

(2001) 08 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No. 18136 (W) of 1999

Asok Kumar Sarkar	Vs	APPELLANT
Indian Airlines Limited		RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Airlines Service Regulations — Regulation 13
Constitution of India, 1950 — Article 14, 21
Contract Act, 1872 — Section 23
Industrial Disputes Act, 1947 — Section 25F

Citation : (2002) 1 ILR (Cal) 93

Hon'ble Judges : Asoke Kumar Ganguly, J

Bench : Single Bench

Advocate : Tapas Banerji, Malay Chakraborty, Thakurdas Roy Chowdhury, Ram Ghosh Dastidar and D. Purakait, for the Appellant; Pradosh Kumar Mallick and R.N. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

Asoke Kumar Ganguly, J.—The subject matter of challenge in this writ petition is the order of termination dated September 10, 1999 passed by the Chairman-cum-Managing Director, Indian Airlines Limited, the second Respondent. By the said order, the Petitioner was communicated that it was decided to terminate his service with immediate effect under Regulation 13 of the Service Regulations.

2. Since the legality of the said order and the manner of exercise of power in the passing of the said order is, the main ground of controversy between the parties, life. is in the fitness of things to set out the text of the said order. The same is set out herein below:

It has been decided to terminate your services with immediate effect under Regulation 13 of the Service Regulations applicable to you. Accordingly, your services stand terminated with effect from the 10th September, 1999.

Though, you are not entitled to any notice or salary in lieu thereof, in terms of

Service Regulation 13, a cheque for Rs. 13,707/- is attached. The Regional Director (East) has been advised to settle your accounts immediately.

3. In the writ petition, a declaration has also been prayed to the effect that Regulation 13 of the Indian Airlines Service Regulations (hereinafter called the said "Regulation") is ultra vires the provisions of Article 14 of the Constitution of India and Section 23 of the Indian Contract Act.

4. The material facts of the case are noted below:

The Petitioner was initially appointed a Loader in the year 1982. Thereafter, the Petitioner was promoted to the post of Traffic Superintendent in the year 1997. On August 3, 1999, one Ms. Monideepa Dutta, a lady passenger, came to the check-in Counter at Calcutta Airport for availing of Flight No. CD 7276 to Pune. The lady had three pieces of luggage, namely two suitcases and one handbag. As the handbag was heavy, she, on being advised, decided to put that also in the hold. All the items of luggage were screened and thereafter she proceeded towards the check-in counter. At the counter of the three items of her luggage were weighed and as the weight of the luggage was in excess of the permissible amount so the lady had to pay excess baggage charges for 10 Kg. She thus paid the excess baggage charges of Rs. 800.00. The staff at the counter gave her the boarding pass for Pune, but counterfoils for three baggage tags showed that they were booked for Ahmedabad instead of Pune. The lady pointed out this discrepancy and it is alleged that she was assured by the staff at the counter "this is alright". On such assurance, she did not have any further conversion and proceeded towards the security area. After passing through the security area the lady also identified her luggage. Then after landing at Pune, her baggage were not made available to her and then she made a complaint to the authorities of the first Respondent at Pune about non-delivery of the baggage to her. The counterfoils of baggage tags were made over by her to the staff of the first Respondent at Pune. The baggage ultimately landed at Ahmedabad Airport on the same day and an F.I.R. was lodged over that incident by the first Respondent at Ahmedabad with Sardarnagar Police Station and an investigation was taken up by the Sardarnagar Police Station. Two pieces of registered baggage belonging to Ms Manideepa Outta, the lady passenger, were recovered from Hotel King Palace, Ahmedabad in an allegedly open condition on August 5, 1999. Thereafter, with the help of police, the third peace of luggage was recovered from the possession of one Ms. Suri Shah and ultimately all the three pieces of luggage were restored to Ms. Dutta.

5. On August 6, 1999, an office memo was sent to the Petitioner on the wrong tagging of baggage in Flight No. CD 7276 of August 3, 1999. In the said letter, the Petitioner was told that he was at the checking counter of the said Flight from 08-30 hrs. to 18-35 hrs. on August 3, 1999. In the said letter, the allegation of wrong tagging of baggage in respect of Ms. Dutta was levelled and it was also stated that as a result of such wrong tagging the passenger was put to a lot of inconvenience. It was further stated that the said passenger complained

that the alleged wrong labeling of baggage was pointed out to the Petitioner by the passenger herself, but the Petitioner assured the said passenger that the same would be delivered to her at Pune but thereafter did not take any action to rectify the mistake or change the labels for Pune. The Petitioner was asked to submit his comments in connection with the alleged failure of duty on his part.

