

I/202835/2022

Government of West Bengal
Labour Department, I. R. Branch
N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 634 / (LC-IR)/22015(16)/28/2022

Date : 27/06 /2022

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 524-I.R. dated. 22/03/2000 the Industrial Dispute between M/s Hotel Airport Ashok, Calcutta Airport, Calcutta - 700052 and their workman Shri Moloy Kr. Paul, C/o. Ram Sarkar, 3, Motilal Colony, P.O. Rajbari, Calcutta - 700081 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fourth Industrial Tribunal, West Bengal.

AND WHEREAS of the said Fourth Industrial Tribunal, West Bengal, has submitted to the State Government its award 07/06/2022 on the said Industrial Dispute vide memo no.884 - L.T. dated 13/06/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Joint Secretary

to the Government of West Bengal

I/202835/2022

No. Labr/ 634/115/(LC-IR)

Date : 27/06/2022

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. M/s. Hotel Airport Ashok, Calcutta Airport, Calcutta - 700052.
2. Shri Moloy Kr. Paul, C/o. Ram Sarkar, 3, Motilal Colony, P.O. Rajbari, Calcutta - 700081.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy, Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Deputy, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Joint Secretary

No. Labr/ 634/40/(LC-IR)

Date : 27/06/2022

Copy forwarded for information to:

1. The Judge, Fourth Industrial Tribunal, West Bengal with reference to his Memo No. 884 - L.T. dated 13/06/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.


Joint Secretary

1

In the matter of an Industrial Dispute between M/s. Hotel Airport Ashok, Calcutta Airport, Calcutta-52 and their workman Shri Moloy Kr. Paul, C/o. Ram Sarkar, 3, Motilal Colony, P.O. Rajbari, Calcutta-700081.

(Case No. VIII-58/2000)

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SMT. DURGA KHAITAN, JUDGE

FOURTH INDUSTRIAL TRIBUNAL

KOLKATA

A W A R D

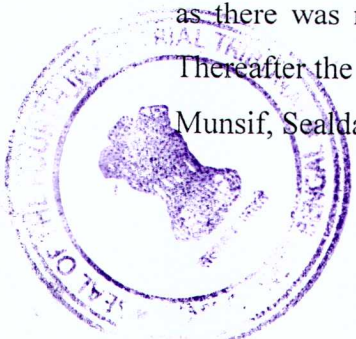
In the matter of an Industrial Dispute between M/s. Hotel Airport Ashok, Calcutta Airport, Calcutta-52 and their workman Shri Moloy Kr. Paul, C/o. Ram Sarkar, 3, Motilal Colony, P.O. Rajbari, Calcutta-700081 vide G.O. No. 524-I.R. dt.22.03.2000 referred to this Tribunal for adjudication. (Case No. VIII-58/2000).

Issues

- 1) Whether dismissal of Sri Moloy Kr. Paul from service with effect from 15.03.1999 by the management of Hotel Airport Ashok is justified?
- 2) If not, what relief Sri Paul is entitled to?

The case of workman Sri Moloy Kr. Paul as found from his written statement in brief is that he was appointed on 05.04.1989 for a monthly salary of Rs. 1335/- per month. He holds diploma in food and beverage service from institute of Hotel Management Catering Technology and Applied Nutrition, Calcutta. After three years of his service he was found in possession of three Bangladeshi currency "taka" of Rs. 100/- each and the management issued a charge-sheet against him on 03.04.1992. He denied all charges. The management suspended him from 27.03.1992 and penalized him by stopping three years increment and demoted him to the flight kitchen department as Flight Catering Operator that is FCO. Against this order the workman moved two writ petition before Hon'ble Court and the Hon'ble Court directed that the matter is to be taken up before the Industrial Tribunal under the Industrial Disputes Act and the second writ petition was disposed of by Hon'ble Court directing the authority that the representation of the workman may be considered by the authority and the appropriate order may be passed as per law preferably within three weeks of communication of the order but the management did not comply with the order of the Hon'ble Court. It is the further case of the workman that following order of Hon'ble Court he approached the Labour Commissioner but he was orally informed that as there was no union involved so matter cannot be taken up under Industrial Disputes Act. Thereafter the workman filed a declaratory suit vide Title suit No. 252/97 before the Court of 3rd Munsif, Sealdah and the case is still pending.

Contd. Page2



It is the further case of the workman that the management was annoyed because the workman took shelter under law and on 10.04.1995 the management issued 2nd charge-sheet on some false charge of supplying dirty beakers and sleeping during working hours and he was suspended from his service on 04.04.1995 in connection with alleged incident dt.03.11.994 (night shift). Ultimately management lifted the suspension order and initiated domestic enquiry but the charge-sheet was not communicated to the workman and he came to know about it when he received dismissal letter dt.15.03.1999 in connection with alleged 3rd charge-sheet dt.20.09.1995.

It is the further case of the workman that as regards alleged incident dt. 08.07.1995 the manager appointed Mr. Surrider Singh, the Assistant Manager to investigate the incident dt. 08.07.1995 so that the guilty person /s could be identified but in his report dt. 24.08.1995 Moloy Kr. Paul was not identified as the guilty person. So it is clear that charge-sheet dt. 20.09.1995 was completely baseless, motivated and predetermined only to harass him.

It is the further case of the workman that after more than two months of alleged incident dt. 08.07.1995 the management issued third charge-sheet on 20.09.1995 and suspended the workman with effect from 20.09.1995. The workman submitted reply to show cause denying all allegations. The charge-sheet stated that the workman pre-setted "stale and fungus ridden croissants" for serving in flight No. I.C.-263 on 09.07.1995 for 'Y' class passengers. The workman denied all allegations and stated that other persons were also responsible and particularly the person entrusted to check the quality of food and to supervise the overall work of the evening shift on 08.07.1995 were responsible. The Croissant were supplied by outside agency namely Monginis and the quality of food is first checked by the executives or by the nominated persons and also by the supervisors or by senior FCO and the workman is not senior FCO or supervisor. He was scheduled on 08.07.1995 evening shift for pre-setting the trays for 'Y' class passengers of flight No. I.C. 263 dt. 09.07.1995. Many items are put on the tray like jam, jelly, cutleries etc. Many persons were involved in the process and everyone involved with pre-setting including the shift-in-charge is responsible if anything goes wrong. It is the duty of the shift-in-charge to check the quality of food. So only one person cannot be held responsible. The quality of food is a question in dispute and the FCO is never responsible for quality of food. This is the duty of the supervisor or the senior FCO. The workman left the hotel at 9.30 p.m. on 08.07.1995.

It is the further case of the workman that after pre-setting the trays are kept in trollies and the Indian Airlines securities seal the trollies. Before the trollies are sealed the catering supervisor of Indian Airlines checks the trays normally at mid-night. The pre-setted trays remain unsealed for a considerable time after being put in the trollies. The person who is responsible for checking the quality of food on behalf of ITDC used to check and if such visible fungus ridden croissant were really supplied it could not escape the eyes of so many persons and all these persons are responsible for such negligence and the workman alone cannot be held responsible.

It is the further case of workman that during the enquiry proceeding neither the

complainant nor Mr. B.K. Sinha who was in-charge of the evening shift on 08.07.1995 was produced before the enquiry officer for cross-examination by the workman nor the sample of "stale and fungus ridden croissants" were placed before the enquiry officer for inspection and the workman did not get the chance for clarification. Thus, workman was deprived from opportunity to cross-examine material witnesses which is clear violation of principle of natural justice.

It is the further case of workman that the charges levelled against him are false, fabricated and with ulterior motive to victimize the workman as the company wants to get rid of him out of vengeance as he took shelter under the law by filing the writ petition before Hon'ble Court.

It is the further case of workman that after getting the perverse enquiry report the management dismissed the workman by letter dt. 15.03.1999 and in the dismissal letter the management has mentioned the charges as found in charge-sheet dt. 10.04.1995 but nothing was mentioned about the earlier charge-sheet dt. 0.04.1995 and the third charge-sheet dt.20.09.1995 which is in gross violation of law.

It is the further case of workman that the order of his dismissal is void and bad in law and may be set aside and he may be reinstated with full back wages and other consequential benefits.

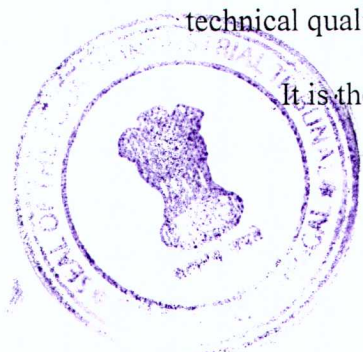
Written statement of the company

The case of the company in brief is that the reference is not maintainable as the workman has no locus standi and no dispute has been raised properly and the appropriate government has no material to refer the dispute to the Tribunal and the issues under reference are pre-judged, so reference is not maintainable and is suffering from infirmity of non-application of mind based on incorrect assumption.

On the factual side the company admits its existence and nature of business. The company admits that the workman was appointed on 05.04.1989 as counter attendant. It is the further case of the company that on 26.03.1992 the workman was caught red-handed for discrepancy in stock and cash and three Bangladeshi currency notes of hundred denomination were recovered from his possession for which he could not offer any explanation. A charge-sheet was issued to him on 03.04.1992 and he was placed under suspension. He was charged with sleeping during working hours. As his honesty and integrity became doubtful he was transferred to flight kitchen as FCO Gr-II in the same scale of pay and was awarded punishment of stoppage of three annual increments vide order dt. 06.07.1993. He challenged the order of management by filing two writ petitions challenging the punishment and the transfer order. Both the writs were dismissed by Hon'ble Court and the Hon'ble Court directed the management to consider the request of Sri Paul for allowing time to learn the job of flight kitchen. Sri Paul challenged this order of Hon'ble Single Bench before Hon'ble Division Bench but his appeal was dismissed.

It is the further case of the company that the job of FCO does not require any academic or technical qualification.

It is the further case of the company that Sri Paul's integrity and honesty became doubtful



and he became untrustworthy and his retention in the hotel became risky and the Union working in the hotel did not pursue his case at all. Sri Paul became aggressive because of transfer as FCO as there was no scope for illegal tips and gratification so he started sabotaging to defame and disrepute the management in the eyes of the customer.

It is the further case of the company that on 03.04.1994 while Sri Paul was in night-shift duty he did not clean the beakers for flight No. IC-263 of Indian Airlines, it was detected by Indian Airlines officials and serious complaint was lodged. As the nature of offence was sabotage a disciplinary proceeding was initiated against him vide charge-sheet dt.10.04.1994 and he was again placed under suspension. On his appeal suspension was withdrawn but he was found guilty in the enquiry.

It is the further case of the company that Mr. Paul again committed serious offence of supplying stale croissant in the food tray to the flight No. IC 263 of Indian Airline on 09.07.1995 and he was again charge-sheeted and placed under suspension vide letter dt. 20.09.1995. A preliminary investigation was conducted by Sri S. Singh AM (VXS) and in his enquiry report Sri Paul was found guilty of misconduct. The incident was serious and the management had to tender apology before Indian Airlines to retain business. Sri Paul was asked to explain. His explanation and the report of IAL was thoroughly investigated and Sri Paul was charge-sheeted. The offence prima facie appeared to be of sabotage by Sri Paul and he intentionally placed those fungus full croissants in the food tray of air passengers. The fungus was so apparent that any lay man having common sense could identify, detect it.

It is the further case of the company that fresh bread and croissant are supplied everyday by reputed food confectioner namely 'Monginis'. This was presumably done by Mr. Paul to take revenge upon the management for transferring him to flight kitchen. The bread was so damaged and harmful that it could cause disease to the passengers. Mr. Paul was found guilty after a full-fledged enquiry where he was given all opportunity.

It is the further case of the company that although he was found guilty in the second charge-sheet the company did not give any punishment for supplying dirty glasses.

It is the further case of the company that after enquiry of the third charge-sheet he was found guilty and report was submitted against him and the management dismissed Sri Paul vide letter dt. 15.03.1999 and directed him to settle his accounts.

It is the further case of the company that the dismissal of Sri Paul was effected after holding enquiry in strict compliance in the principle of natural justice. The dismissal was fair, proper, bona fide and justified. The company prayed for taking of the validity of domestic enquiry as preliminary point and craved leave for adducing evidence before the Tribunal.

It is the further case of the company that the statements made by the workman in his written statement are false. All material averment made by the workman are denied by the company.

