Ltd.
   IGI Airport, New Delhi-110037

Managements…

*Sh. Vishwaranjan, A/R for the claimants.*
*Sh. Sanjog Verma alongwith Sh. B.S. Kaushik, A/R for M/s JAC.*
*Sh. Sunil Dutt, A/R for AAI.*
*Sh. Dig Vijay Rai alongwith Sh. Manish Sehrawat, A/R for DIAL.*
*Sh. Kunal Mehta, A/R for M/s HAWK.*

**Justice Vikas Kunvar Srivastava (Retd.)**
(Presiding Officer)

**Reference of the Industrial Dispute**

1. This Industrial Dispute case (ID No. 264/2011) is referred by the appropriate government i.e. Government of India/Ministry of Labour issued *vide* letter dated 18.08.2009, New Delhi under Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) which shall hereinafter be called as "The Act" only. The reference mooted the said dispute for adjudication to Central Government Industrial Tribunal No.2 which had been transferred to this Central Government Industrial Tribunal No. 1, New Delhi *vide* order no. Z-22019/6/2007-IR(C-2) dated 30.03.2010 by the Government of India. The reference schedules the industrial dispute in following terms-

> *"Whether the action of the management of M/s HAWK Cargo Services Pvt. Ltd. Services Pvt. Ltd., New Delhi & M/s JAC Air Services Pvt. Ltd., New Delhi in terminating the services of the workmen (As per annexure) w.e.f. the dates as mentioned against their names in the annexure is just, fair and legal? What relief the concerned workmen are entitled to and from which date?"*

2. The Industrial Dispute is directed against the managements of :

1. M/s JAC Air Services Pvt. Ltd.,
2. M/s HAWK Cargo Services Pvt. Ltd.,
3. M/s DIAL,
4. Air Authority of India,

Who are arrayed as opposite parties to the statement of claim in the industrial dispute in hand.

Factual Matrix

3. The claimants Rajender Kumar and 12 other workers were terminated by the management of JAC Air Services Pvt. Ltd. (shall hereinafter be addressed as the "JAC" only) are detailed and described with their date of joining, employee number and date of termination in following chart which is carved out and reproduced from the statement of claim submitted by the claimant. Likewise,10 others working under the management of HAWK Cargo Services Pvt. Ltd. (shall hereinafter be addressed as "HAWK" only) are detailed in another chart as given in the statement of claim, with their specific date of joining, employee number and the date of termination against their names. For the purposes of easy references and convenience a list of claimants/workmen is being given hereunder with their details as stated above in the following charts.

CHART 'A'

**JAC AIR SERVICES PVT. LTD.**

IGI AIRPORT, NEW DELHI - 37

| S. No. | Name | Father's Name | Date of Joining | E. No. | Date of Termination |
|---|---|---|---|---|---|
| 1 | Rajender Kumar | Sh. Nihal Singh | 1995 | 1213 | 27.12.2008 |
| 2 | Mukesh Kumar | Sh. Dayaram | 2004 | 1373 | 23.12.2008 |
| 3 | Jagtar Singh | Sh. Rajender Singh | 1997 | 1295 | Dec 2008 |
| 4 | Wazir Singh | Sh. Gopal Singh | 1986 | T-450 | 27.12.2008 |
| 5 | Ran Singh | Sh. Bansi Lal | 2004 | 1384 | 23.12.2008 |
| 6 | Raj Kumar | Sh. Harbu Lal | 1997 | 1194 | 17.12.2008 |
| 7 | Suresh Kumar | Sh. Mur Singh | 1995 | 1237 | 20.12.2008 |
| 8 | Surender | Sh. Attar Singh | 1998 | F-28 | 17.12.2008 |
| 9 | Dalbir Singh | Sh. Dharam Pal Singh | 2006 | 1578 | 24.12.2008 |
| 10 | Vijay Pal | Sh. Hosayar Singh | 2004 | S-72 | 26.12.2008 |
| 11 | Sanjay Kumar | Sh. Maha Singh | 1998 | S-59 | 26.12.2008 |
| 12 | Manoj Kumar | Sh. Balu Ram | 2003 | T-19 | 27.12.2008 |
| 13 | Sunil Kumar | Sh. Krishan | 2004 | 1383 | 27.12.2008 |
| | | | | | |

CHART 'B'

**HAWK CARGO SERVICES PVT. LTD.**

IGI AIRPORT, NEW DELHI – 37

| S. No. | Name | Father's Name | Date of Joining | E. No. | Date of Termination |
|---|---|---|---|---|---|
| 14 | Anjali Kumar | Sh. Khaman Singh | 1986 | 0730 | 16.06.2008 |
| 15 | Shiv Kumar | Sh. Sohan Singh | 1990 | 6736 | 16.06.2008 |
| 16 | Paras N. Yadav | Sh. Ram M. Yadav | 1991 | 0759 | 16.06.2008 |
| 17 | Takdir | Sh. Hari Singh | 2005 | 0788 | 16.06.2008 |
| 18 | Surjeet Singh | Sh. Nathu Singh | 1986 | 0259 | 16.06.2008 |
| 19 | Rajender Prasad Sharma | Sh. Jagdish P. Sharma | 1992 | 0183 | 16.06.2008 |
| 20 | Dharmender | Sh. Jagdish Chander | 1993 | 0297 | 16.06.2008 |
| 21 | Sanjay | Shankar Chand | 1995 | 442 | 16.06.2008 |
| 22 | Surma Singh | Sh. Suraj Ban | 1998 | 444 | 16.06.2008 |
| 23 | Jagpal | Sh. Baram Parkash | 2005 | 0800 | 16.06.2008 |

4. Briefly stating the case as put forth by the claimants/workmen is that they were employed with M/s HAWK Cargo Services Pvt. Ltd. under the supervision and control of 'Airport Authority of India' shall be hereinafter addressed as 'AAI' only, who earlier was carrying the work of loading, packing, driving and supervising itself, but subsequently handover those works to 'C-HAWK' on contract, which changed its name as AAPL and continued working for 'AAI' till 1996. The claimants/workmen had been continuously working with C-HAWK and AAPL since the date of their joining. In the year 1997, the 'AAI' divided work into two parts namely, Export & Import. The 'AAI' invited tender for both the works separately. The export work was entrusted to 'JAC Air Services Pvt. Ltd.' and import was entrusted to AIRGO. Both the companies worked for 5 years till 12.04.2002 and the claimants had also worked for these companies

continuously under the direction of 'AAI'. The 'AAI' is made opposite party no. 4 in the claim statement whereas the HAWK Cargo Services Pvt. Ltd. as opposite party no. 2, the JAC Air Services Pvt. Ltd. is arrayed in the statement of claim as opposite party no. 1. Since 18.10.2007 the 'HAWK' was working in export division and the claimants/workmen worked continuously with them without any interruption. The 'AAI' entered into a contract for modernization of airport with the company 'DIAL'. The 'DIAL' was to supervise the entire work at airport. The 'HAWK' and 'JAC' terminated the services of claimants/workmen on the date of termination as shown in the above charts. The workmen made complaint to the Divisional Labour Commissioner on 16.06.2008. The Assistant Labour Commissioner directed the 'JAC' not to initiate enquiry against any of the workmen and the same direction was also communicated to the management of 'HAWK' but instead of obeying the direction of the Assistant Labour Commissioner, both the opposite parties initiated enquiry against some of the workmen and thereafter terminated them from their services. The management respondents had not paid the salaries of the workmen and banned them from working.

JAC's Defence

5. Out of the opposite parties, the first management namely, M/s JAC Air Services Pvt. Ltd. in response to the claim statement filed by the claimants put its defence, saying that it was engaged by the AAI /DIAL to provide cargo handling services at the import facilities on the cargo terminal. The above engagement was for limited period and for that very purpose of the engagement the answering management had also engaged some employees for a limited period on contractual basis. The 'JAC' specifically mentioned in the appointment letter that "If the contract with the 'AAI' is terminated for whatsoever reason then, services

of the workman also shall be terminated without any further notice" The claimant workman Sh. Rajinder Kumar who was the contractual employee of the management during the period between 01.04.2008 to 13.05.2008 with other workers of the union during the course of their duties at the airport indulged in acts of gross misconduct thereby slowing down the cargo handling services and instigating other workers to hamper the functions of the cargo terminal of the airport. Resultantly, there was substantial delay in transfer of the cargo on account of which the cargo services at the airport were disturbed, the answering management informed the police. The claimants/workmen Rajinder Kumar with other workers of the union disturbed the area of the airport. He conducted demonstrations, *dharna*, attack, assault, gate meeting, raising slogans, etc. The security and peace of the entire airport area were adversely affected by which the answering management and the Airport Authority suffered a bit loss in crores. The FIR of assault has been lodged against the workers at police station 'Indira Gandhi International Airport'(IGIA) on 13.05.2008 *vide* FIR No. 180 under Sections 341/323/506/188/34 IPC. The 'DIAL' issued a warning letter to the answering management to take preventive actions against the faulty workers and avoid such type of activities in future.

