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भारत का राजपत्र
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No. 08] NEW DELHI, FEBRUARY 23— FEBRUARY 29, 2020, SATURDAY/ PHALGUNA 4—PHALGUNA 10, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 7 फरवरी, 2020

का.आ. 239—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा, केंद्र सरकार भारत के प्रतिनिधि कार्यालय, मैड्रिड में निम्नलिखित कर्मचारियों को दिनांक 8 फरवरी, 2020 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

(1) श्री अमित सिंह, सहायक अनुभाग अधिकारी

[सं. टी. 4330/01/2020]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 7th February, 2020

S.O. 239.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorizes the following official in Representative Office of India, Madrid to perform the consular services as Assistant Consular Officer with effect from 08 February, 2020.

(1) Shri Amit Singh, ASO

[No.T.4330/01/2020]

T. AJUNGLA JAMIR, Director (CPV)

नई दिल्ली, 17 फरवरी, 2020

का.आ. 240.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा, केंद्र सरकार भारत के दूतावास, मिंस्क में श्री कुलदीप कुमार, सहायक अनुभाग अधिकारी को दिनांक 17 फरवरी 2020 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी. 4330/01/2016]

टी. अजुंगला जामिर, निदेशक (सी.पी.वी.)

New Delhi, the 17th February, 2020

S.O. 240.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Kuldeep Kumar, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Minsk to perform the consular services with effect from 17 February, 2020.

[No.T. 4330/01/2016]

T. AJUNGLA JAMIR, Director (CPV)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 27 फरवरी, 2020

का.आ. 241.—केन्द्र सरकार एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम,1946 (1946 की अधिनियम संख्या 25) की धारा 5 की उपधारा (1) के साथ पठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की दिनांक 25.09.2019 की अधिसूचना सं. E-HD 40 COD 2019 के माध्यम से प्राप्त सहमति से श्री डी० के० शिवाकुमार, विधायक एवं पूर्व मंत्री कर्नाटक सरकार एवं उनके सहयोगियों के विभिन्न परिसरों पर की गयी तलाशी के दौरान दिनांक 02.08.2017 को आयकर विभाग द्वारा जब्त बेहिसाबी नकदी और उपर्युक्त अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं एवं षडयंत्रों तथा उसी संव्यवहार में किए गए अथवा उन्हीं तथ्यों से उत्पन्न अन्य किन्हीं अपराधों के सम्बन्ध में कर्नाटक सरकार के कर्मियों सहित श्री डी. के. शिवाकुमार एवं उनके

सहयोगियों द्वारा भ्रष्टाचार निवारण अधिनियम, 1988 के प्रावधानों के कथित उल्लंघन का अन्वेषण / जाँच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार समस्त कर्नाटक राज्य में करती है।

[फा. सं. 228/26/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 27th February, 2020

S.O. 241.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka, Home Department (Crimes), issued vide Government Order No. E-HD 40 COD 2019, Bengaluru, dated 25.09.2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole State of Karnataka for inquiry/investigation into all purported violations of the provisions of Prevention of Corruption Act, 1988 by Sri D.K. Shivakumar, other officials of Government of Karnataka and others in connection with the seizure of unaccounted cash, finding of other properties and filing of prosecution by the Income Tax Department and also investigation by Directorate of Enforcement and any attempt, abetment and conspiracy, in relation to or in connection with one or more such offence(s) and/or any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/26/2019-AVD-II]

S.P.R. TRIPATHI, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 21 फरवरी, 2020

का.आ. 242.—केन्द्रीय सरकार, कारखाना अधिनियम, 1948 (1948 का 63) की धारा 2 के खंड (ढ) के पहले परन्तुक के खंड (iii) के अधीन प्रदत्त शक्तियों के अनुसरण में कोल इंडिया लिमिटेड की समनुषंगी कंपनी महानदी कोलफील्ड्स लिमिटेड, जिसका रजिस्ट्रीकृत कार्यालय, डाकघर – जागृति विहार, जिला सम्बलपुर-768020, ओडिशा है, के संबंधित कारखानों या कर्मशालाओं को स्तंभ (2) में यथाविनिर्दिष्ट 'अधिष्ठता' के रूप में और यथाविनिर्दिष्ट नियुक्त अधिकारियों को स्तंभ (3) में नीचे दी गई सारणी में दर्शाया गया है :-

सारणी

क्र.सं.	कारखाना अथवा वाशरी क्षमता सहित का नाम	अधिष्ठता के रूप में नियुक्त अधिकारी का पदनाम
(1)	(2)	(3)
1.	ईब वैली वाशरी, लखनपुर (10 मि.ट. प्रतिवर्ष)	महाप्रबंधक (लखनपुर क्षेत्र)
2.	बसुन्धरा वाशरी (10 मि.ट. प्रतिवर्ष)	महाप्रबंधक (बसुन्धरा क्षेत्र)
3.	जगन्नाथ वाशरी (10 मि.ट. प्रतिवर्ष)	महाप्रबंधक (जगन्नाथ क्षेत्र)
4.	हिंगुला वाशरी (10 मि.ट. प्रतिवर्ष)	महाप्रबंधक (हिंगुला क्षेत्र)

2. महानदी कोलफील्ड्स लिमिटेड के अध्यक्ष-सह-प्रबंध निदेशक को, जिन्हें ऊपर यथा उपदर्शित अधिष्ठता के रूप में पदाभिहित किया गया है ऐसे अधिकारियों को अपने-अपने पदों पर नाम निर्दिष्ट करने के लिए प्राधिकृत किया जाता है।

[फा. सं. 43022/3/2017-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 21st February, 2020

S.O. 242.—In pursuance of clause (iii) of the first proviso to clause (n) of section 2 of the Factories Act, 1948 (63 of 1948), the Central Government hereby appoints officers specified in column (3) of the Table below as "Occupier" of the respective factories or workshops of Mahanadi Coalfields Limited, specified in column (2) of the said Table having its registered office at Post Office - Jagruti Vihar, District Sambalpur-768020, Odisha a subsidiary company of the Coal India Limited, namely:—

TABLE

Sl. No.	Name of the Factory or Washery with capacity	Designation of Officer appointed as Occupier
(1)	(2)	(3)
1.	IB Valley Washery at Lakhanpur (10Mtpa)	General Manager (Lakhanpur Area)
2.	Basundhara Washery (10Mtpa)	General Manager (Basundhara Area)
3.	Jagannath Washery (10Mtpa)	General Manager (Jagannath Area)
4.	Hingula Washery (10Mtpa)	General Manager (Hingula Area)

2. Chairman-cum-Managing Director of the Mahanadi Coalfields Limited is hereby authorised to nominate by name such officers to the respective positions who are designated as occupiers as indicated above.

[F. No. 43022/3/2017-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 17 फरवरी, 2020

का.आ. 243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 117/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/38/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 17th February, 2020

S.O. 243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 117/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the

employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/38/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 2nd day of January, 2020

INDUSTRIAL DISPUTE No. 117/2014

Between:

Sri I. Hanumantha Rao,
S/o Brahmaiah,
D.No.-7A-2-1, Eastern Street,
Thurpuvedi,
Eluru, West Godavari Dist. …Petitioner

AND

1. The Sr. Divisional Manager,
   LIC of India, Divisional Office,
   Jeevan Godavari, Morampudi,
   Rajahmundry.

2. The Branch Manager,
   LIC of India, Eluru Branch,
   Eluru, West Godavari Distt. …Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 38/2014-IR(M) dated 7.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the removal from service of Sri I. Hanumantha Rao, Ex-Temp. Class-IV LIC of India, Eluru-II Branch w.e.f. 28.1.2013 is legal and justified? If not, what other relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 117/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 2nd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 137/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/70/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 137/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/70/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 1st day of January, 2020

INDUSTRIAL DISPUTE No. 137/2014

Between:

Sri Ch. Sekhar Rao,
S/o Ch. Appa Rao,
D.N.13-11-92,
Arilova Colony,
Visakhapatnam – 530040. …Petitioner

AND

The Manager,
Life Insurance Corporation of India,
Divisional Office, PB No.411,
Jeevan Bima Road, Jeevan Prakash,
Visakhapatnam – 530 004.

…Respondent

Appearances:

For the Petitioner : None

For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 70/2014-IR(M) dated 18.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Sri Ch. Sekhar, Ex-Sub-staff, w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 137/2014 and notices were issued to the parties concerned.

2. The case stands posted for appearance of the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 1st day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 199/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/71/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 199/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/71/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 1st day of January, 2020

INDUSTRIAL DISPUTE No. 199/2014

Between:

Sri G.V. Arun Kumar,
D.No.45-1-12/2, Opp: GJ Hospital,
Muslim Tatichetlapalem,
Visakhapatnam-530016. …Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No.411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530044. …Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 71/2014-IR(M) dated 18.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Sri G.V. Arun Kumar, Ex-Substaff w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 199/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute her case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute her case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 1st day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 142/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/76/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 142/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/76/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 2nd day of January, 2020

INDUSTRIAL DISPUTE No. 142/2014

Between:

Sri Shaik Noorjahan,
D.No.14-437/7, Rajiv Nagar,
Arilova, Visakhapatnam
Visakhapatnam (A.P.) … Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No.411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530004. …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 76/2014-IR(M) dated 17.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Sri Shaik Noorjahan, Ex-Temp.Substaff w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 142/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 2nd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 147/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/82/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 147/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/82/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 2nd day of January, 2020

INDUSTRIAL DISPUTE No. 147/2014

Between:

Sri S.K. Noorahmad
S/o S.K. Pacha,
D.No.3-6, Regupalem (Village)
Yelamanchili (Mandal)
Visakhapatnam Dist.
Visakhapatnam (A.P.) … Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No.411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530004. … Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 82/2014-IR(M) dated 18.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Sri S.K. Noorahmad, Ex-Temp.Substaff w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 147/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 2nd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 148/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/83/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 148/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/83/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 2nd day of January, 2020

INDUSTRIAL DISPUTE No. 148/2014

Between:

Sri D. Lakshmana Rao,
D.No.B-103,
Dayalnagar, Visalakshinagar,
Visakhapatnam
Visakhapatnam (A.P.) … Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No.411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530004. … Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/83/2014-IR(M) dated 17.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Sri D. Lakshmana Rao, Ex-Temp. Substaff w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 148/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 2nd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 185/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/102/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 185/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/102/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 1st day of January, 2020

INDUSTRIAL DISPUTE No. 185/2014

Between:

Sri Krishna Prasad,
S/o B. Kalidas,
Veerunaidu Colony,
Narasannapet, Srikakulam District.
Srikakulam. …Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No.411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530044. …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 102/2014-IR(M) dated 1.8.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the removal from service Sri B. Krishna Prasad, Ex-Temp.Class-IV LIC of India, Divisional Office, Visakhapatnam w.e.f. 24.1.2013 is legal and justified? If not, what other relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 185/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 1st day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 150/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/85/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 150/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/85/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 2nd day of January, 2020

INDUSTRIAL DISPUTE No. 150/2014

Between:

Ms. N. Venkata Sudha Rani,
D.No.38-31-129/1,
Green Garden, Marripalem,
Visakhapatnam
Visakhapatnam (A.P.)-530018. …Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No. 411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530044. …Respondent

Appearances:

For the Petitioner : Party in Person
For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 85/2014-IR(M) dated 17.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Ms.N. Venkata Sudha Rani, Ex-Temp. Substaff w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 150/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute her case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute her case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 2nd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 154/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/90/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 154/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/90/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 1st day of January, 2020

INDUSTRIAL DISPUTE No. 154/2014

Between:

Sri U. Ganesh,
C/o V. Sita Rama Rao,
Plot No.79, LIC Colony,
Papayyaraju Palem,
Pendurthy (Mandal),
Visakhapatnam (A.P.) … Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No.411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530044. …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 90/2014-IR(M) dated 18.7.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Sri U.V. Ganesh, Ex-Temp.Substaff w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 154/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 1st day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आन्ध्र सीमेंट्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 24/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-29012/1/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-29012/1/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 3rd day of January, 2020

INDUSTRIAL DISPUTE No. 24/2015

Between:

Sri Mallireddi Naidu Babu,
S/o Krishna,
Pedanaidupalem (Village)
Sabbavaram (Mandal),
Visakhapatnam (A.P.) … Petitioner

AND

The Senior Vice President (admn) & Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. … Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 29012/1/2015-IR(M) dated 1.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sri Mallireddi Naidu Babu, S/o Krishna, workman in dispute in service or else in not paying legal benefits to his father for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 24/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 3rd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आन्ध्र सीमेंट्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 31/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-29012/6/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-29012/6/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 3rd day of January, 2020

INDUSTRIAL DISPUTE No. 31/2015

Between:

Sri Sirapurapu Sanni Babu,
S/o Somulu,
Pedanaidupalem (Village)
Sabbavaram (Mandal),
Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President (admn) & Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : None

For the Respondent : Authorised representative

AWARD

The Government of India, Ministry of Labour by its order No. L- 29012/6/2015-IR(M) dated 1.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sri Sirapurapu Sanni Babu, S/o Somulu, workman in service in contravention of 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 31/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 3rd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आन्ध्र सीमेंट्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 27/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-29012/16/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2016) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-29012/16/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 7th day of January, 2020

INDUSTRIAL DISPUTE No. 27/2016

Between:

Sri Sabbavarapu Ramu,
S/o Sh. Demudu,
Mogilipuram (Village)
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) … Petitioner

AND

The Senior Vice President & Plant Head,
Andhra Cements Limited, Jaypee Group,
Visakha Cement Works, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029.

…Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/16/2016-IR(M) dated 29.3.2016 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of Company in not considering Sri Sabbavarapu Ramu, S/o Demudu in services in contravention of Section 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cement Company is legal and justified? If not, to what relief the concerned workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 27/2016 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 7th day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 17 फरवरी, 2020

का.आ. 255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 198/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/100/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 17th February, 2020

S.O. 255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 198/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 12.02.2020.

[No. L-17012/100/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 1st day of January, 2020

INDUSTRIAL DISPUTE No. 198/2014

Between:

Sri P. Srinivas,
H.No.7-5-155/1,
Tank Road, Sultanabad (P.O.&M),
Karimnagar Dist,
Karimnagar (A.P.) …Petitioner

AND

1. The Zonal Manager,
   LIC of India, Zonal Office,
   Opp. Secretariat, Saifabad,
   Hyderabad-500001.
2. Sr. Divisional Manager,
   LIC of India, Divisional Office,
   Karimnagar, Karimnagar District. … Respondents

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 100/2014-IR(M) dated 8.8.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Zonal Office, Hyderabad/Divisional Office, Karimanagar in terminating the services after crossing 240 days continuous service of Sri P. Srinivas, Ex-Temp. Substaff LIC of India, Divisional Office, Karimnagar Branch w.e.f. 1.2.2013 is legal and justified? If not, what other relief the applicant is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 198/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute her case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute her case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 1st day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 फरवरी, 2020

का.आ. 256.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महानगर टेलीफोन निगम लिमिटेड, मुंबई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 1 मुंबई के पंचाट (संदर्भ संख्या 05/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुए थे।

[सं. एल-40011/10/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2019) of the Central Government Industrial Tribunal cum-Labour Court-1 Mumbai , as shown in the Annexure, in the Industrial dispute between the employers in relation to The Mahanagar Telephone Nigam Ltd, Mumbai & Others, and their workmen which were received by the Central Government on 17.02.2020.

[No. L-40011/10/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present : in-Lok-Adalat JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO. CGIT-1/05 OF 2019

Parties: Employers in relation to the management of Mahanagar Telephone Nigam Ltd., Mumbai

AND
Their workmen

Appearances :

For the Management:	:	Mr.M.B.Anchan, Adv.
For the Union	:	None present
State	:	Maharashtra

Mumbai, dated the 20th day of January 2020

AWARD

1. The present reference has been made by the Central Government by its order dated 07.2.2013 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947. The terms of reference as per the schedule to the said order are as under:

> *"Whether the action of G.M. (e. 1) & G.M. (w.3) MTNL in transferring Mr.Sanjay Y. Pawar to Telephone Exchange, Chunabhatti and Smt. Pushpa Sarvaiya to Devidas Lane Telephone Exchange, Borivali in gross violation of the existing transfer policy and not considering the request of Smt. Pushpa Sarvaiya on medical grounds for posting at Meera Road exchangte where vacancies existed is fair, legal and justified? If not, what relief the concerned workmen are entitled to?"*

2. The case was taken up in the Lok Adalat.

3. Parties have filed Settlement and as per the Settlement the Union has submitted that in view of the Volunteer Retirement Scheme introduced by the Opponent which is being availed by the second party workmen, (Ex.5), it did not want to prosecute the above Reference No.CGIT01/05 of 2019.

4. In view of the above Settlement this reference is decided in terms of the settlement which shall form a part of this Award.

5. Award is passed accordingly.

Justice RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उपाध्यक्ष, भारत पर्यटन विकास निगम लिमिटेड, नई दिल्ली, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2 मुंबई के पंचाट (संदर्भ संख्या 16/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/163/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2014) of the Central Government Industrial Tribunal-cum Labour Court- 2 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice President, India Tourism Development Corporation Ltd., New Delhi & Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-42012/163/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO. CGIT-2/16 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIA TOURISM DEVELOPMENT CORPORATION LTD.

The Vice President,
India Tourism Development Corporation Ltd.,
Scope Complex, Lodhi Road,
New Delhi -

AND

THEIR WORKMEN

Mr. Jayadeep Babaji Khadye,
Sampada CHS Ltd., Bldg. No.48,
B-706, Nehru Nagar,
Kurla [E],
Mumbai – 400 024.

APPEARANCES:

FOR THE EMPLOYER : Mr. V. Philip Representative

FOR THE WORKMEN : Mr. Nagraj N. Kankonkar Advocate

Mumbai, dated the 21st January, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/163/2013 – IR (DU) dated 25.02.2014. The terms of reference given in the schedule are as follows :

"1. Whether the termination of service of the applicant w.e.f. 17.10.2008, who had put in continuous service of 15 years without any break even though on contract basis which was renewed from time to time is liable to be regularized on the role of ITDC, whose branches are scattered all over the Country?2. Whether the claim of applicant for back wages w.e.f. 17.10.2008 is justified ? 3. If so, to what relief workman is entitled to ?''

2. After the receipt of the reference, both the parties were served with the notices.

3. In view of pursis filed by the concerned workman, he wants to withdraw the reference in view of settlement. As such he does not want to pursue the reference and hence reference is disposed of. Hence order.

ORDER

Reference is withdrawn and hence disposed of with no order as to costs.

Date: 21.01.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उपाध्यक्ष, भारत पर्यटन विकास निगम लिमिटेड, नई दिल्ली, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2 मुंबई के पंचाट (संदर्भ संख्या 19/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/161/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2014) of the Central Government Industrial Tribunal cum-Labour Court- 2 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice President, India Tourism Development Corporation Ltd., New Delhi & Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-42012/161/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO. CGIT-2/19 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIA TOURISM DEVELOPMENT CORPORATION LTD.

The Vice President,
India Tourism Development Corporation Ltd.,
Scope Complex, Lodhi Road,
New Delhi -

AND

THEIR WORKMEN

Shri Umesh R. Erran,
B/4 Premier CHS Ltd.,
Shivsrusti,
Kurla [E],
Mumbai – 400 024.

APPEARANCES:

FOR THE EMPLOYER : Mr. V. Philip, Representative

FOR THE WORKMEN : Mr. Nagraj N. Kankonkar, Advocate

Mumbai, dated the 21st January, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/161/2013 – IR (DU) dated 24.02.2014. The terms of reference given in the schedule are as follows :

"Whether the termination of service of the applicant w.e.f. 17.10.2008, who had put in continuous service of 15 years without any break even through on contract basis which was renewed from time to time is liable to be regularized on the role of IDC, whose branches are scattered all over the Country?''

2. After the receipt of the reference, both the parties were served with the notices.

3. In view of pursis filed by the concerned workman, he wants to withdraw the reference in view of settlement. As such he does not want to pursue the reference and hence reference is disposed of. Hence order.

ORDER

Reference is withdrawn and hence disposed of with no order as to costs

Date: 21.01.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 259.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उपाध्यक्ष, भारत पर्यटन विकास निगम लिमिटेड, नई दिल्ली, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2 मुंबई के पंचाट (संदर्भ संख्या 20/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/162/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 259.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2014) of the Central Government Industrial Tribunal-cum Labour Court- 2 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice President, India Tourism Development Corporation Ltd., New Delhi & Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-L42012/162/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/20 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIA TOURISM DEVELOPMENT CORPORATION LTD.

The Vice President,
India Tourism Development Corporation Ltd.,
Scope Complex, Lodhi Road,
New Delhi -

AND

THEIR WORKMEN

Mrs. Sapna S. Sawant,
Bansy Tower CHS Ltd.,
B-Wing, Shanti Park, Mira Road [E],
Dist. – Thane.
Maharashtra -

APPEARANCES:

FOR THE EMPLOYER	:	Mr. V. Philip, Representative
FOR THE WORKMEN	:	Mr. Nagraj N. Kankonkar, Advocate

Mumbai, dated the 21st January, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/162/2013 – IR (DU) dated 25.02.2014. The terms of reference given in the schedule are as follows :

> *"1. Whether the termination of service of the applicant w.e.f. 17.10.2008, who had put in continuous service of 14 years without any break even though on contract basis which was renewed from time to time is liable to be regularized on the role of ITDC, whose branches are scattered all over the Country ?2. Whether the claim of applicant for back wages w.e.f. 17.10.2008 is justified ? 3. If so, to what relief workman is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. In view of pursis filed by the concerned workman, he wants to withdraw the reference in view of settlement. As such he does not want to pursue the reference and hence reference is disposed of. Hence order.

ORDER

Reference is withdrawn and hence disposed of with no order as to costs

Date: 21.01.2020

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 260.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,भारत संचार निगम लिमिटेड, कोझीकोड, एर्नाकुलम और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – एर्नाकुलम के पंचाट (संदर्भ संख्या 13/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.11.2019 को प्राप्त हुए थे ।

[सं. एल-40011/13/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 260.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2017) of the Central Government Industrial Tribunal-cum Labour Court- Ernakulum, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Ltd., Kozhikode, Ernakulum & Others, and their workmen which were received by the Central Government 25.11.2019.

[No. L-40011/13/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 15th day of November 2019, 24 Kartika 1941)

ID No.13/2017

Workman : The General Secretary,
All Kerala Ex-Servicemen Security Staff &
Allied Service Association
Karthika, Thottada P.O.
Kannur - 670007

By Adv. P.K.Madhusoodhanan

Management : 1. The Maj (Rtd) Aravindakshan C.
Proprietor of M/s. X'men Security Agency
Koyilandi Post
Kozhikode - 673305

By Adv.Sangeetha G.

2. The General Manager
Bharat Sanchar Nigam Ltd.
Kozhikode - 673305

By Adv. Mathews K. Philip

This case coming up for final hearing on 29-10-2019 and this Tribunal-cum-Labour Court on 15-11-2019 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-40011/13/2016-IR(DU) dated 27-03-2017 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the action of the management of BSNL Kozhikode in terminating the services of Shri.Ebin Mathew, IMA workers/contract labour engaged by M/s.X' man Security Agency, Kozhikode without conducting of inquiry is legal and justified? If not, to what relief the workman is entitled to and from which date?"

3. The union entered appearance and filed claim statement. The 1st management remained absent and was declared ex-parte vide order dt.14.07.2017. The 2nd management entered appearance and filed written statement denying the allegations in the petition. The union and the 2nd management produced certain documents which were also taken on record subjected to proof.

4. While so on 29.02.2009 the counsel for the union submitted that the union is not interested in pursuing the matter any further. The counsel also filed a memo to that effect.

5. In view of the stand taken by the union that they are not interested in pursuing this industrial dispute there cannot be any adjudication with regard to the dispute referred to this Tribunal.

6. Hence in the circumstances of this case a "no dispute award" is passed and the reference is answered accordingly.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 15th day of November, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil
Exhibits for the Management	-	Nil

नई दिल्ली, 18 फरवरी, 2020

का.आ. 261.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,एनटीपीसी लिमिटेड, टीटीपीएस, तालचेर थर्मल, अंगुल, भुवनेश्वर, (ओडिशा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – भुवनेश्वर के पंचाट (संदर्भ संख्या 24/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020.को प्राप्त हुए थे ।

[सं. एल-42012/150/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 261.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2013) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Bhubaneswar , as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, NTPC Ltd., TTPS,Talcher Thermal, Angul, Bhubaneswar, Orissa & Others, and their workmen which were received by the Central Government 18.02.2020.

[No. L-42012/150/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 24 OF 2013

Dated Bhubaneswar, the 1st February, 2020

Present:

Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

The General Manager,
M/s. NTPC Ltd., TTPS,
Talcher Thermal, Angul. …First party management

AND

The General Secretary
NTPC Power Workers Union,
Talcher thermal, Talcher, Angul. …Second party Union

Appearances:

Sri B.S.Tripathy, Advocate : For first party management

Sri S.K.Mishra, Advocate : For second party Union

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-42012/150/2012 – (IR(DU)) dated 25.2.2013 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (herein after referred to as 'the Act") and the terms of reference reads as follows:

> 'Whether the action of NTPC Ltd., Talcher thermal in introducing the electronic time punching system for recording of attendance without complying Section 9A of the Act is legal or justified ? If not, what relief the Union is entitled to ?'