It is the further case of the company that the workman filed a declaratory suit before the

Sealdah Court challenging that he was not allowed training at flight kitchen, the case was dismissed and he filed appeal against the judgement and the appeal is pending before Barasat Court. The management states that the allegation of the workman that it is the duty of the supervisor to look after the quality of food is baseless and unfounded and he has tried to shift the guilt on his co-worker / supervisor to shield his guilt by camouflage. The charges levelled are all genuine and bona fide.

Thus, the management has prayed for holding that the action of the management was justified, legal and bona fide and the workman is not entitled to any relief whatsoever.

The issue of validity of domestic enquiry was decided by this Tribunal in favour of workman on 16.06.2003.

Being aggrieved by referred order of this Tribunal the Company moved before Hon'ble Court vide W.P. No. 1733 of 2003 and Hon'ble Single bench was pleased to uphold the order of Tribunal and dismiss the writ petition so preferred by the company vide order dt.27.01.2016.

Being aggrieved by the order of Hon'ble Single Bench the Company moved Hon'ble Division Bench vide GA No. 1755 of 2016/APO No. 101 of 2016 and on 12.07.2016 Hon'ble Division Bench has pleased to remand the matter back to Tribunal for hearing in view of judgement rendered in D.P. Maheswari.

On going through the order of Hon'ble Division Bench it is clear that Hon'ble Division Bench has desired this Tribunal to allow parties to prove their case by adducing oral and documentary evidence and to finally decide all issues in dispute in the industrial dispute pending before this Tribunal by referring to judgement of Hon'ble Supreme Court rendered in D.P. Maheswari Vs. Delhi Administration reported in AIR 1984 SC 153.

Accordingly, parties were permitted to adduce further oral and documentary evidence and matter was heard afresh. As the previous order of this Tribunal as regards validity of domestic enquiry was set aside by Hon'ble Court and matter was remanded back. Let us now evaluate all materials on record put by Company justifying dismissal of Mr. Moloy Kr. Paul.

In view of the above stated direction of Hon'ble Division Bench this Tribunal is to adjudicate on all the issues referred including the validity of domestic enquiry and pass the final award.

Under such special circumstances, to adjudicate on whether the dismissal of Sri Moloy Kr. Paul from service with effect from 15.03.1999 by the management of Hotel Airport Ashok is justified or not all the materials on record including the evidence adduced during hearing on the point of validity of domestic enquiry is also to be taken into consideration along with the evidence adduced after order of Hon'ble Division Bench.

Evidence adduced during hearing on point of validity of domestic enquiry

To establish that the domestic enquiry was vitiated and did not follow principles of natural justice or was bad in law the workman examined himself as his sole witness.

The workman deposed that he was an employee of M/s. Hotel Airport Ashok and was terminated from service on 20.09.1995 on false allegation. He proved the copy of charge-sheet (Ext. 1), information slip (Ext. 2) and deposed that after obtaining the charge-sheet he gave reply to it and his reply was marked Ext. by the enquiry officer. P.W.-1 deposed that the incident took place on 08.07.995 in the evening and on the next day management directed him, G.P. Rao and Bidyut Sinha to show cause regarding supply of fungus ridden bread to boarders. Thereafter, the unit manager directed vigilance to investigate and identify real culprit. P.W.-1 received copy of preliminary enquiry held by Mr. Surrinder Singh, Assistant Manager Vigilance and Security. That report was marked Ext. during domestic enquiry. P.W.-1 deposed though that in the preliminary enquiry the guilty person could not be identified and was not named. charge-sheet was issued only against him. P.W.-1 deposed that the nature of his work was to present food and place it on trolley for supply to the boarders. The trollies were not locked by them, thereafter the supervisor, Indian Airlines checked it and after his direction their securities locked the trollies. P.W.-1 deposed that on the date of incident same procedure was maintained. He deposed that peopled worked in three shifts that is from 6.30 a.m. to 1.30 p.m., 1.30p.m. to 9.30 p.m., 9.30 p.m. to 6.30 a.m. and there was a general shift also from 10 a.m. to 6 p.m. He deposed that on 08.07.1995 he was on duty in evening shift. P.W.-1 deposed that in case of any irregularity the supervisor of catering depart used to note down in log book and used to inform itto the on duty supervisor of the Hotel. P.W.-1 deposed that he did not get proper assistance or help during domestic enquiry. Management informed that complaint was made by one I.C.S. Raju who was not examined by enquiry officer and Moloy Kr. Paul did not get opportunity to cross-examine the complainant. The names of Mr.G.P.Rao and Mr. Bidyut Sinha were listed as witnesses butMr. Bidyut Sinha was not produced for evidence. P.W.-1 deposed that the alleged fungus-ridden bread was not placed before enquiry officer during domestic enquiry proceeding. P.W.-1 deposed that the management issued second show cause notice to him and he replied to the same and thereafter he was illegally terminated from his service. He proved the dismissal letter (Ext. 3). He proved the report of enquiry officer with annexures (Ext. 4) and deposed that the enquiry was illegal and not justified.

During cross-examination P.W.-1 deposed that he was examined by the enquiry officer, he attended and participated in that enquiry and signed on all pages of enquiry and obtained copy of day to day proceeding. The enquiry officer allowed him to engage a representative from any co-worker but he conducted his case himself. P.W.-1 deposed that he did not pray for adducing evidence of the management witness in writing. He deposed that Mr. G.P. Rao was produced as management witness-1 during domestic enquiry and he cross-examined Mr. G.P. Rao. He did not lodge any written objection before the enquiry officer but raised objection orally on several occasions. P.W.-1 deposed during cross-examination that management did not produce I.C.S. Raju before the enquiry officer. He denied that sufficient opportunity was given to him to defend his case during enquiry. He denied that the enquiry held by management was proper and justified.

To establish that the domestic enquiry was valid and lawful the company examined Sri Uddalok Mitra as its sole witness.

O.P.W.-1 Sri Uddalok Mitra deposed that he was an employee of M/s. Hotel Airport Ashok and he took V.R.S. and appeared on summons. He deposed that he was engaged for holding enquiry against Mr. Moloy Kr. Paul. He held enquiry for the charge-sheet dt. 20.09.1995. O.P.W.-1 proved the entire proceeding and report of domestic enquiry (Ext. A). He deposed that the enquiry started on 08.12.1995 and was concluded on 31.03.1997, he exhibited the documents placed before him by the parties and informed the procedure to the delinquent workman. O.P.W.-1 deposed that the workman did not raise any objection and signed the day to day proceeding and chose to represent himself. O.P.W.-1 deposed that he recorded all evidence correctly and Mr. Moloy Kr. Paul did not adduce any evidence on his behalf except himself. O.P.W.-1 deposed that he gave opportunity to Mr. Moloy Kr. Paul for cross-examining the management witness. O.P.W.-1 deposed that the report of preliminary enquiry held by Mr. Surrinder Singh was supplied to the party. The fungus ridden bread was not placed before him during enquiry and the workman never stated in his evidence that the bread was not fungus ridden. O.P.W.-1 deposed that he gave sufficient opportunity to the workman to defend himself and followed the principles of natural justice and submitted his report properly with sufficient reasons and found the workmen guilty of the charges levelled.

During cross-examination O.P.W.-1 deposed that before this domestic enquiry he held other enquiry proceeding also. He deposed that he worked in Hotel Airport Ashok from 1990 to 1996 and 1999 to 2002 and conducted about 6 enquiry proceedings in all and he is well acquainted with the procedure for holding enquiry proceeding. O.P.W.-1 deposed that he examined three witnesses on behalf of management during this enquiry. Mr. Raju was not examined. None of the witnesses stated to him why the fungus ridden bread was not placed before him during enquiry. O.P.W.-1 deposed that none of the witnesses stated that they had personally seen Sri Moloy Kr. Paul putting fungus-ridden croissant on the tray. He denied suggestions to the contrary.

After the above stated direction of Hon'ble Division Bench both parties adduced further evidence on all issues.

Evidence adduced after order of Hon'ble Division Bench

The workman adduced following evidence:-

- 1) Oral evidence – Sri Moloy Kr. Paul examined himself as P.W.-1
- 2) Documentary evidence –
 - i) Ext. 1- the receipt of croissant dt. 10.07.1995 proved by CSW- Tapas Biswas
 - ii) Ext. 2-the entry showing that the duty hours of Moloy Kr. Paul was from 14 hours to 21.30 hours on 08.07.1995 proved by CSW- Tapas Biswas.
 - iii) Ext. 3-Photo copy of letter of Moloy Kr. Paul addressed to the manager of Hotel Airport Ashok.



- iv) Ext. 4-Photo copy of letter of Moloy Kr. Paul dt. 05.09.1995 addressed to Senior Manager (Personnel)
- v) Ext. 5 - Photo copy of letter of Moloy Kr. Paul addressed to manager of Hotel Airport Ashok
- vi) Ext. 6 - Photo copy of letter dt.11.7.95 of Mr. G.P. Rao addressed to the manager Airport Restaurant and Flight Kitchen in response to the show cause issued to him.
- vii) Ext. 7 - Photo copy of letter dt.11.7.95 of Mr. B.K. Sinha addressed to the manager of Airport Restaurant and Flight Kitchen in response to the show cause issued to him.
- viii) Ext. 8 – Photo copy of statement Mr. B.K. Sinha recorded by the Security officer Mr. Surinder Singh during preliminary enquiry
- ix) Ext. 9 – photo copy of statement of Mr. Rajib Nair recorded by the security officer Mr. Surrinder Singh during preliminary enquiry

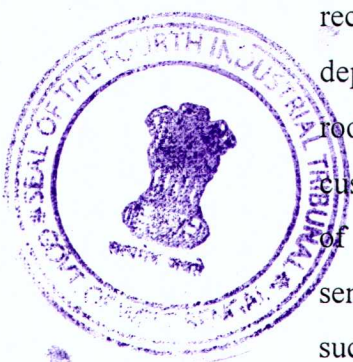
The management adduced following evidence:-

- 1) Oral evidence – C.W.-1 Sri Tapas Biswas
- 2) Documentary evidence –
 - A) Ext. A -Photo copy of charge-sheet dt. 20.09.1995
 - B) Ext. B – appointment letter of Moloy Kr. Paul dt. 05.04.1989
 - C) Ext. C – suspension order of Moloy Kr. Paul dt. 27.03.1992
 - D) Ext. D - charge-sheet dt. 03.04.1992
 - E) Ext. E - charge-sheet dt. 10.04.1995
 - F) Ext. F – show cause notice dt. 25.02.1995
 - G) Ext. G – suspension order dt. 04.04.1995
 - H) Ext. H – copy of letter sent by manager catering Indian Airline to Manager Airport Restaurant and Flight Kitchen on 10/11.07.1995
 - I) Ext. I – receipt given by passenger namely Ashad Faiaz for payment of tip of Rs. 300/-
 - J) Ext. J – investigation report dt. 24.08.1995 relating to third charge-sheet issued against Moloy Kr. Paul.
 - K) Ext. K – show cause notice dt. 09.07.1995 issued by manager Sri Sandip Mukherjee to Moloy Kr. Paul.
 - L) Ext. L – apology letter dt. 12.07.1995 sent by the manager Sandip Mukherjee to the manager (catering) Indian Airlines.
 - M) Ext. M – show cause notice dt. 30.08.1995 issued by senior manager (personnel) to Moloy Kr. Paul.
 - N) Ext. N – second show cause notice dt. 09.11.1998 sent to Moloy Kr. Paul regarding proposed punishment of dismissal for two Charge sheets dated



- O) 20.9.95(issued for pre-setting alleged stale croissant) and 10.4.95(issued for supplying alleged dirty beakers and sleeping on duty).
- P) Ext. O – the reply to the second show cause by Moloy Kr. Paul to the general manager, Hotel Airport Ashok dt. 21.11.1998.
- Q) Ext. P – dismissal letter issued to Moloy Kr. Paul dt. 15.03.1999.
- R) Ext., Q – standing order of Hotel Airport Ashok (12 pages).