6. The 'DIAL' filed a suit *vide* suit no. 893/2008 for perpetual injunction before the Hon'ble High court of Delhi against the said workers. The High Court has also granted the stay against the workers from holding any demonstrations, *dharna,* agitation, gate meeting, raising slogans in any manner in the premises of the airport. By reasons of the above conducts of inciting workers by the present claimants/workmen, import cargo operations were seriously disturbed which caused great inconvenience and tarnished company's name. Therefore, he was

suspended. During the suspension, the management has paid him all allowances allowed in salary as per law.

7. It is asserted by the answering management that its engagement by the AAI/DIAL was for a limited period to provide cargo handling services at the import facility on cargo terminals and the employment of workers was for that very limited period for providing the said services to the Airport Authority of India through contractual employees. The answering management claims itself just a sub-contractor of the DIAL Company bound to follow the instructions of DIAL whereas the DIAL had to follow the directions of AAI. It is explained by the answering management that the activities which were earlier being performed by the AAI subsequently began to be performed by the DIAL, who is responsible for operations, management, development of control of the IGI airport, therefore, any strike or dharna at the IGI airport naturally to directly affect the DIAL.

8. It is further stated that due to the conduct of the claimant/workman of inciting the workers, import cargo operation were seriously disturbed, caused great inconvenience and tarnished the company's name therefore, he was suspended with effect from 20.06.2008 in the interest of industrial peace. Since he was a contractual employee and nature of his employment was temporary but all the provisions of natural justice were followed before his termination from service. The enquiry has been conducted in a fair manner in accordance with rules as well as the principle of natural justice. The enquiry officer had given the present claimant/workman all opportunities but he could not bring out anything in his support hence, the report of the enquiry is unambiguously a judicious report. The answering management has lastly plead that since the claim is wrong against it, therefore, the same be dismissed with heavy, special and compensatory cost in favour of the answering management.

HAWK's Defence

9. Management of the opposite party no. 2 the 'HAWK' states that it was granted for the first time a contract for a period of one year with effect from 17.10.2007 and for this period it was directed to procure a license as required under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971. The 'DIAL' provided a certificate issued by the Government in terms of Section 7(2) of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Rules, 1971 along with a certificate in prescribed form under Rules 21(2) to enable the answering opposite party 'HAWK' to obtain license under Section 12 of the said Act of 1970. On the basis of the said document issued by the 'DIAL', the answering opposite party 'HAWK' applied the Regional Labour Commissioner (Central Government of India, New Delhi) for issuing a license required in the Section 12 of the Act of 1970 and the Rules of 1971 aforesaid and thus it was granted a license on 23.01.2008 for a period of one year for operation of the contract for which the job had been allotted to the answering opposite party, by the 'DIAL'. On the basis of aforesaid facts 'HAWK' claims itself, a sub-contractor who has been given a license of providing service of export, cargo at cargo station of IGI airport, New Delhi, to the establishment namely, 'DIAL'. It is further stated by 'HAWK' that the contract for providing the cargo services was initially granted for a period of one year but subsequently extended for another one year which ultimately came to an end on 31.12.2009. After the completion of the contractual period on 31.12.2009 the principal employer (DIAL) issued a certificate certifying that the working of the answering respondent had been completed on 31.12.2009 and the management of 'DIAL' has ceased to be a contractor thereafter at the cargo

section of the IGI airport, New Delhi. The 'DIAL' also issued a certificate dated 24.11.2010 that the contract of the answering opposite party has expired and there are no dues against them as they ceased to have no work at the cargo section of the IGI airport, New Delhi.

10. On the basis of the narration made above, the answering opposite party 'HAWK' submits that the principal employer had neither taken any of the employees involved in the present dispute as shown in the annexure attached to the terms of reference nor it could terminate their services or even could reinstate them because it had ceased to exist with effect from 31.12.2009. It is denied that the employees in the cargo section of the IGI airport, New Delhi were not the employees of the answering opposite party no.4 (HAWK). The present claimants/workmen as well as their union namely, Contract Mazdoor Union were knowing very well the above fact that the Union has submitted a charter of demands on 03.08.2008 i.e. subsequent to the grant of contract to the answering opposite party 'HAWK' with effect on 17.10.2008. The said charter of demands of Union was addressed to the opposite party, the 'AAI'. They clearly admitted that these employees had been employed by the 'AAI' who has been the employer of the workmen working in the cargo section. The present claimant workman say, Rajender Prasad has also been a signatory of that charter of demands in the capacity of President of the Employees' Union therefore, according to his admission, employees working in the cargo section at IGI airport, New Delhi were the employees of the 'AAI' and not of the answering opposite party 'HAWK'.

11. The answering opposite party 'HAWK' has further impressed on the point that it is the admitted case of the workmen that he was employed much prior to the existence of the answering opposite party and was not taken in employment

by it. Admittedly the 'HAWK' ceased to exist with effect from 31.12.2009. Therefore, neither the 'HAWK' was employer nor it existed to give any benefit including continuity of service. Such service cannot be claimed against a non-existing organization.

12. It is further submitted that in terms of the law laid down by the apex court of India reported in AIR 1997 Supreme Court 645, "All the employees working with a contractor at any stage of time on the cut-off date 06.12.1996 would be treated as employees of the principal employer". Therefore, considering the above legal aspect, the workmen involved in the present dispute were and continued to be employees of the AAI/DIAL and they were not the employees of the 'HAWK' at any point of time.

DIAL's Defence

13. The management/opposite party no. 3 "Delhi International Airport Limited" which shall hereinafter be called for the purpose of brevity and convenience as 'DIAL' only, has also filed its separate written statement claiming itself an independent company incorporated under the Company's Act, 1956 which is a separate legal entity. 'DIAL' submits that it is not an agent of the 'AAI' but merely a lessee in view of the work entrusted to it "the Operation Maintenance and Development Agreement" for the purpose of which an agreement (OMDA) was executed between the AAI & DIAL on 04.04.2006. Very importantly, the 'DIAL' has stated in the said written statement that the workmen/claimants had been working with various contractors of 'AAI' till 2006 when 'DIAL' entered into the agreement (OMDA) dated 04.04.2006. However, 'DIAL' is unaware about the employment history of the claimant and who made the continuation of EPF under the EPF and MP Act, 1952. On the aforesaid ground the 'DIAL' has

denied the workmen to be its workman as per the provision of the Section 2(s) of the Industrial Dispute Act, 1947. The 'DIAL' has further denied the Alleged Domestic Enquiry conducted against the claimants at the instance of 'DIAL' as such denied the application of Industrial Dispute Act 1947 over 'DIAL'. 'DIAL' has further denied absolutely its status as principal employer of the claimant and also from the claimants working directly under them in any manner whatsoever. As such, denied any legal relationship between the claimant and management of 'DIAL'.

14. Additionally, the 'DIAL' has pleaded in the written statement that 'AAI' had given an option of VRS to its employees and in cases where the employees did not want to continue after the OMDA agreement, 'DIAL' had not absorbed the same. Further it is submitted that 'DIAL' has recruited its own workforce on its own terms instead of allowing the services of the erstwhile employees of 'AAI' to continue as alleged. It is assertingly stated by the 'DIAL' that it has not been performing the job of air transport services, accordingly, no license under the Aircraft rules was required. The 'AAI' was having the same therefore, 'DIAL' has not stepped into the shoes of 'AAI' as alleged. 'DIAL' was LAC only under OMDA dated 04.04.2006 accordingly, the claim statement is not maintainable as per the eye of law. On the ground of aforesaid basic facts, the 'DIAL' has also denied the applicability of CLRAA (Contract Labour Revolution and Abolition Act, 1971).