6. In answer to the said letter, the Petitioner replied on August 8, 1999. In the reply, the Petitioner stated that the, lady passenger was having 15 Kg. of excess baggage and she continuously requested the Petitioner to waive the excess baggage fare and introduced herself as the wife of a top Army Personnel. The Petitioner considering the position of the lady passenger waived 5 Kg. fax of excess baggage and requested her to pay the remaining excess baggage fare for 10 Kg., and accordingly, the lady went to pay the same. The further reply of the Petitioner is that when the same lady passenger was requesting the Petitioner to waive-the excess baggage fare and the Petitioner was requesting the lady to pay for the same, there was a heavy rush and may be out of such pressure, there was some confusion and the baggage tags were labeled wrongly for Ahmedabad. The baggage tags of Ahmedabad and Pune are kept side by side and the Petitioner said that this mistake might have been made unintentionally, but, the Petitioner clearly denied in his statement of August 8, 1999 that the passenger ever pointed out the wrong labeling of the baggage tags at the checking counter. The Petitioner further stated that if she had pointed out the mistake in the baggage tags, it would have been immediately rectified. The further reply of the Petitioner is that if the passenger knew of the wrong tagging of the baggage she should have reported the same at the baggage identification point to some of the members of the staff who were available at that point. The fact that she did not do so would show that she had no idea of wrong labeling. It appears that on August 10, 1999, the said lady passenger allegedly gave a statement in Pune office of the 1st Respondent her statement, she narrated the entire incident stating from the point of her reaching the Calcutta Airport at 15-00 hrs. for availing of the Flight No. CD 7276 to Pune. She also narrated the incident of carrying three pieces of luggage and also the incident of her excess baggage and payment of extra baggage fare. The only relevant statement given by Ms Dutta is that the staff at the counter gave the boarding pass" for Pune and counterfoils for three baggage?s were marked for Ahmedabad instead of Pune. Thereafter, the most relevant part of the statement is "I point this out to the staff behind the counter" who softly said "it"s ok". The lady said that she did not have any further conversation with any staff and proceeded towards the security area and after going through the security area she identified her baggage but she did not notice that the tags on the baggage at the identification point were marked for Ahmedabad and at the time of identification of baggage the lady had no conversation with the staff present there.

7. She further stated "on my identification, the staff attending the baggage noted it on the tags. From her statement, it would also appear that Ms Dutta was shown a few photographs of the staff who were at the check-in counter when the

said passenger checked in Flight No. CD 7276 dated August 3, 1999. The lady failed to identify anyone from the photographs.

8. It may be noted that the Petitioner was asked to go to Ahmedabad in connection with the police investigation for recovery of the luggage. On going to Ahmedabad the Petitioner was arrested and later on released on bail.

9. It appears that over the said incident a note was prepared which is dated August 8, 1999 by the 3rd Respondent. The said note has been disclosed by the Airlines Authorities in their affidavit. In the said note about the Petitioner, it has been stated that he was the only person who carried out the checking in operations in respect of CD 7276 dated August 3, 1999 for the sector Calcutta/Ahmedabad/Pune. The said note was prepared accepting the version of the lady that she pointed out the mistaken baggage counterfoils which were marked for Ahmedabad instead of Pune and on that the Petitioner assured the lady passenger that everything was in order. It was also stated that the Petitioner acknowledged the writing on the three pieces of baggage and also the writing on the baggage tags about the seat number to be in his hand-writing. In the said report of the 3rd Respondent, it was stated that this fact of the Petitioner's writing on the baggage tag along with the facts of Mrs. Suri Shah's checking-in at Calcutta Airport who was claiming the baggage tags at Ahmedabad and the baggage being recovered later from the Hotel leads to the conclusion of alleged involvement of the Petitioner and his intentional act of betraying the trust reposed by the management on the discharge of his duties. It was also stated that the incident was reported in the press affecting the name and interest of the Indian Airlines and its reputation and it has allegedly caused damage to the public faith on Indian Airlines. In the report of the 3rd Respondent about the involvement of other members of the staff including the involvement of the casual loader who was at the X-ray point and that of Md. Kamaluddin, Helper (Commercial) who was at the check-in counter does not appear to be substantial and as such no action was taken against them. But it is alleged as the Petitioner had allegedly betrayed the confidence reposed on him by Indian Airlines, the 3rd Respondent expressed his view that this is a case where his service should be terminated immediately in exercise of power under the provisions of Regulation the Service Regulations. It was opined that acts of the Petitioner requires "exemplary action". The 3rd Respondent, therefore, recommended the application of Regulation 13 in the case of the Petitioner and for taking appropriate action by C.M.D. of Indian Airlines.

