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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 2nd November, 2017

Pronounced on: 8th March, 2018

+ W.P.(C) 16316/2004

RAJEEV SHARMA

..... Petitioner

Through: Mr. Omung Raj Gupta and
Mr. Naresh Kaushik, Advs.

versus

UOI & ORS.

... Respondents

Through: Mr. Lalit Bhasin and Ms.Ratna
Dwivedi Dhingra, Advs.

AND

+ W.P.(C) 21983/2005

INDIAN AIRLINES LTD.

..... Petitioner

Through: Mr. Lalit Bhasin and Ms.Ratna
Dwivedi Dhingra, Advs.

versus

RAJEEV SHARMA

... Respondents

Through: Mr. Omung Raj Gupta and
Mr.Naresh Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT

C. HARI SHANKAR, J.

1. These writ petitions, which arise from a judgement, dated 2nd August, 2004, passed by the National Industrial Tribunal at Mumbai (hereinafter referred to as “the Tribunal”), were initially filed before the High Court of Bombay and, consequent upon orders passed by the Supreme Court, were transferred to this court.

2. The Tribunal, *vide* the impugned judgement, dismissed an application, filed by Indian Airlines Ltd (hereinafter referred to as “IAL”) under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval of an order, dated 31st August, 1999/2nd September, 1999, dismissing the workman Rajeev Sharma from service. WP (C) 21983/2005, filed by IAL, prays that the impugned judgement be quashed and set aside, while WP (C) 16316/2004, at the instance of the workman, predictably seeks the enforcement and implementation thereof.

3. The facts are brief. The workman, who was employed with IAL, was, on 31st March, 1997, issued a charge-sheet, alleging that he had been absent from work, for 413 days, during the period February 1996 to March 1997 (328 days in 1996 and 85 days in 1997) and had, thereby, committed “misconduct”, within the meaning of Rule 28 (13) of the Standing Orders (Regulations), stated to be applicable to IAL and to the workmen employed therein. This was followed by another charge-sheet, dated 21st April 1998, alleging that the workman had

remained unauthorisedly absent from duty for 778 days, from February, 1996 till March, 1998, comprising 328 days in 1996, 360 days in 1997 and 90 days in 1998 and, as in the case of the earlier charge-sheet dated 31st March, 1997, requiring him to submit his response, showing cause as to why his absence not be treated as “misconduct” within the meaning of Clause 28 (13) of the Standing Orders (Regulations). No response was received, from the workman, to either of the said charge-sheets. An Inquiry Officer (hereinafter referred to as “IO”) was appointed, who held and concluded the inquiry on a single day, i.e. 4th September, 1998. The workman was permitted the services of a Defence Assistant. IAL cited, as its lone witness, Mr. Harish Chatola, Senior Office Superintendent, who, from the record, confirmed the fact of absence, from duty, of the workman, during the period stated in the charge-sheet. Cross-examination of Mr. Chatola was offered, which was declined by the workman. The workman, in his defence, cited certain adverse family circumstances, i.e. (i) the hospitalisation of his brother, at Faridabad, consequent to his meeting with an accident, which required the workman to take care of him till March, 1997, (ii) an accident, suffered by the workman himself, during the said period, in January, 1997, as a result whereof he was also immobilised for 4 months, and (iii) infection developing in the workman’s leg, during that period, resulting in his being further unable to rejoin duty till November, 1997. It was further contended, by the workman, that he had reported, for work, on 24th November, 1997, whereupon he was directed to make an application through proper channel, accompanied by a medical certificate of fitness. Since

then, according to the workman, he had been running “from pillar to post, for joining duties without any fruits” (as per the statement of the workman before the IO). Medical certificates, allegedly evidencing the treatment, of the workman’s brother, from 19th February, 1996 to 3rd March, 1997, as well as his own treatment from 25th January, 1997 to 24th November, 1997, were also furnished, by the workman to the IO.