AAI's Defence

15. The 'AAI' in its written statement of defence, claims itself an unnecessary party to the dispute as such no cause of action shown against them and no relief has been sought against them. The 'AAI' assertingly has pleaded that it did not

ever employ the workmen who remained employed by the management no.1 (JAC). The answering management (AAI) did not terminate their services and rather has nothing to do with workmen with whom there is no privety of contract. It further pleads that the agreement which is entered by the answering management and 'DIAL' for operation on 04.04.2006. Transferred to 'DIAL' the management of airport at Delhi with effect from 03.05.2006. The workmen have no *locus standi* to file the present case against the answering management. Since the workmen have withheld relevant information from the court it has not been stated that the allotment of contract was by due advertisement and tender and that subtle submission that workman has been continuously employed is incorrect. Because the contract has been awarded from time to time to various qualifiers, contractors to file tender. It is stated by the answering management that in view of the honourable Apex Court expressed in the **Steel Authority of India Limited v/s National Union Waterfront Workers** that on abolition or prohibition of contract labour under Section 10 of the CL(R&A) Act, 1970, the workers engaged through the contractor will not automatically become the employees of the principle employer.

16. On the basis of the above pleadings the 'AAI', the present answering respondent has prayed to dismiss the claim with heavy cost.

A Concise Narration of the Workmen's Employment History

17. On a bare perusal of the factual matrix given hereinabove, the cumulative effect of the narration of facts giving rise to the Industrial Dispute in hand the status of claimants/workmen Rajinder Kumar and others working with the 'AAI' since the year of their initial engagement mentioned in the 4th column of the Charts A&B appended in preceding Para 3 was of contractual worker who kept

continued uninterrupted in the services of 'AAI' at IGI airport till the date of their termination from services as mentioned in the column 6 of the Charts A&B above. The said fact is not rebutted, however, the 'DIAL' has expressed its unawareness about the employment history of the workmen, which cannot be treated as specific denial of entry in services as well as continuation of the claimants as workmen with the 'AAI'. None of the managements/opposite parties namely, 'JAC', 'HAWK' or 'DIAL' has specifically denied in their pleading that the workmen were employed by and working under the supervision and control of 'AAI' who earlier also were carrying the work of loading, packing, driving and supervising. The work was handover to different contractors from time to time till 1996 using the same workforce of the claimants/workmen continued till 1996 from the date of their initial appointment with the 'AAI'. The 'DIAL' in its written statement has explicitly stated that it came into existence by entering into an agreement with 'AAI' on 04.04.2006 namely, the OMDA. Before that, in 1996, the 'AAI' divided its work into two parts namely, export and import, invited tenders for both the above works separately. The export work was entrusted to 'JAC' and import was entrusted to AIRGO. Both the companies worked for 5 years till 12.04.2002 and the claimants had also worked for these companies continuously under the direction of 'AAI'. The 'HAWK' was working in export division since 18.10.2007 and the claimants/workmen worked continuously with them without any interruption. This fact is not denied by 'JAC' and 'HAWK' in their written statement. The 'AAI' which entered into the contract OMDA to supervise the entire work at airport with 'DIAL' is also not denied. The written statement of 'DIAL' and that of the 'HAWK' & 'JAC' unravel that they in consensus with the 'DIAL', in the garb of domestic enquiry terminated the services of workers as the 'DIAL' wanted to get rid of the present

workmen/claimants and to make fresh recruitments on its own. This was complained to the Assistant Labour Commissioner who issued direction not to initiate enquiry against any of the workmen of both the managements of 'JAC' and 'HAWK'.

AAI/DIAL and HAWK & JAC : Their co-relations

18. The Para 2 of the above preferred letter of the IGI refers the notice given by the workmen/claimants and their union as such the requirement of Section 22 of the Industrial Dispute Act which pre-requisite is found fulfilled in the present case. In the aforesaid letter the another fact of subordination and internal co-relation of the 'AAI' with opposite parties 'HAWK' & 'JAC' is also admitted that the export handling agency is 'HAWK' and the import handling agency is 'JAC'. Relating back the above stated things with regard to 'HAWK' & 'JAC' both the agencies in subordination to 'AAI' with Para 3 of the judgement under the head "Factual Matrix", this is to be reiterated that both the above agencies terminated the services of workmen concerned on the ground of misconduct. At this juncture this would be pertinent to mention that in between 'AAI' and two agencies 'HAWK' & 'JAC' there is 'DIAL' which is proved to be an appendage to do the administration of affairs at IGI on behalf of IGI. The MW5 Sh. Vishwani Dev, Manager HR of DIAL in his oral statement in the course of cross examination has stated on oath on July, 2019 before the tribunal, "I am aware of the contents of the OMDA signed by Delhi International Airport Ltd. and Airport Authority of India." … OMDA says about operation, administration, management and development at IGI. Another management witness MW6 Sh. Ravi Anupam Baa, Manager HR, AAI states on oath, "I know about OMDA. It is correct that Delhi International Airport Ltd. (DIAL) has been entrusted in a contract for supervision, operation, management, development and

administration of the work carried on the airport by the IGI." As such the management witnesses have admitted the internal relation of the opposite parties with each other and proved IGI is the principal employer DIAL is in contract with IGI under OMDA for all purposes i.e. supervision, operation, management and administration and for the purpose to facilitate the export and import activities of cargo it had entered into contract with sub-contractors 'HAWK' & 'JAC' who in turn have engaged the workmen who were working since earlier aforesaid works of IGI & DIAL. The IGI is therefore established as the principal employer of all the workmen concerned in the present case. The IGI, who through DIAL administered the business of a public utility services at the airport namely export and import of cargo which was being done by the present workmen/claimants concerned. In the present case, they had notified their grievances and warning for staging a *dharna* in this regard at IGI.

19. All the workmen with regard to whom the reference by the appropriate government is received to this Tribunal have separately filed their statement of claim. On going through all such statement of claims the tribunal has found almost similar version of pleadings with *mutatis mutandis* changes as to their entry in services with the opposite parties, termination from services by the opposite parties 'JAC' or 'HAWK' as the case may be. Needless to state and reiterate all the material pleadings separately for each one of the claimants in view of the above similar basic facts of the claims and defence set forth against them. The Tribunal has gone through the written statements filed by the four managements/opposite parties as against each one of the separate claims of the workmen in the present Industrial Dispute and reference, none found with different versions than others.

Issues settled by the Tribunal for Adjudication on 22.08.2012

(1) Whether enquiry conducted by M/s JAC Air Services or other managements as the case may be, against the claimants was just fair and proper?

(2) Whether action initiated by M/s JAC Air Services or other managements, as the case may be, against the claimants amount to punishment for alleged misconduct, which ought to have been preceded by a domestic enquiry?

(3) Whether the claims, filed by the claimants, are bad for misjoinder of parties? If yes, its effects.

(4) Whether punishment awarded to the claimants commensurate their misconduct?

(5) As in terms of reference.

The Tribunal held the Issue No. 1 as preliminary issue and called evidence of the parties thereon from the managements/opposite parties. After taking evidence at large the issue was decided.

Domestic enquiry, the Tribunal held vitiated

The Tribunal *vide* its order dated 25.01.2019 considered the entire facts pleaded by the parties to the Industrial Dispute in hand and the evidences led before it by the claimants and management opposite parties with regard to the alleged domestic enquiry. The relevant paras of the order dated 25.01.2019 passed by the then Presiding Officer on preliminary issues are being reproduced hereunder for the purpose of easy reference-

> *"4. As per the record and submissions made by the A/R for the claimants, separate charge-sheets were issued by the Management M/s JAC Air Services against 13 Nos. of workmen Sh. Rajender Kumar, Mukesh Kumar, Jagtar Singh, Wazir Singh, Ran Singh, Raj Kumar,*

*Suresh Kumar, Surender, Dalbir Singh, Vijay Pal, Sanjay Kumar, Manoj Kumar and Sunil Kumar. The charge-sheets so served upon the workmen/claimants recite that on 02.04.2008 they deserted their duty point unauthorizedly, & found roaming around Import Section up & down and inciting workers to stop work. On 21.10.2005 they deserted their place of duty point unauthorizedly, took 5-6 workers alongwith them to meet GM(Cargo) who due to his pre-occupation, could not grant permission but they had forcefully tried to entered GM's room and shouted unnecessarily and created a scene in front of GM's office. Also instigated workers to stop work without any valid reason.*

*(a) On 11.07.2007, Sh. Raj Kumar had an altercation with Sh. Ram Chander, Loader No. 1193. Sh. Raj Kumar had abused him and used words against his caste etc.*

*(b) On 12.10.2007 Sh. Raj Kumar alongwith Sh. Rajender Prasad Sharma had an altercation with Sh. Satish Kumar, Driver & Sh. Sunil, Supervisor.*

*5. Both the parties were granted opportunity to adduce evidence and the workmen in support of their case, examined themselves as WW1. Management, in order to prove the charges examined Sh. K.J. Rawtani as MW1. He has also proved enquiry report Ex.MW1/56 and other documents on record.*