In his affidavit-in-chief Moloy Kr. Paul corroborated his written statement and deposed that on 08.07.1995 he performed the pre-setting job for Y class passengers of IC-263 flight along with another FCO G.P. Rao and his shift was from 1.30 p.m. to 9.30p.m. He deposed that he joined his duty on 08.07.1995 after thorough checking of his person at the entry point. He deposed that the stated croissants were not sent for any verification for determining whether it was stale and fungus ridden and the alleged croissant were never shown to him and were not preserved for the purpose of investigation or enquiry proceeding. He deposed that the chef D.D. Mukherjee gave his opinion on the average period when the croissant was likely to develop staleness only on presumptive basis. P.W.-1 deposed that he replied to charge-sheet but the management did not consider his reply. P.W.-1 deposed that no complaint was lodged regarding alleged croissant against the supplier 'Monginis' and said supplier was not examined during the investigation by the management. P.W.-1 deposed that the FCO Mr. G.P. Ray and supervisor Mr. Bidyut Sinha were also show caused in connection with the alleged croissant but no action was taken against them and Mr. G.P. Rao appeared as a management witness during the enquiry proceeding. P.W.-1 deposed that although the supervisor Mr. B.K. Sinha was listed as a management witness he did not appear in the enquiry proceeding. P.W.,-1 deposed that both he and D.P. Rao performed the job of pre-setting on 08.07.1995 evening shift under supervision of the shift supervisor Mr.Sinha. P.W.-1 deposed that he requested the enquiry officer to produce the supervisor Mr. B.K. Sinha as a witness to enable him to cross-examine this witness but the management refused to produce him and he was deprived of opportunity to cross-examine the supervisor. P.W.-1 deposed that at the time of alleged incident M/s. Kolkata Hotel Pvt. Ltd. was not connected with the business of Hotel Airport Ashok on 08.07.1995. P.W.-1 deposed that the management could not produce any receipt showing fresh supply of croissant by Monginis on 08.07.1995 rather management has produced a receipt of such supply of 10.07.1995. P.W.-1 deposed that management did not produce any stock register showing date-wise receipt or croissant delivered by 'Monginis' to Airport Flight Kitchen. P.W.-1 deposed that fresh croissant supplied used to be kept in a room called cold room, fruit room and sweet room adjacent to the manager's office under the secured and closed custody of the manager APR and FK under lock and key and it was the routine duty of the concerned officer in the cold room to check the quality of the croissant to be sent to Flight Kitchen for serving to the airline passengers and on 08.07.1995 also such routine quality check was made. P.W.-1 deposed that he did not bring any



croissant from the cold room to the Flight Kitchen for pre-setting on 08.07.1995 as it was not his duty to bring croissant from cold room to flight kitchen. P.W.-1 deposed that the utility worker Babu Das brought the croissant from cold room to Flight Kitchen for pre-setting on 08.07.1995 but said Babu Das was not examined during investigation proceeding or domestic enquiry proceeding. P.W.-1 deposed that it was the standard practice of security staff to record in the log-book at the entrance point of Airport Restaurant and Flight Kitchen any temporary exit of any staff from premises of Airport Restaurant and Flight Kitchen to any outside area including airline area during duty hours. But no such log-book was produced. P.W.-1 deposed that the management could not produce any document to show that Mr. B.K. Sinha or Mr. Babu Das temporarily left the APR/ FK area and went to the Indian Airline Catering Department or anywhere else for any purpose during duty hours on 08.07.1995. P.W.-1 deposed that Mr. B.K. Sinha was present when the process of pre-setting of croissant was going on and he did not raise any objection about the quality of croissant which were distinctly visible to him. P.W.-1 deposed that he left the Flight Kitchen area by 9 p.m. on 08.07.1995. P.W.-1 deposed that after pre-setting was completed by him and G.P. Rao and he left the area the catering supervisor came to APR/FK area along with Indian Airlines security at around midnight to thoroughly pre-setting croissant for quality which are kept in side the trolley of APR/FK. P.W.-1 further explained the process and deposed that the catering supervisor of Indian Airlines thoroughly checks the quality and after being satisfied the supervisor asks the security personnel to lock the trolley finally to be boarded in the morning flight for IC 263. P.W.-1 deposed that he had no occasion to be present in the APR/FK area and Indian Airlines area after pre-setting of croissant on 08.07.1995 till lifting of croissant to the aircraft on 09.07.1995 as during the period the food is in the custody of Indian Airlines. P.W.-1 deposed that the supervisor Mr. B.K. Sinha was not held responsible for dereliction of duty and no steps were taken against him by the management. P.W.-1 deposed that none of the witness examined by the management saw him mixing any stale and fungus-ridden croissant while pre-setting on 08.07.1995 and the management could not identify any hidden place in the Flight Kitchen area. P.W.-1 deposed that it is absolutely false and baseless to allege that he was in advantageous position and he could bring croissant from any hidden place and mix the same while pre-setting on 08.07.1995. P.W.-1 deposed that in all 16 persons were working in the Flight Kitchen including he and Mr. G.P. Rao on 08.07.1995 evening shift and all were working side by side in one single room. P.W.-1 deposed that the investigation officer MR. Surrinder Singh or the captain of the flight IC 263 Mr. T.K. Guha or the Assistant G.M. Operation, Indian Airlines Mr. Gurudas Sarkar or the Deputy Manager, Catering Indian Airlines Mr. P.K. Biswas were not examined during the domestic enquiry. P.W.-1 denied the allegations of negligence or ill motive or intention to cause damage to the hotel. He denied all allegations. P.W.-1 deposed that he was denied opportunity to cross-examine the management witnesses who were



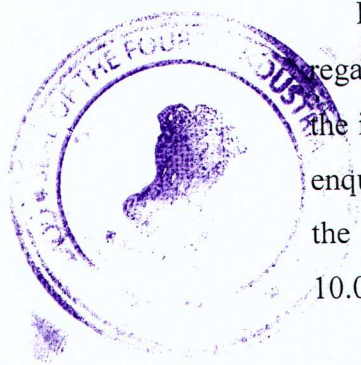
deliberately withheld by the management and he was unreasonably asked to discharge the burden of proof. He prayed as per prayer of pleading.

During cross-examination he admitted that on 26.03.1993 a surprise check was done at the counter of Hotel Airport Ashok and the discrepancy regarding cash of stock was detected but added that the discrepancy was caused as updating of stock was not done. He admitted that during that check three Bangladeshi currency notes of Rs. 100 were found in his pocket and added that customers gave it to him as tips. He admitted the facts that charge-sheet was issued dt.03.04.1992 and his punishment and his filing or two writ applications against such order of management and dismissal of the writ applications by Hon'ble Court. P.W.-1 deposed that he was a member of a union and that on 30.04.1994 he had night duty. He denied that he deliberately sent unclean glasses to flight No. IC 263. He admitted that charge-sheet was issued on dt. 10.04.1994. He deposed that he was not found guilty in that enquiry. He denied that he deliberately supplied stale food to IC 263 flight. He admitted that on 20.09.1995 another charge-sheet was issued against him and he was placed under suspension and was found guilty in that enquiry and the management terminated his service. During cross-examination dt. 28.02.1995 P.W.-1 deposed that on 08.07.1995 during evening shift a team comprising of him, Mr. G.P. Rao and Mr. Bidyut Sinha did the work of pre-setting. He denied the suggestion that many statements made in his affidavit-in-chief are beyond his pleadings.

Evidence of Tapas Biswas:-

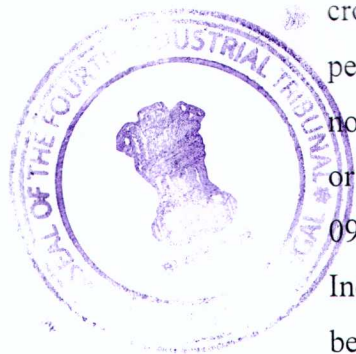
The company's witness C.W.-1 Tapas Biswas deposed that he is attached to Kolkata Hotel as its senior manager and has come to know that Moloy Pal was an employee of ITDC Hotel Airport Ashok. He deposed that this Hotel used to run Flight Kitchen service previously but said service is suspended now. C.W.-1 deposed that Hotel Airport Ashok is no longer in existence because of disinvestment and Kolkata Hotel Ltd. is running the business of previous Hotel Airport Ashok. He deposed that with the change of name there has been change of management as well. C.W.-1 deposed that the disinvestment took place on 08.07.2002. He corroborated the previous charges and enquiry against Moloy Kr. Paul and proved the charge-sheet dt. 20.09.1995, appointment letter of Moloy Kr. Paul, suspension order, charge-sheet of 03.04.1992, charge-sheet of 10.04.1995, show cause dt.25.02.1995, suspension order dt.04.04.1995 and such other documents.

During cross-examination he admitted that he has no personal knowledge regarding the documents filed and proved in this case. C.W.-1 admitted that during the incident in question Kolkata Hotel Ltd. was not in existence. He deposed that the enquiry officer was Mr. Uddalak Mitra and he does not have any knowledge about the enquiry and suspension. He admitted that charge-sheet dt. 03.04.1992 and 10.04.1995 are not subject matter of charge-sheet dt. 20.09.1995. C.W.-1 admitted



that the complaint by manager catering Indian Airlines dt. 0.07.1995 shows that the complaints were increasing. He admitted that the complainant was not examined during the enquiry proceeding. The supplier Monginis was not examined in the enquiry proceeding and he does not have any knowledge whether the stock register of croissant was produced before the enquiry officer or not. He proved Ext. 1 and deposed that as per this receipt croissant were received on 10.07.1995 but the number of croissant supplied is not clear from this receipt (Ext. 1) and deposed that it can be 70 or 700. C.W.-1 deposed that he does not know whether on 08.07.1995 any fresh stock of croissant was received by the Airport Restaurant and Flight Kitchen or not. C.W.-1 deposed that the two sample croissants which were handed over to Rajib Nair on 09.07.1995 by Indian Airlines catering officers were shown to Sandip Mukherjee, Manager Airport Restaurant and Flight Kitchen. C.W.-1 deposed in positive in cross-examination that the sample croissant were not sent for any chemical examination. He deposed that as it was fungus-ridden croissant it was not feasible to preserve the same for the purpose of enquiry or investigation. C.W.-1 deposed that the investigating officer saw the condition of the croissant but the domestic enquiry officer did not get the opportunity of seeing the same. He denied the suggestion that the investigating officer did not actually see the sample croissant. C.W.-1 deposed that the investigating officer Surrender Singh was not examined as a witness in the enquiry proceeding. C.W.-1 deposed that generally whenever croissants are received from 'Monginis' they used to be checked by the executive and there was a stock register and whenever fresh stock received from Monginis the same was entered with the register but he could not say whether the stock register was produced during the enquiry or before the enquiry officer and the investigating officer. C.W.-1 admitted that it is not possible to know the position of stocks of croissant available as on 08.07.1995 without seeing the stock register.

He proved the entry showing that Mr. Moloy Kr. Paul was on duty from 2 p.m. to 9.30 p.m. on 08.07.1995 (Ext. 2) and admitted that Mr. Paul left the AR/FK after 9.30 p.m. on 08.07.1995. He admitted that after pre-setting the trays were placed on the trolley and the trolleys were loaded on the high loader by the FCO and once it is high loaded the job of FCO is over and the airlines people take over all control of the croissant from the AR/FK. C.W.-1 admitted that from thereon the Indian Airline personnel take care of the trolleys till it is air lifted inside the aircraft. C.W.-1 could not say whether the Indian Airlines people took custody of the trollies on 08.07.1995 or in the morning of 09.07.1995. He denied that there was checking of croissant on 09.7.1995 between 1 a.m. to 1.30 a.m. on 09.07.1995 by the catering supervisor of Indian Airlines. C.W.-1 admitted that Sri G.P. Rao and Sri Rajib Nair made statement before the enquiry officer. He admitted that G.P. Rao was the first witness of the management in the enquiry proceeding and Mr. Rajib Nair stated before the enquiry officer that food quality of IC 263 of 09.07.1995 was checked by the supervisor on



3

duty and Indian Airline officials on 08.07.1995. He however denied that the pre-setting trollies were sealed on 09.07.1995 only after checking was done by the Indian Airline catering supervisor. **C.W.-1 deposed that it is not the duty of the FCO to check the quality of the food and Moloy Kr. Paul is FCO.**

C.W.-1 deposed that no complaint was made by the Indian Airlines catering supervisor on 09.07.1995 regarding quality of croissant to the Airport Restaurant and Flight Kitchen. C.W.-1 admitted that from pre-setting till sealing of trolleys for uploading there was no complaint regarding the quality of pre-setted croissant from Indian Airlines Catering supervisor. He denied knowledge about the suggestion that none of the management witnesses stated before enquiry officers that Moloy Kr. Paul mixed old croissant with fresh ones. He deposed that Mr. B.K. Sinha was the evening shift-in-charge on 08.07.1995 but he does not know whether Mr. B.k. Sinha was charge-sheeted for incident of 08.07.1995 or not. C.W/-1 deposed that Mr. G.P. Rao and Mr. Moloy Kr. Paul were served show cause notices.

