THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT DELHI – 1
NEW DELHI

Present: **Justice Vikas Kunvar Srivastava** (Retd.)
(Presiding officer)
CGIT, Delhi-1

In I.D. No. 2/2013

Shri Ashwani Goel
144, Vivekananda Puri
Delhi-110007

Claimant ….

Versus

M/s Delhi International Airport Ltd.
New Udaan Bhawan,
Opposite Terminal-3,
IGI Airport, New Delhi-110037.

Management…

Shri Rajiv Agarwal, A/R for the claimant.
Shri Dig Vijay Rai, A/R for the management.

Award

PROLOGUE

1. Instant matter in hand, the industrial dispute case number 02/2013 Ashwani Goel V. M/S Delhi International Airport Private Limited, which was received to this tribunal on reference by the appropriate Government dated 13.12.2012, once had been finally decided on merit after hearing the parties to the dispute and accordingly an award dated 02.07.2019 was passed in favor of the claimant workman (who shall hereinafter be called as the workman only). The reference of the industrial dispute scheduled in the letter of the appropriate Government is that,

> *"whether the action of the management of Delhi International Airport Private Limited in dismissing the services of Shree Ashwani Goel w.e.f. 19.05.2010 is legal and justified? What relief the workman is entitled to?*

This tribunal answered the reference in terms that, the action of the management in terminating the services of the claimant/workman w.e.f. 19.05.2010 can not be held to be legal and justified inasmuch the dismissal order dated 19.05.2010 suffers from procedural impropriety and moral standards. The tribunal further held the workman entitled to reinstatement into services on the same post with 60% back wages and all consequential benefits. The claimant/workman was also granted litigation cost Rs.10,000 to be paid by the management. The management assailed the Award dated 02.07.2019 in writ petition number WP(C) 11157 M/S Delhi International Airport Ltd. v. Ashwani Goel, before the Hon'ble High Court of Delhi. The writ petition above stated along with another connected writ petition no WP (C) 8215/2019 M/S Delhi International Airport Limited V. Ashwani Goel was disposed of, the impugned award of the tribunal dated 02.07.2019 set aside and the matter remanded to the tribunal for a decision on merits concerning the alleged misconduct said to have been committed by Mr. Goel vide the judgement of the court dated 05.07.2021. The tribunal is also directed to conclude its proceedings at the earliest, though not later than six months, from the date of receipt of a copy of the judgement. The tribunal which was running vacant of the presiding officer, received the copy of the judgement on 11.01 2022.

2. The matter could have been presented before the then presiding officer in charge of the CGIT 1 Delhi on 10.05.2022. On 25.07.2022 the tribunal provided opportunity to the management to lead evidence before the it as directed by the Honorable high court, but when they again failed to do so on the next adjourned hearing also the tribunal passed order to the following effect-

> *"The matter stands posted today for management evidence and a last opportunity for the purpose was granted by the order dated 25th*

July, 2022.
The Ld. A/R for the claimant was present but none appeared on behalf of the management nor their witness. The Honourable High Court in their order dated 05th July 2021, have directed to dispose of the matter within six month from the date of receipt of the order. Accordingly on the previous date the matter was taken up. It is not understood, why the management who was contesting the matter before the Honourable High Court would remain absent with the witness today. Considering the situation they right of the management to produce evidence for proving the charges is here by closed. Call the matter 13.09.2022.
At this juncture the Ld. A/R for the claimant moved an application invoking the provision of section 17(B) of the ID Act. For the absence of the management copy of the application could not be served on them. In this application the claimant has stated that despite the direction given by the Honourable the High Court the management is not praying the salary to the claimant and only for few months it was paid. Now, an amount of Rs.1,94,832.00 is due to be paid to him for the period January 2022 to August 2022. A calculation chart sheet has been attached with the petition.
For the absence of the management it is felt proper to issue a notice to the management for filing reply to this petition. Office is directed to send a notice to the management giving opportunity to file reply to the 17 (B) application filed by the claimant. Call the matter and fixed for reply of the consideration".

3. On 21.08.2022 the CGIT- I, could be manned with its regular presiding officer, before whom also the management continued to remain absent. Therefore on 13.09.2022, the management was ordered to be served with notice of the next date 26.09.2022. On the date of adjourned hearing the management was though represented but did not produce any evidence, hence following order was passed-

"Pursuant to the notice issued on 26.09.2022. Ld. Counsel Sh. Ramesh Thakur appeared on behalf of the opposite party management.
This is noteworthy here that numberous opportunities have already been given to the management for evidence and even last opportunity was ordered on 25.07.2022 even then his absence continued on 17.08.2022. This is further revealed that the High Court vide order 05.07.2022 has directed the tribunal to dispose of the matter within period of six months. Much more time has been

elapsed even from the period in which the direction of the High Court is with regard to the expeditious disposal of the case. Ld. Counsel appeared but, seems that he is not read for further proceeding in the case today. On his request with a view to decide the case on merit expeditiously as sooner as possible, the time has again being granted for one week and not more. Ld. Counsel for the management of the opposite party may produce and adduce his documentary and an oral evidence if any and to ensure submission of argument, in case no evidence is required. To put up on 10.10.2022, for further proceeding and order in terms of the direction given by the Hon'ble High Court."

4. Ultimately the management filed the affidavit of its witness Shree Yudh vir Singh (the enquiry officer in domestic inquiry) as the statement of examination in chief and sought adjournment to produce the witness for cross examination. The said witness was produced to prove the misconduct alleged to have been committed by the workman, as directed in the judgement of High Court remanding the matter to the tribunal. The witness could have been produced before the tribunal on 15.11.2022 only, for the cross examination. After recording his oral evidence, the evidence of the management was closed on its behest. The tribunal fixed 23.11.2022 for arguments. Arguments of the respective parties have finally been heard and concluded on 09.01 2023. Matter reserved for delivering judgement and award.

5. On the cost of repetition it would be relevant to state that, there were three connected writ petitions before the Hon'ble High Court of Delhi in the matter of M/S Delhi International Airport Ltd (which shall herein be called as the DIAL only). viz. WP(C) 8215/2019, WP(C) 11157/2019 both filed by DIAL and WP(C) 5854/2020 filed by the claimant/workman. The first petition of DIAL, WP(c)8215/2019, assailed the interim orders passed by the tribunal in the instant industrial dispute case 02/2013 dated 11.03 2019 and dated 03.06.2019. This writ petition was pending for disposal, meanwhile the final award dated 02.07.2019 was passed by the tribunal which gave rise to the rest of the two petitions, namely,

WP(C) 11157/2019 by DIAL and WP(C) 5854/2020 by the claimant / workman. The claimant/ workman assailed the award to the extent it limited the back wages to 60% of the outstanding amount. Hon'ble High Court consolidating all these three petitions disposed of the two petitions of DIAL and dismissed the petition of the claimant/workman vide judgement dated 05.07.2021. The para 19 of the judgement concludes the matter with direction as to the remand to the tribunal. To understand the scope and extent of hearing and deciding afresh the matter as directed by the tribunal, the said para 19 is carved out from the judgement to reproduce here under for easy reference-

"19. Thus, W.P. (C) 8215/2019 and 11157/2019 are disposed of with the following directions.

i. *The impugned award i.e. award dated 02.07.2019 is set aside.*
ii. *The matter is remanded to the Tribunal for a decision on merits concerning the alleged misconduct said to have been committed by Mr. Goel.*
iii. *The Tribunal will allow DIAL to lead evidence qua the alleged misconduct. Mr. Goel will also be given an opportunity in that regard.*
iv. *Parties will have the right to cross-examine each other's witnesses if recourse is taken to this route.*
v. *Mr. Goel will be paid his last drawn wages or minimum wages, whichever is higher, from 02.07.2019, i.e. the date of the impugned award. The money paid will not be recouped from Mr. Goel, irrespective of whether or not the final decision rendered by the Tribunal is in his favour. This direction is being issued in furtherance of powers vested in this Court, under Article 226 of the Constitution. [See order dated 29.01.2021, passed by this Court, in W.P. (C) 6128/2017; upheld by the Division Bench of this Court, vide order dated 16.03.2021, passed in LPA 112/2021]. It is made clear that the aforesaid remuneration will be paid to Mr. Goel, by DIAL, till the final disposal of the matter, by the Tribunal."*
vi. *Since the remand of the matter has taken place to give DIAL an opportunity to prove the charge levelled against Mr. Goel, it is mulcted with costs which are quantified at Rs.5,00,000/-.*
vii. *Rs. 15,00,000/- deposited in this Court by DIAL, alongwith the accrued interest will be remitted to the Tribunal for payments and costs required to be made under clause (v) and (vi) above. In case, the surplus amount is left, the Tribunal will retain the same, and the amount retained by it [alongwith accrued interest], shall abide by the final decision rendered*

in the matter. In line with this direction, in the interregnum, the Tribunal will invest the money in an interest-bearing fixed deposit, maintained with a nationalized bank.

viii. *The Tribunal will conclude its proceedings at the earliest, though not later than six (6) months, from the date of receipt of a copy of this judgment.*

ix. *The interim order dated 10.12.2019, passed in W.P. (C) 11157/2019, shall stand vacated.*

20. Given the aforesaid, the writ petition filed by Mr. Goel, i.e., W.P. (C) 5854/2020, is dismissed.

21. Needless to add, any observations made hereinabove will not come in the way of the Tribunal trying the case on merits."