10. Thereafter, on September 10, 1999, the impugned order was passed by the C.M.D. after pursuing the note dated September 8, 1999 of the 3rd Respondent and other background papers including the statement of the lady passenger, Ms Dutta and also the statement of the Petitioner and others involved in the matter. From the said order, it appears that the C.M.D. was convinced that the Petitioner had "deliberately, consciously and mischievously" attached the baggage tags for Ahmedabad on all the three items of baggage checked in by the lady passenger.

It was also stated in the said order that there is "devious" conspiracy to rob the lady passenger and the Petitioner, was described as the kidnapping in this conspiracy. It was also stated that the Petitioner by his act of mis-conduct and behavior has not only shaken the confidence of the management and the traveling public but also tarnished the image of the first Respondent, the airline. It was also stated that the incident was reported in the press and the action of the Petitioner brought shame to the entire "team of management-and-employees" of the first Respondent and in the background of these facts the continuance of the Petitioner in the company is not desirable and as such it was decided to invoke the provision of Regulation 13 of the Service Regulations. It was also stated that the Respondent must impose an exemplary punishment" on the Petitioner to relevant other employees from including in similar acts. From the impugned order, it would also appear that since no date of the meeting of the Board of Directors of the 1st Respondent was fixed, C.M.O. was exercising of his powers conferred on him under Regulation 13 read with Clause 3 of the Instrumental of Delegation of Administrative Powers for terminating the service of the Petitioner under Regulation 13 of the Service Regulations with immediate effect. The matter was to be reported to the Board in its next meeting as and when held.

11. Therefore, the Board meeting was held on September 21 and 24, 1999. It appears that the Board approved the action taken by the C.M.D. of invoking Regulation 13 of the Service Regulations read with Clause 3 of Instrument of Delegation of Administrative Powers. The Board was also of the opinion that the India Airlines has lost confidence on the Petitioner and in the interest of the company it approved the termination of the Petitioner immediately and as such the Board passed the following resolution as set out below:

Resolved that on the report of the Regional Director, Eastern Region, note of Director HRD both dated 8th September, 1999, speaking order passed by CMD on 10th September, 1999, together with information and clarification sought by the Board, the Board after due deliberations, was of the opinion that Indian Airlines has lost confidence in Shri A.K. Sarkar having regard to the nature of duties performed by him. The Board approved the action to termination the services of Shri A.K. Sarker with effect from 10th September 1999.

12. For a proper appreciation of the controversy at issue in this case. it necessary to consider the extent of the power under Reg. 13 of the said Regulations. Regulation 13 is set out below:

13(a) The services of an employee may be terminated without assigning any reason to him/her and without any prior notice but only on the following grounds not amounting to misconduct under the standing Orders, normally ;

(i) If he/she is, in the opinion of the Company (the Board of director of Indian Airlines incompetent and unsuitable for continued employment with the company and such incompetence and unsuitability is such as to make his/her continuance

in employment detrimental to the interest of the company;

It his/her continuance in employment constitutes, in the opinion of the company (the Board of Directors of Indian Airlines), a gave security risk making his/ her continuance in service detrimental to the interests of the company; Or If in the opinion of the company (Board of Directors in Indian Airlines) there is such a justifiable lack of confidence which having regard to the nature of duties performed, would make it necessary in the interest of the company to immediately terminate his/ her services;

It appears that Regulation 13 on be applied in three situations which are mentioned in the same and it further appears that in the case of the Petitioner if was invoked since m the opinion of the Board of Directions as there is a justifiable lack of confidence which having regard to the nature of the duties performed make it necessary in the case of company to immediate terminate the service of the employee. But, one thing is clear that ail such cases the power of Regulation 13 can be evoked on grounds which "as not amounting to misconduct under the standing order .

13. The Learned Counsel for the 1st Respondent urged that this Regulation can not be treated to be violative of Article 14 of the Constitution riot can it be said to be violative of Section 23 of the Contract Act. Her further submitted that this Regulation which has been quoted above is the revised form of Regulation. The text of unrevised Regulation 13 is quoted below:

13. The services of an employee are terminable at 30 days on either side or basic pay in lieu:

Provided, however, the Corporation will be at liberty to refuse to accept the termination on of his service by any employee where such termination is sought in order to a void disciplinary action contemplated or taking by the Management.