4. The IO, *vide* his Inquiry Report, dated 20th November, 1998, found the workman guilty of the charges against him, albeit without any reasons. A copy of the said Inquiry Report, dated 20th November, 1998, was provided, to the workman, to respond thereto. The workman submitted his response, to the said Inquiry Report, on 3rd July, 1999. *Vide* order dated 31st August, 1999, the General Manager (Engineering) in IAL wrote, to the workman, stating that, after considering his reply, dated 30th July, 1999, the punishment of “immediate dismissal from the services” of IAL, as recommended, stood confirmed by him. A crossed cheque, representing one month’s salary of the workman, was annexed thereto.

5. Inasmuch as, at that time, another Reference (Reference No NTB 1/90) was pending, before the Industrial Tribunal, involving the workman, IAL applied, under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), for approval of its decision to dismiss the workman from service. It is the said application of IAL, under Section 33(2)(b) of the ID Act, which

stands rejected, by the Industrial Tribunal, by the impugned judgement, dated 2nd August, 2004, which, in turn, stands impugned, at the instance of IAL, in the present proceedings.

6. The Industrial Tribunal has proceeded, essentially, on the ground that the Standing Orders (Regulations) were not applicable to the workman and that, therefore, the proceedings against him, being relatable to Clause 28 (13) thereof, stood vitiated in their entirety. Reliance was placed, by the Industrial Tribunal, for the said purpose, on the judgement of the Supreme Court in *Air India vs U.O.I.*, **AIR 1996 SC 666**.

7. Before me, both learned counsel conceded the applicability, to the present case, of *Air India (supra)*. While Mr. Omung Raj Gupta, appearing for the workman, submits that the Industrial Tribunal rightly relied on the said decision, Mr. Lalit Bhasin, appearing for IAL, would contend that the said decision itself clarified that, in respect of employees who joined the services of the company prior to 1994, the Standing Orders (Regulations) were applicable. Mr. Gupta, faced with this submission, had sought an opportunity to place a brief written note, on record, dealing therewith. The opportunity, as prayed, was granted; however, it has been allowed to go abegging, as no written note has been filed by Mr. Gupta.

8. It would be appropriate, in the circumstances, to gravitate, straightaway, towards the *Air India* decision, before travelling elsewhere.

Air India vs U.O.I., AIR 1996 SC 666

9. “Indian Airlines” and “Air India International” were both established by Section 3 of the Air Corporations Act, 1953 (hereinafter referred to as “the Air Corporations Act”), w.e.f. 15th June, 1953. Section 8 of the Air Corporations Act read as under:

“8. Appointment of officers and other employees of the Corporations.—

(1) For the purpose of enabling it efficiently to discharge its functions under this Act each of the Corporations shall appoint a managing director and, subject to such rules as may be prescribed in this behalf, may also appoint such number of other officers and employees as it may think necessary: Provided that the appointment of the managing director and such other categories of officers as may be specified after consultation with the Chairman in such rules shall be subject to the approval of the Central Government.

(2) Subject to the provisions of section 20, every person employed by each of the Corporations shall be subject to such conditions of service and shall be entitled to such remuneration and privileges as may be determined by regulations made by the Corporation by which he is employed.

(3) Neither the managing director nor such other employee of either of the Corporations as may be specified in this behalf by the Central Government shall, during his service in the Corporation, be employed in any capacity whatsoever or directly or indirectly have any interest in any air transport

undertaking other than an undertaking of either of the Corporations, or in any other undertaking which is interested in any contract with either of the Corporations.”

Section 20 of the Air Corporations Act need not detain us, as it deals with “officers and employees of existing air companies”, and IAL was not an “existing air company”, as defined in clause (v) of Section 2 of the said Act.