Scope and extent of taking additional evidence and deciding the matter afresh

6. Before assailing the award of this tribunal in the writ the DIAL had already approached the high court in WP(C) 8215/2019 assailing two consecutive orders of the tribunal dated 11.03.2019 & 03.06.2019. The former pertains to the issue number1 & 2. relating to whether the claimant is workman as defined in section 2(s) of the I.D. Act, 1947 and,whether the domestic enquiry conducted by the management is just,fair and proper? Consequent upon the non production of management witness either enquiry officer or any one else actively associated with domestic enquiry the issue was decided against the management holding the enquiry against the claimant/workman vitiated. Later order dated 28.05.2019 / 03.06.2019, of the tribunal is related to the refusal to grant opportunity to the management to adduce additional evidence after the issue no. 2 was decided finally. During the pendency of the above writ petition the tribunal passed the final award which too was challenged in separate writ petition. Disposing the duo honorable the court observed and recorded finding to the following effects in para 15, 15.6 and 15.8 of its judgement-

"15. Given the aforesaid facts and circumstances, the question that arises for consideration is, firstly, was there any residuary power left in the Tribunal to call upon DIAL to lead evidence on the merits of the case. Mr. Agarwal has relied upon the judgement in Shambu Nath Goyal Case and

Lakshmidevamma Case to contend that, once the Tribunal holds that the enquiry is vitiated then, the management can be allowed to lead evidence qua the alleged misconduct only if a plea to that effect finds a place in the written statement. On the other hand, Mr. Agnani argued that leeway was, indeed, available to the Labour Court/Tribunal, if the facts and circumstances required such an approach to be adopted."

"15.6. This approach was adopted by a Single Judge of this Court in Delhi Transport Corporation15 Case, wherein it was, inter alia, held that Labour Court had unfettered power to direct the management to lead additional evidence at any stage of the hearing before it is finally concluded, if it is considered just and proper to meet the ends of justice."

"15.8. Having regard to the aforementioned guiding principles, in my opinion, this is a case which calls for interference as the Tribunal failed to notice, [I must emphasize completely] that it had jurisdiction in the matter to, at least, consider as to whether or not DIAL should be allowed to lead evidence concerning the alleged misconduct said to have been committed by Mr. Goel. The Tribunal, in my opinion, failed to comprehend the true ratio of the view rendered by the majority in Lakshmidevamma Case."

7. In the back drop of aforementioned directions of the honorable court, while the matter is to be decided afresh by the tribunal, it must have to keep in the mind what is the case of claimant/workman set forth in the statement of claim and the written statement in defense of the management, because they form the respective pleading of the contesting parties to the industrial dispute giving rise to the issues involved therein for adjudication. This will also be important to see which of the parties has burden of proof of which fact in issue and what type of evidence is required to discharge such burden successfully. For this purpose it will further be noted that the evidence of the management is in two steps, first that was recorded prior to the passing of the award dated 02.07.2019 impugned and set aside in the aforesaid writ petition WP(C) 11157/2019 by the high court on the ground of not exercising the power and jurisdiction vested in the tribunal to allow the management's prayer to provide opportunity to lead additional evidence in discharge of its burden of proving the alleged misconduct on the part of the claimant/workman. Second step of the recording the evidence of management's witness is consequent to the direction of the high court as to the remand to hear

and decide the matter after taking the additional evidence of the management witness in terms of the remand order. This would also be equally important to note that none of the finding arrived at by the tribunal while deciding the issue number 1 relating to the claimant being workman under the I.D. Act, is interfered or assailed by the honorable high court in its judgement and order as to the remand of matter to the tribunal, vide the judgement dated 05.07.2021.

Factual matrix

8. The case of the claimant/workman is that, he joined services with the management as Air Side Monitoring Inspector on 19.07.2007 vide appointment letter dated 04.07.2007 and his last drawn wages were Rs. 22079/- per month. He had ever been diligent in performing duties as such. On 17.05.2008 while he was performing his duties in the night shift, he found the aircraft of Indian Airlines unattended and apprised about the same to his senior officers but to no heed. On inspection of the vehicle it was found that vehicle permit in original was not displayed and on demand the officials of Indian Airlines showed photocopy of the permit which was already expired. When he asked Shree Babu Rao and Goverdhan Lal, officials to show the original permit before using the vehicle, they snatched photocopy from him and caused grievous hurt on his face resultantly blood started to ooze out from his nose and mouth. He was taken by his colleagues for medical room of the International Terminal where he was given medical aid. Shree Virendra Singh, the manager, Apron Control asked him not to lodge any F.I.R. When he insisted for the action against the said officials of the Indian Airlines, he was assigned the job of painting and marking of the airside operations. He then reported the matter through e mail to higher authorities viz. Head H.R., CEO and Chairman, annoyed there by Shree Virendra Singh and others started harassing him. Subsequent there to the management adopting vindictive attitude, issued a memo dated 30.06.2009 which was duly replied by him. Thereafter, a charge sheet was issued falsely which too was duly replied.

The enquiry was conducted un fairly without providing him copy of the charge sheet, list of documents and list of witnesses despite his demand vide letter dated 30.09.2009. The enquiry officer acted at the behest of the management and gave enquiry report suiting to them against the claimant. Ultimately services of the claimant were terminated by the management vide order dated 19.05.2010. Demand notice dated 29.04.2011 though served on the management but they did not respond conciliation proceedings were initiated but the same also failed due to the adamant and non cooperative attitude of the management. Claimant pleads that he is continuing unemployed since the date of his termination from services and prayed for the relief of reinstatement with continuity in service and other consequential benefits there to. He has claimed the costs of litigation also.

9. Countering the claim of the claimant/workman in their written statement the management has pleaded that the claimant was an unwilling and non performer worker and Airport Regulatory Authority had also fined him Rs 100/- for negligence towards his duties. Charge sheet regarding unauthorized absence, habitual absence or overstaying beyond the sanctioned leave etc. was issued against him. The enquiry officer had given ample opportunities to him in order to prove his innocence, but instead of cooperating in the enquiry his behavior was aggressive and violent. The claimant did not participate in the enquiry despite the enquiry officer given him seven opportunities to defend himself. It is asserted that the enquiry was conducted properly and fairly and services of the claimant was terminated after following due process of law and principle of natural justice.

ISSUES

10. On the basis of assertions and denial made by the parties to the industrial dispute regarding the claim of the workman and adversarial defense by the management in their respective pleadings, this tribunal framed following issues for adjudication of the reference on 14.03.2013, which are as under-

"14.03.2013

Present Shri Pradeep Kaushik, A/R For the claimant.
Shri M.L.Sharma, A/R for the management.
W.S. filed. Copy given to Shri Kaushik on perusal of pleading, following issues are settled :

(1) Whether the claimant is a workman within the meaning of section 2(s) of the ID Act ?
(2) Whether the enquiry conducted by the management was just, fair and proper ?
(3) Whether punishment awarded to the claimant commensurate with his misconduct ?
(4) As in terms of reference.

Issue No.1 & 2 are treated as preliminary issue. Adjourned for evidence of parties on this preliminary issue for 18/04/2013 claimant to conclude first.

P.O.
14.03.2013"

11. Out of the aforesaid four issues, issue No.'1' was worth to be decided preliminarily being issue of law based on mostly admitted facts therefore the same was decided by this tribunal through a detailed order after hearing the parties on merit. The issue no. 1 pertains the status of claimant as a workman as well as that of the management, an industry and as such touches the jurisdiction of the tribunal to proceed further for adjudicating the industrial dispute as in reference by the appropriate government in the scheme and procedures under the I.D. Act, 1947. The detailed order of the tribunal is given here under -

"Issue no.1
As per pleading of the parties and evidence adduced on record, it is manifest that there exited relationship of employer-employee between the parties, inasmuch the claimant was appointed as airside monitoring Inspector by the Management vide appointment letter dated 4/7/2007 and he worked under the management till his service were terminated vide order dated 19/5/2010.Though the management has taken a plea that the claimant is not the "workman" as provided under section 2(s) of the ID Act. as he was performing the work of "supervisor" .but no evidence in the respect has been adduced by the Management to show as to how claimant herein does not fall within the definition of "workman". MW1 Shri Shiv Nath Singh –sole witness of the management admitted that there is no job description mentioned in the appointment letter of the claimant. While admitting that no letter was ever given to the claimant the he will

perform supervisory or managerial duties, he clarified that the job of the claimant was to watch & ward the runway and airside. It is thus, evident from the record that the claimant was not supervisory or administrative post, requiring him to perform only administrative duties. As such, contention of the management that the claimant does not fall under the definition of "workman" as provided under section 2(S) of the ID Act, is not tenable. This issue is, therefore, decided in favour of the claimant and against the management".