2. The case of the second party Union as per statement of claim is that Talcher Thermal Power Station (in short TTPS) was originally under the control of Orissa State Electricity Board (in short OSEB). The said TTPS was transferred to NTPC by virtue of the TTPS (Acquisition and Transfer) Act, 1994. Accordingly, TTPS was vested to NTPC Ltd. with effect from 3.6.1995. As per Section 11 of Acquisition and Transfer Act,1994, the service condition of erstwhile employees of TTPS shall not be varied to their disadvantage. It is the claim of the Union that working hour of the workmen attached to the offices was 10 A.M. to 5 P.M. with half an hour lunch break from 1.30 P.M. to 2 P.M. But, the management of NTPC changed the hours from 8.30 A.M. to 5.30 P.M. with lunch break from 1 P.M. to 2 P.M. with a total duration of 8 working hours, which is disadvantageous to the employees of TTPS. It is also pleaded that attendance of the workmen/employees was recorded through attendance register mannually. The management has introduced and forced the workmen to give their attendance by 'Electronic Time punching Device'. The above procedure of taking attendance is neither permitted in the Certified Standing Order of the Company nor it is allowed in term and condition of service of the employees of the management. No notice as contemplated under Section 9-A of the Act was issued to the employees or the Union before introducing the 'Electronic Time Punching Device' for taking attendance of the workers. Taking of attendance by manual method being a service condition and prevailed from the time of erstwhile management of TTPS, the introduction of taking attendance through 'Electronic Time Punching Device' being disadvenageous to the erstwhile employees and that too without a notice under Section 9-A of the Act is illegal and not sustainable in the eye of law. Any order in this regard is void and it has to be cancelled. The claim of the Union is that they raised a dispute before the labour machinery for cancellation of the changed service condition i.e., taking of attendance by 'Electronic Time Punching Device'. Conciliation proceeding before the labour machinery was failed as a result of which, the present reference is made.

3. The management has disputed the statement of claim taking a stand that the Industrial Tribunal being an adjudicator is to adjudicate upon the dispute within the term and condition of the reference. Change of working hour from 8.30 A.M. to 5.30 P.M. instead of 10 A.M. to 5 P.M. not being the schedule of reference, any pleading by the Union in this regard has no merit for consideration. According to the management, the workmen are duty bound to give their attendance for the purpose of drawing their salary as well as for maintenance of discipline in administration of the Company. Neither the Certified Standing Order nor the TTPS (Acquisition and Transfer) Act mandate that attendance of the workmen has to be taken manually by signing the attendance register. No specific mode or method has been described in service condition of the employees in this regard. The management being in head of the administration and helm of the affair has the authority to decide the mode of taking daily attendance of the workman. Taking of attendance by 'Electronic Time Punching Device' does not affect the service condition of individual workman in any manner. Rather it is no-time consuming and the best and effective method to take attendance of the present employees. Method of taking attendance is not also covered by the Item No.8 of Schedule IV of the Act as such no notice as contemplated under Section 9-A of the Act is required to be issued. By introducing the Biometric System for taking attendance, time schedule of working hour is not changed. Introduction of such Biometric System for taking attendance cannot be a service condition in any stress of imagination and therefore, the management is not duty bound to issue any notice to the Union or the employees under Section 9-A of the Act before introducing the same. Thus, the management has made a prayer in the written statement for rejection of the statement of claim.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

i) Whether the action of NTPC Ltd., Talcher Thermal in introducing electronic time punching system for recording of attendance without complying Section 9A of the Act is legal and justified?

ii) If not, what relief the Union is entitled to ?

5. The second party Union have examined workmen Sri Sitakanta Rath and Sri Nirakar Dash as W.Ws.1 and 2 and filed documents like copy of Talcher Thermal Power Station (Acquisition and Transfer) Act, 1994, copy of OSEB Certified Standing Order, copy of NTPC-Talcher Thermal circulars dated 15.3.2012 and 22.3.2012 and copy of Union complaint letters dated 19.3.2012, 24.3.2012 and 12.4.2012 and copy of OSEB Order dated 10.9.1974 marked as Ext. 1 to Ext. 5 in support of the claim advanced in the statement of claim. On the other hand, the management has examined its Manager (HR) as M.W.1 and filed the copy of a settlement with NTPC Mens Congress Union marked as Ext. A to refute the allegations raised in the statement of claim.

FINDING

6. The bone of contention of the dispute raised by the Union is that no notice under Section 9-A of the Act was issued by the management before introducing Biometric System for taking attendance of the employees. It is not disputed by the management that no notice under Section 9-A of the Act was issued before introducing of Biometric System. It is emerging from the oral testimony of the workmen examined in this case that they are required to be present in time by introduction of such system. Manual attendance register system was allowing the workmen to sign the attendance register as per their convenient and mutual understanding. At times they are stranded to traffic of vehicle would unable to attend the office in-time. In old system permitted them to give their attendance in such a situation even though they were late. Giving attendance by manual is a usage and custom. The same being a service condition covered by Item No.8 of the Schedule IV cannot be changed without a prior notice under Section 9-A of the Act. On being cross-examined, W.W.2 admits that there are three shifts and there is no change of timing of the shifts by introduction of such Biometric System. It is only his grievance as emerging from his cross-examination that if a workman is late, he would loose his salary for that day. In the old system attending the duty in late hour was adjusted. It is admitted by W.W.2 that if an employee fails to sign the attendance register, he was treated absent from duty. By introduction of Electronic Time Punching Device working hour is changed. But, both the witnesses have failed to explain as to how working hour is changed by taking such attendance by Biometric System. It appears that they are mostly apprehensive that their late-coming, if any, would penalize them by deduction/loosing of wages for the days of late coming. It cannot be over looked that a workman has to punctual in his duty. On the other hand, as per the Certified Standing Order habitual late attendance and absence without leave are misconduct. In that view of the matter, the management has the authority or power to take attendance of its employees by any method inclusive of the method of Biometric System. It is also emerging from the evidence of the parties more particularly from the Certified Standing Order that there is no prescribed method by which the management is required to take attendance of its employees. On the other hand, the Certified Standing Order prescribes the period and hours of work, holidays and pay days, change of shifts are required to be notified. Any workman attending late is liable to deduction of wage as per the Wage Act and he shall at work at the time fixed and notified as per the Certified Standing Order. Be that as it may, it cannot be stated or held that the management has no choice to take attendance of its employees by any other method than signing attendance register. It is prerogative of management to decide as to how the administration of its office can be run smoothly.

7. The other point of contention raised in the pleading and argument of the second party Union is that taking of attendance by signing attendance register is an usage and custom and the same cannot be changed without a prior notice under Section 9-A of the Act. In this regard reliance has been placed on the decision of the Hon'ble Supreme Court in the case between Tata Iron and Steel Co. Ltd. and the workmen and others reported in AIR 1972 SC 1917 and in the case of the management of Indian Oil Corporation Ltd. Vrs. its workmen reported in AIR 1975 SC 1856. But, in both the cases change of working day and withdrawal of certain allowance without prior notice were subject matters of the disputes. Change of wages, allowance, working hours, holidays, timing of shift, declared rest days are undoubtedly service conditions and therefore, notice under Section 9-A of the Act is required for making any change in those regards. Method of taking attendance cannot be termed as an usage or custom as defined in Schedule IV of the Act in stretch of any imagination. The timing of shift and duty hour are not going to be affected by such system. When introduction of such system is not going to affect the term and condition of service, the management cannot be prohibited to adopt the best method suitable to him for taking attendance of its employees. Since the system is not suitable to

a later comer or unauthorized absentee or to a group of workmen, the management cannot be restrained for introducing such system without a notice as required under Section 9-A of the Act. In any stretch of imagination it cannot be said that taking attendance through Biometric System is a violation of service condition. Thus, the principles set out by the Hon'ble Apex Court in the cases under reference are in different context and the facts and circumstances. Therefore, the principles set out therein is not applicable to the case at hand.

8. For the analysis and discussions made above, the statement of claim preferred by the second party Union and the dispute raised therein have no merit for consideration and as such, the same stands rejected.

The reference is answered and the Award is passed accordingly.

B. C. RATH, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 262.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स र्देशक, सेंट्रल इंस्टीट्यूट ऑफ फ्रेशवॉटर एक्वाकल्चर कौसल्यागंगा, भुवनेश्वर, (ओडिशा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2 भुवनेश्वर के पंचाट (संदर्भ संख्या 37/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020 को प्राप्त हुए थे ।

[सं. एल-42012/106/1999-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 262.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2017) of the Central Government Industrial Tribunal-cum-Labour Court-2 Bhubaneswar, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Central Institute of Freshwater Aquaculture, Kausalyaganga, Bhubaneswar, Orissa & Others, and their workmen which were received by the Central Government 14.01.2020.

[No. L-42012/106/1999-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present: Sri B.C.Rath,LL. B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar.

I.D. Case No. 37 of 2017

This the 14th day of October, 2019

The Director Central Institute of Freshwater Aquaculture (CIFA)
Kausalyaganga, Bhubaneswar, Orissa. …1st Party Management

-Versus-

Sri Sachidananda Paikray,
S/o. Purna Chandra Rout,
of Kantapada, P.O. Sankhamari,
Via : Badamba,Dist-Cuttack.
At Present Village Pubasasan,
P.O. Kausalyagang, Bhubaneswar-751002,
P. S. Pipili, Dist-Khurda. (Orissa) …2nd Party workman

Appearance:-

For the 2nd Party Workman : Self

For the 1st Party Management : None

AWARD

This Industrial Dispute Case is registered in the event of the reference received from the Government of India Ministry of Labour and Employment in exercising its authority conferred under clause(d) of sub-section(1) and sub-section(2A) of Section 10 of the I.D.Act,1947(14 of 1947) vide their Letter No. L-42012/106/1999-IR(DU) Dated 09.05.2017 for adjudication and the term of reference is :-

> "Whether the action of the Management of Director Central Institute of Fresh Water Aquaculture Kausalyaganga Bhubaneswar in terminating the services of Sachidananda Paikray in 1993 without complying with the provisions of Sec.25-f of ID Act,1947 is legal & justified ?If not, then what relief the said workman is entitled to and from which date?"

2. Briefly stated the case of the 2nd Party workman, as emerging from the statement of claim, is that he was engaged by the 1st Party Management as a casual labourer on monthly wage basis with effect from 7.10.1990. He was selected and imparted training on Scientific method of Carp culture by the Management. He rendered continuous service from 7.10.1990 till 31st December,1993. Thereafter, he was refused employment without compliance of notice pay and retrenchment compensation. Hence, he raised a dispute before the Labour Machinery consequently resulting in the reference as mentioned in Supra.

3. The Management fails to appear in the case inspite of notice and service of statement of claim of the 2nd Party as a result of which it has been set exparte .

4. The Workman has adduced oral as well as documentary evidence to support his claim.

In his evidence preferred in shape of sworn affidavit he has stated that he was engaged with effect from 7.10.1990 as a casual labourer and he was paid Rs.450/- per month for his such engagement. His evidence in form of sworn affidavit is nothing less than his pleading advanced in his statement of claim. In support of his assertion the Xerox Copies of the orders of the 1st Party Management in regard to selection of the workman for taking a training program on carp culture and his relieve order after such training are filed . That apart a Xerox copy of the letter issued by the Director of the 1st Party Management addressed to the Labour machinery is filed. Admittedly, there is nothing in the uncontroverted affidavit evidence of the workman to discard his claim. But, as per the settled principle of the Hon'ble Apex Court the burden lies on the workman to establish that he was in continuous and uninterrupted service of the 1st Party Management for more than 240 days in a calendar year preceding to his retrenchment/termination so as to enable him to be entitled to notice pay and retrenchment compensation as provided U/s.25-(f)of the Act. Mere assertion in form of sworn affidavit in this regard is not sufficient to hold that he worked for more than 240 days continuously and uninterruptedly in the establishment of the 1st Party Management. The documents relied upon by the workman do not disclose either the nature of employment/engagement of the workman nor it establish that he rendered service for more than 240 days continuously in a calendar year preceding to the alleged refusal of employment. No where in Exts.1 and 2 it has been mentioned that the workman and other persons named in those letters were the employees or casual labourers of the 1st Party Management. Perusal of Ext.1 and 2 suggest that the workman and several others were selected as trainees for a training on scientific method of carp culture. There is nothing in Ext.1 and 2 to establish that the 2nd Party workman was selected for the training being an employee or casual labourer of the 1st Party Management. Similarly, Ext.3 and Ext.4 do not disclose that the workman was employed for more than 240 days in a year in between 1991 to 1993. The contents of Ext.4 is at best leads to an inference that the 2nd Party was engaged for some days during December 1991 and in the year l1993. It cannot also be over sighted that even if it is accepted for argument shake that the workman was engaged/employed in the 1st Party Management in between 1991 to 1993 as a casual labourer and thereafter he was refused employement, the dispute seems to have been raised in the year 2017. Such dispute is raised after preference of the Writ before the Hon'ble High Court of Odisha in the year 2016 and withdrawal of the same on a plea that the matter relates to Industrial Dispute and the party is at liberty to approach the appropriate Government for raising such dispute. No reasonable explanation is coming forth from the evidence and pleadings of the workman as to the delay in raising the industrial dispute. Having regard to the above facts and circumstance it cannot be inferred from the mere oral testimony of the workman that he was ever employed by the 1st Party Management as a casual labourer for a period of more than 240 days continuously and uninterruptedly in a calendar year. That apart, he has raised the dispute after

more than 25 years without assigning sufficient reason for the delay in raising the dispute. Thus, the statement of claim preferred by the workman has no merit for consideration and the same stands rejected.

Accordingly, the award is passed. A copy of the award be sent to the Ministry for necessary action at their end.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 263.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक,सेलुलर और आणविक केंद्र, हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – हैदराबाद के पंचाट (संदर्भ संख्या 94/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020.को प्राप्त हुए थे।

[सं. एल-42011/120/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 263.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/2015) of the Central Government Industrial Tribunal-cum -Labour Court- Hyderabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director,Centre for Cellular and Molecular, Hyderabad & Others, and their workmen which were received by the Central Government 17.02.2020.