13. The Learned Counsel submitted that under the pre-revised Regulation there were no guidelines and there was a blanket power of the corporation to terminate the service of an employee of 30 days" notice or basic pay in lieu thereof. But, the present Regulation 13 is hedged in with sufficient guidelines and these regulations do not fall foul at all of the provisions of Article 14 of the Constitution of India. The Learned Counsel further submitted that this revised Regulation was framed keeping in view the decision 6f the Supreme Court in trial case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . The Learned Counsel further submitted that even though the vires of the revised regulations have not been pronounced upon but the said regulations were noted by the Supreme Court in the subsequent judgment in the case of Delhi Transport Corporation v. O.T.C. Mazdoor Congress.

14. The Learned Counsel submitted that in the course of hearing in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, (hereinafter called D.T.C. case) an intervention application being intervention

Petition No. 1 of 1990, was filed by the first Respondent and the Learned Counsel appearing on behalf of the first Respondent was heard by the Supreme Court. The Learned Counsel also pointed out that the Hon'ble Supreme Court noted in para 87 of the judgment "the unrevised Regulation 13 and also the revised Regulation 13". The Learned Counsel relied in this connection on the observation of Chief Justice, Sabyasachi Mukherji occurring in para. 108 of D.T.C. case. According to the Learned Counsel, those observations support the stand taken by the first Respondent in this case and the Learned Counsel wanted this Court to follow the principle enunciated by the learned Chief Justice in para. 108 of the judgment.

16. this Court humbly points out that the judgment of the Hon'ble Chief Justice was the minority view and is not binding on this Court. Apart from that this Court is of the opinion that in the instant case, even though the vires of the revised Regulation 13 have been challenged before this Court but this Court feels that for the purpose of deciding the legality of the impugned order, this Court need, not go into those constitutional questions. It is a well-settled judicial dictum that if the Court can decide the controversy in a matter without deciding any constitutional issue, the Court should rather leave the constitutional question untouched and decide the controversy between the parties if such a decision, without deciding the constitutional issue is possible. Therefore, this Court does not decide here the constitutional validity of the revised Reg. 13.

17. Coming back to the impugned order, which was passed under the said regulation (assuming the said regulation to be valid) this Court is of the opinion that the impugned order has not been passed in accordance with the said regulation for the reasons stated below:

18. The power of dismissal, which is conferred on the authorities under Regulation 13, is subject to several conditions. It is not a blanket power as has been rightly contended by the Learned Counsel for the Respondent.

19. The first of such condition is that the said power can not be exercised while dealing with a case of misconduct under the Standing Order. In other words, if mis-conduct is alleged against an employee in that case the power under Regulation 13 can not be pressed into service.

20. It is clear from the documents which have been disclosed and referred to in this case that the clear stand of the Respondent is that the Petitioner is guilty of mis-conduct. This is clear from the documents which have been disclosed in the affidavit in-opposition by the said Corporation. The impugned order dated September 10, 1999 is purported to have been passed on the ground that "misconduct and behavior has shaken the confidence of the management and traveling public". In the said order the C.M.D. has further held that the Petitioner had (deliberately, consciously and mischievously attached the baggage tags for Ahmedabad on all, the three baggage, checked in by the lady passenger". So it is clear that in the instant case, misconduct is the foundation of the Impugned

order passed against Petitioner. The C.M.D. has further stated impugned order that the Petitioner is the kind the, "conspiracy". Having taken the said stand in the impugned order, the C.M.D. has made it clear that the impugned order of dismissal of service, against the Petitioner was passed for his alleged misconduct. It is also stated in the impugned order of the C.M.D. that for the acts of the petitioned deterrent and exemplary punishment is to be imposed.

21. Reference in this connection may Be made to the Standing Order (Regulation) concerning discipline and appeals (hereinafter called the Standing Order). From Standing Order No. 1, it appears that every employee of the Corporation shall have to maintain absolute integrity and devotion to duty and must conduct himself in a manner which is conducive to the best interests, credit and prestige of the Corporation. This standing order is admittedly applicable to the Petitioner. From the order of the C.M.D. dated September 10, 1999, it is clear if the allegations made therein are accepted that the Petitioner must have acted in the breach of Standing Order No. 1.

22. Under Clause 16 of the said Standing Order various acts of mis-conduct have been specified. 16(8) of the said Standing Order makes it clear that breach of any standing order or any law or rules applicable to the establishment is a misconduct.