12. The above order, deciding the preliminary issue as to the jurisdiction of the tribunal over the matter in lis before it is a substantive order, though interlocutory, but in nature, an order passed in furtherance of the proceeding. Subsequent to the passing of which the tribunal emanated it's competence to exercise jurisdiction conferred on it under the I.D. Act.

13. The learned authorized representative for the management vehemently opposed the argument submitted by the claimant's authorized representative Shri Rajiv Agarwal, to the effect that the decision of the tribunal dated 11.03.2019 on issue number 1 has attained finality and even acquiesced by the management in the superior court of law which kept the same un interferedq. He further added, the decision of the tribunal over issue no. 1, need not to be interfered or reconsidered, despite setting aside the final award by the high court with remand of the matter for deciding afresh. The learned authorized representative termed the order dated 11.03.2019 deciding the said issue number 1, an 'interim order' passed by the tribunal at an interim stage of proceedings before passing of the final award and therefore, merged in the order of the high court which set aside that final award dated 02.07.2019 with remand of the matter to the tribunal to hear and decide the same afresh.

14. DIAL filed two Writ Petitions i.e., W.P (C) 8215/2019 and W.P (C) 11157/2019. In W.P(C) 8215/2019 the interim order dated 11/03/2019 & 3/6/2019 were challenged. Whereas in W.P (C) 11157/2019 the final award passed by the

tribunal dated 02/07/2019 was challenged. This would be noteworthy at this stage that, vide order dated 11/03/2019 issue No. 1 & issue No. 2 both were decided. On the cost of repetition, it further would be important to contend that issue No.1 is about the jurisdiction of the tribunal over the matter, if the claimant is a 'workman ?, as provided under Section 2 (S) of the I.D. Act. Issue No.2 is with regard to the genuineness of enquiry proceeding conducted by the management. The tribunal by composite order decided both the issues in favor of the claimant on 11/03/2019. Tribunal found, while deciding the issue no.2 with regard to the genuineness of enquiry proceeding that there was no evidence on record as to the appointment of enquiry officer Sh. Yudh Vir Singh. Sh.Yudh Vir Singh himself was not produced in witness box by the management to prove enquiry proceeding and enquiry report before the tribunal and/or to rebut the specific allegations of the workman as aforesaid. The management not only failed to produce the enquiry officer Sh. Yudh Vir Singh but also anybody else who was actively associated with the domestic enquiry. The tribunal reached at the conclusion that non examination of enquiry officer or any other official who was associated with the enquiry proceedings, is fatal to the case of the management. So fair as proving of enquiry report and it's procedure is concerned. Vide order dated 11/03/2019 this tribunal held that the management has failed to prove the enquiry proceeding and enquiry report against the workman. Resultantly the domestic enquiry conducted against the workman becomes vitiated. On the same day the management moved another application before the tribunal for giving opportunity to examine the enquiry officer and prove the enquiry report. The said application was rejected being devoid of merits vide order dated 28th May 2019/ 3rd June 2019. From the above facts the position emerged from the record that in W.P (C) 8215/2019 M/s Delhi International Airport V. Ashwani Goel, the challenge by the management was against the part of the order related to decision on issue No. 2 and the subsequent rejection of application seeking opportunity to produce the witness for proving the enquiry proceeding and the report against the present

claimant. Hon'ble High Court in its order dated 5th July 2021 has recorded its observation in Para 9.1, 9.2 & 9.3.

> ***9.1*** *The Tribunal, thus, not only held that Mr. Goel was a workman under the meaning of Section 2 (s) of the I.D. Act but also went on to rule that the enquiry conducted against Mr. Goel was not fair, as there was a violation of the principles of natural justice since the relevant documents and list of witnesses was not furnished to him, and he was not paid subsistence allowance during the period of suspension. The Tribunal also went on to state that, DIAL had failed to prove that the enquiry proceedings were conducted, as no one associated with the enquiry or in the making of the report, had been examined.*
>
> ***9.2*** *Pertinently, on that very date, i.e., 11.03.2019, an application was moved on behalf of DIAL stating that, since the matter was at a preliminary stage and was listed on 22.04.2019, and therefore, an opportunity be given to "prove the enquiry and examine the enquiry officer". A short reply was filed on behalf of Mr. Goel to the said application in opposition to the prayer made therein, principally, on the ground that, such permission could not be granted at the stage at which the matter was positioned.*
>
> ***9.3*** *The order sheet of 22.04.2019 shows that arguments on DIAL's aforementioned application dated 11.03.2019 were heard. Besides this, the order sheet of that date i.e., 22.04.2019, also adverts to the fact that "final arguments" had also been heard in the matter; parties were, however, given an opportunity to file judgments and the matter was reserved for "orders/award". Pertinently, the proceedings sheet dated 22.04.2019 did not refer to any further date.*

However, on 28.05.2019, the matter was listed before the Tribunal. Since parties were unaware of this date, they went unrepresented on that date. The Tribunal, however, dismissed DIAL's application dated 11.03.2019, via its order dated 28.05.2019, and once again listed the matter for final arguments on 03.06.2019. It appear that, on 03.06.2019, final arguments were heard once again in the matter, whereupon it was reserved for orders/award. As noted above, the impugned award was passed on 02.07.2019 with a direction that same be sent to the appropriate government for publication under Section 17 of the I.D. Act. The impugned award was published on 08.07.2019.

15. From the factual matrix as gathered from the above stated Paras, carved out from the judgment of Hon'ble High Court dated 5th July 2021, the context appears to be the non affording opportunity to the DIAL by the tribunal to prove enquiry proceeding, report and the charge of misconduct labelled upon the workman in the enquiry proceeding conducted against him. In the W.P (C) 8215/2019 the decision of the tribunal on issue no.1 is neither assailed by the management nor the Hon'ble High Court has interfered with the finding of the tribunal in the impugned order dated 11/03/2019.

16. Learned Authorized Representative arguing on behalf of the DIAL placed reliance upon the judgment of the High Court of Delhi in ***'Sarita Parwal V. Pankaj Prakash 2010 SCC Online Delhi 1251'*** in support of his contention that, it is a well settled principle of law that interim order merges with final order/judgment. In the case of Sarita Parwal (Supra) it is held,'i*t is settled law that if an interim order is passed and after passing of an interim order a final judgment is passed, the interim order merges into the final order and if an appeal is preferred the order of the trial court merges into the order of the appealing*

court'. Learned AR further placed reliance on the judgment of Apex Court in the case of '***Kalabharti Advertising V. Hemant Vimalnath Narichania & Others (2010) 9 SCC 437'.*** It is held by the supreme court in Para-15 as follows: -

> ***Para-15*** *No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court.*
>
> *Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. (vide:* ***Dr. A.R. Sircar v. State of Uttar Pradesh & Ors., 1993 Supp. (2) SCC 734; Shiv Shanker & Ors. v. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr., 1995 Supp. (2) SCC 726; the Committee of Management, Arya Inter College, Arya Nagar, Kanpur & Anr. v. Sree Kumar Tiwary & Anr., AIR 1997 SC 3071; GTC Industries Ltd. v. Union of India & Ors., AIR 1998 SC 1566; and Jaipur Municipal Corporation v. C.L. Mishra, (2005).***

17. Before application of the aforesaid case laws cited by the learned AR, Shri Dig Vijay Rai, for the management, this would be pertinent to state that the present case is an Industrial Dispute case registered by the tribunal on receiving reference under Section 10 of the I.D. Act from the appropriate Government. The claim of the workman and reference of the Industrial Dispute by the appropriate government to the tribunal still exists. The award impugned in the W.P (C) 11157/2019 is set aside for deciding afresh the matter in accordance with the direction given by the High Court in the order of remand. The industrial dispute case is neither dismissed nor is struck off, rather the award is set aside on the ground of not providing the opportunity to prove the enquiry proceeding and the charges against the claimant/workman. The portion of order dated 11/03/2019 relating to the decision of the tribunal over issue No.2 by which the enquiry proceeding was held vitiated was challenged in earlier W.P(C) 8215/2019. Rest of the decision in order dated 11/03/2019 relating to issue No.1 is left undisturbed. Unlike the facts of the case referred by learned AR in the above two cited cases, in the present case , before the High Court the impugned order dated 11.03.2019 of the tribunal got challenged in writ jurisdiction under Articles 26/227 of the Constitution of India for judicial review and not in appeal.,therefore the above two cited cases, with due regard, are not applicable in the fact, and circumstances of the present case.

18. The part of the order dated 11.03.2019 was assailed in the writ jurisdiction of the high court and the finding of the tribunal as to the genuineness of the enquiry proceeding and the validity of the enquiry report was in issue before the high court for judicial review. The judicial review under the Articles 226 and 227 of the Constitution of India is quite different from the appellate jurisdiction of a court of appeal, where the finding of the appellate court merges with that of the trial court.