*6. It is clear from evidence on record that charge sheet Ex.MW1/50 was served on the workman herein. Sh. A. Rajesh was appointed as Enquiry Officer to conduct the said enquiry. His report is Ex.MW1/56. On the basis of the above report, order of dismissal Ex.MW1/57 was passed against the workman herein.*

*7. It is evident from perusal of the record as well as statement of MW1, Sh. K.J. Rawtani that no opportunity was given to the workman herein to adduce evidence so as to rebut the various charges contained in the charge-sheet. When management, in its wisdom had decided to hold regular enquiry against the workmen herein, in that eventuality it was incumbent on the management to have afforded an opportunity to the workmen herein to adduce evidence on the various charges made against them. It is also admitted that no preliminary enquiry was conducted against these*

*claimants/workmen. Not only this, the workmen herein were not afforded an opportunity to cross-examine any witness of the Management. Rather, separate statements of the workmen herein were recorded during the course of domestic enquiry. There is nothing on record to prove that the workmen herein were supplied with all the relevant documents alongwith charge-sheet. There is a long line of decisions of the Hon'ble Apex Court that at the same time service of charge-sheet, management is required to provide to the charged officials all the documents alongwith list of witnesses who are sought to be examined during the course of domestic enquiry. Purpose of filing/providing of these documents is that fair opportunity is required to be afforded to the employee/workmen in a domestic enquiry. Since entire proceedings were admittedly conducted in a single day without affording opportunity to the workman to adduce evidence, as such, it has dealt a crippling blow to the principles of natural justice which are imperative part of enquiry. There is also a long line of decisions of Hon'ble Apex Court that every quasi-judicial or administrative authority is required to adhere to principles of natural justice while holding enquiry or passing any adverse order against an employee. Rules of natural justice are not codified nor they are unvarying in all circumstances. They may be summarized in one word as 'fairness'.*

*8. I have gone through the enquiry proceedings which clearly shows that the entire proceedings were conducted by the Enquiry Officer in a single day and no opportunity was given to the witness to cross-examine the witness examined by the management during the course of above enquiry. There is nothing on record to show that any opportunity was granted to the workman to adduce evidence in defence nor statement was recorded that the workmen herein does not want to adduce any evidence. There is no merit in the contention of the management that in view of admission of misconduct by the workman, there is no need to grant any opportunity to the workman to adduce evidence. It is well settled position in law that if opportunity has not been granted to the workman to cross-examine the witness examined by the department during the course of domestic enquiry, same would amount to serious lapse on the part of the department, which would vitiate the enquiry.*

*Such an act could also be termed to be totally unfair and in violation of principles of natural justice.*

*9. In the case of **Sanjay Gupta Vs State of UP AIR 2014 SC 2982 Hon'ble Supreme Court** while considering the question of validity of domestic enquiry, held that opportunity to cross-examine the witness is an imperative component of natural justice or fair enquiry and denial of the same would result in setting aside the report.*

*10. Further, in case of **Union of India Vs Prakash Kumar (AIR 2009 SC 1375)**, it was held that if the disciplinary proceedings were not conducted fairly, presumption could be drawn that same caused prejudice to the charge-sheeted employee. In the case in hand also, as is clear from the facts discussed above, entire proceedings were conducted with tearing hurry by the management with a view to sack the workmen herein.*

*11. As a sequel to the above discussion, it is held that in the case in hand, enquiry against the workmen/claimants whose names found mentioned in para 4 above, was not conducted by the management in a fair & proper manner and principles of natural justice were not followed. As such, Issue no.1 is answered in favour of the workmen and against the management."*

20. The order reproduced hereinabove from the order-sheets of the present I.D. case is not challenged in any superior court of law as such remains on record as binding order over the parties of the dispute the same shall be treated as part of the award.

21. In the present matter workmen concerned were terminated from their services solely on the charge of misconduct labelled against them for the reason their **participation in strike** Hon'ble judges of the apex court, Justice Krishna Iyer with Justice Desai in the case titled as **'Gujrat Steel Tubes Ltd And Others V. Gujrat Steel Tubes Mazdoor Sabha And Others' (1980) 2 SCC 593**, held: "The effect of the omission to hold enquiry is that the tribunal would have to consider not only whether there is a prima facie case but would have to decide

for itself on the evidence adduced whether the charges have been made out. A defective enquiry in this connection stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the entire matter and the employer would have to satisfy the tribunal that on the facts the order of dismissal or discharge was proper. Therefore, the tribunal had full jurisdiction to adjudge de novo both guilt and punishment." Accordingly tribunal called the management to prove the charge of misconduct by its fresh evidences.

21. The rest of the issues settled by this tribunal on 22.08.2012 are now open to be adjudicated on merit. Testimonies of the witnesses of managements opposite parties were recorded. The managements produced following witnesses to prove the charges of misconduct in the second round of evidence in the year 2019-

a) On behalf of JAC the witnesses in oral evidence produced were namely, Sh. K.J.Rawtani, Sh. Babu Ram, Sh. Naresh and Sh. Bijender Singh.

b) On behalf of HAWK the witness in oral evidence produced was Sh. Subhash Chandra Bakshi.

c) On behalf of DIAL the witness in oral evidence produced was Sh. Vishwani Dev.

d) On behalf of AAI the witness in oral evidence produced was Sh. Ravi Anupam Baa.

22. Before going through the statements recorded in oral evidence of witness of the management it would be pertinent and relevant to mention the documentary evidences produced before the tribunal by the respective managements or opposite parties number 1, 2, 3 and 4 with the filing of the written statement as well as the fresh affidavits in second round of evidences produced by them after the decision by the tribunal over preliminary issue on 25.01.2019. On 13.07.2010

the management of opposite party-1 'JAC' produced a list of documentary evidence containing-

1) Copy of FIR dated 13.05.2008 against the workers,

2) Copy of letter dated 08.04.2008 from DIAL to the management no. 1

3) Email from DIAL to the management no. 1

4) Copy of order dated 09.05.2008 passed by the High Court in Civil Suit no. 839 of 2008 filed by DIAL against the workers of management no. 1

5) Copy of order dated 08.12.2008 passed by the High Court in Civil Suit no. 839 of 2008 above,

6) Copy of order dated 05.03.2010 by the High Court in writ petition (Criminal nom 158/2010) filed by workers for question of above FIR

The evidences documentary and oral both shall be appreciated and discussed where ever require.

**ARGUMENTS**

23. Heard the arguments of learned Counsels representing their respective parties to the industrial dispute as 'Authorised Representatives'. Perused the pleadings of the parties, corresponding evidences and materials available on record, thrust of the arguments submitted by learned Counsel Mr. Vishwa Ranjan Kumar, Advocate on behalf of workmen/claimants was upon termination of services illegally and improperly with a view to get rid of the workmen in vengeance of their demand of permanence in service and regularisation through their labour union. The services of concerned workmen was having been utilised without interruption since their initial engagement at IGI by the AAI and they were kept as contractual labour for an extraordinary long period of over a decade or more in case of several workmen. Though no incident of misconduct ever reported against them they were victimized only on joining strike called on by

labour union pursuing demand of regularization of contractual labours learned Counsel drew attention of the tribunal towards the FIR placed in evidence by the JAC that the same is concerned with mutual scuffling amongst two employees which was not connected with strike but charged as misconduct for termination of service. The workmen who were parties to the incident mutually settled their differences and FIR was quashed by the court. The order of the court is perused by the tribunal with the contents of FIR. This is noted that management witness of JAC did not support the complaint against his colleague in cross examination, even the incident under the FIR is not entered into log book which is maintained and preserved by the management for entering the serious incident of misconduct. He illustrated charge sheets issued against the other claimants also which prominently consist of incident of joining strike and other incidents seem ornamental only as they are not shown entered in the log book. Moreover no log book is produced before the tribunal to prove charge of misconduct. Oral evidence of management wherein they did not support the allegations of misconduct made by the management against workmen witnesses is shown. Learned Counsel argued in context of the enquiry preceding the termination of service held by the tribunal vitiated and improper the termination order is illegal and baseless while the workmen concerned or blame less. They are entitled to be reinstated in service with full back wages and litigation cost with compensation. Learned Counsel for the opposite party the managements 'HAWK' and 'JAC' put vehemence on the fact the concerned workmen though were working directly under them but they did not recruit them. In their pleadings they have stated the workmen to be employees of 'DIAL' and 'AAI'. The action taken against the workmen for their alleged misconduct during strike was on the instructions of

'DIAL'. The email trial of the DIAL sent to the management of JAC is evidencing the said fact.