[No. L-42011/120/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 22nd of January, 2020

INDUSTRIAL DISPUTE No. 94/2015

Between:

The General Secretary,
CCMB Contract Workers Union,
1-1-82, Habsiguda, Street No. 01,
Hyderabad – 500 007. …Petitioner

AND

1. The Director,
Centre for Cellular and Molecular
Biology (CCMB), Uppal Road,
Habsiguda,
Hyderabad – 500 007.

2. Shri K. Prabhakar Reddy,
H.No.1-36/6, B, Jawahar Colony,
Chandanagar,
Hyderabad – 500 050. …Respondents

Appearances:

For the Petitioner : None

For the Respondent : Sri P. Sudheer Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42011/120/2015-IR(DU) dated 5.10.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Centre for Cellular and Molecular Biology (CCMB) and their workman. The reference is,

SCHEDULE

"Whether the action of the management of CCMB and contractor of CCMB in reducing the mandays of work from 26 days to 20 days in a month without issuing any notice is legal and justified? If not, to what relief the workmen are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 94/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner union to attend the court to prosecute their case. But the Petitioner union failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner union has already been settled and the Petitioner Union has no claim to raise against the Respondents. Hence, the case of the Petitioner union is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 22nd of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 फरवरी, 2020

का.आ. 264.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स शीर्ष सुरक्षा लिमिटेड, सत्यनगर, भुवनेश्वर (ओडिशा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2 भुवनेश्वर के पंचाट (संदर्भ संख्या 61&63/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.01.2020.को प्राप्त हुए थे।

[सं. एल-42011/107/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 264.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61&63/2017) of the Central Government Industrial Tribunal -cum-Labour Court-2 Bhubaneswar, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Top Security Ltd., Satyanagar, Bhubaneswar (Odisha) & Others, and their workmen which were received by the Central Government 14.01.2020.

[No. L-42011/107/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

I.D.Case No.61 of 2017 & I.D Case No. 63 of 2017
Reference No.L-42011/107/2017-IR(DU) Dated.09/10/2017

1. M/s. Top Security Ltd, Plot No.18,
2nd Floor Satyanagar, Bhubaneswar (Odisha)-751007.

2. The Head-cum-CGM,
OSCOM, M/s. IRE Ltd, Matikhala,
Chhatrapur, District-Ganjam,
(Odisha)-751007. …1st Party Managements

-Versus-

The Secretary, Orissa Security & Service Employees Union,
Station Road, Chhatrapur, Ganjam, (Odisha). …2nd Party Union

14) 22.10.2019 By this order both the I.D. Cases mentioned above are disposed of by this common order since the terms and conditions of the references in both the cases are identical so also the parties.

Heard the authorized representative of the 2nd Party Union and the authorized representative of the Managements on the petition moved along with an affidavit by the authorized representative of the 2nd Party Union. It is submitted that the authorized representative being the Secretary of the Union has gone through the formula of fixation of minimum wages and he was satisfied that the House Rent Allowance is one of the components on the basis of which the minimum wage is fixed from time to time. Therefore, the dispute arising due to demand of the Union to pay house rent allowance at the rate of 10% of wages to the contract workers engaged as Security Personals by the Contractor M/s. Top Security Service(P)Ltd, has been resolved amicably with full satisfaction of the Contract Workers. Hence, there being no dispute pending between the parties the reference cases may be disposed of with "no dispute award". The sworn affidavit of the representative is filed in support of the petition of the 2md Party Union. On being asked the representatives of the parties submitted that the dispute under reference is resolved amicably keeping in view the formula and component on basis of which minimum wage is being paid to the workers.

Having regard to the above submissions of the parties as well as the sworn affidavit filed by the authorized representative of the Union it can be safely said that the dispute under reference being resolved and settled amicably there is no requirement for the Tribunal to proceed with the hearing of the reference as well as taking evidence of the parties for the purpose of giving award. In that view of the matter the reference is to be disposed of with no dispute award. Accordingly the above noted Industrial Dispute Cases are disposed of. Copy of the order be sent to the Ministry for necessary action at their end.

Dictated & corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 265.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, (एचआर) बीएपी/बीएचईएल, रानीपेट, वेल्लोर तमिलनाडु और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 04/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.02.2020 को प्राप्त हुए थे।

[सं. एल-42011/83/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 265.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2018) of the Central Government Industrial Tribunal-cum-Labour Court- Chennai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, HR, BAP/BHEL, Ranipet, Vellore, Tamil Nadue & Others, and their workmen which were received by the Central Government on 13.02.2020.

[No. L-42011/83/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

ID No. 4/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 31.01.2020

The General Secretary
Anaithu Oppandha Thozhilalar Sangam
BAP/BHEL/Ranipet
Chennai-632406 : 1st Party/Petitioner Union

AND

1. The General Manager
HR, BAP/BHEL
Ranipet
Vellore-632406 : 1st Party/Respondent

2. M/s. Raghavendra Enterprises Facility Management
M. 6/2, Second Floor, 4th Main Road
Besant Nagar
Chennai-600090 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Respondents : Advocates M/s. T.S. Gopalan & Co.

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/83/2017-IR(DU) dtd. 26.02.2018 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of the Management of M/s Raghavendra Enterprises, Contractor of M/s BHEL Ranipet in terminating the services of workmen as per lit enclosed is legal & justified? If not, what relief the workman is entitled to and from which date?"*

2. On receipt of the above reference from the appropriate Government the dispute was registered as ID No. 4/2018 and due notices were issued to both the parties for their appearance fixing the case to 17.12.2018. Since then, the case is dragged for such a long period till 27.01.2020 intervening almost 6 adjournments in the year 2019, and then finally it was posted to 27.01.2020 for appearance and for Claim Statement. Neither the Petitioners nor the General Secretary of the Union appeared. A little reference to the backdrop of the case needs mention that the Appropriate Government when sent the reference dtd. 26.02.2018 the copy of the reference was accordingly issued in favour of the Respondents viz. Respondent No. 1, The General Manager (HR), BAP/BHEL, Ranipet, Vellore and Respondent No. 2, Raghavendra Enterprises Facility Management, Besant Nagar, Chennai and to the Petitioner, The General Secretary, Anaithu Oppandha Thozhilalar Sangam, BAP/BHEL, Ranipet. The Appropriate Government also directed to the Petitioner-Parties raising the dispute shall file a Statement of Claim complete with relevant documents, list of reliance and witnesses before the Tribunal within a period of 15 days. It is well presumed the Petitioner Union must have received the copy of the reference dtd. 26.02.2018 sent by the Appropriate Government. Since then no step is taken by Petitioner Union. On further perusal of the record it also reveals that as soon as the reference was received by this Tribunal, due notice was issued to the Petitioner Union as well as Respondents. The receipt of the notice has been acknowledged by the concerned parties and the Respondent entered appearance by filing its Vakalatnama on 26.10.2019 and 15.12.2018. But the Petitioner Union slept over the matter to comply the direction of the Appropriate Government or to raise their claim before this Tribunal despite of receipt of such reference. However, for the interest of justice this Tribunal suo-moto afforded sufficient opportunities to the Petitioner for appearance and presentation of their Claim Statement. The General Secretary of the Union or any of the aggrieved petitioners did not turn up.

Thus, their non-appearance clearly says that the Petitioners or the Union has got no interest to proceed with the dispute. The non-cooperation and default in appearance of the Petitioner constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraphs, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 31.01.2020)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 266.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महानगर टेलीफोन निगम लिमिटेड, मुंबई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 1 मुंबई के पंचाट (संदर्भ संख्या 10/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/02/2020 को प्राप्त हुए थे।

[सं. एल-40011/06/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 266.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2017) of the Central Government Industrial Tribunal-cum-Labour Court- 1 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Mahanagar Telephone Nigam Ltd., Mumbai & Others, and their workmen which were received by the Central Government on 17.02.2020.

[No. L-40011/06/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present: in-Lok-Adalat

JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO .CGIT-1/10 OF 2017

Parties: Employers in relation to the management of Mahanagar Telephone Nigam Ltd., Mumbai

AND

Their workmen

Appearances:

For the Management:	:	Mr. M.B.Anchan, Adv.
For the Union	:	None present
State	:	Maharashtra

Mumbai, dated the 20th day of January 2020

AWARD

1. The present reference has been made by the Central Government by its order dated 07.2.2013 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947. The terms of reference as per the schedule to the said order are as under:

> *"Whether the action of management of MTNL in frequently transferring Mr.B.M.Patil Telephone Mechanic from on place to other is fair, legal and justified? If not, what relief the workman is entitled to?"*

2. The case was taken up in the Lok Adalat.

3. The second party workman has filed statement of claim and list of documents on 12.2.2019. The case was adjourned on 23.4.2019, 15.7.2019, 27.9.2019, 02.12.2019 for filing written statement on behalf of the first party management. On 02.12.2019, the case was adjourned to 10.2.2020 for filing written statement on behalf of the management. However, in the meantime, Lok Adalat was held on 20.1.2020 and the matter was taken up in Lok Adalat today.

4. Today, i.e. on 20.1.2020, when the matter was taken up in Lok Adalat, the Parties have filed Settlement and as per the Settlement the Union has submitted that in view of the Volunteer Retirement Scheme introduced by the Opponent which is being availed by the second party workmen (Ex.6), it did not want to prosecute the above Reference No. CGIT 01/10 of 2019 .

5. In view of the above Settlement this reference is decided in terms of the settlement which shall form a part of this Award.

6. Award is passed accordingly.

Justice RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 267.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सहायक महाप्रबंधक,भारत इलेक्ट्रॉनिक्स लिमिटेड, मछलीपट्टनम हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – हैदराबाद के पंचाट (संदर्भ संख्या 72/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुए थे ।

[सं. एल-42011/14/2011-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 267.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 72/2011) of the Central Government Industrial Tribunal-cum-Labour Court- Hyderabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Assistant General Manager, Bharat Electronics Limited, Machilipatnam, Hyderabad & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-42011/14/2011-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 26th day of December, 2019

INDUSTRIAL DISPUTE No. 72/2011

Between:

Sri V.V. Krishna Rao,
General Secretary, BEL Karmika
Sangham, C/o Bharat Electronics Limited,
M.C. Unit, Ravindranath Tagore Road,
Machilipatnam. …Petitioner

AND

The Assistant General Manager,
Bharat Electronics Limited,
Machilipatnam. …Respondent

Appearances:

For the Petitioner : M/s. B. Kamalakara Rao & Ch. Lakshminarayana, Advocates

For the Respondent : Sri B. Raghava Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42011/14/2011-IR(DU) dated 14.10.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of Bharat Electronics Limited, Machilipatnam (i) by not inducting all the 21 Graduate Clerks, who were recruited during the year 1983 to 1985 in Wage Group-IV instead of Wage Group-V as per BEL Career Plan and (ii) by not paying the difference of financial loss of 100% to all the 21 Graduate Clerks, are legal and justified? What relief the concerned workmen are entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.72/2011 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The case of the Petitioners is that the Petitioner Sangham was registered under Trade Unions Act, 1962 with registration No.K.29 in the month of October, 2009. It is further submitted the BEL unit of Machilipatnam was earlier popularly known as the Andhra Scientific Company and the said company was taken over by Bharat Electronics Limited on 16.2.1983 with retrospective effect from July, 1981. It is stated that Bharat Electronics Limited herein after called as BEL is a well established public sector undertaking under Ministry of Defense control and its management framed the Rules and regulations against recruitment , Induction and Promotions of its employees. During the period of take over of Andhra Scientific Company Limited, BEL had a Career Plan 1978 and it is in force upto 1989. As per the above career plan the Induction status of 21 graduate clerks should be in Wage Group-V. The qualification of graduate clerks is graduation in any discipline. It is also submitted that after taking over of Andhra Scientific Company Limited by the BEL, Bangalore the Machilipatnam Unit management has recruited the 21 graduate clerks from 1983 to 1985. In the above recruitment, the management had not followed the career Plan 1978, Induction procedure has been done as per their will and wish and they put the graduate clerks in Wage Group –IV instead of wage group-V. it is further submitted that the graduate clerks are recruited in Wage Group-V as per Career Plan 1978 in all BEL units except Machilipatnam unit which is illegal, partial, arbitrary, capricious, discrimination and the same is liable to be set aside. It is also submitted that the union and the employees of this unit identified this wrong induction and violation of the BEL Career Plan and represented to the management to resolve the wrong Induction and upgrade them as per career plan 1978 for the category of Graduate Clerks who have joined between 1983 and 1985 but the management has not taken any action in this regard. It is submitted that other units of M/s. Bharat Electronics Limited like Hyderabad, Chennai, Bangalore, Ghaziabad recruited the graduate clerks in Wage Group-V as per the career plan 1978 (which is in vogue upto 1989). Whereas only Machilipatnam Unit management were recruited this graduate clerks in Wage Group-IV in the period 1983 to 1985. The said action of the Respondents is illegal, improper, partial, discriminative, and not only violative of the principles of natural justice but also violative of their own rules and the same is liable to be set aside. It is further submitted that the unions and the employees of BEL Machilipatnam unit represented the Management to resolve the lapses of induction and violation of the BEL career plan and upgrade them as per career plan 1978 to the recruited employees during 1983 to 89 and do justice as per the qualification of the employees. The BEL management had agreed and given assurance to the unions and the employees, stating that the lapses have been rectified stage by stage in due course and this rectification plan was started by the management in the year 1987 onwards. As per the assurance given by the management in the year 1986 almost all the categories of the employees were upgraded to some extent and other senior unskilled employees are also got both service and monetary benefits from the organization except the Petitioner clerical cadre employees. The discriminative action of the Respondents are also liable to be set aside. It is also submitted that because of the wrong Induction of wage group to the Petitioner's members there are wage parity between the persons who are appointed during 1983 to 1985 in between the different units of BEL. As a result of it, the Petitioner workers were getting less pay scales and also deprived of their right to get equal promotions on par with other unit members. It is stated that Mr. Ch.V. Ramana Murthy whose staff No.206629 was appointed as a graduate clerk at their Hyderabad unit in the year 17.4.1985 and transferred to Machilipatnam unit in the year 2006. He was recruited and inducted in wage group –V as per their BEL Career Plan 1978, now he was promoted to wage group X with effect from 1.5.2009, whereas Mr. B. Ganesh Babu, Staff No.205838 who was recruited as a graduate clerk in the Machilipatnam Unit on 15.7.1983 was wrongly inducted in Wage Group-IV, by violation of BEL career plan 1978. Though he was senior to the said Raman Murthy he was promoted and working in Wage Group-IX only and he will be promoted to wage group-X only by 2013. This discrimination is nothing but violative of not only principles of natural justice but also violative of Art.14, 16, & 21 of the Constitution of India. It is also submitted that the Petitioners made so many representations to the Respondents but it was in vain. It is further submitted that the BEL is a well established organization and it was streamlined their recruitment, induction and promotion systems in all units through its career plan 1978. It is also very clear that all the other BEL units including BEL-HYD has followed their career plan except in Machilipatnam unit because they committed this blunder in applying BEL Rules at the time of recruitment and inducting them in deserved wage group based on qualification. The consequence of their mistake resulted in loss of service, monetary loss and mental agony caused to senior employees who lost 6 ½ years service as well as monetary benefits than a junior employee is in higher wage group. It is also stated that facing the above said agony and plight for the age old problem the Petitioner made a representation for settlement of dispute either through conciliation or negotiations by joint meetings with the Respondents to the Assistant Labour Commissioner (C),