19. Moreover the order dated 11.03.2019 is an interlocutory order which

substantively decided the jurisdictional fact in issue no. I also. Such order though interim but are quite different from other ad interim orders passed by the courts for example, those prohibitory orders under order 39 of the CPC to be in effect till the pendency of suits or till further order. Such interlocutory order as in the present case was necessary to be passed by the tribunal in order to emanate power to exercise jurisdiction over the matter. The tribunal acted on its decision on the jurisdiction and ultimately passed award. However the issue of jurisdiction remained set at rest irrespective of the management approached the high court challenging both the order dated 11.03.2019 and consequent thereupon the final award. The award is set aside in the context of irregular and improper exercise of discretion by the tribunal in refusing the grant of opportunity to the management so as to lead evidence for proving enquiry, inquiry report and charge of conduct only. There is no new fact, admission and evidence relating to the issue no.1, brought on record of the tribunal by the management witness produced before it on availing fresh opportunity pursuant to the order of remand by the high court. The tribunal in aforesaid circumstances, being the same forum can not appreciate the same facts, admissions and same evidence differently than appreciated earlier to reach at a reviewed and different conclusion with regard to the claimant's status as workman as defined in section 2(s) of the I.D. Act.

20. On the discussion made herein above the issue no1 is beyond the scope of hearing and deciding afresh. The tribunal's decision over the said jurisdictional issue under order dated 11.03.2019 shall form part of the award.

Issue no.2, whether the enquiry conducted by the management is just, fair and proper?

21. The management with a view to prove the enquiry proceeding fair and proper, satisfying all the requirements of the principle of natural justice produced witness MW1 Shiv Nath Singh, before the tribunal. On appreciation of his

evidence tribunal vide order dated 11.03. 22019 decided the said issue in favour of the claimant that the enquiry proceeding is vitiated being unfairly conducted.the, management felt necessity of additional evidence to be adduced in this regard. Tribunal did not permit the management to lead fresh evidence at that stage and after hearing passed the final award. Honorable high court in writ jurisdiction set aside the award with remand of the matter for hearing afresh and receiving evidence to prove the enquiry fairly conducted. In accordance with the terms of remand order the management examined the inquiry officer shrei Yudh Veer Singh on 15.12.2022. The evidence so produced afresh shall only be considered at this stage whether it makes any difference than the earlier appreciation of evidence already on record.

22. **Nature of Departmental proceedings 'quasi-judicial' :** Holding departmental proceedings in disciplinary enquiry and recoding finding of guilt against any delinquent and imposing punishment for same is a quasi-judicial function and not administrative function. Hence, authorities have to strictly adhere to statutory rules while imposing punishment. The apex court has repeatedly held this, some of them are cited here, **Vijay Singh Vs. State of Uttar Pradesh & others (2012) 5 SCC 242, State of UP and Coal India Ltd. Vs. Ananta Saha, (2011) 5 SCC 142 and Mohd. Yunus Khan Vs. State of UP, (2010) 10 SC.** A disciplinary enquiry is conducted based on principle of natural justice, whenever any employee allegedly commits misconduct so as to find out his guilt proved and punish accordingly. No specific clauses are provided describing the procedure of the disciplinary enquiry in the matter against the employee of an industrial establishment except the Industrial Employment (standing order) Act, 1946 that provides several acts and omissions as misconduct. The said standing order Act is applicable to the industrial establishments employing a hundred or more employees. Those who are not covered under the said Act frame their own service rules prescribing such

procedures. In the present case DIAL has it's own Standing orders in the name and style ," **Standing orders of Delhi International Airport Private Limited"** This is established principle of natural justice that such service rule abides not only the employee but employers also who makes the rule. The apex court in the case of **Union of India v. Mohd Ramzan Khan, AIR1991 SC 471 : (1990 SCR Supp.(3) 248)** has held that the delinquent employee who is held guilty of misconduct, should have right to represent his innocence to the disciplinary authority as **the principle of natural justice** requires. The DIAL in the present case is provided opportunity to lead evidence both documentary and oral in compliance of the order of the high court regarding taking on record of the case evidence to prove the domestic enquiry fairly conducted and in proof of the charge of misconduct against the claimant. Availing that opportunity, DIAL has filed several photocopies of documents pertaining to the leave rules, attendance sheet and the aforesaid standing order. The tribunal admitted and taken on record the said standing order and noticed that there is provision of a fact finding enquiry and institution of domestic enquiry only in the event prima facie the misconduct found to have been committed and the explanation Asko Ed from the delinquent is not satisfactory and he denies the imputation of charge against him. The para 32 of the standing order at it's page 40 is proceeding described under the heading, **" Procedure For Dealing with Misconduct & Disciplinary Proceeding"** The said para is reproduced here under for the purpose of easy reference in discussions.

> *"32. <u>PROCEDURE FOR DEALING WITH MISCONDUCT & DISCIPLINARY PROCEEDINGS</u>*
>
> *In normal circumstances, no order for punishment shall be passed unless; The concerned employee is given an opportunity to submit his explanation in writing which he may submit in respect thereof.*
>
> *An employee against whom misconduct is alleged shall be given a charge sheet clearly setting forth briefly the fact and the circumstances alleged*

against him and the nature of the misconduct. The employee shall be required to submit his explanation to the charges, for which, a period of 48 hours shall be allowed. If the employee refuses to accept the charge sheet, it shall be pasted on the Notice Board or a copy of the same shall be sent at the available address of the employee through registered/speed post and shall be deemed to have been served upon him.

The manager upon receiving such explanation shall consider the same and in case no explanation is received, the manager shall proceed with the matter as deemed fit. If the explanation is found satisfactory, the matter shall be closed forthwith. No formal written enquiry shall however, be necessary when the employee expressly admits the charges and the management will take appropriate action.

If the explanation is not found satisfactory, a regular Domestic Enquiry at the place designated solely by the management shall be conducted according to principles of Natural Justice by an Officer of the Company or outsider to be appointed by the management and where necessary a presiding officer from amongst the employees of the establishment shall be appointed to present the case is support of the charges.

Adequate and reasonable opportunity will be given to the employee by holding a Domestic Enquiry according to the following procedure:

A workman shall present himself to appear before the enquiry officer at the time, place and date specified in the enquiry notice. If the employee fails to present himself at the assigned place & time before the Enquiry Officer or boycott the enquiry, the enquiry shall be proceeded Ex-parte and no further opportunity would be provided.

The employee while defending himself before the Enquiry Officer shall have right to represent himself in enquiry proceeding through any co-employee of the establishment or an office bearer of the union of which he is the member provided the office bearer is employed in the company.

However, no outsider union leader or an advocate shall be permitted as a representative of the employee.

The employee shall be permitted to produce additional documents, witnesses in his defence and cross-examine the Management witnesses on whose evidence the charge rest. For the purpose of preparing Defence, the employee may also inspect the documents/complaints mentioned in the charge sheet. The employee have to explain the relevancy of the additional documents to the charges under enquiry and such documents shall be called for and witnesses be allowed, if the enquiry officer is satisfied about its relevancy. The presenting officer shall be entitled to re-examine the witnesses on any point. The enquiry officer shall record a concise summary of the evidence led by both the parties.

A copy of the enquiry proceedings shall be supplied to the employee, if he makes an application to this effect. In case, the enquiry officer is changed/replaced, the succeeding enquiry officer may act on the evidence so recorded by its predecessor.

After the conclusion of the enquiry, a report shall be prepared by the enquiry officer containing his findings on the charges, which shall be forwarded to the management. The management shall send a copy of the report to the employee concerned.

If the concerned employee is exonerated of the charges, the Enquiry ordered shall be treated as closed and the employee shall be treated as if he was on duty and shall be entitled to full salary for the period after adjusting the subsistence allowance paid. The management may not agree with the findings of the enquiry officer and may form its own opinion with reasons recorded in writing on the basis of the available evidence on the enquiry record and take appropriate action.

If on the conclusion of the enquiry, the employee has been found guilty of the charges framed against him the employer shall pass an order

accordingly. In awarding punishment under these standing orders, the Management shall take into account the seriousness of other extenuating or aggravating circumstances that may exist. The final action shall be taken after giving the concerned employee a reasonable opportunity of making representation on the proposed penalty.

A copy of the orders passed by the manager shall be supplied to the employee concerned whereupon the order shall become operative."

23. A two fold protection in cases of major punishments the natural justice is necessary to be afforded to the delinquent in conformity with the requirement of natural justice. On getting a complaint the disciplinary authority should hold a **preliminary enquiry** into the matter which is actually a fact finding enquiry with collection of prima facie evidences and witnesses. This is not formal but necessary to hold preliminary enquiry so as to ascertain that their are prima facie evidences which, if found proved in due course of the procedure would be sufficient to HOD the delinquent guilty and liable to be punished. In **Amulya Ratan Mukharjee V. Eastern Railway,1962 LLJ (11) 540 Cal H.C.** the high court held that, " before making a charge a charge, the authorities are liable to hold a preliminary investigation or fact finding enquiry on receiving a complaint from the management. All this is to enable the management to apprise themselves of the real facts and to decide whether the employee should be charge-sheeted. Admittedly, no preliminary enquiry is held in the present matter before instituting the departmental disciplinary enquiry against the claimant The management had not kept itself abide with the rules of the procedure embodied in their own standing order, as such they have committed a serious lapse in and skipping of the fairness in violation of the principle of natural justice.