10. The power to make Regulations, under the Air Corporations Act, was conferred by Section 45 thereof. For the purposes of the present case, sub-sections (1), (2)(b) and (3) of Section 45 alone need to be referred to. They read as under:

“45. Power of Corporations to make regulations –

(1) Subject to the provisions of sub-section (3), each of the Corporations may by notification in the Official Gazette, make regulations not inconsistent with this Act or the rules made thereunder for the administration of the affairs of the Corporation and for carrying out its functions.

(2) In particular and without prejudice to the generality of the foregoing power, any such regulations may provide for all or any of the following matters, namely: –

(b) the terms and conditions of service of officers and other employees of the Corporation other than the managing director and officers of any other categories referred to in section 44;

(3) No regulation under clause (b) of sub-section (2) shall be made except with the previous approval of the Central Government.”

11. Various Regulations were framed, by Air India, as well as by IAL, in exercise of the powers conferred by Section 45 of the Air Corporations Act, with the previous approval of the Central Government. The Supreme Court, in *Air India (supra)*, was concerned with the Air India Employees Service Regulations, 1963 (hereinafter referred to as “the 1963 Regulations”), which were framed by Air India under Section 45 of the Air Corporations Act, and governed the terms and conditions of the employees of Air India.

12. At the time of enactment of the Air Corporations Act, the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as “the IE Act”) was already in force. The preamble to the said Act itself declared that it was “an Act to require employers in industrial establishments formally to define conditions of employment under them”. The object of the said Act was expressly stated as the requirement, of “employers and industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them”. Sub-section (3) of Section 1 of the IE Act made it generally applicable to “every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the

preceding twelve months”. The expression “standing orders” was defined, in clause (g) of Section 2 of the IE Act as meaning “rules relating to matters set out in the Schedule” to the said Act. The Schedule to the IE Act enumerated the following categories of matters:

- “1. Classification of Workman, e.g. whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating the Workman periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employers and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for Workman against unfair treatment or wrongful exactions by the employer or his agents servants.
11. Any other matter which may be prescribed.”

13. Section 3 of the IE Act required every employer, in an industrial establishment to, within six months from the date on which the IE Act became applicable to the said establishment, submit, to the Certifying Officer, five copies of the draft Standing Orders proposed by him for adoption in the establishment. Section 4 provided that such Standing Orders would be certifiable, under the IE Act, if provision was made, therein, for every matter set out in the Schedule, and the Standing Orders were otherwise in conformity with the provisions of the Act, and cast, on the Certifying Officer, or the appellate authority (against the decision of the Certifying Officer), the responsibility to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders. Certification of Standing Orders was provided for, in Section 5 of the IE Act, which postulated that, on receipt of draft Standing Orders under Section 3, the Certifying Officer would forward a copy thereof to the trade union of the workmen in the establishment, or, where no such trade union existed, to the workmen themselves, calling for objections within 15 days. Thereafter, the said Section contemplates grant of an opportunity of hearing, to the employer as well as the workmen or their representatives, by the Certifying Officer who, consequent thereupon, would decide whether the draft Standing Orders were acceptable as such, or any modification or addition thereto were required, and would make an order in writing accordingly. Sub-section (3) of Section 5 stipulates that, once the above exercise was conducted, the Certifying Officer would certify the draft Standing Orders, and send copies, thereof, to the employer and the workmen. Section 6 of the IE Act provides for an appeal, against

the order of the Certifying Officer certifying Standing Orders, in respect of the establishment, by the employer, workmen, trade union or other prescribed representatives of the workmen, who felt themselves aggrieved thereby. Section 12-A of the IE Act provided that, for the period commencing on the date on which the IE Act became applicable to any industrial establishment, and ending with the date on which Standing Orders, finally certified under the said Act, came into operation in the said establishment, “the prescribed model standing orders shall be deemed to be adopted in that establishment”. For this purpose, Section 15 empowered the appropriate Government to, by notification in the Official Gazette, make Rules, to carry out the purposes of the IE Act, among which purposes has been included, by sub-section (2)(b), the “setting out of model standing orders for the purposes of” the IE Act.