Vijayawada dated 29.10.2009. It is further submitted that in reply the second Respondent contended that no parity in anomaly was arisen as per the rules in vogue applicable to the unit was paid and hence no case for them and it is also mentioned by them the Negotiating Trade Union has agreed in final settlement that the qualification of graduation at the time of induction are placed in WG-IV (CP-5) hence, there is no case for the Petitioner and it is also mentioned by them that the Negotiating Trade Union cannot curtail the rights of the individual by entering into a settlement with the management and which amounts to infringement of the fundamental rights of the affected person and that agreement or settlement is non-est in law and cannot bind on the person. It is submitted that as per the minutes of the conciliation proceeding held on 31.12.2009 before the Assistant Labour Commissioner (C), and Assistant Labour Commissioner (C) reported the same to the Ministry of Labour and Employment, New Delhi for adjudication as industrial dispute. It is stated that the 3rd Respondent in his letter No.L-42011/14/2010-IR(DU) dated 28.4.2010 opined that "Grant of a particular pay scale at the time of induction is a policy and administrative matter of the management. Hence, the matter raised for grant of a higher pay scale at the time of induction in services cannot be construed as an industrial dispute." Hence, rejected. The said letter stated to be issued on behalf of the 3rd Respondent is illegal, arbitrary, partial and nothing but violation of the fundamental right of the individual and the same is liable to be set aside. It is further stated that this anomaly has already been settled by the Apex Court, wherein the Apex Court held that infringement of Fundamental Rights of the person directly or indirectly by the instrumental of the Governmental organization is nothing but violation of the guidelines given in the constitution of India and the same is liable to be set aside. It is further submitted that questioning the 3rd Respondent letter No.L-42011/14/2010-IR(DU) dated 28.4.2010 for rejecting the reference to the Industrial Tribunal the Petitioner filed WP 11002 of 2011 before the Hon'ble High Court of A.P.. The Hon'ble High Court in its interim order dated 30.6.2011 in WPMP No.13512 of 2011 passed the order as, "There shall be an interim direction to the first and second Respondents to grant pay scales to the Petitioner in accordance with law." After receipt of the above order the Respondents appeared before the court and filed their counter. The Hon'ble High Court with the consent of both the parties heard the matter finally on 20.8.2011 and allowed the writ petition and directed the 3rd Respondent to refer the matter to this Tribunal for adjudication. Hence, the 3rd Respondent referred this matter to this Tribunal fro adjudication. Therefore, the Petitioner prayed this Tribunal to direct the Respondents to consider the case of the members of the Petitioner Sangham for inducting wage group-V instead of IV as per BEL career plan 1978 on par with other employees of BEL, as it was done in the case of Mr. Ch.V. Ramana Murthy, staff No.206629 who was initially recruited by BEL, Bangalore for Hyderabad unit and subsequently transferred to Machilipatnam Unit, and to pay all consequential service and financial benefits from the date of their appointment during the period from 1983 to 85 to till date and pass such order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

3. <u>Respondents filed their counter with the averments in brief as follows</u>:

Respondent No.1 and 2 filed counter jointly and in their counter, Respondent No.1 and 2 while admitting some of the facts to be true and have also denied the other facts averred in the claim statement. In their counter both the Respondents stated that the allegation made by the Petitioner Sangham are general in nature and the Petitioners shall be called upon to prove the allegations strictly. It is stated that BEL had a career plan 1978 and the same was in force upto 1989 which was in vogue in other units of BEL except Machilipatnam Unit. In other words, the said BEL career plan 1978 had no application to ASCO Machilipatnam unit. Further ASCO Machilipatnam unit recruited 21 clerical grade employees during the period from 1983-85 and placed them in the Clerk Grade-I as per Memorandum of Settlement dated 19.6.82 under Section 12(3) of the Industrial Disputes Act and the same was in force till 31.3.1985, as per the MOS dated 19.6.82, the starting grade of the clerical employee in clerk Grade-1 is in the basic of Rs.380-10-150 and the same is evidenced by Memorandum of Settlement dated 19.6.82. It is stated that carer plan of 1978 was in force upto 1989 which is in vogue in other units of BEL except for Machilipatnam Unit. The allegation made by the Petitioner is totally incorrect. In fact after negotiations between the then negotiating Trade Union, and the management another MOS was signed on 24.8.2004 by the then negotiating Trade Union and the management. According to the said MOS, ASCO National Mazdoor Union (NTU) raised 3 demands. Out of the said demands one of the demands is with regard to upgradation of graduate employees joined in between 1983-1985 from WG IV to V. The said demand was not accepted by the management. Further, it was categorically stated in the said MOS that it is in full and final settlement of all the demands raised by NTU in its demand letter dated 5.5.2004 and it was also agreed that NTU will not raise any other demand on induction having monetary value/financial implication. In fact, there is no wrong induction of wage group to the Petitioner, Petitioners members as alleged by the Petitioner Sangham. The Respondents have stated that it is not correct to make a comparison between Mr. Ch.V. Ramana Murthy Staff No.206629 and Mr. B. Ganesh Babu, Staff No.205838 for the reasons that he had been recruited in BEL Bangalore as graduate clerk on 17.4.1985 in WG-V as per the career plan 1978 which is in vogue in BEL units except Machilipatnam unit. Later on he was transferred to Hyderabad unit on 2.9.1985 and subsequently transferred to Machilipatnam on 15.5.2006. Whereas Mr. B. Ganesh Babu staffNo.205838 has

joined BEL ASCO Unit in clerk Grade-I on 15.7.1983 as per the MOS dated 19.6.1982 which was effective from 1.4.1981. Hence, Mr. B.Ganesh Babu who was covered under different agreement cannot be compared on par with Mr. Ch.V. Ramana Murthy who was covered under career plan 1978 of BEL, Bangalore, which was not in vogue in BEL Machilipatnam. Therefore, there is no discrimination and violation of Art.14,16, and 21 of the Constitution of India. In fact, the management of BEL has neither committed any blunder in applying BEL Rules at the time of recruitment nor a mistake which resulted on loss of service, monetary loss and mental agony caused to senior employees who lost 6 ½ years' service as well as monetary benefits than a junior employee who is in higher wage group. It is stated that BEL had a career plan 1978 and the same was in force upto 1989 which is applicable to all other units of BEL except Machilipatnam unit since the said career plan 1978 had no application to ASCO Machilipatnam unit and the same is not applied to the employees who have been recruited in between 1983-1985. It is stated that the Respondent have already submitted all the relevant points to the conciliation officer vie their letter dated 19.11.2009 during the time of conciliation. Since the unit Management did not agree for upgradation of clerical employees, the conciliation officer closed the conciliation and sent his conciliation failure report to Ministry of Labour vide his report No.8/20/2009-Assistant Labour Commissioner(Central) dated 6.1.2010. With reference to other allegations made by the Petitioners, it is true that Memorandum of Settlement was signed on 24.8.2004 between the then Negotiating Trade Union and the Management. The Memorandum of Settlement during conciliation under Sec.12(3) of the Industrial Disputes Act, 1947 is binding on the parties and applicable to all the non-executive employees of the unit. Therefore, the allegation of the Petitioner is totally incorrect and there is no case for the Petitioner to raise before this Tribunal. The allegation made by the Petitioner Sangham are matters of record and the Petitioner Sangham is put to strict proof of the said allegations. The prayer for implementation of pay scale in the wage group V made by the Petitioner union was found to be untenable in the eye of law and fact. The Respondents have stated that the financial implication of the above said implementation will impose heavy financial burden on the answering Respondents. The Petitioner union has no prima facie case and balance of convenience is not in their favour and with the above averments Respondents No.1 and 2 submitted for dismissal of the claim petition.

4. In view of the averments of both the sides, the points for consideration of this case are as follows:

I. Whether the action of the Management of Bharat Electronics Limited, Machilipatnam (i) by not inducting all the 21 Graduate Clerks, who were recruited during the year 1983 to 1985 in Wage Group-IV instead of Wage Group-V as per BEL Career Plan and (ii) by not paying the difference of financial loss of 100% to all the 21 Graduate Clerks, are legal and justified?

II. What relief the concerned workmen are entitled to?"

5. During the course of hearing of this case the Petitioner Sangham examined two witnesses, one Sri T. Vijaya Kumar, General Secretary of the Petitioner Sangham as WW1 and Sri Ganesh Babu, as WW2. The Petitioner have also relied on 10 documents which have been marked as Exhts.W1 to W10. Whereas the Respondents have examined Sri V S V R Phani Kumar, Dy. Manager (HR) as MW1 and also relied on three documents in support of their claim which have been marked as Exhts. M1 to M3.

6. I have already heard the Learned Counsels for both the sides and perused the evidence adduced from the side of both the parties along with the written notes of submissions filed by the parties.

7. The Learned Counsel appearing on behalf of the Petitioners contended that in this case the Petitioners have questioning the disparity of pay in fixing the wage group IV instead of V. He contended that the Petitioners were appointed in the Respondents' organization as graduate clerks in between 1983 to 1985 through employment exchange along with other categories like Technical Assistants, ITI Technicians and Stenos. It is also contended that as per BEL career plan 1978 which is in force upto 1989, the Petitioners are to be inducted in wage group of V but they were inducted against the BEL career plan rules in wage group IV. All the Petitioners were appointed by the BEL recruitment only. It is further contended that the Andhra Scientific Company, Machilipatnam was taken over by BEL company on 16.2.1983 along with the existing staff. The Petitioners were appointed by BEL only, as such they are governed by the BEL rules only. it is also contended that BEL has recruited Technical Assistants, ITI Technicians and Stenos along with the Petitioners cadre with one wage group lower against the BEL career plan. It is contended that as per the request of the Petitioners it was rectified and the employees were given proper wage group as per the BEL career plan 1978 except the present Petitioners who were appointed as graduate clerks. The action of the Respondents is illegal, arbitrary and partial and also violative of the principles of natural justice. The Respondents have no power for violation of the BEL rules. But whereas the Petitioners pay was not rectified. Even then they made so many requests to fix their pay at wage group V and to pay difference of amount from the date of their appointment. But the Respondent management rejected the claim of the Petitioners and put them in wage group IV by