24. **Charge sheet-** The departmental enquiry starts with the issue of charge sheet which must describe specific charge of misconduct and must have all the necessary particulars and supporting evidence and witnesses. This is also

necessary to state in the charge sheet the relevant rule of the applicable service rules under which the workman is liable to be punished. In **Sur Enamel and Stamping Works (P) Ltd. vs. Their Workmen,1963 SC 1914,** the Hon'ble Supreme Court, in an attempt to lay down the procedure for conducting an enquiry for industrial adjudication, provided that an enquiry cannot be said to have been properly held unless:

1. *the workman proceeded against must be informed clearly of the charges levelled against him;*
2. *the witnesses must be examined in the presence of the workman;*
3. *the workman must be given a fair opportunity to cross-examine the witnesses including himself if he so wishes; and;*
4. *the Enquiry Officer must record his findings with reasons in his report.*

25. **Appointment and Authorization of Enquiry Officer :** The para 32 of the standing order authorizes the management to appoint enquiry officer in it's discretion either from amongst the officer of the establishment or any outsider. The management opted the domestic enquiry to be conducted by Advocate, an outsider. The management witness MW1 Shivanath Singh examined earlier before the order of the high court admitted that he was not aware of the appointment of inquiry officer Yudh veer Singh Advocate by the management nor seen the evidence on record of the enquiry with regard to his authorization by the management. After the remand of the matter in the course of fresh hearing in terms of the order of the high court Shri Yudh Veer Singh is examined as MW2 by the management, but in their e list of additional evidence filed by the management, there is no such letter of appointment and authorization in his favor issued by the management. MW2 in his oral examination stated that he was appointed as enquiry officer on 19.09.2009, without referring the name and designation of the competent officer who appointed him as such. Management therefore failed to prove the appointment and authorization of enquiry officer,

even in the course of fresh hearing in the case in terms of the remand order. In the case of **Saran Motors Pvt. Ltd., New Delhi Vs. Vishwanathan 1964 11.LLJ 139**, it was observed that:

- "Enquiry Officer should be properly and duly authorized by the competent authority to hold a domestic enquiry into the charges alleged against an employee. Any person, even an outsider, may be appointed as an enquiry officer, provided rules or Standing Orders do not bar such an appointment.
- The Enquiry Officer has the obligation to explain the procedures of enquiry and charge sheet against the concerned employee.

26. Effect of non payment of salary and even non payment of subsistence allowance as per rules and proceeding the domestic enquiry by the enquiry officer ex parte.

The evidence already recorded and appreciated by the tribunal prior to the order of remand by the high court is on record in addition there to additional documentary evidence and oral evidence of the management is taken on record in the course of fresh hearing in terms of the high court's remand order. The evidence on record admittedly establish that the workman is not paid his salary since 01.06.2009 till date, though he had not been placed under suspension at any point of time throughout the enquiry proceeding. He was suffering from serious back pain and lack of fund even to pull the lives of his family. He appeared on the first date of hearing fixed in the enquiry v.i.z. 30.09.2009 and moved following two application proved in the evidence before the tribunal Ex WW1/6 and Ex. WW1/7-

Ex WW 1/6-

"Before the enquiry officer Sh. Yudhveer Singh (Advocate) in the matter of charge sheet dated 27.09.2009 alleged to have been issued to Ashwani Goel.
For my defence during the enquiry the following documents may kindly be provided-

1. *Copy of chargesheet dated 27.09.2009.*

2. *Copies of prosecution documents relied upon in framing the allegations.*
3. *List of prosecution witnesses.*
4. *Copy of disciplinary powers for Sr. Assistant (AMI).*
5. *Name of presenting officers.*
6. *Whether this CSE entitled allowed assistance of DA, if any represent him in the enquiry if so who can act as my DA.*
7. *Delegation of disciplinary power of Rajiv Yadav (Associate GM, HR).*
8. *Delegation of disciplinary power of Pratik Vijay (AM, HR).*
9. *Delegation of disciplinary power given to Sh. Birendra Prasad (GM, HR).*
10. *A certified copy of CSO of M/s Delhi International Airport Pvt.Ltd.*
11. *A copy of Foreign Travel Policy as amended up-to-date applicable to CSE may also be provided.*
12. *Transfer policy regarding rotation from fixed duty to shift duty.*

I will give the names of defence witnesses, additional defence documents and name of my DA after receipt of above documents.
Ashwani Goel *30.09.2009*
Airside Monitoring Inspector
JRL: A3
Pernr: 00003763

Ex WW 1/7

Enquiry Officer *30.10.09*
Delhi International Airport Pvt. Ltd
New Delhi
Mr. Yudhveer Singh

This as ref to your Reg. AD letter sending there with enquiry proceedings 21.10.09 in the matter of charge sheet dated 27.08.09 issued to me.
As explained to you personally and on medical leave since May 17, 2009. Still I am unable to walk/sit properly because of back pain. Because of my being on leave, I have received no salary from 01 June 09 till date. Further I was being paid from 10th June 09 with unauthorized deductions of Rs. 48625.00 till 30th May 2009. The management is with holding my following dues wrongfully.

1. *Salary amount from 01.06.09 to 30.10.09 Rs.110,000.00.*
2. *Reimbursement of mediclaim Rs.30,000/- Approximately received from TTK Healthcare Services.*
3. *Unlawful deductions of full a final settlement of TA DA claim.*

In view of the circumstances explained above Rs.1.5 Lakh under. Going financial crisis. I even do not have money to commute in a hired private car

to attend a meeting or on scooter or bus it is not possible for me to attend the enquiry because of medical problems.
I have very clear intentions to come attend the enquiry to give my defence but due to financial reasons i am not unable to do so. In the circumstances you are requested to keep the enquiry in abeyance for a short time a direct the concerned authorities to release my wrongly withheld dues enabling me to attend the enquiry. You will appreciate that the reasons explained by me for inability on my part to attend the enquiry is justified and in consonance with the principles of natural justice. You will act as per law and on the basis of cotena of cases where the Apex Court has held that a delinquent employee not attending the enquiry on A/c of Financial Problems cannot be proceeded exparte.

(ASHWANI GOEL)
CSE

In the case of **Saran Motors Pvt. Ltd., New Delhi Vs. Vishwanathan (Supra)** it is further observed that

- In the case where a workman who is placed under suspension by the
- employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance in accordance with the provisions of Section 10-A of the Industrial Employment (Standing Order) Act, 1946 which provides:

"Where any workman is suspended by the employer pending inquiry into complaints or charges or misconduct against him, the employer shall pay to such workman subsistence allowance:

- at the rate of 50% of the wages which workman was entitled to immediately preceding the date of such suspension, for the first 90 days of suspension and;
- at the rate of 75% of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman."

The enquiry officer on examination before the tribunal as management witness on 15.11.2022 stated that, it is correct that the concerned workman made representations addressed to me regarding payment of conveyance allowance so that he can participate in the enquiry proceedings as he has no money. The enquiry was conducted in the premises of the management and the workman

was not suspended. He further stated, I don't have any knowledge that the workman was not paid any conveyance allowance as well as salary. I do not have any knowledge if the management had not paid money on account of the medical issues received from TTK health services for the period he was ill.

To secure fairness in the enquiry and ensure the requirements of the principle of natural justice an independent person should properly be appointed as inquiry officer, so as to treat the management and the delinquent at par. In the present case the enquiry officer was under duty to dispose of the representation of the delinquent referred herein above, directing the management authority to supply him relevant papers relied on by them in the enquiry for proving the charge of the alleged misconduct against the delinquent , Further he would have direct the management to pay of the delinquent his salary or at least the subsistence allowance, but the enquiry officer kept both the prayers un heard., as it is admitted by him in evidence. This hampered the possibility and opportunity of answering the charge sheet, personal appearance and participation in enquiry. This skipping of procedure amounts willful or un willful omission on the part of the enquiry officer but certainly lead towards non participation of the delinquent and proceeding ex parte against him,which shows that he was carrying out the command of some superior officer. In...Kuldeep Singh Vs. Commissioner of Police & others, (1999) 2 SCC 10. the apex court has held that, **upplying copy of document to the delinquent relied upon by the Enquiry Officer must, Where reliance was placed by the Enquiry Officer on the previous statement of the witness without supplying a copy thereof to the**

delinquent and without affording an opportunity to cross examine the witness, it has been held by the Hon'ble Supreme Court that reasonable opportunity contemplated by Article 311(2) of the Constitution means hearing in accordance with principles of natural justice. Ascribing the non-production of the witnesses, which was fault of the department, to the delinquent showed that the Enquiry Officer was biased in favour of the department and found the delinquent guilty in so arbitrary manner. Thus it is legally necessary to supply relevant materials for the enquiry officer. In the present case the claimant in his statement deposed by submitting affidavit in examination in chief has asserted that he has not been supplied with charge sheet list of documents and witnesses. Further, in cross examination also he stated his representation (Exhibit WW 1/6 kept indisposed. The enquiry officer MW2 Shri Yudh Veer Singh also, in his cross examination has admitted the same. The apex court in the case of **Meenglass Tea Estate vs. workmen, 1963 11, L.L.J, 392 (S.C.)** in somehow similar facts and circumstances has held, **Management may ask for any document in proof of charge. So, according to the principles of natural Justice, such copies of those documents should be supplied to the delinquent workman. A workman who is to answer to charge must not only know the accusation but also the testimony by which the accusation is supported as enumerated in the case.**