14. In or around 1982, proceedings, under the IE Act, were initiated, against Air India, by the Deputy Chief Labour Commissioner, for certification of Standing Orders. Air India contended that the IE Act was not applicable to it. The Certifying Officer rejected the said contention, and proceeded to certify the Standing Orders to be applicable to Air India. Air India’s appeal, thereagainst, was rejected, which prompted Air India to move the High Court in writ proceedings. The said challenge, by Air India, was also unsuccessful, as the High Court held that the IE Act was a special Act, and applied to the employees of Air India, notwithstanding the

provisions of the Air Corporations Act. Air India, consequently, approached the Supreme Court.

15. On 29th January, 1994, the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994 (hereinafter referred to as “the 1994 Repeal Act”), came into force. Section 11 of the said Act repealed the Air Corporations Act, from that day, i.e. w.e.f. 29th January, 1994. Relying thereon, the employees of Air India sought to contend, before the Supreme Court, that, with the repeal of the Air Corporations Act, the 1963 Regulations also perished. Consequently, it was sought to be contended, Air India could not avoid certification of Standing Orders under the IE Act.

16. *Per contra*, Air India sought to contend that the 1963 Regulations were saved by Section 8 of the 1994 Repeal Act. It would be appropriate to reproduce Section 8 of the 1994 Repeal Act, thus:

“8. Provisions in respect of officers and other employees of corporations. –

(1) Every officer or other employee of a corporation (except a Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of the corporation) serving in its employment immediately before the appointed day shall in so far as such officer or other employee is employed in connection with the undertaking which has vested in a company by virtue

of this Act., become, as from the appointed day an officer or other employee, as the case may be, of the company in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration, *upon the same terms and conditions, with the same obligations* and with the same rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as he would have held under that corporation if its undertaking had not vested in the company and shall continue to do so as an officer or other employee, as the case may be, of the company or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to be the officer or other employee of the company within such period.

(2) Where an officer or other employee of a corporation opts under sub-section (1) not to be in the employment or service of the company in which the undertaking of that corporation has vested, such officer or other employee shall be deemed to have resigned.

(3) Notwithstanding anything contained in the Industrial Disputes Act., 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of a corporation to a company shall not entitle such officer or other employee to any compensation under the said Act., or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(4) The officers and other employees who have retired before the appointed day from the service of a corporation and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the company in which the undertaking of that corporation has vested.

(5) The trusts of the Provident Fund or Pilots Group Insurance and Superannuation Scheme of the corporation and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the company as was being done hitherto in the corporation. Tax exemption granted to Provident Fund or Pilots Group Insurance and Superannuation Scheme would continue to be applied to the company.

(6) Notwithstanding anything contained in this Act or in the Companies Act, 1956 or in any other law for the time being in force or in the regulations of a corporation, no Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of that corporation shall be entitled to any compensation against that corporation or against the company, as the case may be, for the loss of office or for the premature termination of any contract of management entered into by him with that corporation.”

17. The Supreme Court, speaking through Bharucha, J. (as His Lordship then was) categorically rejected the contention of Air India, in the following words (in para 9 of the report):

“Section 8 of the 1994 Act does not in express terms save the said Regulations, nor does it mention them. *Section 8 only protects the remuneration, terms and conditions and rights and privileges of those who were in Air India’s employment when the 1994 Act came into force. Such saving is undoubtedly “to quieten doubts” of those Air India employees who were then in service. What is enacted in Section 8 does not cover those employees who joined Air India’s service after the 1994 Act came into force. The limited saving enacted in*

Section 8 does not, in our opinion, extend to the said Regulations.”