Learned counsel for the opposite parties argued that the witness K J Rawtani as mw1 has produced the log book to prove the participation of several workmen out of the claimant have participated in illegal strike, *dharna* and other activities like instigating other workmen also to join the strike and *dharna*. It is also argued that Sanjay Singh being appointed and worked as supervisor not workman under section 2 (s) of the I.D. Act. Some of the claimants are denied to be workman of the management but his is to be noted that no muster roll or attendance register is plead in support of the said plea.

24. Argument is done that if a workman is terminated even without enquiry or enquiry held is found defective, it is open to the employer to adduce evidence even for the first time before the tribunal to prove the charges. Reliance is placed on **Mohd. Azim V. Sarv UP Gramin Bank 2015** LLR 464 Delhi. This is also to be noted that opposite parties have ben given the said opportunity already, they availed and exhausted that.

In addition to the oral arguments, written argument is also submitted by the opposite parties wherein they relying on several judgements of High Courts and Supreme Court are cited in reliance. I gone through the judgements. Some of the workmen to whom they denied to be workmen as defined under section 2(s) of the I.D. Act but therein arguing so they ignored that those workmen are terminated from service by them only. Likewise the workman Sanjay Singh is denied to be workmen being supervisor but they ignore that section 2 (s) includes person involved in supervising work also and it is the nature of work than the nomenclature which attracts the employee within the definition of workmen. It is argued citing case laws that if termination is not found legal the terminated

employee may be compensated in terms of money than reinstatement in services. This point of argument shall find discussion under the head reinstatement in succeeding paras.

**DISCUSSIONS**

25. Before going through the facts of the case in hand and the evidence adduced before the tribunal on the aspect of the mass order of dismissal of workmen, their guilt and punishment awarded to them it would be pertinent to keep into mind the object of legislating the Industrial Dispute Act,1947 and provisions of the Act relevant thereto.

**Legislatives Aim of the Industrial Dispute Act, 1947 to maintain peaceful industrial relation**

26. There are two institutions for the prevention and settlement of industrial disputes provided in the Act namely the Works Committees consisting of representatives of employees and workmen, and Industrial Tribunal. Appropriate Government is empowered to require Work Committees to be constituted in every industrial establishment employing 100 workmen, or more and their duties will be to remove causes of friction between the employer and workmen in their day -to- day working of the establishment and to promote measures for securing amity and good relation between them. Industrial peace will be more enduring where it is founded on the voluntary settlement, and it is hoped that the works committees will render recourse to the remaining machinery provided for in the Act for the settlement of disputes infrequent. A reference to an Industrial Tribunal will lie where both the parties to an industrial dispute apply for it and also where the Appropriate Government considers it expedient to do so.

27. Another machinery to fulfil the above prime object of the Act is the provision of Conciliation Proceeding which is made compulsory in all dispute in the public utility services and optional in the case of other industrial establishments. The time limit for expeditious disposal is prescribed. The settlement if any arrived at in conciliation proceeding is made binding over the parties to the dispute for a period agreed between them or for one year if not agreed unless revoked.

28. There are some special provisions in the Act relating to prohibition of Strikes and Lock outs in the establishment during the pendency of conciliation or adjudicatory proceedings which are section 22 and 23 in the Act. Strike is defined in section 2(q) of the Act, which runs as follows-

**Strike**

Section 2 (q) "Strike" *means a cessation of works by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment."*

The apex court in Gujrat Steel Case (supra) observed in para 129, relevant portion of the para are quoted herein below-

> *"129: A selective study of the case law is proper at this place. Before we do this, a few words on the basis of the right to strike and progressive legal thinking led by constitutional guidelines is necessitous. The right to unionise, the right to strike as part of the collective bargaining and subject to the legality and humanity of the situation, the right of the weaker group viz. labour, to pressure the stronger party viz. capital, to negotiate and render justice, are processes recognised by industrial jurisprudence and supported by Social Justice. While society itself, in its basic needs of existence, may not be held to ransom in the name of the*

*right to bargain and strikers must obey civilised norms in the battle and not be vulgar or violent handlooms industry, represented by intransigent managements, may well be made to reel into reason by the strike weapon and cannot then sequel or wail and complain of loss of profits or other ill-effects but must negotiate or get a reference made. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikes are no more conspiracies than professions and political parties are, and, being far weaker, need succour. Part IV of the Constitution, read with Article 19, sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgement sets the tone of economic equity in industry of course, adventurist, extremist, extraneously and puerile strikes, absurdly insane persistence and violent or scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining."*

Further para 133 of the Gujrat Steel 'judgement (ibid) is also important to be read for understanding justification of a strike. Para 133 is reproduced here in below-

*"133: I Swadeshi Industries Ltd. Vs Workmen, the management, after holding that the strike was illegal, terminated the services of 230 workmen without framing any charge-sheet or holding any enquiry. It was contended that the strike was not legal. The Court observed that collective bargaining for securing improvement on matters like basic pay, dearness allowance, bonus, provident fund and gratuity leave and holidays was the primary object of trade union and when demands like these were put forward and thereafter a strike was resorted to in an attempt to induce the company to agree to the demands or at least to open negotiations the strike must prima facie be considered justified. As the order of the termination was found to be illegal it was held that reinstatement with back wages must follow as a matter of course, not necessarily because new hands had not been inducted".*

**Evidence as to the demand of regularization and permanence in service**

29. The management/opposite party no. 2 'HAWK's witness Sh. Subhash Chandra Bakshi submitted his affidavit in evidence in examination-in-chief as the authorised representative in the second round of evidence after the decision over preliminary issue on 14.11.2022. He deposed that the 'HAWK' was neither in existence in the year 1992 nor had taken the workmen into its employment at any point of time. The witness further states that 'HAWK' has informed termination of the services of the claimants/workmen concerned. The witness firmly states on oath that the claimants/workmen were well aware that their employer was AAI/DIAL and that is why their labour union *vide* charter of demands dated 10.03.2008 and 11.03.2008 had approached to them i.e. 'DIAL' have received of their demands. The said demand letter annexed and marked at Ex MW1/3 & Ex MW1/4. It is further deposed that the workmen concerned approached the 'AAI' 'their employer', with charter of demands seeking regularization of their services dated 31.03.2008 which is annexed and marked as Ex MW1/5. The witness further states that 'HAWK' informed the Bureau of Civil Aviation Security (BCAS) that it had stopped working as ground handling contractor at IGI Airport with effect from 01.01.2010 therefore need not any security passes. The said letter is annexed and marked as Ex MW1/6 in the evidence. The 'HAWK' was a contractor during the period from Oct 2007 till 31.12.2009 and is not in existence at present. The witness lastly impressed on the point, "the workmen concerned are employees of 'AAI' and still continue to be in service with the said authority."

30. In march with the aim and object of the Act to endure peaceful industrial relation sections 10(3) and 10 A (4 A) of the act provide that the Appropriate Government in case, has referred an industrial dispute for adjudication to industrial tribunal, may by order prohibit the continuance of any strike or lock-

out in connection with such dispute which may be in existence on the date of the reference. Further there is provisions regarding the circumstances in which a strike may be declared illegal. Section 22, 23 and 24 of the Act are quoted here under-

> *Section "22. Prohibition of strikes and lock-outs-.*
>
> *(1) No person employed in a public utility service shall go on strike in breach of contract-*
>
> > *(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or*
> >
> > *(b) within fourteen days of giving such notice; or*
> >
> > *(c) before the expiry of the date of strike specified in any such notice as aforesaid; or*
> >
> > *(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.*
>
> *(2) No employer carrying on any public utility service shall lock-out any of his workmen-*
>
> > *(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or*
> >
> > *(b) within fourteen days of giving such notice; or*
> >
> > *(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or*
> >
> > *(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.*
>
> *(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.*

*(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.*

*(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.*

*(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day."*

*Section "23. General prohibition of strikes and lock-outs.- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-*

> *(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;*
>
> *(b) during the pendency of proceedings before 1[a Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings; 2[***]*
>
> *3[(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under subsection (3-A) of Section 10-A; or]*
>
> *(c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award."*

*Section "24. Illegal strikes and lock-outs.- (1) A strike or a lock-out shall be illegal if-*

> *(i) it is commenced or declared in contravention of Section 22 or Section 23; or*
>
> *(ii) it is continued in contravention of an order made under subsection (3) of Section 10 4[or sub-section (4-A) of Section 10-A]*

*(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, 5[an arbitrator,] 6[a Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under subsection (3) of Sec.10 7[or sub- section 4(A) of Section 10-A].*