27. Notice of Enquiry

On receipt of the charge sheet, the employee sends his reply to the Authority. If the Authority found the reply to be unsatisfactory, he may get a show cause notice from the Authority. This procedure is applied in the case of **Associated Cement**

Co. Ltd vs. Their workmen and Other 1964 65 26 FJR 289 SC which further states that: "The workman should be given due intimation of the date on which the enquiry is to be held so that he has an opportunity to prepare his defense at the enquiry." In the present case the workman was admittedly served with notice of enquiry with regard to the charges sheet dated 27.09.2009 without supplying the material and relevant documents fixing 30.09.2009 for **Explanation by Employee** and for his attendance. After a charge sheet has been served on the accused workman, he may send his explanation cum reply in this manner:

1. admitting the charges and pleading for mercy.
2. denying the charges in totality.
3. requesting for more time to submit the explanation.

The claimant when appeared in the enquiry proceeding, the original record of proceeding shows that the date of charge sheet with which he was served said to have wrongly dated and changed by endorsing a new date 27.08.2009. The delinquent when protested the change in date the same was ignored and made by the enquiry officer. He requested some more time to submit explanation and postpone the enquiry for some time moving two representations proved and admitted too by the MW 1 & MW2 both in the evidence before the tribunal respectively Ex WW1/6 and Ex WW1/7 discussed herein above. The enquiry proceeding on that day deferred and the delinquent departed legally and reasonably expecting the information of further course of proceeding and the fate of his two representations The management witnesses states the same kept un disposed of and not informed to the delinquent, further the record of proceedings also corroborate that the enquiry officer proceeded exparte recording absence of the delinquent, though the causes assigned on the first date of enquiry, by the claimant which would be preventing him from participating in the enquiry were hot removed or not directed to the management to remove forth with. The enquiry officer did not make any

endeavor to make probable and ensure the participation of the delinquent in the enquiry and enable him to explain whatever imputed to him by the management.

28. Bias

Bias means an operative prejudice, whether conscious or unconscious in relation to a party or issue. Prejudice may be the result of a preconceived opinion or predisposition or a predetermination to decide a case in a particular manner, so much so that it does not leave the mind open. The case in hand is not a proved case of misconduct where vagueness in charge sheet or non supply of material and relevant documents relied on by the management would have been ignored. The enquiry officer in ignoring the reasonable expectations of the delinquent for direction to the management to pay money payable to him ,as he was kept un paid of his salary since 01.06.2009, the medical claim etc. can not be held just and impartial in conducting the enquiry against the delinquent ex parte. The oral evidence on record of the tribunal given by the inquiry officer also corroroborates his partially towards the management and his preconceived mind with premeditated conclusion of the domestic enquiry culminating into the termination of the services of the claimant under the comment of authorities of the management who appointed him being outsider. In his cross examination he has admitted, all the different cases in which he was appointed time to time by the management as enquiry officer he accorded dismissal of the employees.

Learned AR for the management relied on the judgement of the apex court in the case of **Biecco Lawrie Limited and Another V. State of West Bengal and Another (2009) 10 SCC 32**, to emphasize his argument that the enquiry officer may not be imputed with the bias against the delinquent. The facts before the apex court in the above cited case is of a delinquent employee who admittedly abused another employee in filly language and when charge sheeted he tendered apology. However in domestic enquiry he took plea of non supply of charge sheet with

specific abusive language, since his misconduct was proved as he had apologized and had been afforded every opportunity to defend him allegation of bias of the enquiry officer was not sustained. The facts of the above judgement being quite different, law propounded by the apex court in their circumstances, respectfully submitted that, is not applicable in the present case.

Enquiry Officer when to be held biased and proceeding under pressure from his superior officer- *In* ***Kuldeep Singh Vs. Commissioner of Police & others, (1999) 2 SCC, w****here reliance was placed by the Enquiry Officer on the previous statement of the witness without supplying a copy thereof to the delinquent and without affording an opportunity to cross examine the witness, it has been held by the Hon'ble Supreme Court that reasonable opportunity contemplated by Article 311(2) of the Constitution means hearing in accordance with principles of natural justice. Ascribing the non-production of the witnesses, which was fault of the department, to the delinquent showed that the Enquiry Officer was biased in favour of the department and found the delinquent guilty in so arbitrary manner which showed that he was carrying out the command of some superior officer.*

29. **Examination of Witnesses Non examination of complainant as witness & its effect** : Where a police-sub-inspector was dismissed from service on the charges of in-efficiency and dis-honesty based on adverse reports of superior officers and such superior officers, though available, were not examined to enable the police-sub-inspector to cross-examine them, it has been held that refusal of the right of the delinquent to examine such witnesses amounted to denial of reasonable opportunity of showing cause against the action of dismissal and the dismissal was held as not legal. It has further been held that the reports against the delinquent police-sub-inspector relating to period earlier than the year in

which he was allowed to cross efficiency bar should not have been considered in the departmental enquiry. (**State of Punjab vs. Dewan Chunni Lal, AIR 1970 SC 2086)** In the present case the management failed to produce the complaint authority who complained the unauthorized absence of the claimant on duty. None of the officer or official of the establishment handling the attendance of the employees on duty in the establishment is examined by the management, producing the attendance register maintained and preserved by him in ordinary course of routine day to day business, neither before the enquiry officer nor in the industrial tribunal. This being denial of providing evidence of the charged misconduct, though made basis for holding the claimant guilty in enquiry.

Further, some general rules for examination of the witness are mentioned in the judgment of **Tata Engineering and Locomotive Co. Ltd. vs. S.C. Prasad, (1969) 11 L.L.J. 799 (S.C.)**

It was observed by the Hon'ble Supreme Court that:

- "If the allegations mentioned in the charge sheet are denied by the workman in the domestic enquiry proceedings, the onus for proving those allegations will be upon the shoulders of the management and;
- the witnesses, called by the Management, must be allowed to be cross examined by the workman and;
- the workman must also be given a reasonable opportunity to examine himself and can add any further pieces of evidence that he might choose in support of his plea."

.

30. After considering the evidence already appreciated by the tribunal prior to the direction of the high court to permit the management to lead additional evidence for proving the fairness of the enquiry and, on appreciation of those brought on record additionally, both the documentary and oral evidence of the inquiry officer, it would be relevant before, any conclusion is recorded ,to reproduce here below that is already drawn on record in order of the tribunal

dated 11.03.2019 :

"6- The version of the claimant in his affidavit Ex.WW1 is in line and reiteration of the averments made in the claim petition. The claimant has filed on record copy of the letter dated 30/9/2009 (Ex.WW1/6) whereby he had demanded 12 Nos. of documents vis-à-vis copy of chargesheet dated 27/9/2009, copies of documents relied upon by the Management, list of witnesses etc. As regards supply of documents to the claimant, I may mention that MW1 has admitted in his cross examination that the had workman/claimant demanded documents as mentioned in Ex.WW1/6 later on though not on the first date of enquiry. The witness also admitted that the management did not supply the complete documents as demanded by the workman vide letter Ex.WW1/6, though claimed that documents mentioned at SI.No1, 2 and 5 of Ex.WW1/6 were supplied to the workman. However, he could not show that documents mentioned at SI. No.2 of Ex. WW1/6 was supplied to the workman. He also admitted that no subsistence allowance or salary was given to the workman w.e.f. 1/6/2009. Thus, it emerges from the evidence adduced on record that copy of the documents relied upon by the Management and list of witnesses to be examined by the Management were not at all supplied to the claimant despite his demand vide letter Ex.WW1/6. It is worthwhile to mention here that denial of documents upon which are/were important documents for claimants to defend the case, amounts to depriving him from defending the case in a proper manner. Depriving the workman to defend his case with the relevant documents and list of witnesses amounts to violation of the principle of natural justice.