C.W.-1 Tapas Biswas deposed that the investigating officer has mentioned in his report that at 1 p.m. on 09.07.1995 Captain Mr. T.K. Guha reported that there was fungus in croissant. He further admitted that it is correct that in report of investigating officer it was stated that Mr. Prabir Biswas was not sure whether he received complaint in writing or verbally. C.W.-1 admitted that in the report of investigating officer it is mentioned that Mr. Prabir Biswas directed the I.O. to contact the G.M. (Operation) for further details and the I.O. contacted Mr. Gurudas Sarkar G.M. (OPS). He further admitted that Mr. Gurudas Sarkar G.M. (OPS) told the I.O. that had there been any complaint on I.C. 263 on 09.07.1995 the complaint would have been initiated from his (Mr. Gurudas Sarkar G.M. (OPS) office. C.W.-1 deposed that he does not know whether Mr. Gurudas Sarkar G.M. (OPS) expressed any doubt about supply of croissant on 09.07.1995. He deposed that as per the report of investigating officer Mr. T.K. Guha was very sure that a written complaint was lodged before him regarding irregularity in the croissant and as per report of I.O. according to Mr. T.K. Guha the detection of alleged croissant was made after 20 to 25 minutes taking off of flight I.C. 263 and the same came to notice of Mr. T.K. Guha when some lady cabin crew reported it but C.W.-1 could not say whether the lady cabin crew was examined during domestic enquiry or not. C.W.-1 deposed that he does not know whether Mr. T.K. Guha, Mr. Prabir Biswas and Mr. N.R. Chatterjee were examined during enquiry proceeding or not. He admitted that captain Mr. T.K. Guha could not state the name of the lady cabin crew who reported about that croissant on 09.07.1995. He deposed that he does not know whether any written complaint was produced during enquiry. C.W.-1 admitted that the shift in-charge of India Airlines checked the quality of food and number of trollies between 1 a.m. To 1.30 a.m. and this fact was stated by Mr. G.P. Rao during the enquiry. C.W.-1 deposed that the sealing of trolleys is done by Indian Airlines Security after checking by the Indian Airlines Catering supervisor and

during enquiry Mr. G.P. Rao corroborated the statement. C.W.-1 deposed that he agrees to this statement of Mr. G.P. Rao that the food quality and other things were checked by Indian Airlines Catering supervisor who arrives after the pre-setting is done. C.W.-1 however denied the suggestion that the croissant was checked by the Indian Airlines Supervisor on 09.07.1995 before uplifting the same to flight. He could not say at what time exactly the trollies were uplifted or whether it was uplifted before or after checking by Indian Airlines Catering Supervisor. C.W.-1 could not say whether Mr. Moloy Kr. Paul was present after the checking of croissant by Indian Airlines supervisor and after it was uplifted to the aircraft. C.W.-1 deposed that he has no personal knowledge about whether the Indian Airlines Supervisor checked the quality of croissant on 08.07.1995. C.W.-1 deposed that he cannot say whether the statement of Mr. Rajib Nair Assistant Manager of ARFK that all the employees were responsible for the incident is correct or not.

C.W.-1 admitted that the pre-setting of croissant was supposed to take place under the supervision of Mr. B.K. Sinha the evening shift-in-charge of the ARFK on 08.07.1995 but on 08.07.1995 Mr. B.K. Sinha was not present at pre-setting area for 2-3 hours and on that day Mr. B.K. Sinha did not exercise his work of supervision on pre-setting in the pre-setting area. C.W.-1 admitted that on 08.07.1995 on being asked by Mr. B.K. Sinha, Mr. G.P. Rao came from washing area to work with Mr. Moloy Kr. Paul at pre-setting area. Mr. B.K. Sinha did not check the quality of croissant before leaving the pre-setting area and returned to pre-setting area at 18.00 to 18.30 hours. C.W.-1 deposed that as per statement of Mr. G.P. Rao pre-setting of croissant was partially done and some trays were loaded by Mr. Moloy Kr. Paul by the time Mr. B.K. Sinha returned to the pre-setting area but Mr. B.K. Sinha stated that when he returned to pre-setting the pre-setting of croissant was already completed (So, there is contradiction between statements of Mr. G.P. Rao and Mr. B.K. Sinha).

C.W.-1 deposed that it is possible that old croissant may be kept hidden in some place in the Flight Kitchen area. C.W.-1 did not deny that Mr. B.K. Sinha stated in the domestic enquiry that there could not be any old croissant of two three days in the pre-setting area. C.W.-1 admitted that as per statement of Mr. G.P. Rao on 08.07.1995 he was called by Mr. B.K. Sinha for doing pre-setting job along with Mr. Moloy Kr. Paul. He admitted that Mr. Rajib Nair stated that he did not have personal knowledge of pre-setting of croissant and heard it from the shift-in-charge Mr. B.K. Sinha. C.W.-1 deposed that Mr. Rajib Nair stated that there were 12 people working in the Flight Kitchen area when pre-setting was done although Mr. Nair was not present in that FK area in the even shift of 08.07.1995.

C.W.-1 admitted that the practices when croissant were received from outside they were kept in cold room adjoining to the executive office under lock and key and the key of cold room was kept with the security personnel and sometimes with the manager Flight Kitchen. He admitted that off-loaded croissants were taken away by



the boys of Missionary of Charity. He denied the possibility of off-loaded croissants being kept in Flight Kitchen area. He deposed that whenever the croissant were received from out side they are checked by the Executive, quality control. But he could not say whether on 08.07.1995 the croissants which were received from out sidewere checked by the Executive, quality control. He deposed that sometimes the croissants were kept in poly pack at Flight Kitchen area. C.W.-1 deposed that when any employee of Flight Kitchen area leaves that area he has to note the departure time at the security point. He could not say whether Mr. B.K. Sinha noted his time of departure from Flight Kitchen area to go to I.A. office on 08.07.1995 or not. C.W.-1 deposed that no passenger of the flight who allegedly complaint about fungus in croissant was examined before the enquiry officer. C.W.-1 admitted that in pre-setting rooms many tables were kept side by side. He admitted that there were 173 passengers on board in I.C. 263 on 09.07.1995 and as per statement of captain Mr. T.K. Guha 50 % of croissant were unconsumable although Mr. Rajib Nair doubted the exact No. of fungus-ridden croissant and deposed that around 40 % of croissant s could have been stale.

C.W.-1 deposed that the I.O. Mr. Surrinder Singh stated that he did not find any inconsistency in the complaint. C.W.-1 deposed that if croissants were kept hidden at some place there is possibilities of growing fungus.

C.W.-1 admitted that the I.O. did not mention the name of Mr. Moloy Kr. Paul specifically as the offender in his report.

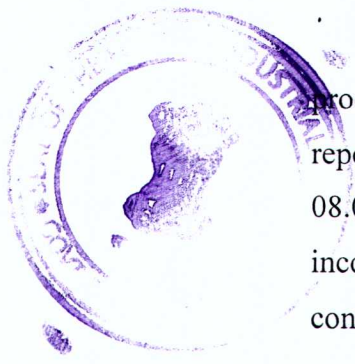
C.W.-1 admitted that none of the witness examined by the I.O. or by the E.O. has seen Mr. Moloy Kr. Paul mixing any stale croissant.

C.W.-1 admitted that as per investigation report Mr. G.P. Rao performed the work of pre-setting.

C.W.-1 deposed that one Haradhan Dey conducted the preliminary investigation but could not say whether Mr. Haradhan Dey was examined in the enquiry proceeding. C.W.-1 deposed that as per investigation report the I.O. examined a burger and a croissant, Mr. Kadam Singh a witness of such examination was not examined in the enquiry proceeding.

C.W.-1 admitted that the I.O. examined other croissant (not the ones allegedly found on 08.07.1995 / 09.07.1995) to know how many days it takes for a croissant to get infected or get stale.

C.W.-1 deposed that Mr. D.D. Mukherjee was not examined in the enquiry proceeding. He admitted that the I.O. did not name anyone as the wrong-doer in his report. He denied that Mr. B.K. Sinha was spared for his dereliction of duty on 08.07.1995. He denied that the I.O. observed in his report that there was inconsistency in the complaint of Indian Airlines. He denied suggestion to the contrary.



Ld.Counsel for the Company argued that :-

- 1) Ld. Counsel for the Company argued that the order of reference is not maintainable in law as :-
 - A) There is no industrial dispute between Mr. Moloy Kr. Paul and the management as
 - i) Mr. Moloy Kr. Paul never raised any dispute with the management before raising the dispute with the Labour Directorate. He has not filed any document to show that he raised the dispute with the management first. And referred to the judgement of Hon'ble Supreme Court as reported in 1968 Lab I.C. Vol. 1 page-526 where Hon'ble Court has pleased to hold that, " if no dispute was raised by the respondent with management any request sent by them to the government would only be a demand and not an industrial dispute A mere demand to the government without a dispute being raised by the workman with the employer cannot be an industrial dispute". In this regard Ld. Counsel referred to another judgement of Hon'ble High Court, Calcutta as reported in 2005 FLR Vol. 105 page-532 where Hon'ble Court has held the same.
 - ii) Ld. Counsel for Company further argued that the domestic enquiry conducted by the management was fair and proper and argued that :-
 - a) Ld. Counsel for company argued that on 16.03.2003 this Tribunal held that the domestic enquiry was perverse and against that order the Company moved the writ application which was dismissed by Hon'ble Single Bench on 27.01.2016 and against this order the company moved Hon'ble Division Bench and Hon'ble Division Bench remanded the matter back for hearing by it in view of the judgement passed by Hon'ble Supreme Court in the case of D.P. Maheswari.
 - b) Ld. Counsel for company argued that the preliminary issues meant by Hon'ble Supreme Court in D.P. Maheswari were totally different like territorial jurisdiction etc. but validity of domestic enquiry does not come within the purview of such preliminary issues and in this connection referred to judgement of Hon'ble Supreme Court as reported in 1972 LIC 1441 where Hon'ble Court was pleased to hold that, " we are, therefore clearly of the opinion that when a case of dismissal or discharged of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. In this regard Ld. Counsel referred to another judgement of Hon'ble Supreme Court, as reported in 2018 FLR Vol. 157 page-340 S.C. and 2019 LLR Vol. 3 S.C. where Hon'ble Court has held the same.
 - c) Ld. Counsel for company argued that in view of the above referred judgement of Hon'ble Supreme Court in spite of direction of Hon'ble Division Bench of Calcutta High Court this Tribunal does not need to hear the validity of domestic enquiry again along with the merits of the case as the same is not permissible in law.
 - d) Ld. Counsel for company argued that as validity of domestic enquiry was held not