(Emphasis supplied)

18. In *Air India (supra)*, therefore, the direction, to Air India, to provide draft Standing Orders for certification, under the IE Act, was opposed by Air India, on the ground that the conditions of its employees were governed by the Regulations issued under the Air Corporations Act. As against this, the employees contended that the Air Corporations Act itself stood repealed, w.e.f. 29th January, 1994, and that, therefore, this argument of Air India could not sustain. The Supreme Court effectively upheld the said contention of the employees. Air India’s submission, advanced *per contra*, to the effect that Section 8 of the 1994 Repeal Act saved the provisions of the Air Corporations Act, and the Regulations issued thereunder, were rejected, *clarifying, at the same time, that the provisions of the Air Corporations Act, and, consequently, of the Regulations issued thereunder, would stand saved in respect of employees who had joined the services of Air India prior to 29th January, 1994.*

19. The law enunciated by the Supreme Court in *Air India (supra)* was applied, as it is, by a Division Bench of this Court (speaking through Sanjiv Khanna, J.), in *Indian Airlines vs. U.O.I., 2006 (3) SLJ 461 (Del)*, adjudicating a writ petition, filed by IAL, challenging the orders of the Certifying Officer and the appellate authority, under the IE Act, holding the said Act to be applicable to IAL. It was

contended, before this court, in the said case, on behalf of IAL, that the IE Act did not apply to it, in view of the Service Regulations, framed under the Air Corporations Act, which was a special statute. This Court rejected the submissions of IAL, relying, for the said purpose, on the judgement of the Supreme Court in *Air India (supra)*. It was categorically held that, in view of the said decision, there could be no doubt about the fact that “the provisions of the Standing Orders Act (were) clearly applicable to the petitioner”. The attempt, of IAL, to escape the rigour of the judgement in *Air India (supra)*, by arguing that certain aspects had not been considered by the Supreme Court in the said decision, was also, needless to say, quelled by this Court in no uncertain terms, ruling, unexceptionably, that it was not open to this Court to revisit a decision of the Supreme Court, in view of the mandate of Article 141 of the Constitution of India. This decision did not, however, deal with the destination between “pre-1994” and “post-1994” employees of IAL, qua the applicability of the Air Corporations Act, and the Regulations framed thereunder.

20. Prior to the above decision, another Division Bench of this court had occasion to deal with a similar issue, in CWP 5677/97 (*Capt. Sanjeev Marwah vs Indian Airlines Ltd*), which was disposed of, by a short order dated 6th January, 1998, which read thus:

“The learned counsel for the petitioner has contended that the Regulations under which the enquiries being held against the petitioner does not survive in view of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994. The learned counsel has relied on a decision of the

Supreme Court in *Air India vs. Union of India and others, JT 1995 (5) FC 578* in this behalf. In para 9 of the said judgement a distinction has been drawn between pre-1994 employees and post-1994 employees. The petitioner is admittedly a pre-1994 employee. Therefore, even as per the said decision of the Supreme Court, the petitioner does not get benefit. Mr. Bhasin, the learned counsel appearing on behalf of the respondent submits that assuming for the sake of argument, though not admitting, that the Regularizations do not apply, the Model Standing Orders will continue to apply to the employees like the petitioner and these Orders also envisage departmental inquiries in such matters.

In view of the above we find no merit in this petition. We would also like to note here that the petitioner has admittedly raised this point before the Enquiry Officer and the Enquiry Officer may also deal with the same at the appropriate stage. The writ petition is dismissed.”

21. The Special Leave Petition, preferred by Capt. Sanjeev Marwah, challenging the above decision of this court, was also dismissed, by the Supreme Court, *vide* order dated 19th January, 1998, which states that the parties were “heard at length”. It may, therefore, be safely assumed that the judgement of this court was accorded the imprimatur of the Supreme Court.