23. So the allegations levelled against the Petitioner in the impugned order, if accepted to be true, make out a case of breach of Standing Order No. 1. The same is a mis-conduct within the meaning of Standing Order No. 16(8). The impugned order of termination, being admittedly based on allegations which amount to a misconduct within the meaning of standing order and, has, therefore, been passed in total breach of the conditions precedent for the exercise of power under Regulation 13. As such the impugned order is invalid.

24. This infirmity in the said order is far too palpable to be ignored by this Court.

25. the next infirmity of the impugned order is that exercise of power under Clause 13 of the Regulation depends on the satisfaction of the Board of Directors of Indian Airlines. It appears from the impugned order dated September 10, 1999 that on that date the Board was not at all aware of the alleged incident relating to the dismissal of service of the Petitioner. But, the order was passed on the purported plea that date of meeting of the Board of directors was not fixed, so the C.M.D. in exercise of his power conferred on him under Regulation 13 and Clause 3 of the Instrument of Delegation of Administrative Power passed the impugned order with immediate effect. In this context, the delegation under the instrument of Delegation of Administrative Power (hereinafter called the said instrument) assumes vital importance.

26. So Clause 3.2 of the said instrument, which purports to authorise to C.M.D. to act on behalf of the Board, may be set out her/or its proper appreciation, Clause 3.2 of the said instrument is in the following terms:

3.2 When urgent action is called, the Managing Director may also in respect of all matters on which the approval of the Board is normally required, in such manner as he may deem fit in the interest of the Corporation, without consulting the Board provided that any action taken in exercise of this power shall be reported to the Board in its next meeting.

27. A reading of Clause 3.2 of the said instrument makes it clear that it is very unhappily drafted to the extent of becoming unintelligible. At least, the delegation in favour of C.M.D. is incomplete.

28. Even if those apparent defects are ignored and any rational meaning is extracted from those jumbled words, the said instrument of delegation can only apply in respect of a situation (i) where urgent action is called for and (ii) on which the approval of the Board is normally required.

29. this Court finds that under the revised Regulation 13, the requirement is of a totally different order. The condition present to the exercise of power under Regulation 13 is the satisfaction of the Board. The precise language used is "in the opinion of the Company (the Board of Directors of Indian Airlines)". So approval is totally different from satisfaction. Approval presupposes that the action can be or has been taken by some other authority, but the same is to be sent for the approval or confirmation of the Board. Approval in other words means confirmation See *Williams v. Veerland* 250 U.S. 295 : 63 L ed 289; *U.S. v. Conn.* 278 U.S. 339 : 70 Led 616.

30. Under Regulation 13 the authority to dismiss vests on the Board. Such authority can not be delegated in view of Clause 3.2 of the said instrument. Clause 3.2 will only apply in a situation when the jurisdiction to take action vests on a different authority but such action is subject to the approval of the Board. Therefore, Clause 3.2 of the instrument of delegation which provides for a limited delegation does not authorise C.M.D. to exercise the power which vests on the Board and solely depends on its satisfaction. Under Regulation 13, Board is not the approving authority but it is the authority to take the decision. In such a situation the satisfaction of the C.M.D. can not be a substitute for the satisfaction of the Board on the strength of Clause 3.2 of the Instrument of Delegation.

31. Apart from that Clause 3.2 of the Instrument Delegated power is contemplated only in a case when urgent action is called for. In the facts of this case, there is no requirement of an urgent action. The same is clear from the following facts.

32. Admittedly, the alleged incident took place on August 3, 1999. Thereafter, the Petitioner was placed under suspension immediately and his personal identity card was also taken back. As such, there was no situation calling for taking an urgent action of dismissal. From the perusal of the order passed by C.M.D. dated September 10, 1999, it is clear that the same was passed after a period of more than a month from the date of the alleged incident. No facts have been disclosed in the impugned order showing requirement for taking urgent action.

33. Mere recital that urgent action is called for does establish urgency in the absence of any objective material. As such, the purported exercise of power by C.M.D. is in excess of his purported delegated authority under the said Instrument. As such the impugned order is invalid and can not be sustained.

34. Since the initial exercise of power is invalid and infirm for the reasons mentioned above, the same can not be confirmed subsequently by the Board. This is made clear by the Supreme Court in the case of Baradakanta Mishra Vs. High Court of Orissa and Another, . Hon''ble Chief Justice A.N. Ray speaking for the court has held that confirmation have no legal effect in a situation where the thing which has to be confirmed is void. Since in the instant case, the order of the C.M.D. is void the same can not be confirmed by the order of the Board.