- e) proper the record pertaining to domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Tribunal to be defective and such record does not constitute 'materials on record'. Ld. Counsel argued that the record of enquiry held by management ceased to be 'materials on record' within the meaning of Section 11A of the I.D. Act and in this regard referred to judgement of Hon'ble Supreme Court as reported in 1999 (81) FLR page-188.
- iii) Ld. Counsel for Company further argued that charges brought against Sri Moloy Kr. Paul are genuine true and correct as :-
- Ld. Counsel referred to the charge-sheet dt. 20.09.1995 (Ext. A) and to the letter of Indian Airlines dt. 10.07.1995 (Ext. H) and argued that there is no reason for Indian Airlines to unnecessarily make a complaint of stale croissant full of fungus had there been no such croissant.
 - Ld. Counsel for Company argued that it is immaterial whether the number of stale croissant full of fungus was small or huge as there is no difference between theft of one rupee or of one thousand rupees. There was loss of trust and confidence.
 - Ld. Counsel for Company argued that in his cross-examination Moloy Kr. Paul stated on 28.02.2019 that on 08.07.1995 he, G.P. Rao and Bidyut Sinha did the work of pre-setting in evening shift. Ld. Counsel argued that out these three Mr. Moloy Kr. Paul single handed-ly pre-setted the said croissant.
 - Ld. Counsel for Company argued that in clause 1(d) at page-4 of investigation report dt. 24.08.1995 (Ext. J) it is stated that, "Nair also mentioned the details of the staff who were on duty in the Flight Kitchen in the evening shift on 08.07.1995. He clarified that Sri B.K. Sinha had been in IA Stores. Sri Moloy Kr. Paul had done the pre-setting work of croissant for the breakfast flight of the next day i.e. 09.07.1995 and Mr. G.P. Rao did the pre-setting of 'J' Class trays of all flights..... the croissants were also taken out from store by Mr. Moloy Kr. Paul himself since the only utility worker Sri Bhanu Das on duty in that shift accompanied Mr. Sinha to IAL stores. Ld. Counsel argued that the IO has opined in clause 5(b) that Mr. Moloy Kr. Paul only did the pre-setting job and he himself brought the croissant from the store prior to placing it in the trays and the IO has concluded that," could not be denied that those croissants were supplied from APR&FK only to IC 263 on 09.07.1995 and Mr. Moloy Kr. Paul, FCO was in advantageous position to mix the stale croissant which must have been hidden some crevices of Restaurant earlier, put those while single-handedly pre-setting the flight IC 263 of 09.07.1995". **Ld. Counsel argued that the existence of such fungus ridden stale croissant in APR&FK or Hotel is quite impossible without having managed in hiding in secret place which was known to the hider only.** Ld. Counsel argued that in his cross-examination dt. 30.11.2017 the management witness C.W.-1 deposed that, "it is possible that there could be old croissant kept hidden in some place in Flight Kitchen area", and on 18.01.2018 he deposed that, "I agree that if the croissant were kept



- e) hidden in some place the existence of croissant being stale or fungus ridden is possible”.
- f) Ld. Counsel for Company argued that Ext. 6 shows that Mr. G.P. Rao did not pre-set the croissant and G.P. Rao has stated in that letter that he packed fruit compote, made coffee grant box and pre-setted ‘Y’ class and a workman has relied on this document. So, it is clear that Mr. G.P. Rao did not pre-set the croissant for flight I.C. 263 on 09.07.1995.
- g) Ld. Counsel for Company argued that workman has relied on Ext. 7 i.e. letter dt. 11.07.1995 written by Mr. B.K. Sinha where Mr. Sinha has stated that when he came back to APR&FK at about 6 to 6.30 P.m. the food for IC 263 was already pre-setted at those trollies. So, it is clear that Mr. Sinha did not pre-sett the croissant. Thus, it is clear, argued Ld. Counsel, that Mr. Moloy Kr. Paul single handedly pre-setted the croissant and his such act was sabotage in nature which endangered the business of APR&FK and caused irreparable damage to the reputation of ITDC as a whole. Ld. Counsel argued that Mr. Paul did it to take revenge and defame the management as he has always tried to humiliate his employer for loss of monetary gain. Ld. Counsel argued that Sri Paul has lost the trust and confidence of the management and therefore dismissal from service is the appropriate punishment and in this connection referred to judgement of Hon’ble Supreme Court as reported in 1971(II) LLF page-615. Ld. Counsel for the Company argued that before awarding any relief to the workman Tribunal should see the past record of the workman and previously he was given reformatory punishment to mend himself but he did not rectify himself.
- iv) Ld. Counsel for the Company argued that Sri Paul committed such misconduct as his past record was very bad and he was charge-sheeted many times for his misconduct. He was demoted to the present post. Ld. Counsel argued that in his written statement Sri Paul has admitted the fact that he was demoted and three years increment was stopped. Ld. Counsel referred to the previous charge-sheet dt. 03.04.1992 (ext. D) and argued that he was found guilty of discrepancy in stock, shortage of cash and illegal possession of three Bangladeshi Taka of 100 and as he was not trustworthy for the job at counter he was transferred. He challenged the punishment before Hon’ble Court by his writ applications which were dismissed. Ld. Counsel argued that for his misbehaviour and misconduct none of the unions of the hotel sponsored his case and as he lost the counter duty where he had monetary gain so he became furious and tried to defame the management. Ld. Counsel referred to the report of IO (Ext. J) in this regard.
- v) Ld. Counsel for the Company argued that thus management has been able to prove the charges mentioned in charge-sheet dt. 20.09.1995 against the workman and that the workman has lost the trust and confidence of the management and as the charges were grave and serious in nature the dismissal from service of Sri Paul is appropriate punishment. Ld. Counsel referred to all the charge-sheet, previous suspension order, show cause notice, written complaint of Indian Airlines reply of show cause notice,

- vi) dismissal letter, letters of Sri G.P. Rao and Sri B.K. Sinha and all other exhibited documents in this connection. Ld. Counsel argued that all the oral and documentary evidence on record clearly shows that charges brought against Sri Moloy Kr. Paul are true and he was guilty of the charge mentioned in charge-sheet dt. 20.09.1995.
- vii) Ld. Counsel for the Company argued that Sri Paul is not entitled to any relief like reinstatement in service and back-wages as the charges are very serious, his past record was not clean and there is no pleading in his written statement that he remained unemployed from the date of dismissal and tried his level best to secure a job but could not succeed.
- viii) Ld. Counsel for the Company argued that if the Tribunal ultimately holds that dismissal is illegal then back-wages cannot be automatic and to get a relief of back-wages the workman should raise specific pleading that after dismissal he was not gainfully employed elsewhere but the workman has not pleaded it. The primary onus is on the workman to plead that he was not employed during this period and it is not for the employer to show that he was employed. Ld. Counsel referred to decision of Hon'ble Allahabad High Court as reported in 2006(110) FLR page-97 where Hon'ble Court has pleased to hold that the burden to show lack of gainful employment is on the workman. Ld. Counsel referred to various other judgement in this connection like 2007(114) FLR page-1091 – Delhi High Court, 2007 LIC page-1200 – H.P. High Court, 2018 FLR 157 page-154 Supreme Court, 2018 FLR Vol. 157 page-583 – Delhi High Court, 1979 (II) LLJpge-194SupremeCourt, WPA No. 5958 (W) of 2012 dt. 28.01.2021 of Hon'ble Calcutta High Court.
- ix) Ld. Counsel for the Company argued that the workman is getting interim relief @ 75% of his last drawn salary till today and argued that any evidence adduced by workman beyond pleading ought not to be considered.
- x) Ld. Counsel for the Company argued that Ld. Advocate for workman pointed out the facts and evidences from the domestic enquiry proceeding but as per the present position of law domestic enquiry would not constitute fresh evidence as those proceedings have already been found defective by this Ld. Tribunal and such record would also not constitute materials on record. The judgements cited by workman are entirely on the point of validity of domestic enquiry, therefore all the issues are to be adjudicated in favour of the company.

Ld. Counsel for Company argued that the Tribunal may hold that the charges are true, genuine and correct and the workman is not entitled to any relief and prayed for.

Ld. Counsel for the workman argued that:-

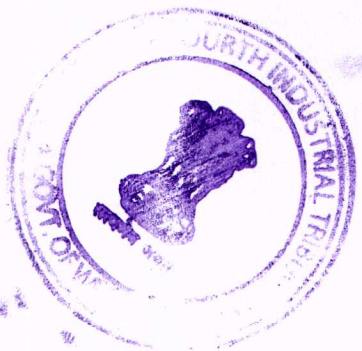
- 1) Ld. Counsel for the workman argued that the allegations levelled against workman Moloy Kr. Paul are baseless and completely false:-

- a) The investigating officer Mr. Gurudas Sarkar did not confirm the allegation regarding supply of any stale croissant on the material date on board. He could

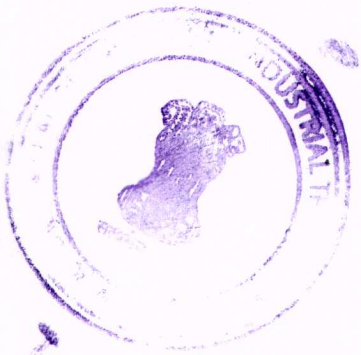
- b) not give details of the complaint or copy of the original complaint. In his report the I.O. Mr. Surrinder Singh stated that captain T.K. Guha stated that he made a written complaint of the irregularities, so there exists a controversy over the initiation of the very complaint from the side of Indian Airlines Catering Division.
- c) Ld. Counsel for the workman argued that the investigation report shows that initially show cause was served to three persons namely Mr. B.K. Sinha the evening shift in-charge, Mr. Moloy Kr. Paul, FCO and Mr. G.P. Rao FCO and each of them submitted their replies but Mr. Sanjoy Mukherjee the general manager ultimately issued charge-sheet only against Mr. Moloy Kr. Paul. He spared the rest two show caused persons and made both of them witnesses for management in proceedings dt. 07.02.1996.
- d) Ld. Counsel for the workman argued that the charge-sheet against MR. Moloy Paul contained two charges – i) “It has been reported against you that you pre-setted those croissants which were in afternoon shift duty on 08.07.1995 for Y class passengers of referred flight i.e. IC 263 for 09.07.1995 and ii) you pre-setted those croissant which were stale and full of fungus. It is strange how you failed to notice those croissant on which fungus was visible very clearly and the same could be noticed by any person. So, the allegations is of negligence on the part of the workman to notice the stale croissant. There was no allegation in the charge-sheet that the workman had deliberately and with ill intention pre-set the stale croissant.
- e) Ld. Counsel for the workman argued that during enquiry proceeding the management representative stated that, “ from the details presented by MR it is noted that one very reputed company by the name of ‘Monginis’, a manufacturer of Bakery items was supplying the croissant to APR & FK on daily basis. These items are packed in cellophane papers”. So it is clear that the croissants were always supplied packed in cellophen papers and so it is never possible for any FCO pre-setting the croissant to notice the exact condition of the croissant they were given to pre-set. If it is wrapped in cellophane paper there is no opportunity to check the exact condition or to notice if it is stale. This disclosure by MR demolishes the charge of negligence.
- f) Ld. Counsel for the workman argued that at page-6 of his report the enquiry officer has noted that the management has argued that Sri Moloy Kr. Paul has deliberately pre-setted inedible food item knowing fully well that such item, if consumed by passenger, could cause a lot of damage to the organization and also to the passengers causing food poisoning. This statement is a complete deviation from the allegation contained in the charge-sheet. In the charge-sheet there is no allegation that Mr. Paul deliberately pre-setted the stale



- g) croissant rather he was charged only with negligence in noticing stale croissant.
- h) Ld. Counsel for the workman argued that it is alleged that the pre-setting was done in afternoon shift on 08.07.1995 for Y class passengers at the schedule of duty produced by MR shows that Moloy Kr. Paul's duty was from 2 p.m. to 9.30 p.m. He pre-set the croissant on 08.07.1995 as breakfast item for Y class of IC 263 morning flight. After pre-setting the FCO puts the trays in the trolley and the catering manager of IA would check the quality of the food item and after checking he would ask his security persons to seal the trollies and thereafter the trollies were taken from ITDC FK&R area to IA area. MW-1 G.P. Rao has said that the usual practice was followed on 08.07.1995. Mr. G.P. Rao stated to the enquiry officer that the shift-in-charge of IA checks the quality of food and it is done between 1 a.m. to 1.30 a.m. at night and the sealing job is done by IA security after checking of IA catering supervisor. This witness also stated that on 08.07.1995 the food quality and other things was checked by the IA catering supervisor who has arrived after pre-setting was done.
- i) Ld. Counsel for the workman argued that M.W.-2 Mr. Rajib Nair, Assistant Manager ARFK and Mr. Tapas Biswas, the manager of Calcutta Hotel also corroborated this process of checking and sealing and both stated that the supervisor and IA officials checked the same so all employees including the supervisor were equally responsible and it was physically impossible for the senior supervisor to go through each and every tray of 21 trollies at night. Mr. Tapas Biswas deposed that the shift-in-charge of IA checks the quality of food and number of trollies between 1 a.m. to 1.30 a.m. at night and the sealing is done by IA security after checking by IA catering supervisor, so, it was only after checking of quality by the catering supervisor of IAL that alleged croissants were put on trays and on trollies and the same was uplifted to the aircraft only when the catering supervisor was satisfied about the quality. The fact that none of these persons made any complaint about quality of food on 08.07.1995 / 09.07.1995 leads us to infer that the pre-setted croissants are were not of poor quality or stale or fungus ridden. Ld. Counsel argued that had there been any stale food the catering supervisor would have definitely detected it. So the allegation against Mr. Moloy Kr. Paul is false.
- j) Ld. Counsel for the workman argued that all the management witnesses including Mr. Tapas Biswas had deposed that Moloy Kr. Paul left the ARFK after his duty by 9.30 p.m. and the checking by supervisor and the loading etc. were all done by airport officials after 9.30 p.m. It is also deposed by Mr. Biswas that after loading the croissant to the high loader there is no possibility of exchange of croissant till it reaches to the aircraft and the report of investigating officer also corroborate the same so overall situation is that the