justifying their action vide their order bearing No.MC/HR/421/ALC(C) 2010 dated 1.4.2010. Thereafter, the Petitioners approached the Dy. Labour Commissioner, Vijayawada for settlement of the issue by forming an union. The ALC(C), Vijayawada issued notice to the Respondents for conciliation. Ultimately, as the conciliation was failed, the ALC(C) sent a failure report to refer the matter to the Central Government Industrial Tribunal. But the Government of India refused to refer the matter holding that it is not a dispute under the Industrial Disputes Act, 1947. Thereafter the Petitioner moved the Hon'ble High Court and ultimately as per the direction of the Hon'ble High Court the matter was referred to this Tribunal for adjudication. The Learned Counsel further contended that as per the appointment order, the rules and regulations against recruitment, induction and promotions of its employees are governed by BEL rules which was established as public sector undertaking under Ministry of Defence control and it's management. Accordingly, the career plan 1978 was enforced upto 1989 and as per this career plan, the induction status of 21 graduate clerks should be in wage group V, as per the rules of BEL in vogue and as such the management of BEL unit of Machilipatnam, should also follow the rules and regulations of BEL as was followed in other units like Ghaziabad, Chennai, Hyderabad, Panchkula, Kotdwara, Pune, Nay Mumbai, Bangalore units. He further contended that the Memorandum of Settlement dated 19.6.1982 is only wage revision of existing Andhra Scientific company employees, but not career plan by putting the induction of direct recruiters and it is not relevant to the Petitioners because they were recruited by the BEL only. It is also contended that even admitting without approving that registered Trade Union representing the employees it should be benefit the employees and not against the rules and as such the MOS is not fair in the eye of Law and as such the management shall not follow the MOS, as it is detrimental to the rights of the Petitioner. He further contended that the Hon'ble Apex Court and the Hon'ble High Courts have categorically held that more than one time that any agreement or MOS are against the rules in vogue and detrimental to the rights of the employees it shall be null and void in the eye of law and as such the MOS dated 19.6.1982 shall not applicable to the Petitioners. It is contended that except Machilipatnam unit all other units of BEL are following the career plan 1978. One Sri Ch.V. Ramana Murthy joined BEL, Hyderabad unit as a graduate clerk on 17.4.1985 in wage group V as per career plan 1978, which is in vogue in BEL units. But other employees of Machilipatnam BEL unit are not getting the same facility which clearly shows that there is discrimination in between the units of BEL which is against the rules in vogue. The Petitioners are only entitled to wage group V and any discrimination in this regard is liable to be set aside. He also contended that in the present case the Petitioners have examined two witnesses and have also relied on 10 documents. The witnesses examined on behalf of the Petitioner like WW1 and WW2 have fully supported the facts averred in their claim statement and the documents relied on by them also find support from the averments made in the claim statement. The Respondent company has examined one management witness namely, Sri V.S.V.R. Phani Kumar who is the legal officer of the Respondent company. The Respondent has also relied on four documents like Ex.M1 to M4. The management witness has admitted that the Petitioners are getting their salary as wage group IV and other BEL employees of BEL are getting pay under wage group V except Machilipatnam unit. He also contended that the Hon'ble Apex Court time and again has held that "Statutory rules framed under Article 309 of the Constitution can be amended only by a Rule or Notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the Executive orders or instructions, Statutory rules cannot be altered or amended by such Executive orders or circulars or instructions nor can they replace the statutory rules. The rules made under Article 309 of the constitution cannot be tinkered by the administrative instructions or circulars." The said proviso was held in the case of Ajaya Kumar Das Vs. State of Orissa reported in LAWS (SC) 2009 (&) Page 46. In this case, the Respondent cannot change to fix the pay scales against the career plan which was made on that Article 309 of the Constitution and fix the Petitioners salary at Wage Group V instead of Wage Group IV. The action of the Respondent management is illegal, arbitrary and without any power. Thus, the same is liable to be set aside. It is submitted to allow the claim of the Petitioners by awarding induction wage group V as per BEL career plan 1978 on par with other BEL units and pay all consequential service and financial benefits to the Petitioners from the date of their appointment during the period from 1983 to 1985 to till date and to pay the amount as per the calculation and pass such other and further orders as this court may deem fit and proper.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents contended that as per the direction of the Hon'ble High Court of A.P., this reference has been sent to this Tribunal by the Government of India, Ministry of Labour and Employment. Initially, the conciliation officer of the labour Department, Government of AP, Vijayawada sent the failure report to the Government of India, Ministry of Labour and Employment, but the Ministry of Labour and Employment rejected to refer the dispute to the Tribunal for adjudication. subsequently, the Petitioners moved the Hon'ble High Court of A.P., by filing a WP bearing No.11002/2011 and the Hon'ble High Court after hearing the parties directed the Government of India, Ministry of Labour and Employment for adjudication of the dispute. Initially the Government of India, Ministry of Labour and Employment rejected the reference on the ground that: "Grant of particular pay scale at the time of induction is a policy and administrative matter of the Management. Hence, the matter raised for

grant of a higher scale at the time of induction in services cannot be construed as an industrial dispute". He further contended that the Ministry of Labour and Employment, Government of India has initially rightly rejected the reference of the dispute as not an industrial dispute, as this nature of dispute i.e., induction of candidates into the pay scales at the time of recruitment does not fall within the ambit of any 4 schedules under the ID Act because this is purely an administrative policy/matter, on which the members of the unions or the workmen do not have any right to agitate. Further more, all the 21 members of the Petitioner union who received the offer of appointment letters at the time of induction into WG-IV have accepted the terms/conditions contained in the offer of appointment letters. He further contended that WW1 being one of the employees out of the 21 petitions have clearly admitted the above fact in his cross examination. Once the Petitioners having accepted the terms and conditions in the offer of appointment letters and having given consent for the same and joined in the pay scale of wage group IV, they have no legal right to agitate on the issue afterwards in order to suit their whims/fancies and they are estopped to agitate this fact after entering into service. He also contended that the Respondent management (i.e., Bharat Electronics Ltd., hereinafter referred as BEL for the sake of brevity) has many units across the country and it has taken over the present unit called Andhra Scientific Company Ltd., at Machilipatnam for obvious reasons in 1982/1983. Previously it was under the control of a private management. The career plan 1978 which was in existence till 1989 in other units of BEL, is not applicable to Machilipatnam unit. MW1 has categorically deposed this fact in his evidence. He further contended that the Petitioner union is demanding implementation of the career plan 1978 in respect of 21 clerks who were recruited/inducted into pay scale of wage group-IV during 1983-85 after the unit was taken over from the private management by BEL (the Respondent management) which is a public sector undertaking, WW1 in his cross examination has also admitted the above facts. He also contended that Ex.M1 is a Memorandum of Settlement in short (MOS) dated 19.6.1982 between the then management of Andhra Scientific company, Machilipatnam and the union representative, i.e., the workmen of Andhra Scientific company, Machilipatnam under Sec.12(3) of the Industrial Disputes Act, and it was signed before the conciliation officer. Therefore, this MOS is a statutory one having legal enforceability and is binding on both the parties. As per Clauses 9 and 10 of the said MOS this MOS is in force from 1.4.1981 to 3.3.1985 In the first page of the MOS after the preamble the revised pay scales are mentioned for various categories of workmen including the Clerks at Item-8. Even though the said Memorandum of Settlement was valid till 3.3.1985, still another Memorandum of Settlement dated 24.8.2004 was entered into by the Respondent management /BEL after it took over the reigns of Andhra Scientific Company in 1983 with the Union (called ASCONMU Union) representing the workmen, which is marked as Ex.M2. According to the above Memorandum of Settlement dated 24.8.2004 entered between the parties and signed before the Dy.CLC(C) & conciliation officer , Eluru is under Sec.12(3) & 18(3) of the ID Act is legally enforceable and binding on both the parties, in which it has been categorically agreed by the union at page-2 of the MOS (2nd para item(2), paras–3 & 4) that their demand of induction of these 21 clerks (Petitioners/members of the union) into wage group-V form Wage Group-IV is dropped stating that it is a managerial function. The fact of recruitment and promotion is a policy matter of the management and it is admitted by WW1 in his cross examination, and he also admitted that the MOS signed by both the parties are legally binding and also admitted that the union agreed to drop the demand of induction of these 21 clerks into Wage Group-V in the said MOS dated 24.8.2004 (Ex.M2). He also contended that though WW1 in his deposition has stated that National Mazdoor Union and Employees Union gave protest letters against the said MOS dated 24.8.2004 to the NTU union and management, he did not file the copy of such letter in the court to show whether any such protest had been made. Further, he has deposed that Ex.M2 is a bipartite settlement under the ID Act and hence it is legally enforceable. He further contended that MOS was entered into by the Respondent management (BEL) and Andhra Scientific Company National Mazdoor Union representing the workmen on 30.12.1985 (Ex.M3) under Sec.12(30 of the ID Act before the Conciliation Officer and the Dy. Commissioner of Labour, Eluru wherein at Clause 26 it has been categorically agreed by both the parties that in respect of all matters not specifically covered under the above terms, the rules terms and conditions of service as obtaining at present at BEL-ASCO unit shall continue to apply, unless they are specifically modified by the management. He also contended that how the Petitioner union time and again agitated the above issue despite the clear cut position in view of the MOS vide Ex.M1 and M2 made between the parties and it is binding to both the parties legally. Lastly, he contended that in view of his above submission, the Petitioners union are not entitled to get any relief in the instant case and the reference is liable to be answered in negative.

9. On consideration of the rival contention of both the sides and on perusal of the evidence adduced so far by the parties, it is seen that admittedly as per the direction of the Hon'ble High Court of A.P. the present dispute has been referred by the Ministry of Labour and Employment, Government of India to this Tribunal for adjudication, but previously the Ministry of Labour and Employment, Government of India had rejected the request of the conciliation officer as the dispute is not coming within the ambit in 4th schedule of the Industrial Disputes Act, 1947. In the previous rejection order it has been mentioned that "grant of particular pay scale at

the time of induction is a policy and administrative matter of the management. Hence, the matter raised for grant of a higher scale at the time of induction in services cannot be construed as an industrial dispute." In fact the Respondent organization was initially under the control of Andhra Scientific Company Ltd., at Machilipatnam and it was taken over by BEL in the year 1982-83. The career plan 1978 was in existence till 1989 in other units of BEL. But it does not applicable to Machilipatnam unit. The Petitioners contended that all the units under BEL are getting their salary as per the career plan 1978 except the employees of Machilipatnam unit. All the workers working under BEL are discharging the same duties but there is discrimination among the employees of Machilipatnam unit and other units of BEL by an administrative order, and the Respondent management has violated the fundamental rights of the Petitioners' union. In view of the judgment of the Apex Court, "infringement of fundamental rights of the person directly or indirectly by the instrument of the Government of India organization is nothing but violation of the Constitution of India and the same is liable to be set aside." It has been contended on behalf of the Petitioners side that, "Statutory rules framed under Article 309 of the Constitution can be amended only by a Rule or notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the executive orders or instructions, statutory rules cannot be altered or amended by the said executive orders or circulars or instructions in order nor can they replace, the statutory rules, the rules made under Article 309 of the Constitution can not be tinkered by the administrative instructions or circulars." The above said proviso was held in the case of Ajaya Kumar Das Vs. State of Orissa reported in LAWS(SC) 2009(7) page 46. It is also contended that in view of the above observations of the Apex Court in the referred case, the Respondent cannot change to fix the pay scales against the career plan which was made under Article 309 of the Constitution and fix the Petitioners salary at Wage Group V instead of Wage Group IV. The action of the Respondent management is illegal, arbitrary and without any power and the same is liable to be set aside. The Petitioners have also relied on a judgement of Chairman, Industrial Tribunal, Hyderabad passed in ID No.7/1993 (Old No.205/93) stating that in the similar case, the Tribunal has, directed the management to pay the scales of pay to the employees mentioned in Annexure-A as per the gradation in the career plan and to consider their service from the date of their initial appointment for the purpose of promotions with attendant benefits. Even though appeal has been preferred, the order of the Chairman, Industrial Tribunal, has been confirmed by the Hon'ble High Court of A.P.. On the other hand, it has been contended from the side of the Respondent that there is no dispute in the proposition of Law. But the present case is quite different to that of the cases referred from the side of the Petitioners. In fact, in the case at hand at the time of joining the Petitioners have not raised any objection about the induction of their scale of pay. Even though the career plan was in force since the year 1978. The representative of the Petitioners' union and the Respondent have signed in the Memorandum of Settlement obeying it's terms and conditions in the year 1983, vide Ex.M1. Similarly, in the year 2004, the representative of the Petitioners union and also the Respondent's management have also signed in another Memorandum of Settlement vide Ex.M2 and in all through the MOSs they had admitted to obey the terms and conditions of the MOSs. Similarly, WW1 being the General Secretary of the Petitioners union has clearly admitted that the Respondent management unit was taken over by BEL on 16.2.1983. Prior to 16.2.1983, the Respondent management was called Andhra Scientific Company and it was under the control of a private management and earlier Andhra Scientific Company was financially in a bad situation for which the Government of India has taken over the management since 1983 for the interest of the employees. He has also admitted that he was one among the 21 graduate clerks. He further admitted that all the 21 graduate clerks have received the appointment letters containing certain terms and conditions and the 21 graduate clerks including himself have joined under the Respondent management after accepting the terms and conditions mentioned in the appointment letters. He has also admitted that the recruitment and promotions are the policy matters of the management. So also giving promotion to higher grade is not only basing on seniority alone but also with the performance report of the employee. Administrative policy of the management and the union has no role to interfere. He further admitted that one Sri Ch. V. Ramana Murthy was transferred to BEL unit from Bangalore to Hyderabad and Hyderabad to Machilipatnam and he was getting his pay scale as per the career plan 1978. WW1 has also admitted the Memorandum of Settlement dated 19.6.1982 (Ex.M1) as wells as the Memorandum of Settlement dated 24.8.2004(Ex.M2). He has clearly admitted that the Memorandum of Settlement dated 24.8.2004 is a bipartite settlement under Sec.12(3) and 18(3) of the Industrial Disputes Act, 1947. He has also clearly admitted that the above settlement is legal and binding on both the parties. As per the Memorandum of Settlement dated 24.8.2004 (Ex.M2) both the parties have agreed to drop the demand of 21 graduate workers to be inducted in the wage group V. Even though WW1 admitted that the National Mazdoor Union and the Employees Union have given protest letters against the Memorandum of Settlement dated 24.8.2004 to NTU union and the management, but they have not filed any document to that effect. The evidence of WW1 finds support from the argument advanced from the side of the Respondent. When the Petitioners have joined in service under the Respondent admitting the terms and conditions of the Memorandum of Settlement (Ex.M1) dated 19.6.82 and subsequently, admitted the Memorandum of Settlement dated 24.8.2004 (Ex.M2) how time and again they are agitating the same issue. At the time of joining into service the 21 graduate workers of the Petitioners union inducted into the pay scale of Wage Group IV, but they have not agitated the issue during

that time and as such the Petitioner s estopped to agitate such an issue later on. In view of the settlement made between the Petitioners union and the Respondent management time and again, the Respondent has rightly refused the demand of the Petitioners union and the action of the Respondent management in inducting the 21 members of the Petitioners union at the time of induction into pay scale of Wage Group IV instead of Wage Group V as demanded by the union is legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point No.II**: In view of the discussion made in Point No.I, the Petitioner are not entitled to any other relief.