35. Now, coming back to the facts of this case, this Court finds that the only fact which has been alleged against the Petitioner is by the lady passenger. She said that even on her pointing out the incorrect labeling of the baggage, the Petitioner is alleged to have told her "it is OK", and assured her so correct the same. From that fact only it has been assumed by the management of the first Respondent that the Petitioner has indulged in a conspiracy and he is the kingpin. Further he has maliciously and mischievously "gave the wrong labeling. This is a devious conspiracy" to rob Smt. Dutta. This has not been alleged even by the lady passenger. It is difficult for this Court to accept this part of the cause which has been embellished against the Petitioner by the management of the first Respondent on the basis of the aforesaid statement of one lady passenger. this Court also finds that it is very difficult to accept the version of the lady that when the Petitioner assured her that it would be put in order, the lady passenger, a rather educated accomplished lady had accepted the same. It appeared further strange to this Court that when the said lady passenger identified her luggage, she did not check up whether the errors have been ratified or not and she did not make any complaint to anyone that the errors have not been rectified. She has not been able to even identify one Petitioner when his photographs were shown to her. In the conspectus of these facts, it is difficult for this Court to accept the case of the Respondent Airlines that the Petitioner was the kingpin in a conspiracy of wrongful labeling the baggage of the said lady passenger. this Court is of the opinion that this is really a situation in which the Petitioner is legitimately entitled to get an opportunity to prove his innocence. The management of the Corporation can not in this fact situation find out the alleged guilt of the Petitioner unilaterally. They should have held an enquiry. Instead of doing that, the corporation has chose to fall back upon Regulation 13 far the purpose of dismissal of the Petitioner who is a non-firmed employee of the Corporation. Even if Regulation 13 may not be struck down as arbitrary but the action of the Respondents which has been taken is de hors the said regulation and must be struck down an arbitrary.

36. As a confirmed employee of the Corporation, the Petitioner is entitled to have the benefit of a regular enquiry where he can prove his innocence. It is well

settled that as a result of the impugned order, the Petitioner has lost his job which is possibly the only source of his livelihood. The Courts have repeatedly held that when a permanent employee is thrown out of the employment that affects his livelihood which is included within the sweep of the right to life under Article 21 of the Constitution. Any action which affects the right to life or livelihood of an individual must be based on a procedure which is just, reasonable and fair. The procedure in such a case can not be fanciful or whimsical. See D.K. Yadav Vs. J.M.A. Industries Ltd., .

37. In the instant case, the Respondent-Corporation by denying the Petitioner an opportunity of hearing and by not holding a regular enquiry but has dismissed the Petitioner on the basis of his alleged guilt, which has not been proved anywhere. The impugned action dt. the Respondent Corporation is, therefore, wholly opposed to the basic tenants of natural Justice. Such an action is, therefore, void ab initio and can not be sustained by this Court.

38. Learned Counsel for the Respondent has raised the plea of loss of confidence and referred to certain decisions.

39. The plea of loss of confidence against the Petitioner has been raised by the Respondent primarily for their reason of bringing the case within the purview of the Regulation 13 where a justifiable lack of confidence having regard to the nature of the duties performed would make it necessary in the interest of the Corporation to terminate the service of the employee.

40. But, one thing must be noted that phraseology of Regulation 13 is a justifiable lack of confidence and not loss of confidence simpliciter. From the aforesaid phraseology of a "justifiable lack of confidence", it is clear that if the action based on the aforesaid plea of a "justifiable lack of confidence" is challenged before the court by the wronged employee, the authority must disclose materials before the court to justify its lack of confidence,. In the instant case, no such materials have been disclosed which justifies the lack of confidence on the part of the authorities of the Corporation on the Petitioner.

41. Apart from that, the said Corporation is a large statutory Corporation, where the employment is not merely a matter of contract between the employer and the employee, but it is a matter of status.

42. In this connection, Justice Rameswamy speaking for the majority judgment in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress (Supra) of the report has said - "it is thus to hold that the employees of the Corporation, statutory authority or instrumentality under Article 12, have the statutory status as members of its employees".

43. So, when the Petitioner has a statutory status, the question of personal confidence is hardly relevant. Apart from that, the Petitioner was not "doing any job of confidential nature. He was virtually employed as an ordinary employee of the said Corporation at- the time of dismissal like any other Traffic

Superintendent. He was doing his normal duty on the alleged date of incident, i.e. on August 3, 1999. There is no question of any lack of confidence having regard to the nature of duties performed by the Petitioner.