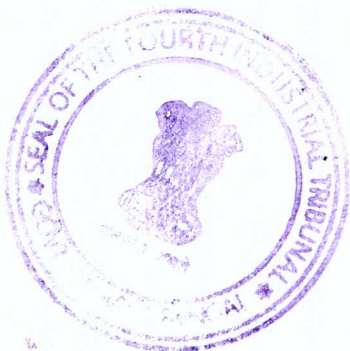


- k) croissants were checked by IAL authorities and were found fit for consumption much after Mr. Paul left the office area argued Ld. Counsel.
- l) Ld. Counsel for the workman argued that during the enquiry the management listed Mr. G.P. Rao, Mr. B.K. Sinha, Mr. Rajib Nair, Mr. H. Dey, Mr. Sandip Mukherjee and Mr. I.C. Raju (complainant) as witnesses and Mr. Uddlok Mitra an officer of the management was appointed enquiry officer but out of the six listed witnesses only three i.e. Mr. G.P. Rao, Mr. Rajib Nair and Mr. H. Dey were examined during enquiry proceeding. The rest three listed witnesses including the most important i.e. the complainant Mr. I.C., Raju were not examined during domestic enquiry. So the letter of complaint dt. 10.07.1995 was not proved by the complainant yet the enquiry officer took that letter into consideration without giving any opportunity to Mr. Moloy Kr. Paul to cross-examine the complainant. So, there was deprivation of fair hearing and gross violation of principles of natural justice.
- m) Ld. Counsel for the workman argued that another FCO Mr. G.P. Rao who was admittedly on duty and pre-setted croissant on 08.07.1995 along with Mr. Moloy Kr. Paul was won over and made management witness and the shift-in-charge Mr. B.K. Sinha was not produced for examination during domestic enquiry only to deprive Moloy Kr. Paul opportunity to cross-examine him. Mr. B.K. Sinha in his statement dt. 10.08.1995 ruled out possibility of existence of any old croissant in APR&FK and this very vital witness was withheld resulting in serious prejudice to Moloy Kr. Paul.
- n) Ld. Counsel for the workman argued that Mr. Uddalok Mitra who was examined before this Tribunal deposed during his cross-examination on 16.05.2003 that the complainant Mr. Raju was not examined and that none of the witnesses stated during enquiry that they had seen Mr. Moloy Kr. Paul putting fungus-ridden croissant on pre-set tray. So, there was no eye-witness of alleged incident. Mr. Tapas Biswas also deposed the same on 18.01.2018. So there was no evidence against Mr. Moloy Kr. Paul and he was sacked without any evidence against him.
- o) Ld. Counsel for the workman argued that the alleged stale croissant were not sent for any chemical examination to any authority for ascertaining whether it was stale and fungus-ridden or not. Even the supplier M/s. 'Monginis' were not examined by the management although it could have been very vital witness in unearthing truth.
- p) Ld. Counsel for the workman argued that the investigation officer and enquiry officer substantially deviated from the charge framed against Mr. Paul and brought in new facts like Mr. Paul has kept hidden stale croissants some were in APR&FK and has deliberately put the same and all this is outside the scope of the charge-sheet. The investigating officer Mr. Surrinder Singh reported at page-7 of his report that no consistency is found in the complaint. At page-9

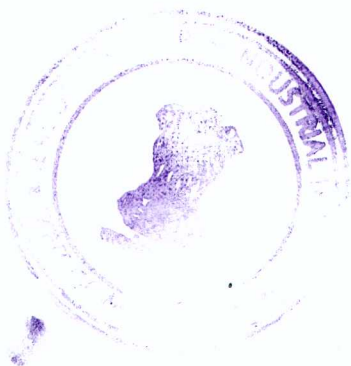


he said that 'the existence of such fungus-ridden croissant in APR&FK hotel is quite impossible without having manage in hiding to a secret place which was known to the hider only'. No such allegations were there in the charge-sheet. It was stated in the report that Mr. Paul was in advantageous position to load those stale croissants so there is no definite report or direct complicity of Mr. Paul and the report is based on presumption only and the investigation was done on the basis of surmises and conjecture to implicate Mr. Paul and the charges levelled are frivolous, false and motivated.

- q) Ld. Counsel for the workman argued that the investigating officer in his conclusion fixed the complicity of Mr. Paul on three grounds i.e. i) circumstantial evidence, ii) statements and iii) nature of complaint. He imagined the story of someone keeping croissants in hiding and thereafter putting the stale one in tray and presumed that Mr. Moloy Kr. Paul did all of it. There was no witness or even allegation of any such story all through the proceeding. Mr. Tapas Biswas admitted that the IO did not mention the name of Mr. Moloy Kr. Paul as the person who has hidden the croissant somewhere. The whole investigation and enquiry was perfunctory and the findings were palpably wrong.
- r) Ld. Counsel for the workman argued that the co-accused i.e. another FCO Mr. G.P. Rao and the supervisor Mr. Sinha were let off for no reason only to implicate Mr. Paul. The management could not produce any receipt showing that fresh croissants were received on 08.07.1995 from Monginis for use in IC 263 for 09.07.1995. Rather the management produced a receipt showing that croissants were received by the management on 10.07.1995 and it is absurd to presume that croissants received on 10.07.1995 were for the use of flight dt.09.07.1995.
- s) Ld. Counsel for the workman argued that without examining the alleged stale croissant the IO arrived at a finding that the food items retained their freshness for a period of 8 days by experimentally collecting one burger from a hotel bakery which is different item and such experiment can only mislead the process of investigation.
- t) Ld. Counsel for the workman argued that Mr. Tapas Biswas deposed on 21.12.2017 that there were 173 passengers on board on flight IC 263 on 09.07.1995 and as per statement of captain Mr. T.K. Guha 50% of croissants were unconsumable. Mr. Rajib Nair the assistant catering manager detected the number of fungus-ridden croissant to be around 40%. So, as per Mr. T.K. Guha there were around 87 stale croissant and it is physically impossible for anybody to mix 87 stale croissant evading the notice of other FCO and the supervisor who were working together in the same room.
- u) Ld. Counsel for the workman argued that no complaint book or any oral or documentary evidence of any such complaint lodged by any passenger or



- v) cabin crew of IC 263 was produced during the investigation or during enquiry or before the Tribunal. Thus, it is proved that the allegations levelled against the workman are totally false and baseless and the principles of natural justice were not followed during the enquiry and Mr. Moloy Kr. Paul was denied opportunity of being heard.
- w) Ld. Counsel for the workman argued that the report of the enquiry officer is not based on any evidence and is totally invalid, unfair, bad in law, perverse and unjustified and it is clear that the motive of management was to victimize the workman and is thus not sustainable in law.
- 2) Ld. Counsel for workman referred to following decisions of Hon'ble Court in support of his argument:-
- i) AIR 1970 SC 150 – Ld. Counsel argued that in this case Hon'ble Court held that Hon'ble Supreme Court held that no one should be condemned unheard and that the aim of natural justice is to prevent miscarriage of justice.
 - ii) 1969(II) LLJ, S.C. 799, 809 –Ld. Counsel argued that in this case Hon'ble Court held that Hon'ble Court held that enquiry officer is not entitled to bring in facts which were not part of evidence.
 - iii) AIR 1968 SC 266 – Ld. Counsel argued that in this case Hon'ble Court held that the burden of proving the truth of allegations is on the management.
 - iv) AIR 1987 SC 1242 - Ld. Counsel argued that in this case Hon'ble Court held that for a fair trial all the essential material facts should be stated by the party beforehand so that the other party is not taken by surprise.
 - v) 1971(II) LLJ page-599 - Ld. Counsel argued that in this case Hon'ble Court held that the question whether there has been violation of principles of natural justice in the domestic enquiry and whether a reasonable opportunity of defending himself has been provided to the workman in the enquiry is to be considered in the particular circumstances and in the enquiry done in the case pending before this Tribunal management chose not to examine the listed witness Mr. B.K. Sinha who was the shift-in-charge and asked the workman to produce this witness but as he was a shift-in-charge and was cited as management witness it was not possible for the workman to produce this witness and in this way management denied the workman the opportunity to cross-examine Mr. B.K. Sinha.
- Thus, the domestic enquiry was vitiated and there has been serious non-compliance of principles of natural justice and the findings of domestic enquiry is baseless, unfair and perverse and the management completely failed to prove their allegations before the enquiry officer and also before this Tribunal. So, the workman is entitled to be re-instated with full back wages.



On going through the order of reference, pleadings of both parties, oral and documentary evidence on record and judgements referred it is found that:-

The two issues framed are – (a) Whether the dismissal of Sri Moloy Kr. Paul from service w.e.f.15.3.99 by the management of Hotel Airport Ashok is justified?

(b) If not, what relief Sri Paul is entitled to?

1) So far as the argument of Ld. Counsel for Company that there is no Industrial dispute between Mr. Moloy Kr. Paul and the management as Mr. Moloy Kr. Paul never raised any dispute with the management before raising the dispute with the Labour Directorate is concerned Ld. Counsel referred to the judgement of Hon'ble Supreme Court as reported in 1968 Lab I.C. Vol. 1 page-526 where Hon'ble Court has pleased to hold that, “ if no dispute was raised by the respondent with management any request sent by them to the government would only be a demand and not an industrial dispute A mere demand to the government without a dispute being raised by the workman with the employer cannot be an industrial dispute”.

(a) So far as this argument is concerned the referred case was case of retrenchment of workman and unlike instant case there was NO Domestic enquiry involved in referred case. In the case before this Tribunal there has been a full-fledged domestic enquiry contested by the workman. Thus, the judgement referred by Company is factually distinguishable with the instant case.

(b) The workman has proved a letter dt. 05.09.1995 addressed to the Senior Manager (Personnel), Airport Restaurant and Flight Kitchen (Exhibit-4) where he has demanded withdrawal of complaint against him. The company has proved that on 09.11.1998 a second show cause notice was issued on the workman proposing punishment of dismissal and he submitted his reply on 21.11.1998 denying all allegations and praying against proposed punishment. So, referred judgement is distinguishable.

2) Ld. Counsel for Company further argued that in spite of direction of Hon'ble Division Bench of Calcutta High Court this Tribunal does not need to hear the validity of domestic enquiry again along with the merits of the case as the same is not permissible in law and in this connection argued that :-

a) Ld. Counsel for company argued that the preliminary issues meant by Hon'ble Supreme Court in D.P. Maheswari were totally different like territorial jurisdiction etc. but validity of domestic enquiry does not come within the purview of such preliminary issues and in this connection referred to judgement of Hon'ble Supreme Court as reported in 1972 LIC 1441 , 2018 FLR Vol. 157 page-340 S.C., 2019 LLR Vol. 3 S.C.

b) Ld. Counsel for company argued that in view of the above referred judgement of Hon'ble Supreme Court in spite of direction of Hon'ble Division Bench of Calcutta High Court this Tribunal does not need to hear the validity of domestic enquiry again along with the merits of the case as the same is not permissible in law.

c) Ld. Counsel for company argued that as validity of domestic enquiry was held not proper the record pertaining to domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Tribunal to be defective and such record does not constitute 'materials on record'. Ld. Counsel argued that the record of enquiry held by management ceased to be 'materials on record' within the meaning of Section 11A of the I.D. Act and in this regard referred to judgement of Hon'ble Supreme Court as reported in 1999 (81) FLR page-188.

3) So far as above argument is concerned :- Firstly, the Management never moved before any Hon'ble Higher forum against order of Hon'ble Division Bench and needless to mention the order of Hon'ble Division Bench is binding on both the parties and of course on this the Tribunal. Hon'ble Division Bench remanded the matter back to the Tribunal for hearing in view of the judgement passed by Hon'ble Supreme Court in the case of D.P. Maheswari.