The reasoning in the impugned Award

22. The reasoning of the Industrial Tribunal, as contained in paragraphs 8 to 10 of the impugned Award, reads as under:

“8. The learned counsel for company did not dispute the proposition that the workman was chargesheeted under the Standing Orders (regulations) framed under section 45 of the Air Corporations Act. But it was argued that clause 28 of Standing Orders (Regulations) published by the previous consent of Central Government were applicable. It was sought to be argued that establishments of the Corporation was not a Industrial Establishment because the payment of Wages Act 1936 was amended only in the year 1965. In the opinion of this tribunal, this controversy has been settled by the Supreme court on another ground. It is not in dispute that the company issued the chargesheet in year 1998 much after the commencement of the Air Corporations (Transfer of Undertakings and Repeal) Act 1994 (The Act of 1994 for short). It is also clear that after commencement of Act on 19/1/94 and issuance of notification of ‘appointed day’ the Indian Airlines ceased to be a Corporation. It became Indian Airlines Ltd. an Undertaking of Indian Airlines. The Corporation became a Company by Statutory Transfer. The Air Corporations Act 1953 stood repealed from the appointed day. Since the Act of 1953 repealed, the only question is if the Standing Orders (Regulation) framed under the old Act were saved. In opinion of this tribunal the Supreme Court has set the matter at rest. In the case of *Air India vs Union of India 1995 SCC (L & S) 1152* it has been laid down that regulations have not been served. True, this case relating to Air India but both Air India and Indian Airlines were corporations governed by the Act of 1953. Both of them were vested in the two Public Ltd Companies. The Supreme Court has made the following observations after considering section 8 of the Act of 1994.

“8. In our view, if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation. We do not think that there is room for implying anything in this behalf.

9. Section 8 of the 1994 Act does not in express terms save the said Regulations, nor does it mention them. Section 8 only protects the remuneration, terms and conditions and rights and privileges of those who were in Air India's employment when the 1994 Act came into force. Such savings is undoubtedly "to quieten doubts" of those Air India employees who were then in service. What is enacted in Section 8 does not cover those employees who joined Air India's service after the 1994 Act came into force. The limited saving enacted in Section 8 does not, in our opinion, extend to the said Regulations.

10. Holding as we do that the said Regulations ceased to be effective on 29/1/1994 the very foundation of Air India's case no longer exists. No consideration of other arguments is, therefore, necessary."

Since the regulations did not apply the workman was not governed by the Standing Orders (Regulations) applicable to him as a man working in factory. The workman could not have been charged for a committing a misconduct covered by clause 28 (13) of Standing Order (Regulations) applicable to workman working in a factory. Therefore, the framing of chargesheet, the procedure followed would not be in accordance with section 33 (2) of the Act 1961. It is well established that compliance of Section 32 (1) of the Act is mandatory as held by the Supreme Court in the case of Lord Krishna Textile Mills vs. its workman, AIR 1961 SC 860.

Therefore, the enquiry as well as the order of dismissal is invalid.

The result of the aforesaid discussion is that the workman could not have been charged under regulations which had no legal existence so far as the company was concerned. It is obvious

the workman would be governed by Model Standing Orders. Section 3 read with the definition of company in Act of 1994 clearly indicates that the company came into existence prior to merger in 1994. Thereafter the Indian Airlines Corporation merged into it. The establishments of the company are covered by the definition of establishment under section 2 (e) (1) of the Industrial Employment (Standing Orders) Act 1946 for the reason they were covered by definition of Establishment under section 2(11)(aa) of the Payments of Wages Act 1936. On date of merger of the Corporation in the company in the year 1994. The definition of establishment in the Payment of Wages was under section was amended to include the Air Transport service under section 2(ii)(aa) of Payment of Wages w.e.f. 1/2/65. At the time, the Indian Airlines Ltd came into existence, the Industrial Employment (Standing Orders) Act 1946 became applicable to its establishments. Therefore, there was no vacuum. So long as the Certified Standing Orders are not framed the company is governed by Model Standing Orders as per section 12 A of the Act 1946. Since the chargesheet was framed under the non-existent regulations, and the entire procedure prior to enquiry and after the enquiry was as per the regulations, it cannot be held that workman was dismissed in accordance with the Standing Orders applicable to him. This tribunal cannot grant approval to an order which was in derogation of mandatory procedure under section 33 (2) of the Act. The order dated 31/8/99 2/9/99 sought to be approved is illegal. This tribunal cannot put its seal of approval to an illegal order. The other points raised by the learned counsel for the workman need not be discussed. The result is that this application fails and is accordingly dismissed.”