44. Dealing with almost similar plea of lack of confidence of the management to get rid of an employee, *L. Michael and Another Vs. Johnson Pumps Ltd.*, has commented that the lack of confidence is a new amour for the management and the industrial jurisprudence, which has been developed on catena of cases of the Hon"ble Apex Court, is sometime sought to be "subverted by this neo-formula". The learned judge also cautioned if the application of this doctrine is not properly scrutinised by the court, the lack of confidence in the law will be "the consequence of the loss of confidence doctrine.

45. In support of the aforesaid doctrine of the alleged less of confidence, the Learned Counsel for the Respondent cited some decisions.

46. The first decision which was cited on this aspect was in the case of *Air Corporation, Bombay v. V.A. Rebellow*. In that case, the Hon"ble Supreme Court was considering an order of termination of services of Rebellow on the basis of loss of confidence. In that case, the broad features of the case were that Rebellow, as an Assistant Station Superintendent, worked in such a manner that he was placed under suspension in view of the private conduct and behavior of Rebellow with Air Hostess employed by the Corporation. In that case, the order of termination of the employment of Rebellow did not contain any stigma against Rebellow. Apart from that it appears that the service of Rebellow was terminated because of total lack of confidence of the Corporation on account of grave suspicious regarding the private conduct and behavior of Rebellow with the Air Hostess of the Corporation and it was also clear in that case that the report and statements from the Air Hostess concerned could not be disclosed as that would involve the reputation and future of the unmarried girls. It is because of these facts that the Hon"ble Supreme Court upheld the termination of service of Rebellow. The same is not the position here. Apart from that, in the instant case, the impugned order of termination Courts is stigma and is clearly based on the mis-conduct of the Petitioner as has been disclosed above. So the decision in the Rebellow's case does not support the case of the Respondent.

47. The next decision cited by the Learned Counsel for the Respondent on this aspect was in the case of *Assam Oil Company Vs. Its Workmen*, . In that case, the service of one Miss Scott, a lady Secretary, was terminated on account of loss of confidence. Miss Scott was working at the relevant point of time in the Assam Oil Company Ltd., which was not a State within the meaning of Article 12 and the employment was governed purely by contract of master and servant. Apart from that, from paras 12 and 13 of the judgment, it appears that Miss Scott, a lady Secretary, was occupying a position of some confidence with Mr. Gowan. It also noted the said office was very small. In those circumstances, the Hon"ble Supreme court held that normal remedy of re-instatement is hot warranted. But, in the instant case, the facts are totally different.

48. To the same effect in the judgment of the Hon'ble Supreme Court in the case of Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra, . In the facts of the case, the Hon'ble Judge of the Supreme Court held that the order of reinstatement by the tribunal is not expedient. The Respondent, V. Chopra, was a Stenographer and served the Insurance Company only for a period of 12 months. In that case also, it was found that the establishment of the Company was a small one in which the position of a Stenographer is of such confidence and trust and it was felt that such Stenographer will take down dictation in almost all matters which are confidential and secret.

49. This Court feels that there are clearly distinguishing factual features in the case of Ruby General Insurance Company v. Chopra (Supra), and on those facts, the Hon'ble Supreme Court held that the relief of reinstatement is inexpedient. As such, the ratio in the case of Ruby General Insurance Company v. Chopra are not attracted here.

50. The other case cited on the aspect of the matter was in the case of Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, . In the said case, it was held that the payment of compensation and not reinstatement would be the adequate relief. It is clear from that case that Anil Kumar Chakraborty was a Compounder of the Respondent-company and as a Compounder, he held the position of trust and confidence. In the facts of the case that it was found Chakraborty abused his position of trust and indulged in mal-distribution of drugs and medicines to the detriment of the health and well being of the workers. In the facts of those cases, it was held that the order of reinstatement will be inexpedient. It goes without saying that those facts are totally absent in the present case and as such, re-instatement which is the normal remedy can not be refused in this case.

51. The Learned Counsel for the Respondent also raised an argument on the plea of alternative remedy. It has been urged that the Petitioner has the alternative remedy of raising dispute before the Industrial Tribunal and to have an adjudication of his grievance instead of coming to this Court. This Court is unable to appreciate this objection of the Respondent-Corporation. In this case, the Petitioner has challenged the constitutional validity of the revised Regulation 13. The fact that the court does not adjudicate on the same is a different matter. But, the court at the same time does not express any opinion on the said challenge nor does the court say that the said challenge has no substance. This Court is of the opinion, that since the legality of the impugned order can be decided on other points, the Court is not examining the aspect of the constitutional validity of those regulations.