Ld. Counsel for company argued that the preliminary issues meant by Hon'ble Supreme Court in D.P. Maheswari were totally different like territorial jurisdiction etc. and validity of domestic enquiry does not come within the purview of such preliminary issues. But in D.P. Maheswari Hon'ble Supreme Court held, *"It is better that tribunals, particularly those entrusted with the task of adjudicating Labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues"*. In this case Hon'ble Supreme Court has pleased not to make any distinction, between types of Preliminary issues that ought to be decided together at the time of final adjudication as argued by Ld. Counsel for Company, rather, the Hon'ble Court has directed that Tribunal **"should decide all issues in dispute at the same time"** without trying some of them as preliminary issues". Thus as per direction of Hon'ble Division Bench and in view of the judgement passed by Hon'ble Supreme Court in the case of D.P. Maheswari this Tribunal has to decide all issues in dispute at the same time and validity of domestic enquiry is admittedly an issue in dispute between parties as the same forms the basis of dismissal of the workman.

4) The issue of validity of domestic enquiry was decided by this Tribunal in favour of workman on 16.06.2003.

5) Being aggrieved by referred order of this Tribunal the Company moved before Hon'ble Court vide W.P. No. 1733 of 2003 and Hon'ble Single bench was pleased to uphold the order of this Tribunal dated 16.06.2003 and dismiss the writ petition so preferred by the company vide order dt.27.01.2016.

6) Being aggrieved by the order of Hon'ble Single Bench the Company moved

Hon'ble Division Bench vide GA No. 1755 of 2016/APO No. 101 of 2016 and on 12.07.2016 Hon'ble Division Bench has pleased to remand the matter back for hearing in view of judgement rendered in D.P. Maheswari. Hon'ble Division Bench has pleased not to record any finding as regards the Validity or otherwise of Domestic enquiry.

7) , Hon'ble Supreme Court has held that if the domestic enquiry is found to be unlawful or unjustified the Company ought to be given an opportunity to prove the allegation levelled against the workman by adducing further evidence before the Tribunal. (Reference- Firestone Tyre and Rubber Company Vs. management. Supreme Court)

8) After order of Hon'ble Division Bench the Company also adduced further oral and documentary evidence where Company's witness Tapas Biswas deposed on the matter of Domestic enquiry and proved all documents relating to Domestic Enquiry and matter was heard afresh.

9) Although Ld. Counsel for Company argued that documents proved during hearing on validity of Domestic enquiry are no more "materials on record", ironically the company's witness Tapas Biswas proved all the documents relating to domestic enquiry and the argument of Company is largely based on those documents only. In this context Ld. Counsel referred to the decision of Hon'ble Court as reported in 1999 FLR Vol-81, page-188 SC(Neeta Kaplish vs P.O. Labour Court) but in referred case Hon'ble Court has held, " Section 11-A-The expression "materials on record"-Domestic enquiry found not proper-"Materials on record" already found defective -Ceases to be materials on record". The reliance of Ld. Counsel for company on this citation ironically shows that the Hotel has admitted that the Domestic Enquiry was defective. In The Workmen of M/s Firestone Tyre(1973(26) FLR 359 SC) Hon'ble Court held, "When defective enquiry is not admitted by management then it will be on the management to decide whether it will adduce any further evidence before Labour Court..."Hon'ble Court in Neeta Kaplish vs P.O. Labour Court(Supra) held that the decision of M/s Firestone Tyre(Supra) makes it clear that the 'stage' at which the employer has to ask for an opportunity to adduce evidence for justifying it's action is the stage when the Tribunal finally comes to the conclusion that domestic enquiry was invalid.

10) So far as validity of domestic enquiry is concerned :-

a) During hearing on the point of validity of Domestic Enquiry The Management examined Shri Uddalak Mitra as OPW-1 and the workman examined himself as PW-1. After the case was remanded back to this Tribunal both parties adduced further evidence, the workman examined himself and the management examined one Tapas Biswas.

b) After the alleged incident of service of stale and fungus-ridden croissant to the passenger on stated flight the management initially issued show cause to the shift-in-charge Mr. B.K. Sinha and the two FCOs Mr. Rao and Mr. Malay Paul. All the three workmen / employees denied responsibility and tried to shift the burden on other person /s, interestingly the management did not proceed against the shift-in-charge supervisor Mr. Sinha and the other FCO Mr. Rao and issued charge-sheet only against Mr. Moloy Kr. Paul whereas the rest two show-

caused persons were enlisted as management witnesses. There is no justification whatsoever in the report of domestic enquiry as regards why the management chose not to proceed against the shift-in-charge Mr. Sinha and the other FCO Mr. Rao. It appears from the report that the shift in charge and another FCO were not charged only on the basis of their statements.

C) Prior to the domestic enquiry one preliminary investigation was carried on by the management and the investigating officer did not mention the name of Mr. Moloy Kr. Paul as the erring workman. Yet, charge-sheet was issued only against Mr. Moloy Kr. Paul.

D) In the report of preliminary investigation it is found that the investigating officer (IO) has imagined a totally new story like someone has hidden croissants in some hidden place for unknown period and brought it out on that day for presetting/ for serving to passengers. This whole story is clearly a figment of imagination of the IO as none of the witness gave any such statement before the Investigating officer Mr. Surinder Singh. There is no eyewitness of any such hiding any such item or bringing it out from hiding. There is absolutely NO witness. While discussing this one must not lose sight of the fact that the amount/number of croissants being discussed here is not one or two, it's a considerably large number of croissants (Above 87 croissants as stated by Mr. Rajib Nair and Mr. T.K. Guha), so it is impossible for someone to hide such large amount of croissants and then bring it out in an area where 12 to 14 people were working (As per statement of Mr. Rajib Nair) without anyone noticing the same. The shift in charge has stated in his reply to show cause (Exhibit-7) that Mr. Moloy Paul, Mr. G.P. Rao, Mr. T. Punnaiya, Mr. N.I. Mallik, Mr. M. Dhannaiya, and Sri K. Trinath were present in that room at that time. That the room where the supply of croissant is kept is under lock and the key is under custody of superior officers is also admitted.

e) In the charge-sheet there was allegation of negligence worded thus, "Manager (Catering) Indian Airlines Eastern region lodged a complaint for supply of stale croissant full of fungus on board in their flight IC 263 dt. 09.07.1995 and the complaint being of very serious nature effecting the image, reputation and interest of the entire flight catering business and the concerned workman has pre-setted those croissants while he was in the afternoon shift duty on 08.07.1995 and he pre-setted those croissant which were stale and fungus was visible and it could be noticed by any person and that act prima facie not only shows gross Thus, the charge-sheet contained allegation of only negligence whereas during the domestic enquiry and during further evidence before this Tribunal the stance of the management all through had been that the alleged incident of 08.07.1995 / 09.07.1995 was a deliberate act on the part of Mr. Moloy Kr. Paul to discredit the Airport Flight Kitchen. Such change of stance outside the purview of Charge sheet clearly shows bias on the part of management against the workman.

f) Even the EO in the report of Domestic Enquiry showed prejudice when he used words like "Intentionally", "Sabotage" etc, although none of the witnesses examined during Departmental Enquiry gave any such statement.

g) Admittedly, croissants were being supplied by company named Monginis and

were delivered twice everyday for the purpose of serving to the Air passengers. But no document was proved during the domestic enquiry and during further evidence before this Tribunal showing delivery of fresh croissant on 08.07.1995 or on 07.07.995 or on 06.07.1995. The only document in this regard showed delivery of croissants on 10.07.1995 (Ext.1). OPW-1 Tapas Biswas admitted in his cross-examination that this receipt shows that 70 or 700 croissants were received on 10.7.1995. Croissants delivered on 10.07.1995 could not be pre-setted on 08.07.1995. No stock register or receiving register of any such croissant was produced during the domestic enquiry or during further evidence before this Tribunal thereby leading to adverse presumption against the Hotel as regards their claim that they received fresh supply on 08.07.1995.

h) It is strange to note that the allegation is about stale fungus-ridden croissant but no such stale fungus-ridden croissant was sent for any chemical examination or to any other statutory authority meant to check the quality of food / consumables like Food Safety And Standards Authority Of India or Central Food Laboratory etc.

i) The investigating officer admittedly did not name any workman and did not name Mr. Moloy Kr. Paul as the person responsible for alleged mishap. In his report (Ext. J) he had stated that Monginis supplies 600 to 700 croissant twice daily and no croissant supplied before 07.07.1995 was found in the store and he noted that there is no possibility of stock of three or more days old being kept in the store-room. The enquiry report says and the witnesses have deposed before this Tribunal that the supplier, "Monginis" used to supply fresh croissants every day and those were packed in cellophane paper. But NO document of supply of any such croissant on 8.7.95 or 7.7.95 or 6.7.95 or 5.7.95 or 4.7.95 was produced during Departmental Enquiry or before this Tribunal. The non-production of any receipt or stock register of receipt of stated item on any day for seven to ten days preceding the date of alleged incident clearly leads to the assumption that there was no supply of said item on any of these days and the APRFK had only stale croissants in their stock and to cover up this fault they have brought false allegation against the workman. Withholding of material evidence in one's possession, suppression leads to adverse presumption.

j) The bias of the investigating officer is clear from his opinion like Mr. Moloy Kr. Paul looked fidgety, peevish and sometime delirious in his attitude and was over-cautious. He has clearly noted that another FCO "Mr. G.P. Rao's statement shows that he does not have good relation with Mr. Moloy Kr. Paul". He has noted that "Mr. Moloy Kr. Paul is cunning and grunting person" and has referred to the previous conduct of Mr. Moloy Kr. Paul. Such frivolous comments show prejudice and premeditation on the part of the enquiry officer. In conclusion he has noted that "no consistency was found in the complaint, no number of stated fungus-ridden croissant is mentioned" and that "Mr. Moloy Kr. Paul FCO was in advantageous position to mix stale croissant which must have in hidden some crevices of restaurant earlier". So it's all an imaginary probability.

k) There was no such allegation or story of croissants being kept in a hidden place



deliberately or being brought out and mixed while pre-setting on 08.07.1995. So, it is clear that the findings of the investigating officer is completely based on assumptions and surmises only.

l) Management witness deposed that as the utility worker Mr. Das accompanied Mr. B.K. Sinha to aircraft Area so Mr. Moloy Paul himself brought the croissant from cold room to pre-setting area (although there is no witness of any such bringing of croissant from cold room by Mr. Paul) and in domestic enquiry the version is that the alleged stale croissant was kept in some hidden place. So there is clear contradiction in management's statement – wherefrom Mr. Paul brought out the croissant? – was it the cold room or was it some hidden place?. If it was from the Cold room the alleged stale fungus ridden croissant were obviously kept in the cold room by management for supply to fliers.

m) So far as the domestic enquiry is concerned admittedly Mr. B.K. Sinha was the shift-in-charge who had the responsibility of overall supervision of the pre-setting job and he was one of the three persons show-caused for alleged incident. This Mr. B.K. Sinha was later listed as a management witness in the D.P. but he was never produced during the departmental enquiry and the charged officer Mr. Moloy Kr. Paul was deprived the opportunity to cross-examine this very vital witness. Hon'ble Supreme Court has held in AIR 1963 SC1914 that an enquiry is not fair unless the employee is given a fair opportunity to cross-examine the witnesses. Hon'ble Court has held in 1980 Vol IV SCC page-379 that the principles of natural justice ought to be followed in case of domestic enquiries.

n) The workman deposed that utility worker, one Babu Das, used to bring Croissants from the cold room to the pre-setting area. Management's witness deposed that the utility worker Mr. Das accompanied Mr. B.K. Sinha to the airlines area so he was not there at relevant time. But said utility worker Mr. Das was not examined during Departmental Enquiry and thus the workman was denied the opportunity to cross-examine this very vital witness. Many other vital witnesses like the stated complainant, Manager catering IA Mr. Raju, persons who informed alleged incident to complainant i.e. Commander Captain T.K. Guha and Cabin Crew of IC 263 flight, the officer who conducted preliminary investigation i.e. Mr. Surinder Singh were not examined, thus workman was denied the opportunity to cross-examine these witnesses.