Thus, Point No. II is answered accordingly.

Result:

In the result the reference is answered in negative as follows:

The action of the management of Bharat Electronics Limited, Machilipatnam (i) by not inducting all the 21 Graduate Clerks, who were recruited during the year 1983 to 1985 in Wage Group-IV instead of Wage Group-V as per BEL Career Plan and (ii) by not paying the difference of financial loss of 100% to all the 21 Graduate Clerks, are legal and justified. The concerned workmen are not entitled to get any relief.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 26th day of December, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri T. Vijaya Kumar WW2: Sri Ganesh Babu	MW1: Sri VSVR Phani Kumar

Documents marked for the Petitioner

Ex.W1: Photostat copy of list of graduate clerks working in BEL, Machilipatnam

Ex.W2: Photostat copy of Lr. No. PER/83/F 85 II/145 dt.11.6.83 appointment of one of the Petitioners

Ex.W3: Photostat copy of comparison of graduate clerks joined in Machilipatnam and other units.

Ex.W4: Photostat copy of upgradation of tech-Asst. dt. 28.2.1987

Ex.W5: Photostat copy of upgradation of tech-Asst. dt.31.7.1987

Ex.W6: Photostat copy of Memorandum of Settlement dt. 24.8.2004

Ex.W7: Photostat copy of FOC dt.6.1.2010

Ex.W8: Photostat copy of lr. from gi dt. 16.4.2010

Ex.W9: Photostat copy of order passed in WP 11002/2011 dt.20.8.2011

Ex.W10: Photostat copy of order from Government of India dt.14.10.2011

Documents marked for the Respondent

Ex.M1: Photostat copy of Memorandum of Settlement dt.19.6.1982

Ex.M2: Photostat copy of Memorandum of Settlement dt.24.8.2004

Ex.M3: Photostat copy of Memorandum of Settlement dt. 30.12.1985

नई दिल्ली, 18 फरवरी, 2020

का.आ. 268.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – कोलकाता के पंचाट (संदर्भ संख्या 84/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.02.2020 को प्राप्त हुए थे।

[सं. एल-14011/22/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 268.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2014) of the Central Government Industrial Tribunal-cum-Labour Court- Kolkata, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Hindustan Aeronautics Limited, Kolkata & Others, and their workmen which were received by the Central Government 05.02.2020.

[No. L-14011/22/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 84 of 2014

Parties: Employers in relation to the management of Hindustan Aeronautics Limited

AND

Their workmen

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. R. De, learned counsel.

On behalf of the Workmen : Mr. K. Chakraborty, learned counsel

State: West Bengal. Industry: Aviation.

Dated: 24th January, 2020

AWARD

By Order No. L-14011/22/2014-IR(DU) dated 22.12.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether the action, going to take the management of HAL, Barrackpore Division, 9, Topkhana Road, PO Barrackpore, Kolkata-700120 to terminate the Attendance incentive where union demand is very clear that as it is a part of wage settlement and hence the recent wage settlement of 2012 which was signed on 19th Sep, 2014 and nowhere it is mentioned that it would be discontinued rather it is clearly told in HAL Personnel Circular (exhibit-VI) No. 704 dated 25th Sep, 2014 issued by HAL Corporate office to give effect of the said incentive as per revised Basic Pay from 1.1.12 is legal or justified? If not, to what relief the workmen concerned are entitled?"*

2. When the case is taken up for hearing today, an application is moved on behalf of the union for non-prosecution of the reference as the matter has been settled amicably outside. Learned counsel for the management has no objection to it.

3. In view of the above application, there exists no dispute in the matter in issue under this reference. The reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 24th January, 2020

नई दिल्ली, 18 फरवरी, 2020

का.आ. 269.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, इंस्ट्रूमेंटेशन लिमिटेड, पलक्कड़, एर्नाकुलम और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – एर्नाकुलम के पंचाट (संदर्भ संख्या 34/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.01.2020 को प्राप्त हुए थे ।

[सं. एल-42011/67/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 269.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2015) of the Central Government Industrial Tribunal-cum-Labour Court- Ernakulum, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Instrumentation Limited, Palakkad, Ernakulum & Others, and their workmen which were received by the Central Government 08.01.2020.

[No. L-42011/67/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Monday, the 23rd day of December 2019, 2nd Pausa 1941)

ID No. 34/2015

Workman	: 1.	The General Secretary, Instrumentation Workers Union (CITU), Kankikode West, Palakkad - 678623 By Adv. Ashok M.Cherian
	2.	General Secretary, Instrumentation Workers Union (INTUC), Kankikode West, Palakkad - 678623 By Adv. C. Anil Kumar
Management	:	The General Manager, Instrumentation Limited, Kankikode West, Palakkad- 678623. By Adv. M/S Menon & Menon

This case coming up for final hearing on 3-12-2019 and this Tribunal-cum-Labour Court on 23-12-2019 passed the following;

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its Order No. L-42011/67/2015-IR(DU) dated 8-7-2015 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is-

"Whether the action of the management of the Instrumentation Ltd., Palakkad denying regularization of nineteen employees of the canteen co-operative society as demanded by the two Unions is justifiable? If not, what relief they are entitled to get?"

3. After receipt of the reference from the Government, summons were issued to the Union No.1,2 & the management. Union No.1 & 2 entered appearance and filed claim statements seeking an award for the regularization of the canteen employees in the service of the management company and also seeking consequential benefits.

4. The management entered appearance and filed counter statement denying the allegations in the claim statement. Subsequently Union No.1 remained exparte. Union No.2 filed a memo to the effect that an earlier award passed by this Tribunal directing regularization of the canteen employees in ID No.17/2006 was challenged before the Hon'ble High Court in WP No. 29022/2006 and the Hon'ble High Court of Kerala had set-aside the award. The SLP No. 6767/2018 filed by the Union is pending before the Hon'ble Supreme Court. The Union No.2 therefore prayed that the present Industrial Dispute may be closed without prejudice to the right of the Unions to raise the dispute again subject to the outcome of SLP No. 6767/2018 pending before the Apex Court.

5. In view of the above position, there is no scope for adjudicating the above referred dispute referred to this Tribunal and hence under the circumstances explained above, a No dispute Award is passed in this case and the reference is answered accordingly reserving the right of the Unions to re-adjudicate the matter at the appropriate time.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 23rd day of December , 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil
Exhibits for the Management	-	Nil

नई दिल्ली, 18 फरवरी, 2020

का.आ. 270.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, रबर रिसर्च इंस्टीट्यूट ऑफ इंडिया , कन्नूर ,कोच्चि और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – एर्नाकुलम के पंचाट (संदर्भ संख्या 43/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुए थे ।

[सं. एल-42012/58/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 270.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2013) of the Central Government Industrial Tribunal-cum-Labour Court- Ernakulum, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Rubber Research Institute of India, Kannur, Kochi & Others, and their workmen which were received by the Central Government 17.02.2020.

[No. L-42012/58/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 27th day of January 2020, 7 Magha 1941)

ID No. 43/2013

Workman	:	Shri.K.D. Babu Kunnel House Manikkadavu P.O. Kannur - 670705 By Adv. A.C. Peethambaran
Management	:	The Director Rubber Research Institute of India Padiyur,Kannur - 670593 By Adv.Joseph & Kuriyan

This case coming up for final hearing on 01.01.2020 and this Tribunal-cum-Labour Court on 27.01.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-42012/58/2013-IR(DU) dated 02.09.2013 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

> "Whether the action of the management of Rubber Research Institute, Padiyur in dismissing Shri.K.D.Babu from service for the alleged theft of dried rubber is correct ? To what relief he is entitled to ? ''

3. The workman filed claim statement. According to the workman he was working as watchman (Roll no.3) with the management institute, Padiyur for the last 15 years. He faced a domestic enquiry as a result of the allegations in connection with the shortage of 1394 Kg of dried rubber alleged to have been committed theft by the watchman. When the management noticed shortage of dried rubber, the officer in charge filed a complaint before the Irikkur Police Station against the watchmen who were on duty. The said complaint was withdrawn by the officer in charge as a result of a settlement under the leadership of mediators like Joy Thomas, Balan Padiyur, Radha Lekshman, K.J.Joseph and Shaju Joseph. During the mediation talk, the other watchmen, Sri. K.V. Bhaskaran and T.C. Rameshan admitted the theft and expressed their willingness to remit the value of dried rubber stolen by them. Thereafter they remitted the amount. An Enquiry Officer was appointed conduct domestic enquiry against the watchmen. The Presenting Officer examined 7 witnesses to prove the charge against the workman but failed to bring any material and reliable evidence to prove the involvement of the workman in the theft. The Enquiry Officer was biased and the proceedings were in violation of principles of natural justice. A request from the side of the workman to appoint an Advocate as defence assistant was denied by the Enquiry Officer. The involvement of the workman in the theft was not at all proved. The Disciplinary

Authority sent a show cause notice dt.30.06.2011. The workman gave his reply. Without considering the reply, the Disciplinary Authority dismissed the workman from service of the management.

4. The management filed written statement denying the allegations in the claim statement. The workman was a watchman working with the management along with other watchmen namely Sri.K.V.Bhaskaran and Sri.T.C. Rameshan. All the three watchmen were on duty during the period when the theft took place. The officer in charge submitted a report dt.12.05.2009 stating that 1394 Kg dried rubber was stolen from the central store of the management. The officer in charge found that the locks of the rolling shutter or those of the gate were not tampered in any manner during the theft. It is therefore evident that the theft was carried out with the help of the watchmen of R R S who were in charge of security during the relevant point of time. Hence it is clear that all the 3 watchmen conspired and acted in connivance with each other for the theft. Hence the workmen were charge sheeted for alleged misconduct. A proper enquiry was conducted, an impartial and independent officer was appointed as Enquiry Officer to enquire in the charges levelled against the workman. He conducted the enquiry in an impartial and un biased manner. The workman was given adequate opportunity to cross examine the witnesses and also lead evidence in support of his defence. The Enquiry Officer complied with all the provisions of principles of natural justice. The Enquiry Officer found that the workman was guilty of the charges levelled against him. The Disciplinary Authority after considering the findings of the Enquiry Officer, based on the evidence and documents produced during the enquiry found the workman guilty. Hence a notice dt.19.05.2011 was issued to the workman along with a copy of the domestic enquiry report. The proposed penalty was also communicated to him. No satisfactory explanation was given by the workman. The watchman who were assigned the duty of security is required to have absolute trust and confidence of the management. Since the charges against the workman is proved, the management lost its confidence in the workman and Disciplinary Authority concurred with the findings of the Enquiry Officer and found that his continuance in service would be detrimental to the discipline and security of the management. Considering the gravity and seriousness of the charges proved against the workman, he was terminated from service. The management denied the allegations of the workman that he was not allowed to cross examine the witnesses and to appoint a Lawyer as his defence assistant. During the enquiry, the workman informed that he would represent his case himself and he was given all reasonable opportunity to defend his case.

5. The workman filed rejoinder denying the allegations in the written statement filed by the management. The workman asserted that he was not provided a proper opportunity to cross examined the management witnesses and that the Enquiry Officer was biased. There was no direct or circumstantial evidence to connect the workman with the alleged theft.

6. After the pleadings were completed, the management wanted the fairness and legality of the enquiry report to be adjudicated as a preliminary issue. Hence the Enquiry Officer was examined as MW1 and the enquiry file was marked as Exbt.M1 in this proceedings. After perusing the enquiry proceedings and hearing the learned Counsels for management as well as the workman, this Tribunal vide order dt. 14.10.2016 found that the enquiry conducted by the management is vitiated and hence it is invalid. However the management was given the liberty to adduce independent evidence in this industrial dispute to substantiate and proved the misconduct alleged against the workman.

7. The management examined MW2 to MW4 and marked exhibits M2 to M11 and W1 to W5 through the witnesses. The workman examined W1 and W2 on his behalf in this proceedings.