*(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal."*

**Public utility services: whether cargo facility service on an Airport is public utility service**

31. Public utility services generally are facilities provided by the Government, which are essential to a citizen's needs. For instance, these services include the supply of water, electricity, the postal system, the banking, railways, etc. Such services are enumerated in the Industrial Dispute Act to control the affairs of workmen involved in providing such services. Section 2(n) of the act defines-

*2(n):"public utility service" means-*

*(i) any railway service 5[or any transport service for the carriage of passengers or goods by air;]*

*[(ia) any service in, or in connection with the working of, any major port or dock;]*

*(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;*

*(iii) any postal, telegraph or telephone service;*

*(iv) any industry which supplies power, light or water to the public;*

*(v) any system of public conservancy or sanitation;*

*(vi) any industry specified in the 7[First Schedule] which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification*

*in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification: Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension.*

32. In U.P. State **Bridge Corporation Ltd. V. The U. P. Rajya Setu Nigam Sanyukt Karmchari Sangh (2004) 4 SCC 268**, the apex court held that under section 22 of the Act a notice of strike is required only in the case of any public utility service, Lifting and carrying the goods in air transportation at all airports is an essential service for passengers and comes within the ambit of "public utility service "as defined and enumerated in the Industrial Dispute Act. In the present case before this tribunal, it is admitted that the workmen/claimants concerned and their union namely, 'Contract Mazdoor Union' had served notice to the management with regard to their grievances and to hold a *dharna* at cargo terminal of the IGI. The letter dated 07.05.2008 authored by Captain Dharmender Yadav, Associate General Manager (Security) of the IGI. The said letter (reference no. IGIA/CGO/SEC/1417/294 dated 07.05.2008) placed on record is admitted and unrebutted by the opposition parties. The second para of the said letter is reproduced hereunder:

*"It has been learnt that some of the workers of the handling agencies in Export & Import affiliated to "Contract Mazdoor Union" shall be holding a dharna at Cargo Terminal (copy of the notice by Contract Mazdoor Union is enclosed). Very limited number of workers of handling agencies in export & import workers are affiliated to "Contract Mazdoor Union" and this percentage must*

*be 7-8 per cent only. Most of the workers are affiliated to CITU. The Export handling agency is M/s HAWK Cargo Services & the Import handling agency is M/s JAC Air Services Pvt. Ltd."*

**Fact of strike at the airport and evidence as to the mass strike, it's legality and justification-**

33. First of all the tribunal is of the opinion that it should be probed on the facts and evidences on record that the answering managements were handling the work of cargo lifting, loading and unloading of them to and from aircrafts at both the spot meant for export and import in the airport premises through workmen in a manner as prescribed in the Industrial Dispute Act? The statement of claim when assert and pleads that the workmen were duly selected and engaged in the airport premises more than decade of years ago on contractual basis paying them wages at the rate of Minimum Wages Act by then existing competent authority which transformed itself subsequently as the Airport Authority of India and kept continued as such through various contractors of their choice even since before the coming into existence of answering contractors the managements of JAC, HAWK or DIAL. All answering managements have filed written statements of their defence but none of them have denied the above stated facts pleaded in the claim of the workmen. However, they have shirked off their role in engaging the workmen on their own and asserted the continued engagement of the claimants/workmen since entering into contract with 'DIAL' and utilization of the services of those workmen as they were doing since before.

34. The workmen were eager of their regularization and permanence in service with the management. It also comes out from the pleading of 'DIAL' and 'AAI' also that the work of managing total affairs of the IGI Airport was completely

entrusted by 'AAI' to the 'DIAL'. Managements of 'JAC' and 'HAWK' plead that they were working under the instructions of 'DIAL'. 'AAI' and 'DIAL' both were to face applicability of CLRA Act, 1971 over the establishment and issue of sham contracts in respect of the contractual workmen engaged in cargo facility services in the premises of IGI Airport through the contractors 'JAC' and 'HAWK'. All the answering management were planning to get rid of the claimants/workmen which sounds from the pleading of 'DIAL' which discloses that they wanted to recruit new workers for their business of cargo facility on their own and to appoint them in the airport. These circumstances seem to had caused unrest in workmen and in apprehension of losing their job they became insisting regularization and permanency in service to secure their source of livelihood.

35. It further comes out from the facts and evidence that the management had deliberately employed the claimants/ workmen on contract basis for performing the regular nature of jab solely for the purpose of denying them the status and salary of regular and permanent employee. The management witness had admitted that their job was perennial in nature and continuing regularly.

36. Undoubtedly in the above situation keeping the workmen as contractual labour in service of the airport for a considerable length of time of more than decades amounted **UNFAIR LABOUR PRACTICE** as defined in the section 2( ra )of the Industrial Dispute Act, 1947 read with item no. 10 of the 5th schedule. In the case titled as **Chief Conservator of Forest & Others V. Jagannath Maruti Kondhare & Others, (1996) 2 SCC 293,** the apex court has held:

> *"22 : We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get*

*frustrated if such a burden is placed on a workman which he cannot reasonably discharge, in our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as form the materials on record we are satisfied that the 25 workmen who went to the industrial Court of Pune (15 to the Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no possible object as, it may be remembered, that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on the increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants."*

37. The nature of engagement of the workmen/claimants concerned in the establishment of IGI for the work of export and import of cargo at the airport is contractual. Their status as such contractual workmen is establish to have commenced from the year stated in the Column 4 of the Charts A & B appended with Para 3 of the judgement. Some of the workmen were continuing since 1995,1997,1998 whereas some like Anjali Kumar, Shiv Kumar, Paras Nath Yadav, Surjeet Singh, R.P. Sharma, Dharmender, Sanjay, Surma Singh were continuing since 1986,1990,1991,1986,1992,1993,1995,1998 respectively. Their termination in the year 2008 as shown in Column 6 of the aforesaid charts A & B

of Para 3 itself show that such workers were kept continued as contractual workers unreasonably without regularization or permanency in service for more or less 20 years from the date of their initial engagement. This is quiet unlawful in view of the provisions of the Industrial Dispute Act whereas a workman who has completed a continuous service for about 240 days or more in a calendar year is entitled to be regularized in service subject to the service rules.

38. In the present case the management of all the 4 opposite parties has nowhere stated in their pleadings that they have service rules approved by the competent authority. Therefore, they had to be governed by the Industrial Dispute Act and Industrial Employment (Standing Orders) Act, 1946. Non regularization of service of such workmen have caused them loss of regular pay-scale. The Industrial Employment (Standing Orders) Central Rules also provides the responsibility of employer for maintenance of service record confirmation of the workmen and fixation of the age of retirement alongwith medical aid and other allowances payable to the workmen in their service tenure. It also provides the rules as to termination of employment and disciplinary action for misconduct. In the absence of any draft standing order/service rules approved by the competent authority under the Industrial Employment (Standing Orders) Act, 1946 the workmen concerned in the present case naturally had living in the apprehension of insecurity with regard to their services and therefore they were aspirant since a long for their regularization and permanency in service. If they notified their grievances to the management and demanded for their permanency and requisition in services with other facilities and expecting suitable amends to be done by the management they were fully justified to notify their intention to go on strike/staging *dharna* in their workplace to draw the attention of the

management/employer. Such an intent on the part of the workmen concerned may not be taken as illegal or unjustified.

39. It also does not come out form the pleadings and evidence of the opposite parties/managements that whether they had taken ever any step to regularize those contractual workmen who were engaged by them for a permanent and perennial nature of work in their establishment whether they had any scheme for their requisition. Even this has also not been stated that the management ever had regularized any number of their contractual workmen who were working for the last 20 years or more regularly in the same nature of work in their establishment. Therefore, it is established fact that the establishment of the opposite parties IGI & others did not heed to the genuine grievances of their contractual workmen and when they raised voice against such an inaction, negligence or non-compliance of the legal provisions under the Industrial Dispute Act, Industrial Employment (Standing Orders) Act, Contract Labour (Abolition and Regularization) Act, 1971 etc. To the contrary, they opted to suspend such employees against which the workmen and their union came in protest in mass which is evident from the letter dated 07.05.2008 of Captain Dharmender Yadav, Associate General Manager (Security) of IGI already discussed hereinabove.