7- It is fairly settled that the payment of subsistence allowance, in accordance with the rules, to an employee under suspension, is not a bounty but it is a right. Non-payment of the subsistence allowance from the date of suspension till removal is a clear case of breach of principles of natural justice. To this view I am fortified by the decision of Hon'ble Supreme Court in the case of ***Jagdamba Prasad Shukla Vs. State of UP and others, Manu/SC/0524/2000.*** *Depriving the workman to defend his case with the relevant documents and list of witnesses amounts to violation of the principle justice. It has come on record that claimant who was terminated from service vide order dated 19/5/2010 was not paid substance allowance or salary w.e.f. 1/6/2009. As such, there was also breach of principle of justice by the Management.*

8- According to the management, Shri Yudhveer Singh, Advocated was

appointed as enquiry Officer and he had conducted enquiry against the claimant. However, MW1 Shiv Nath Singh admitted that there is no documents on record to show that Shri Yudhveer Singh was appointed as Enquiry Officer. It is pertinent to mention here that so as to prove enquiry proceedings & enquiry report before this Tribunal and /or to rebut the specific allegations of the workman as aforesaid, the Management has not examined Shri Yudhveer Singh – the Enquiry Officer or any other person who was actively associated with the domestic enquiry. MW1 Shri Shiv Nath Singh clarified that he was appearing as an official (of the Management) to watch the proceeding. Admittedly, MW1 was not actively involved in any manner in the domestic enquiry. Thus it is crystal clear, the said witness of the Management was not at all associated with enquiry proceedings at any stage. To my mind, non examination of the Enquiry Officer or any other official who was associated with enquiry proceedings is concerned. To the View I am fortified by the decision of Hon'ble High Court of Delhi in the case of The ***Kangra Co-operative Bank Ltd. Vs. M/s Seema Sharma*** *(2018 LLR 231), wherein it has been observed in para 9 as under :-*

> *"The petitioner has not examined the Enquiry Officer or any of its employee as a witness in the court to prove the enquiry proceeding and report and only chose the examine MW1 H.R. Thakur Presenting Officer to prove the same. Mr. H.R. Thakur was not an independent witness to appear in the court and the prove the enquiry proceedings against the respondent. The presiding (sic. Presenting) Officer is not expected to become a persecutor. He is a biased witness. Therefore, the Industrial Adjudicator has rightly adjudicated the issue that the petitioner has failed to prove the enquiry proceeding and Enquiry Report against the respondent.*

It is worthwhile to mention here that ratio of the aforesaid decision has been upheld by Division Bench of our own High Court in LPA No.86/2018 – decided on 27/4/2018."

31. The additional documentary evidence brought on record and the oral examination of the enquiry officer recorded by the tribunal as has been appreciated and discussed in detail, in but for the last preceding paras here above, does not make any difference even after the fresh hearing in conclusion. The tribunal firmly holds that the management has failed to prove the enquiry

proceeding and enquiry report fair and impartial, conducted in conformity with the principle of natural justice and fair play against the delinquent workman. Consequently the domestic enquiry in question, is held vitiated. The issue no 2 is therefore decided against the management and in favor of the claimant.

Proof of Misconduct alleged to have committed by the workman –

32. The Supreme Court in the case of Workmen of M/S Firestone Tyre and Rubber co. of India (P) limited. V. Management and Others has held, sco.kydence justifies the finding of misconduct. That in terms of section 11 A of the I. D. Act, 1947 a domestic enquiry is held and finding of misconduct is recorded the authorities under the Act have full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. But where the inquiry is found to be defective, the employer can lead evidence to prove misconduct before the authority. This Court held as under:

> *"32. From those decisions, the following principles broadly emerge :-*
> *(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified. 4 For short, the 'Act'5 (973) 1 SCC 813.*
>
> *(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.*
> *(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.*
> *(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it*

is open to the employee to adduce evidence contra.
(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.
(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.
(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742within the judicial decision of a Labour Court or Tribunal.

33. **"<u>Misconduct" & it's meaning</u> :** In the case of **Institute of Chartered Financial Analysts of India & others Vs. Council of Institute of Chartered Accountants of India & others, AIR 2007 SC 2091,** the Hon'ble Supreme Court has defined the expression "misconduct" thus : *"misconduct" inter alia, envisages breach of discipline, all though it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, wide enough to include wrongful omission or commission whether done or omitted to*

be done intentionally or unintentionally. It means "improper behaviour, intentional wrong doing on deliberate violation of a rule of standard or behavior". Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law or a forbidden act. It differs from carelessness. Misconduct, even if it is an offence under the Indian Penal Code, is equally misconduct. Acquisition of additional qualification (degree) would not amount to misconduct or professional misconduct." Further, Interpreting the word "misconduct", the Hon'ble Supreme Court in the case of **State of Punjab & others Vs. Ram Singh, Ex-Constable, AIR 1992 SC 2188 (Three-Judge Bench)** and the Hon'ble Allahabad High Court in **Rinku alias Hakku Vs. State of UP, 2000(2) AWC 1446 (Allahabad High Court : Full Bench)** have observed thus : "*the word `misconduct' though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performace of the duty, the act complained of bears forbidden quality or character. It's ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve."*

34. This would be noteworthy here at this stage that, the facts and circumstances proved by evidences tend to show that, the management in connivance with the enquiry officer orchestrated the proceeding of domestic enquiry ex parte against the claimant with ulterior motive. The witnesses were barred to be confronted by the delinquent workman in the garb of ex parte proceeding. However, the management is not relieved from proving the

misconduct alleged to have been committed by the workman. To prove the misconduct in terms of the remand order by the high court, the DIAL has produced additional documentary evidences, one of them is Standing Orders which only worth to be taken into notice, rest of the documents pertaining to the domestic enquiry, need to be proved by enquiry officer or any one else who actively participated in the domestic enquiry proceedings. The attendance sheet are photo state copies which can be proved only by the custodia legis thereof or maker of entries therein or some body who noted the attendance of the workman as supervisor. None of such official or officer is produced by the management as witness for examination before the tribunal. The photo documents are not compared and verified as true copies of their originals by the officer concerned.

35. The DIAL in additional documentary evidence has submitted its standing order, the Page No. 21 of which contains Para-22 relating to Leave or Absence Leave. In Para 22.2.2 there is provision of sick leave sub Para b of the Para 22.2.2 aforesaid provisions, 'sick leave can be accumulated without any limit and in sub Para-d, further provides that, if entire sick leave has been exhausted, CL/PL can be adjusted for the leave taken, at the employees request. The case of the claimant is that he was suffering from back pain and relative illness and was under treatment during the period alleged authorized absence. The enquiry officer as management witness when produced before the tribunal on 15.11.2022.,in his cross-examination admitted that, it is correct that the concerned workmen made representations regarding payment of conveyance allowance so that he can participate in the enquiry proceeding as he has no money. He further stated in cross-examination that, I do not had any knowledge if the management had not paid the money on account of the medical claim received from TTK Healthcare Services for the period he was ill. The management has not rebutted this fact of illness and the treatment papers of TTK Healthcare Services. This would also be relevant to state that the period of alleged un authorized absence is said to be

commenced from 01.06.2009. Prior to the aforesaid period this is not the case of management that the workman/claimant has ever been un authorizedly absent from his duty. Though he was appointed in the establishment of management vide appointment letter 04.07.2007 and conformed in service w.e.f. 18.01.2008. The alleged case of unauthorized absence is subjected to domestic enquiry vide a charge sheet dated 27.08.2009. The aforesaid admitted and proved facts tend to show that the workman/claimant has never been habitual absentee on his duties. There has never been complaint against him for any kind of misconduct. The management establishment has its HOD who deals with the matter of leave of employees. In the present case the management has not tried to prove the unauthorized Absence or Absence without leave by producing the officer or official noting the attendance of employees on duty nor has produced the concerned HOD to prove that the workman/claimant has not moved any application for sick leave with the papers of treatment from TTK Healthcare Services. The photocopy of attendance sheet Anexure A1, photocopy of time & attendance Anexure A6 are filed in the tribunal but not proved as such the allegation of unauthorized absence from duty for the want of evidence can not be said to have been proved and therefore, the finding as to the unauthorized absence by the enquiry officer is based on 'No Evidence'. The finding of unauthorized absence is therefore not justified . The learned AR on behalf of the management has argued that remaining absent for a long time can not be said a minor misconduct. He relied on the judgement of the Apex Court in '***North Eastern Karnataka Road Transport V. Ashappa (2006) 5 SCC 137'*** with due regard,, the facts of the case before the Apex Court was the prolonged unauthorized absence which is held misconduct , the facts of present case are different. Than Here the prolonged unauthorized absence is not proved, secondly the work of the delinquent workman was not of a nature which could not be handled by other co-workers. Moreover, it has not been alleged and proved by the management that the establishment has suffered any loss or material inconvenience in discharge of

its function on the Airport.On the basis of the above discussions looking into the facts and circumstances proved on record the tribunal is of opinion that the management remained unsuccessful in justifying the finding of the enquiry officer as to the misconduct alleged to have been committed by the workman.

35. Issue No. 3 & 4. On the discussion over the evidences both documentary and oral placed before the tribunal prior to the order of remand and again after the order of remand as additional and fresh evidence, I am of the considered opinion that, they do not make any difference in the conclusion arrived at earlier by the tribunal. Moreover, the finding on issue no. 3 & 4 based on the appreciation of evidence already on record need not to be interfere by the tribunal as same is beyond the scope of order of the remand by the Hon'ble High Court. The finding of issue no. 3 & 4 made by tribunal is made part of the present award hereunder:

36. Both these issues being co-related are taken up together and same can be disposed of conveniently by common discussion.