52. Apart from that, in the instant case, the action of the Respondent is void for the reasons mentioned above and is totally opposed to the principle of natural justice.

53. The Learned Counsel for the Corporation has relied on a decision of the

Division Bench of the Calcutta High Court in the case of General Manager, Mummria Eastern Coalfields v. Gopal Chandra Mondal and Anr. 1998(2) C.L.J 109 in order to contend that the against the termination of service, a writ petition is not maintainable. In that case, the service of Gopal Chandra Mondal was terminated as it was found on an enquiry that he gave a false undertaking about the relationship of one Mahesh Kora with his deceased sister. In those facts the service of Gopal Chandra Mondal was terminated without complying with the provisions of Section 25F of the Industrial Disputes Act. The Division Bench held the best forum for decision on that aspect would be the industrial court and not the writ court. this Court is in respectful agreement with the principles of law laid down in the case of General Manager, Mummria Eastern Coalfields v. Gopal Chandra Mondal and Anr. (Supra), but, unfortunately the same has no factual relevance to the present case.

54. The Learned Counsel for the Respondent also relied on this aspect on the case of Scooters India and Others Vs. Vijai E.V. Eldred, . In that case, there was termination of services of the workman automatically for unauthorised absence in terms of provisions of the Standing Order. In the facts of that case, the Hon"ble Supreme Court held that the writ petition is not maintainable as the remedy is available under the Industrial Law. Apart from that, in para. 2 of the judgment, it was held that there are disputed questions of fact and the writ petition was filed more than.6 years after the date on which the cause of action had arisen and there is no explanation for the delay. As such, the petition was dismissed on that ground. It is clear that the said decision in the case of Scooter India rests on a totally different and factual matrix and the decision rendered therein has no application to the facts of this case.

55. On the question of alternative remedy, this Court is of the view that the principles which have been laid down by the Constitution Bench of the Hon"ble Supreme Court in the case of State of Uttar Pradesh v. Md. Nooh are very pertinent. In the case of Md. Nooh, the argument before the Hon"ble Supreme Court was that the Police Act and Regulations made thereunder have provided for an appeal and revision and have given the tribunal sufficient powers to correct the errors, illegality and irregularity touching jurisdiction, procedures and all other aspects of the matter. Such tribunal alone is competent to correct all such errors. This argument has been noted by the learned Judge in para. 8 of the judgment and the same has been dealt with in para. 11 by the learned Judges by holding that in a case where error/, illegality and irregularity touching jurisdiction of the procedure is so loudly obtrusive that it leaves on the decision an indelible stamp of infirmity or vice and the same can not be cured on appeal or revision. The learned Judges held that the excess of jurisdiction is manifest and the proceedings have been conducted in a manner which is contrary, to the rule of natural justice. Such proceeding offends the superior court's sense of fair play and justice. In such a case, the superior court may exercise its power under the writ jurisdiction. Same principles have been laid down by the Hon"ble Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai

and Others,

56. Following those principles, the court has quashed the impugned order dated September 10, 1999 passed by the C.M.D. of the Corporation dismissing the Petitioner from service and the court also quashes the resolution of the Board held in the meeting on September 21 and 24, 1999 relating to the Petitioner whereby the Petitioner's dismissal has been upheld.

57. The writ petition is allowed to the extent indicated above.

58. The Respondent-Corporation is directed to reinstate the Petitioner with full back-wages and salary to which he would have been entitled to but for the impugned order. But, this Court makes it clear that this will not prevent the Respondents from holding any enquiry departmentally against the Petitioner on charges which formed the basis of the dismissal order against him. Such enquiry of course must be held according to law.

59. this Court also directs that the Petitioner must be given the continuity of the service and his seniority to which he would have been entitled to but for the impugned order. this Court directs the Respondent-Corporation to re-instate the Petitioner within seven (7) days from today and pay his entire back-wages and salary within a period of 2 months after his re-instatement. The writ petition is allowed to the extent indicated above.

60. There will be no order as to costs.

61. The prayer for stay of the operation of the judgment was made by the learned Advocate appearing for the Respondents after the judgment is pronounced. In the facts and circumstances, such prayer is declined.

62. Let Xerox certified copy of this order be given to the learned Advocates for the parties.