**The grievance of the workmen concerned why not fulfilled by the management? "not answered" and the lightening call of strike**

40. The management took a harsh action of the notice sent by the Mazdoor Union and took harsh steps on taking the help of police requesting the Station House Officer Police Station, IGI Airport Terminal them to conciliate the matter with the aggrieved workmen and their Mazdoor Union. On the record of tribunal there is a First Information Report (FIR) lodged before the management of JAC

of an incident of a fracas in the premises of IGI Airport at cargo Gate No. 2 with driver of a vehicle owned by JAC namely, Sh. Bijender Singh S/o Sh. Jaipal Singh with some of the workmen concerned. The witness of the IGI and DIAL MW3 Sh. Naresh, Assistant Manager, JAC has not owned during his cross examination the said FIR. He states, "no police complaint was made or FIR filed". This statement dated 05.07.2019 is recorded in second turn of recording evidence after the enquiry was vitiated and set aside by this tribunal calling management to prove the charges against the workmen concerned. He further states, "I was present when strike was called and the work was halted. I don't know what action was taken against the three persons in the crowd namely, Sh. Jai Bhagwan, Sh. Rajinder Singh and Sh. Kishan Chand".

41. In pleadings of the opposite parties/managements 1-4 of this industrial dispute case nowhere none of them has stated about the reason or impediments in not regularizing or benefitting the workmen with permanence in service though they were continuously, regularly and without any interruption in their service utilized the services of those workmen. There is no evidence of this effect that when on charge of strike the concerned workmen were suspended and a dispute arose in the establishment the management had averred made efforts to solve the dispute by means of conciliation. When the matter was raised as industrial dispute by the workmen through their union the management did not take steps for redressal. The oral/documentary evidence produced before the tribunal further shows that the management pretended to institute an enquiry against workmen and proceed it further irregularly by reason of which when workmen raised industrial dispute before the Labour Officers process of conciliation was called for and the managements were restrained from proceeding with the enquiry. They did not cooperate and participate in the conciliation proceeding and ultimately

terminated the services of workmen. This would be pertinent to state at this stage that in the present industrial dispute case the tribunal after framing the issue of aforesaid enquiry whether vitiated as vide order dated 05.07.2019 held the enquiry vitiated. From the evidence on record considered by the tribunal it is found established that:-

1. The managements/opposite parties had not heeded to the grievances of workmen concerned prior to the industrial dispute is raised and kept them in unfair labour practice as contractual labour for extraordinary long period of time, say more or less two decades.
2. When notice of staging *dharna* was given by the workmen the management did not heed to address the grievance and fulfilled the demands but against the spirit of Industrial Dispute Act went into litigation unnecessarily in the course so as to make them unapproachable and irreconcilable to the workmen.
3. When industrial dispute was raised with regard to the suspension and termination of the workmen on the charge of strike the management did not cooperate and concede to the direction of conciliation officer.

The facts and evidence brought on record by the parties tend to prove and establish that on the one hand when the so called lightening call of strike and notice to staging *dharna* with regard to the grievance raised before the management seems to be just and rightful as well as in accordance with Section 22, 23 and 24 of the Industrial Dispute Act the reaction of the management seems to have been harsh, non-compromising, irreconcilable and unjust. The management did not notify any restraint over strike, staging *dharna* etc. by the workmen as per the provisions of Section 22, 23 and 24 of the Industrial Dispute Act.

**Participation in strike whether MISCONDUCT per se**

42. The workmen Suresh, Dalbir Singh, Ran Singh are charged of inciting other workmen to join the strike. Workmen Vijay Pal, Sanjay Kumar, Sunil Kumar and Mukesh Kumar are charged to have deserted from duty to sat on *dharna* and incited the other workmen also to join the strike. Workman Wazer Singh is charged of absconding from duty on 31.03. 2008 and indulged in misrepresenting and inciting the other workmen to join the strike On 1.4.2008 despite the request of JAC management refused to report on duty which is a gross misconduct. Likewise workman Jagtar Singh is charged with deserting the duty on 01.04.2008, 02.04.2008, 17.04.2008 without permission and on when deserted duty on 08.05.2008 he sat on *dharna* till 13.05.2008 and despite appeal of the management did not heed to report on duty which amounts to serious misconduct. The workman Raj Kumar is charged of deserting duty on 02.04.2008 roamed here and there at import terminal inciting other workmen also to join the strike. Charge of some other incident of fracas with Satish Kumar(driver) and Sunil (supervisor). He is charged of abusing and uttering cast related abusive words to loader Ramchander. He is further charged with other incident of forcibly entering the office of GM with 5-6 other workmen in an attempt to misbehave with him om 21.10.2005. Likewise workman Manoj Kumar is accused of distorting of facts and indulging in falsehood, com accident by fast driving of forklift and causing thereby damage. He is charged with mainly absconding from duty and joining the strike on 08.05.2008 and of enticing other workmen to join the strike.

43. The incidents which are made basis of charges labelled against workmen concerned were stated by the management to amount serious and gross misconduct which if proved by evidence in the enquiry shall be sufficient to ensue

punishment of termination of service. Enquiry is held vitiated and struck off by the tribunal. The management was required to prove the charges before the tribunal. In evidence the management failed to produce before the tribunal muster roll or attendance register which they were duty bound to maintain and preserve under the provisions of model standing order in accordance with the Industrial Employment Standing Order Act, 1946, Management witnesses refused to have any such document. In the absence of muster roll or attendance register the allegation of absconding from or deserting duty is not found proved.

44. MW3 Naresh an assistant manager of JAC on having been confronted in cross examination told about workmen Jai Bhagwan, Rajender Singh and Krishan Chand that they were present in the crowd of strike. He has not assigned to them active role in sabotaging or other kind of violence in strike. Though he denied the suggestion that he deposed in affidavit of examination in chief falsely to make the management' case good against the workmen and defeat the interest of the workmen but has not supported the contents pf paras 8, 9, and 10 of the said affidavit which alleges act of misconduct He told that action against the above workmen was initiated on receiving the complaint from 'DIAL' relating the incident of which he is not aware.

45. MW1 K J Rawtani in the capacity of executive director when produced in cross examination before the tribunal as a witness of misconduct labelled against workmen, when confronted, answered on 10.04.2019 that entries in the log book are made only in respect of serious matter and not in respect of petty matters. He further stated that there is no entry of incident dated 08.05.2008 and of date 13.05.2008 in the log book. This witness admits that he is not witness of those incidents nor he was interrogated by the police about them. I he further states that FIR of that incident is quashed by the court but expresses his un awareness about

compromise if any arrived between the parties to the incident. With regard to the same incident amounting to misconduct another management witness MW2 namely Baboo Ram and MW3 Naresh though assert that the said incident of 13.05.2008 was entered in the log book but copy of that is not brought on record in evidence before the tribunal because the same was not available as such the witnesses remained un successful in proving that charge of misconduct. It would be noted that above incidents are said by the management serious misconduct but in their turn to prove the same before the tribunal they failed to do so. Mostly, witnesses of management stated the role of concerned workmen to have been seen in the crowd of strike or joining the *dharna* but none of them assigned them role of masterminding strike or actively involved in sabotage or other kind of violence on their part.

46. Even if the strike is illegal, it cannot be castigated as unjustified unless the reason for it are entirely perverse or unreasonable. If misconduct was basic to the dismissal and no enquiry precedent to the dismissal was made the story did not end there in favour of the workmen. The law is well settled that the management may still satisfy the tribunal about the misconduct.

47. Mere failure to report on duty when a strike is going on does not per se amount misconduct many a workman may under the fear of mob's ire and fury remain absent. In the absence of active and violent participation in strike one cannot be held guilty of misconduct merely for remaining absent from duty during strike. Punishment of dismissal from service for passive participation even in illegal or unjustified strike by not reporting on duty is improper. In the present case the tribunal has already held that the strike for which the present workmen were arraigned with the charge of misconduct was not illegal and unjustified. Hon'ble the apex court in **Gujrat Steels Case** (supra) has "there must be active

individual excess such as master minding the unjustified aspects of the strike, e.g., violence, sabotage or other reprehensible role. In the absence of such gravamen in the accusation, the extreme economic penalty of discharge from service is wrong"

48. The issue number 2 is answered that since the termination of services of the claimant workmen concerned is not simpliciter discharge from services but punitive in nature on charges of misconduct in relation to strike allegedly called by them illegally, unauthorised absence from duty, instigating other workmen to follow the strike and incident of violent fracas etc. as their charges labelled against them show, there needed a full-fledged proper domestic enquiry which was found not done by this tribunal in its order dated 25.01.2019. This tribunal has found in its discussions on facts and evidences brought on record that domestic enquiry done by the management was not proper and vitiated. As such there is no enquiry prior to punishment of termination from service of the concerned workmen.

49. A defective enquiry stands on the same footing as no enquiry, even then the tribunal provided the management to prove before it whether the charge of misconduct and other guilts labelled against the workmen claimants are made out. The management witnesses absolutely failed to prove the charges and therefore tribunal satisfied and reached at conclusion that on facts the order terminating the services of workmen is bad and liable to be set aside and struck off. The issue number 3 is decided accordingly.