37. The version of the claimant in his affidavit Ex.WW1 is in line and reiteration of the averments made in the claim petition. As per pleadings of the parties and evidence adduced on record, it is manifest that the claimant was appointed as Airside Monitoring Inspector by the Management vide appointment letter dated 4/7/2007 and he worked under the Management till his services were terminated vide order dated 19/5/2010 pursuant to the domestic enquiry conducted against him.

38. During the course of arguments, learned A/R appearing for the Management strenuously argued that a fair and reasonable opportunity of hearing was afforded to the workman/claimant and the charge sheet did not suffer any discrepancy. He also argued that the punishment awarded to the workman/ claimant was commensurate with the misconduct on his part. He placed reliance

on the decision of Hon'ble Supreme Court in the case of **Biecco Lawrie Ltd. & another Versus State of West Bengal and another (Civil Appeal No.245 of 2007 - decided on 28/7/2009)** to buttress his submission that interference is not warranted in the matter.

39. I have carefully gone through the judgement in the case of **Biecco Lawrie Ltd.(supra) as** relied upon by the Management. In that case, pivotal question for consideration was whether the principle of natural justice was violated and whether the order of dismissal of the workman was bad & unjustified, or not. With due respect I may mention that the aforesaid judgement is of no help to the case of the Management inasmuch this Tribunal vide detailed order dated 11/3/2019 has already held that domestic enquiry conducted against the workman/claimant was vitiated. The Management in its written statement had not reserved its right to prove the allegations of misconduct against the claimant/workman. Charge sheet dated 27/8/2009 contained allegations of misconduct against the claimant/workman to the effect that he had been unauthorisedly absenting from duty w.e.f. 1/6/2009 without prior sanction of any leave or any intimation and the management sent him various communications vide letters dated 24/7/2009, 7/8/2009 and 14/8/2009 but he neither responded nor joined duty and this remained absent from duty for 88 days. Onus to prove the allegations of misconduct against the workman/ claimant was/is upon the Management. The Management has not led any evidence to prove the misconduct regarding unauthorized absence from duty by the workman/claimant or to prove service of the aforesaid letters to the claimant/workman. Even if it is assumed for the sake of arguments that the workman/claimant remained absent from duty unauthorisedly and this fact was held to be proved by the Enquiry Officer in his enquiry report, in that eventuality also the Disciplinary Authority was required to give personal hearing to the workman before imposing penalty upon the workman. There is nothing on record to show that personal hearing

was afforded to the claimant/workman prior to imposition of penalty of removal/dismissal from service. Even perusal of order of dismissal dated 19/5/2010 (Ex.WW1/10) also does not show that any opportunity of personal hearing was granted to the workman prior to his dismissal by the Disciplinary Authority and it would be worthwhile to refer to para 3 & 4 of the dismissal order and same is reproduced hereunder :-

> "A copy of the enquiry report dated February 19, 2010 was already sent to your under the cover of show cause notice dated March 11, 2010. We have received your reply dated May 05, 2010 against the show cause notice. After perusal of your reply, management found it unsatisfactory.
>
> The Management has considered the gravity and seriousness of the charges, your long & unauthorized absence is causing dislocation of company's work and also adversely affecting the discipline of the organization. It is also serious misconduct as per the clause 30.7, 30.9 and 30.21 of the certified standing orders of the company."
>
> Having regard to the aforesaid facts and circumstances of the case, this Tribunal is of the considered opinion that the action of the Management in terminating the services of the claimant/workman w.e.f. 19/5/2010 can not be held to be legal and justified inasmuch the dismissal order dated 19/5/2010 suffers from procedural impropriety and moral standards.

40. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. Testimony of the claimant that he continuously worked with the Management from 19/7/2007 prior to his termination/ dismissal vide order dated 19/5/2010, has gone unrebutted. The job of the workman as Airside Monitoring Inspector is considered to be of perennial and regular nature. The workman/claimant has pleaded and testified that he is unemployed since the date of his termination. The Management has not led any evidence to show that the workman/claimant is gainfully employed and is getting same or more emoluments which he was getting at the time of termination from service.

41. The Hon'ble Apex Court in case **"Deepali Gundu Surwase v. Kranti**

Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) **Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages**. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/ workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

With regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award back wages if order of termination./dismissal is set aside, their lordships after referring to the decision of a Bench of three Judges had laid down the law as under :- (see page 102-103 of LLR Jan.-June2015)

"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position, in which he would have been but for th illegal action taken by the employee. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to be borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or Court that the action taken by the employer is ultra vires the

> relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

42. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that 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 act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

43. In the case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman

to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee /workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

Reinstatement with back wages

44. The claimant against the order of reinstatement with 60% back wages approach the Hon'ble High Court in W.P. (C) 5854/2020 assailing this part of the award dated 02.07.2019. The same was dismissed by the Hon'ble High Court vide judgment dated 5th July 2021 while disposing the two petitions of the DIAL against the order date 11.03.2019/ 03.06.2019 and the award dated 02.07.2019 in W.P. (C) 8215/2019 and W.P. (C) 11157/2019. As such the matter of back wages to the extent of 60% stand confirmed by the Hon'ble High Court. The tribunal shall not interfere in the finding of the tribunal as to the back wages again.

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A. Therefore, adjudicating the rights entitlement and interest of the workman and liabilities of the opposite party management, in answer to the reference dated 13.12.2012, *"whether the action of the management of Delhi International Airport Private Limited in dismissing the services of Shree Ashwani Goel w.e.f. 19.05.2010 is legal and justified? What relief the workman is entitled to?"* I hold that, the domestic enquiry conducted by the management of DIAL against the workman is vitiated and unfair by reason of having been conducted in violation of the principle of natural justice. The dismissal order dated 19.05.2010 is also held illegal, un justified and not sustainable in the eye of law, therefore struck off.

B. Since the claimant / workman was performing duty to a post of regular and perianal in nature this tribunal is of the firm view that the claimant/workman herein is entitled for reinstatement into service of the Delhi International Airport

Pvt Ltd. (DIAL) on the same post with 60% back wages with all consequential benefits.

C. The claimant/workman is also granted litigation cost of Rs.50,000 as provided under Section 11 (7) of the I.D. Act and the same shall also be paid by the management.

D. Hon'ble High Court while disposing the writ petitions vide judgment and order dated 05.07.2021 has granted relief in Para-19 as follows:

v. *Mr. Goel will be paid his last drawn wages or minimum wages, whichever is higher, from 02.07.2019, i.e. the date of the impugned award. The money paid will not be recouped from Mr. Goel, irrespective of whether or not the final decision rendered by the Tribunal is in his favour. This direction is being issued in furtherance of powers vested in this Court, under Article 226 of the Constitution. [See order dated 29.01.2021, passed by this Court, in W.P. (C) 6128/2017; upheld by the Division Bench of this Court, vide order dated 16.03.2021, passed in LPA 112/2021]. It is made clear that the aforesaid remuneration will be paid to Mr. Goel, by DIAL, till the final disposal of the matter, by the Tribunal."*

vi *Since the remand of the matter has taken place to give DIAL an opportunity to prove the charge levelled against Mr. Goel, it is mulcted with costs which are quantified at Rs.50,000/-.*

vii *Rs. 15,00,000/- deposited in this Court by DIAL, alongwith the accrued interest will be remitted to the Tribunal for payments and costs required to be made under clause (v) and (vi) above. In case, the surplus amount is left, the Tribunal will retain the same, and the amount retained by it [alongwith accrued interest], shall abide by the final decision rendered*

in the matter. In line with this direction, in the interregnum, the Tribunal will invest the money in an interest-bearing fixed deposit, maintained with a nationalized bank.

The said direction of the Hon'ble High Court remain un-complied by the management, though not stayed in any proceeding before the Hon'ble High Court or Hon'ble the Supreme court by the Court, are made part of the award. The office is directed to calculate and quantify the liability under the aforesaid direction on the part of the management. It is made clear as an amount of Rs.7,29,834/- stands paid for the period from 02.09.2019 to 31.12.2021 and a balance of Rs.3,65,310/- is still remained u

npaid for the period from 01.01.2022 to March, 2023. The management of Delhi International Airport Pvt Ltd. (DIAL) is directed to pay of the entire amount in addition to back-wages within 30 days of this order to the claimant Sh.Ashwani Goel, with interest at the rate of 06% per annum.

E. In case the management of DIAL not comply full, with the direction and payment of back wages as well as the payment of Rs.3,65,310/- which fell due vide the order of the Hon'ble High Court referred herein above, under the award within the prescribed time limit of 30 days, the management shall be liable to pay the same with interest at penal rate of 12% per annum thereafter.

F. The concerned Labour Commissioner is directed to execute and enforce the award in case of failure of the management to pay the same within the aforesaid 30 days adopting all legal process of recovery to satisfy the amount under the award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Justice Vikas Kunvar Srivastava (Retd.)
Presiding Officer
Central Government Industrial Tribunal
Cum-Labour Court No.I, Delhi

Date: 24.03.2023

Case cited relayed Disgusting

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