o) In his reply to show cause Mr. B.K. Sinha, the shift-in-charge, who had the responsibility of overall supervision of the pre-setting job, stated that he went to the Airlines area from 4/4.30 PM to 6/6.30 PM and when he returned the food for IA-263 was already pre-set (Exhibit-7) whereas Mr. G.P. Rao stated that only part of pre-setting was done when Mr. Sinha returned to the ARFK area. Moreover no document showing such exit or entry of Mr. Sinha from ARFK area or his presence in Airlines area from 4/4.30 PM to 6/6.30 PM is produced.

p) Mr. G.P. Rao another FCO deposed before the Enquiry officer during Departmental Enquiry that the shift-in-charge of Indian Airlines checks quality of food between 1 AM to 1.30 AM on behalf of Indian Airlines and thereafter the sealing of Trolleys is done by Indian Airlines security yet the shift in charge of Indian Airlines was not cited or examined as a witness

in the Departmental Enquiry of allegation of service of alleged stale and heavily fungus ridden croissants which were visible by any person as per the Management.

q) OPW-1 Tapas Biswas deposed during his cross-examination that Mr. Rajiv Nayar had stated before enquiry officer that food quality for IC-263 of 09.07.1995 was checked by the supervisor on duty and by Indian Airlines Officers on 08.07.1995 OPW-1 Tapas Biswas has clearly deposed on 09.08.2017 that ,"it is not the duty of FCO to check quality of food and Moloy Paul was FCO", but the Enquiry officer simply overlooked this evidence and put whole blame on the Workman Mr. Moloy Kr. Paul.

r) The investigating officer has clearly stated that there was written complaint of alleged incident but no such written complaint was proved during D.P. or before Tribunal during further evidence and no such complainant was examined either,thereby denying the workman opportunity to cross-examine this witness.

s) The bias of the Domestic Enquiry officer against Mr.Paul is clear from his opinion like Mr. Moloy Kr. Paul " had attitude problem and was quite belligerent and aggressive on his counters during enquiry proceeding", and the EO has arrived at his finding on the basis that, "the Charged Employee has in no way been able to refute the charges levelled against him" but the onus was on the Management to establish the charges and not on the accused workman to refute the same. Thus it is found that the enquiry officer was biased against him as he has made various statements in his report for which there is no corroboration in oral or documentary evidence . Such statement made by the E.O. without any evidence to corroborate it shows his bias against the workman. In AIR 1964 SC 719 Hon'ble Court was pleased to hold that when a finding is recorded by EO without any evidence to back it, such recording is bad in law. In this context Hon'ble Court has pleased to hold that personal knowledge of E.O. should not be the basis of the findings. (Ref- 1964 Vol 3 LCR 652).

t) The last show cause issued to Mr. Moloy Paul on 09.11.1998 shows that Mr.Sanjay Mukherjee, on behalf of the Management, has stated that the workman deserves to be dismissed as management has been able to prove charges of supplying stale croissants (Charge sheet dated- 20.9.95) and of supplying dirty beakers on 3.11.94 and sleeping on duty, after around five months on 27.3.95, (Charge sheet dated-10.4.95-Ex-E) but absolutely NO evidence in support of allegations of supplying dirty beakers or sleeping on duty was adduced by the management. No witness corroborating any such allegation was examined. No oral or documentary evidence of these allegations, except the Charge sheet, is produced before Tribunal.

u) Thus, on the basis of materials and oral and documentary evidence on record it is found that the enquiry officer arrived at his findings without examining vital witnesses and overlooking the oral and documentary evidence before him. The finding of enquiry officer is found to be perverse, unjustified and unsustainable in law. It is clear that principles of natural justice were not followed by the enquiry officers and the workman was denied his right to cross-examine vital witnesses and the finding of enquiry officer reeks of bias so the domestic enquiry is found to be

perverse, invalid and bad in law. Thus the Domestic enquiry was not lawful or proper as it did not follow principles of natural justice and reeked of bias against the workman.

12) The further evidence adduced by management by examining one Tapas Biswas who only proved the documents relating to domestic enquiry and previous charge-sheet against workman and admitted that he was not working in the Hotel during relevant period and therefore he does not have any personal knowledge and proved only the documents discussed above also failed to justify the action taken by the Hotel against the workman.

13) Management has failed to prove their allegations against Mr. Moloy Kumar Paul.

14) Issue No. 1 is thus decided in favour of workman.

15) So far as the entitlement of the workman consequent to unjustified termination of his service is concerned :-

(a) Ld. Counsel for the Company argued that the past conduct of this workman must be taken into consideration while deciding on any benefit for the workman and as he was found guilty of having in his possession three Bangladeshi currency 'Taka' of Rs.100/- denomination during previous Domestic Enquiry and was punished with withholding of three increments and he was again charged with supplying dirty beakers Company has lost confidence in him and so he cannot be reinstated and referred to decision of Hon'ble Court in M/s. Francis Klein & Co. (P) Ltd. Vs. Workmen (1971(II) LLF Page-615 SC). But in referred case the workman was a Darwan (guard) who refused to help his supervisor in his attempt to catch a thief and in that incident the Company lost confidence in him. There was no previous fault. In the case before this Tribunal for the previous fault of having 3 Bangladeshi Taka he was punished with loss of 3 increments and the next allegations of supplying dirty glasses and then supply of stale croissants were not proved at all. So the referred case is distinguishable.

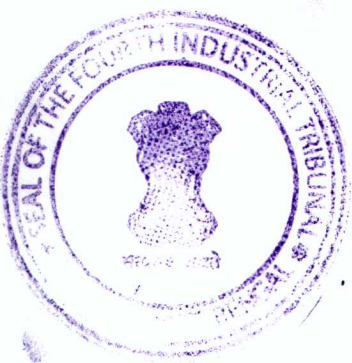
(b) So far as previous conduct of possession of three Bangladeshi currency 'Taka' of Rs.100/- denomination by workman is concerned the workman has suffered punishment of loss of three increments for alleged misconduct. So far the allegation of supplying dirty beakers and sleeping on duty is concerned the Company proved the chargesheet issued against this workman but failed to produce any evidence showing that he was found guilty of the charge. For the misconduct of possessing three Bangladeshi 'Taka' he has suffered punishment of withholding of three increments and transfer to another department, punishing him again for alleged misconduct will amount to double jeopardy.

(c) Ld. Counsel for the Company argued that to be entitled to receive any compensation, back wages etc. the workman has to prove that he was not working for gain or was unemployed all through the period since his stated termination by the Company but Moloy Paul did not plead or prove that he was unemployed for this period, So, he is not entitled to any back wages. In this connection Ld.

- (d) Counsel referred to decision of Hon'ble Apex Court in Kendriya Vidyalaya Sangathan and Another Vs. S. C. Sharma 2005(1) Scale 317 where a two-judge bench of Hon'ble Supreme Court was pleased to hold that, "When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him". As this workman has failed to discharge such initial burden, he is not entitled to any back wages, argued Ld. Counsel for Company. On query Ld. Counsel for the Company admitted that for receiving the sustenance allowance @ 75% of his salary Mr. Moloy Paul is required to submit written declaration before company every month that he is not having any other income/employment.
- (e) In Vinod RabjibaiRajpur Vs, State of Gujarat (Ref: 2020 II CLR 199) – Hon'ble Court has pleased to upheld relief of reinstatement with continuity of service and full back wages.
- (f) So far as evidence is concerned the workman prayed for reinstatement with full back wages and promotional benefits in his affidavit in chief.
- (g) Ld. Counsel for Company referred to decision of Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan And ... vs S.C. Sharma on 11 January, 2005 to argue that as the workman is gainfully employed he is not entitled to back wages but Hon'ble Supreme Court of India has recently clarified the legal position on payment of back wages to an employee whose services are wrongfully terminated. In the case of JayantibhaiRaojibhai Patel v. Municipal Council, Narkhed &Ors. the bench comprising Justice DY Chandrachud and Justice Indira Banerjee relied on precedents laid by the Supreme Court, to hold that an employee whose services are found to have been wrongfully terminated, will be entitled to receive full back wages (Ref-Civil Appeal No. 6188 of 2019, dated 21st August, 2019).
- (h) In DeepaliGunduSurwase v. Kranti Junior AdhyapakMahavidyalaya (Ref-(2013) 10 SCC 324) Hon'ble Court held that, "...In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule...". The aforesaid rule is subject to the rider that the adjudicating authority/courts may take into consideration "...the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors...". It further held that, "*...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...*". The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned, by relieving the employer of the obligation to pay back wages.
- (i) Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court (Ref- (1980) 4 SCC 443), a three-judge bench of Hon'ble Supreme Court



- (j) stated that, "... Plain common-sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too...". It further held that only in exceptional circumstances the court may exercise its discretion to deny the relief of full back wages, for example: when it would place an impossible burden on the employer. In the case before this Tribunal the Hotel has not pleaded any such 'impossible burden'.
- (k) In Hindustan Tin Works (P) Ltd v Employees (Ref- (1979) 2 SCC 80) it has been held by a three-judge bench of the Hon'ble Supreme Court that "...Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure."
- (l) In Deepali GunduSurwase v. Kranti Junior Adhyapak Mahavidyalaya (supra) Hon'ble Court held that,.. "*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 the illegal action taken by the employer. 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 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.*"



In sub paragraph nos. (i) (ii) & (iii) of paragraph no. 33 of said ruling the Hon'ble Apex Court has been pleased to observe further that

- (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 not 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."

(I) In the case before this Tribunal, it appears that workman has deposed on oath that he was not gainfully employed and the onus shifted to the employer. Ld. Counsel for Company admitted that for receiving sustenance allowance @ 75% from the Company the workman submits written declaration every month that he is NOT otherwise employed. The employer failed to plead or prove that the employee was gainfully employed and was getting the same or substantially similar emolument. The Company's witness did not depose that workman is gainfully employed. There is nothing in the evidence and materials on record to show that Moloy Paul is gainfully employed. Accordingly, it is found that the workman Moloy Paul is not gainfully employed since the date of dismissal from his service and is receiving 75% of his last salary as sustenance allowance.

Under such facts and circumstances in view of evidence and materials on record regard being had to the judgements referred by Ld. Counsels for both sides it is found that the workman MoloyKr.Paulis entitled to be reinstated in his service with full back-wages. Considering the absolutely baseless allegations, failure of Hotel to prove the allegations, falsity and utter lack of transparency on the part of Company, sheer disregard to any due process of law and dismissal without any lawful enquiry, no alternative source of sustenance available toworkman, it is held that that total back-wages should be awarded to the workman Mr. Moloy Kr Paul after deducting the 75% of his salary that has already been paid to him as sustenance allowance.

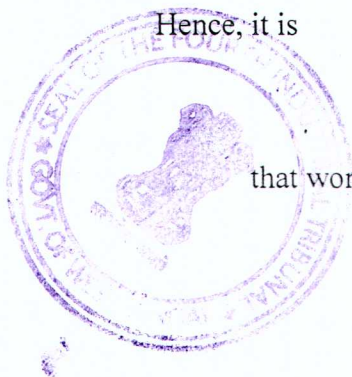
Both issues are adjudicated accordingly.

Hence, it is

ORDERED

that workman Mr. Moloy Kr. Paul be reinstated in his service under the Company within

Contd. Page36



60 days of this day. He will also get full back-wages for the period since 15.03.1999 till reinstatement of the service.

Company is directed to reinstate the workman Mr. Moloy Kr. Paul in the service and pay full back-wages to him within 60 days of this day.

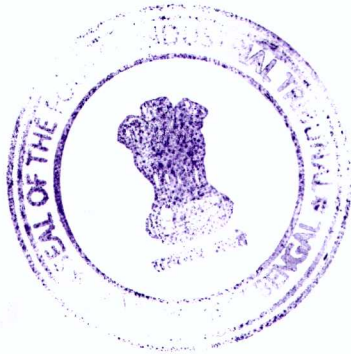
Let a copy of this award be sent to The Principal Secretary to the Government of West Bengal, Labour Department, N.S. Buildings, 1, Kiran Sankar Roy Road, Kolkata-700001.

Dictated & Corrected by me,

Sd/- Dwergakhaitan

Judge

Judge
Fourth Industrial Tribunal, W.B



Sd/-

Durga Khaitan

(Durga Khaitan)

Judge

Fourth Industrial Tribunal

Kolkata

07.06.2022

Judge
Fourth Industrial Tribunal, W.B