**Reinstatement in service and payment of full back wages**

50. Since the termination of service is found bad and illegal the rule is simple that discretion to deny reinstatement or pare down the quantum of back wages is

absent save for exceptional reasons. In **Hindustan Tin Works Vs. Employees. (1979) 2 SCC 80** the Hon'ble apex court's view is relied in the case of Gujrat Steel (supra) is found reliance in para 150 quoted here under-

> *"150: Another facet of the relief turns on the demand for full back wages. Certainly, the normal rule, on reinstatement, is full back wages since the order of termination is non est. even so, the industrial court may well slice off a part if the workmen are not wholly blameless or the strike is illegal and unjustified. To what extent wages for the long interregnum should be paid is, therefore, a variable dependent on a complex of circumstances.*

51. In the present case it is neither pleaded nor proved by evidence of management that the workmen concerned were engaged at any point of time after their termination of service in any other gainful employment. Any charge of misconduct is not proved in the proceeding before the tribunal by the management witnesses therefore they are proved blameless more over their strike is not held by this tribunal illegal and unjustified which entitles them to be reinstated with full back wages without slicing any portion thereof or without paring down the quantum of total back wages. In this regard the tribunal placed reliance on the view taken by the apex court in **Gujrat Steel case(supra)**para 143 of the judgement is quoted hereunder with due regard-

> *"143: Dealing with the complex of considerations bearing on payment of back wages the new perspective emerging form Article 43-A cannot be missed, as explained in Hindustan Tin Works. Labour is no more a mere factor in production but a partner in industry, conceptually speaking, and less than full back wages is a sacrifice by those who cannot best afford and cannot be demanded by those, who at least sacrifice their large "wages" though can best afford, if financial constraint is the ground urged by the latter (Management) as inability to pay fullback pay to the former. The morality of law and the constitutional mutation implied in Article 43-A bring about a new equation in industrial relations. Anyway, in Hindustan Tin Works case, 75% of the past wages was directed to be paid. Travelling over the same ground by going through every precedent is supererogatory and we hold the rule is simple that the discretion to deny*

*reinstatement or pare down the quantum of back wages is absent save for exceptional reasons.*

In the case of the **Gujrat steel (supra)** the apex court discussed the view propounded in the case of **Hindustan Tin Works (supra)** as below-

> *"142: The recent case of **Hindustan Tin Works v. Its Employees** (1) sets out the rule on reinstatement and back wages when the order of this Court, et al, deal with this subject:*
>
> *"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workmen has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect..... In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party*

*objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances.*

**ENTITLEMENT FOR FULL BACK WAGES**

52. It has been elaborated and explained by the apex court in Gujrat Steel's case (supra) why in case where mis conduct could not be proved and termination from services is held illegal the workmen is entitled to be reinstated in service with full back wages. Paras 149 and 150 are quoted here under-

*"149: Even so, during the several years of the pendency of the dispute, surely some workmen would have secured employment elsewhere as was conceded by counsel at a certain stage, and it is not equitable to recall them merely to vindicate the law especially when new workmen already in precarious service may have to be evicted to accommodate them. In the course of the debate at the Bar we gained the impression that somewhere around a hundred workmen are likely to be alternatively employed. Hopefully, there is no hazard in this guess.*

*"150: Another facet of the relief turns on the demand for full back wages. Certainly, the normal rule, on reinstatement, is full back wages since the order of termination is non est. even so, the industrial court may well slice off a part if the workmen are not wholly blameless or the strike is illegal and unjustified. To what extent wages for the long interregnum should be paid is, therefore, a variable dependent on a complex of circumstances.*

53. All the managements who are made parties in the statement of claim are necessary parties for the adjudication of the industrial dispute referred to this tribunal. On facts and evidence this has been conclusively held in preceding paras that 'AAI' is the principal employer in connection with the claimants/workmen concerned and the 'DIAL' though independently incorporated and registered as company but has no other business than to work as necessary appendages of the 'AAI' under OMDA, it is none the less principal employer with 'AAI'. 'DIAL' and 'AAI' for the purpose of administration, governance of all the affairs of IGI

airport have the same and in severable interest and liability jointly and severally. 'HAWK' and 'JAC' are their sub-contractors bound to work under their instruction. The issue number 3 therefore answered that the claim is not suffering with defect of misjoinder of party.

54. In the words of **Justice V R Krishna Iyer** spoken in the case of **Gujrat Steel (supra)** every litigation has a moral and the foremost being that the economics of law is the essence of labour jurisprudence.

Before that, I depart discussions and proclaim award in conclusion would like to cite para 5 of the judgement in **Gujrat Steel Case (supra)** authored by **Justice Krishna Iyer**:

> *"5: Gandhiji, to whom the Arbitrator has adverted in passing in his award, way back in March 1946, wrote on Capitalism and Strikes in the Harijan:*
>
> *"How should capital behave when labour strikes? This question is in the air and has great importance at the present moment. One way is that of suppression named or nicknamed 'American'. It consists in suppression of labour through organized goondaism. Everybody would consider this as wrong and destructive. The other way, right and honourable, consists in considering every strike on its merits and giving labour its due – not what capital considers as due, but what labour itself would so consider and enlightened public opinion acclaims as just-*
> *…*
> *In my opinion, employers and employed are equal partners even if employees are not considered superior. But what we see today is the reverse. The reason is that the employers harness intelligence on their side. They have the superior advantage which concentration of capital brings with it, and they know how to make use of it…Whilst capital in India is fairly organized, labour is still in a more or less disorganized condition in spite of Unions and Federation. Therefore, it lacks the power that true combination gives.*
> *Hence, my advice to the employers would be that they should willingly regard workers as the real owners of the concerns which they fancy, they have created."*

## AWARD

Reaching at conclusion arrived on the basis of discussions made herein above the reference of industrial dispute is adjudicated and answered that the 'AAI' and 'DIAL' are jointly and severally liable for illegal termination of services of the workmen claimants and consequent thereupon they are made bound with the following terms and direction under the AWARD that-

(a) The termination of services of all the 23 workmen/claimants detailed and described in the charts A & B appended with para 3 of the judgement done by the management of the opposite parties 1 to 4 on dates shown in column. 6 of the above charts are held here by bad in law and illegal consequent thereupon the same are set aside and struck off.

(b) All the claimants/workmen are held hereby entitled to be reinstated forthwith in services by the 'AAI' and 'DIAL' with all consequential benefits of seniority, wages/salary and other emoluments payable under law to workmen of the 'AAI'.

(c) The claimants/ workmen shall be entitled to full back wages without slicing or pare down it' quantum. the 'AAI' and 'DIAL' are directed to pay off the entire arrear of back wages as awarded above to each and every claimant/workman within 30 days from the date of award otherwise in case of failure to pay of the same within aforesaid prescribed they shall be liable to pay interest at the rate of 6% per annum from the date of their accrual. And in case of failure to comply with the award the same shall be recoverable as land revenue.

(d) The 'AAI' and 'DIAL' are directed to reinstate all the 23 claimants/workmen detailed and described in the chart A & B appended with para 3 of the judgement with all consequential benefits forthwith within 30 days from

the date of order otherwise they shall be jointly and severally would be liable to pay each and every claimant/workmen compensation at the rate of Rs.900/- per day till date of their reinstatement in service is done. In case of failure to pay the compensation as directed above the same shall be recoverable as land revenue with interest at the rate 6% per annum.

(e) The opposite parties 'HAWK' and 'JAC' for their illegal act of termination of services of claimants/workmen in collusion with 'DIAL' and 'AAI' shall also be liable to pay compensatory cost along with 'AAI' and 'DIAL' as the workmen concerned were forced by them to face illegal loss of employment for no fault of them and were pushed in unwanted litigation causing thereby mental agony and harassment. All the four opposite parties 'AAI', 'DIAL', 'HAWK' and 'JACK' are directed to pay compensatory cost severally and separately to all the concerned workmen individually a lump sum amount of Rs.10 thousand for the 12 years of litigation in the tribunal since the year 2011 within 30 days from the date of AWARD. In case of failure to pay the same within aforesaid prescribed time the said amount shall be recoverable as land revenue with interest at the rate of 6% per annum.

(f) Office is directed to send the AWARD forthwith to the appropriate government in due course of procedure under section 17 of the I.D. Act, 1947 for implementation and execution in accordance with law.

**Justice Vikas Kunvar Srivastava (Retd.)**
(Presiding Officer)

28.02.2024

*Sudha Jain*