Analysis and Order

23. In the wake of the aforementioned decisions, it is obvious that the decision, of the Industrial Tribunal, that the Standing Orders (Regulations) under the Air Corporations Act were not applicable to

the workman, and that, therefore, he would be governed by the Model Standing Orders, by virtue of the IE Act, cannot sustain in law. The Supreme Court, in *Air India (supra)*, has clearly held that the “terms and conditions of service” of pre-1994 employees of Air India stood saved by Section 8 of the 1994 Repeal Act. Among the said terms and conditions, were the Standing Orders (Regulations), framed under Section 45 of the Air Corporations Act. Clause 28 (13) of the said Standing Order (Regulations) would, therefore, apply to the workman, and the invocation, thereof, by IAL, cannot be regarded as incompetent or without jurisdiction. A Division Bench of this court has, in *Capt. Sanjeev Marwah (supra)*, expressed as much, and the said decision binds me, especially as the Special Leave Petition, preferred, thereagainst, by the employee, was dismissed by the Supreme Court, specifically recording, while doing so, that the matter had been heard at length.

24. Learned counsel for the respondent has been unable to bring, to my notice, any decision, which could efface, or even dilute, the effect of *Air India (supra)* or of *Capt. Sanjeev Marwah (supra)*. Despite requesting for, and being granted, specific opportunity, by me, to do so, nothing was forthcoming from the respondent.

25. Resultantly, following *Air India (supra)* and *Capt. Sanjeev Marwah (supra)*, I am constrained to hold that the impugned judgement, dated 2nd August, 2004, is unsustainable in law.

26. Having said that, however, the matter cannot rest there, as the Industrial Tribunal has, in para 10 of the impugned judgement, observed that, in view of its finding that the Regulations, whereunder the workmen had been charged-sheeted, were no longer in effect after 29th January, 1994, “no consideration of other arguments” was necessary. The Industrial Tribunal having chosen not to examine any other aspect of the application, filed by IAL, under Section 33(C)(2) of the ID Act, the said application would have to be remanded, to the Industrial Tribunal, to be decided on merits, uninfluenced by the impugned judgement. It would be entirely inappropriate for me to express any opinion thereon, as any such expression of opinion would amount to usurpation, by me, of the jurisdiction statutorily vested, by Section 33(C)(2) of the ID Act, on the Industrial Tribunal.

27. Consequent on the above discussion, these writ petitions are disposed of in the following terms:

- (i) WP (C) 21983/2005, filed by Indian Airlines Ltd, is allowed, to the extent that the impugned judgement, dated 2nd August, 2004, passed by the National Industrial Tribunal at Mumbai in Approval Application No NTB-72 of 1999, is quashed and set aside. The said Approval Application is remanded, to the Industrial Tribunal, to be decided on merits. In view of the fact that the present proceedings have been pending for over two decades, the Industrial Tribunal is

requested to decide the aforementioned Approval Application as expeditiously as possible and, in any case, within 3 months from the date of presentation, before it, of a certified copy of this judgement. The principles of natural justice shall be strictly complied with, and both parties would be granted a fair opportunity of hearing, without allowing either party to seek unnecessary adjournment.

(ii) As a consequence, WP (C) 16316/2004, filed by the workman Rajeev Sharma, is dismissed.

(iii) In case any benefits, by way of back wages or otherwise, have been granted to the workman Rajeev Sharma, consequent to the passing of the impugned judgement, they shall not be withdrawn or recovered, and would abide by the outcome of the decision, of the Industrial Tribunal, in Approval Application No NTB-72 of 1999.

28. There shall be no order as to costs.

**C.HARI SHANKAR
(JUDGE)**

MARCH 08, 2018
HJ