8. The following issues are framed for adjudication.

1. Whether the action of the management in dismissing the workman from service is based on legal evidence ?

2. Whether the punishment imposed on the workman is proportional to the charges proved against him?

3. What is the relief he is entitled to?

9. <u>Issue No. 1 & 2</u>

The contention of the management is that the workman along with the other watchmen were involved in the theft of 1394 Kg of dried rubber. When the shortage was noticed, the officer in charge filed a complaint before the Police Station against the watchmen who were on duty. Thereafter there was a negotiated settlement in the presence of the Police and the management and some trade union leaders. During the mediation, Sri.K.P.Bhaskaran and T.C.Rameshan admitted the crime and agreed to reimburse the loss to the management. Thereafter the management initiated the domestic enquiry against all the watchmen including the workman. 7 witnesses were examined on the side of the management and the Enquiry Officer found that the charges against the workman was proved. The Disciplinary Authority accepted the findings of the Enquiry Officer and after

giving an opportunity to the workman to represent on the quantum of punishment, he was dismissed from service.

10. According to the management, K.V.Bhaskaran and T.C.Rameshan were assigned the duty of watchman along with the workman during the period when the theft took place in the Rubber Research Station (RRS), Padiyur. As per the inspection report dt.12.05.2009, the officer in charge of RRS found that 1394 Kg of dried rubber was stolen from the central store of the management. The officer in charge found that the locks of rolling shutters and the gates were not tampered in any manner. Hence it was evident that the theft took place with the assistance from the watchmen who were in charge during the relevant point of time. Hence according to the management, all the watchmen conspired and committed theft of dried rubber stored in the central store.

11. The management ordered a domestic enquiry against all the workmen. The Enquiry Officer after conducting enquiry found that the charge against the workman were proved. The show cause notice issued to the workman was marked as M4. The workman gave his reply dt. 28.08.2009 denying the charges levelled against him. The other watchmen did not challenge the findings of the Enquiry Officer and also the decision of the Disciplinary Authority to dismiss them from the service of the management. Aggrieved by the order of dismissal, the workman approached this Tribunal challenging the decision of the management in dismissing him from service.

12. Since this Tribunal found that the enquiry was not conducted in a fair and proper manner, the management was allowed to lead fresh evidence to prove charges against the workman. Accordingly the management examined the officer in charge of Regional Research Station, Padiyur as MW2. According to her, on 12.05.2009, the Rubber Tapping Demonstrator (RTD) reported to her that the worker on processing duty Sri. E.V.Bijukumar informed him about the reduction in size of the accumulated scrap stored in the central store. He noticed the same on 11.05.2009 but reported the matter only on 12.05.2009. The RTD later reported the matter to MW2. Since the Assistant Farm Superintend who was in charge and custody of scrap rubber was on leave, weighing of the scrap rubber was postponed till 19.05.2009. After weighing, it was found that there was substantial reduction to the tune of 1394 Kg of rubber. It is very clear that such a quantity of scrap cannot be removed without knowledge of the watchmen who were on duty on 09.05.2009, 10.05.2009 and 11.05.2009. As per Exbt.MW3, Sri.T.C. Rameshan and K.D.Babu were on night duty on 09.05.2009 and Sri. T.C.Rameshan and Sri.Bhaskaran were on night duty on 10.5.2009. Later she also filed a complaint with the police and Sri.K.V. Bhaskaran and Sri.T.C. Rameshan admitted and owned up their role in the theft. The workman was also called by Police for questioning but there was no further investigation by the Police in the matter. In the conciliation proceedings before the Sub Inspector of Police, Sri.K.V.Bhaskaran and Sri.T.C. Rameshan admitted their role in the theft and agreed to compensate the loss to the management. On 28.06.2011, Sri.T.C. Rameshan and K.V.Bhaskaran submitted a letter stating that workman was also involved in the theft. Since the letter was addressed to the Director, the same was forwarded to the Director on the same day with a covering letter. That letter along with the covering letter is marked as Exbt.M11. In her cross examination, she admitted that the police complaint was filed after 8 days of theft, after conducting an internal enquiry. She also admitted that in the farm level enquiry conducted by her the name of the workman has not come up. She admitted that Sri.T.C. Rameshan and K.V.Bhaskaran admitted the crime in front of the Police and she was also a signatory to the settlement which is marked as W1. The State Bank of Travancore counter foil of the receipt slip dt.30.08.2009 through which Sri.K.V.Bhaskaran remitted Rs.37,380/- towards his share of loss to the management is also admitted to by MW2. Sri T.C. Rameshan has given a request seeking extension of time for remitting his part of the compensation to the management which is marked as Exbt.W3. She also admitted that she never named the workman in any of her reports or the complaint filed with the Police. MW3 is the Asst. Farm Superintendent in Regional Research Station, Padiyur. He also stated that the other two watchmen admitted to the crime and compensated the loss to the management. According to him, he has no direct knowledge of the involvement of the workman in the crime. The Rubber Taping Demonstrator was examined as MW4. He also admitted in evidence that during the Police investigation, the other two watchmen admitted their role in the crime and agreed to compensate the loss to the management. According to him, his statement that the workman used to carry some load in his bike is given on the basis of some information given by some local residents. The statements given by MW2, MW3 and MW4 during the internal investigation were also marked in the enquiry.

13. The learned Counsel for the management argued that Exbt. M11 will prove the involvement of the workman in the above incident of theft. Exbt. M11 is a forwarding letter dt.28.06.2011 forwarding the 2 letters received from Sri.K.V.Bhaskaran and T.C. Rameshan addressed to the Director, Rubber Board, Kottayam. In the above referred letters both these ex-watchmen alleged that the workman was also involved in the theft because they used to see him carrying gunny bags in his bike while returning from duty in the night. These 2 letters were not part of the enquiry and it is submitted to the Director, Regional Research Station, Padiyur after the enquiry is completed. The enquiry report is submitted by the Enquiry Officer on 18.03.2011 and EXbt. M11

is dt.28.06.2011. As already stated, the reason for giving a letter addressed to the Director, Rubber Board, 3 months after the submission of the enquiry report leads to some suspicion regarding the reasons for giving such a letter. Apart from the above document, there is no other direct evidence to involve the workman in the alleged theft. Exbt.W1 is a statement given by Sri.K.V.Bhaskaran and T.C. Rameshan in the presence of MW2 and the Sub Inspector of Irikkur on 30.05.2009 admitting their involvement in the theft and also stating that they will compensate the loss to the management. Exbt. W4 is a statement given by T.C. Rameshan to MW2, the officer in charge admitting his involvement in the theft and also admitting that he will compensate the loss to the management. At no stage of this proceedings there was an allegation against the workman and his involvement in the episode. Exbt.M6 is a statement given by MW2 dt.14.08.2009 to the internal enquiry. According to Exbt. M6 statement, MW2 states that the watchers Sri.K.V.Bhaskaran, T.C. Rameshan and Sri.K.D.Babu took initiative to make the theft a joint responsibility of the farm and remit the cost of the stolen material. She also stated that after the suspension of the workman, he called her over telephone regarding his suspension allowance and also enquired whether the weight of slugged rubber was also being recorded. And further she states in the report that the local residents told her that workman frequently used to take loads on his motor bike while leaving the farm after duty hours in the night. MW3 in his evidence also states that many employees told him that the workman is also involved in the incident. When he was asked to specify the name of atleast one employee, he said that he do not remember the name of the employee who told him regarding the involvement of the workman. A similar statement is given by MW4 also in the enquiry. Now the question is on the basis of this evidence alone is it possible to conclude that the workman is involved in the theft. On the other hand, there is clear evidence to the effect that the theft was conducted by Sri.K.V.Bhaskaran and T.C. Rameshan. It is also be proved that the loss to the management was compensated by those two ex-watchmen of the management.

14. The learned Counsel for the management relied on the decision of Hon'ble Supreme Court in **Divisional Controller, Karnataka Road Transport Corporation Vs M.G.Vittal Rao,** 2012 (1) SCC 442 to argue that the degree of proof which is necessary in a departmental enquiry is that of "preponderance of probability" and "not beyond reasonable doubt" as in a criminal case. It is a settled law that the standard of proof required in a domestic enquiry and in a criminal case are altogether different. In a criminal case, the standard of proof required is "beyond reasonable doubt" while in a domestic enquiry it is the "preponderance of probability" that constitutes the test to be applied. In **State of Haryana Vs Rattan Singh**, AIR 1977 SC 1512 the Hon'ble Supreme Court held that absence of any evidence to support a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the face of the record. In **Uttarakhand Transport Corporation Vs Heerasingh Parihar**, Civil Appeal no.9520/2019 the Hon'ble Supreme Court held that in a departmental enquiry, the test is whether the findings are based on some evidence. In the present case as already pointed out there is no direct evidence to prove the involvement of the workman in the alleged theft. However as pointed out earlier, some of the witness examined by the management pointed out that some workers or the public told them that the workman is also involved in the incident. According to the learned Counsel for the management, relying on the decision of the Hon'ble High Court of Kerala in **Vasu K.C. Vs State of Kerala**, 2009 (4) KHC 931, hearsay evidence can also be relied on in a disciplinary proceedings. In the above referred case, the disciplinary proceedings were initiated against a Head Constable for demanding a bribe of Rs.2000/- from one Sri.V.T.Saseendran, father of an accused in a crime and he accepted Rs. 200/- and later the father of the accused committed suicide. After the evidence was closed in the vigilance case, the Vigilance Tribunal recommended departmental enquiry against the Head Constable. The allegation in that case was the Tribunal relied on hearsay evidence while recommending disciplinary action against the delinquent. In that context quoting various Supremes Court decisions, the High Court of Kerala held that there is no allergy to hearsay evidence in a disciplinary proceedings provided it has reasonable nexus and credibility. In this case, the only evidence by MW2, MW3 are that some workers and general public told them that the workman was also might be involved in the incident. It is not possible to accept the credibility of such an evidence when the Tribunal is examining the maximum punishment awarded to a worker. In this particular case again the evidence in favour of the workman is so strong that this kind of hearsay evidence cannot overrule the legitimate right of a workman.

15. Considering all the facts, evidence, pleadings and circumstances of this case, I am inclined to hold that the charges against the workman are not based on any evidence and accordingly his dismissal from service is not correct.

16. <u>Issue No. 3</u>

Relying on the decision of Hon'ble Supreme Court in **Andhra Pradesh State Road Transport Corporation Vs Raghuda Siva Sankar Prasad**, 2007 1 SCC 222 the learned Counsel for the management argued that since the management lost confidence in the worker, he shall not be reinstated in the service of the management. In the above case, the allegation against the workman was that he has stolen fuel injection pump, alternator bearing, new tubes and sponge sheets from the garage of the management. The workman in that case, admitted

to theft in the Labour Court and the Labour Court found that the charges against the workman were proved. In such a context, the Hon'ble Supreme Court held that loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. In the present case as already pointed out there is absolutely no evidence to prove the involvement of the workman in the theft. However since the watchman is in charge of security of an establishment and the management feels that they lost confidence in the workman, the management may consider accommodating him in some other area of equivalent level.

17. In view of the finding at Issue no. 1 & 2, I am inclined to hold that dismissal of the workman form service of the management is not correct and he is directed to be reinstated in service without back wages but with continuity of service. If the management feels that the workman cannot be accommodated as watchman he may be accommodated another equivalent post.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 27th day of January, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1	-	Workman Shri. K.D. Babu, dt. 31.10.2013
WW2	-	Shri. Balan Padiyoor, dt.11.10.2019

Witness for the Management:-

MW1	-	Shri. Dr. Siby Varghese, dt. 15.02.2016
MW2	-	Smt. Radha Lakshmanan dt. 28.03.2019
MW3	-	Shri. K.J. Joseph, dt. 28.05.2019
MW4	-	Shri.V.V. Thamban, dt. 17.07.2019

Exhibits for the Workman:-

W1	-	Photocopy of the decision taken in the presence of mediators dt.30.05.2009
W2	-	Photocopy of the Receipt dt.13.08.2009 issued by SBT, Iritty
W3	-	Photocopy of the request dt. 24.07.2009 made by Shri.T.C. Ramesh
W4	-	Photocopy of the letter dt. Nil issued by Shri. T.C. Ramesh
W5	-	Photocopy of the letter dt. 11.07.2011 issued by co-watchmen to Director, Rubber Research Institute of India, Kottayam

Exhibits for the Management:-

M1	-	Enquiry Report
M2	-	True copy of the original Crop Stock Register
M3	-	The original Duty Chart of watchers of Rubber Board Regional Research Station, Padiyur for the period 09.05.2009-10.05.2009 and 10.05.2009-11.05.2009
M4	-	True copy of the show cause notice dt.12.08.2009
M5	-	True copy of the Enquiry Notice dt.25.01.2010
M6	-	Report dt.14.08.2009 of the Officer-in –Charge Smt. Radha Lakshmanan, RRS, Padiyur
M7	-	Statement dt.12.08.2009 of Shri.E.V. Biju Kumar (Roll no.2) worker, RRS, Padiyur
M8	-	Report dt.30.10.2009 of Shri.P. Sukumaran, Farm Assistant, RRS, Padiyur
M9	-	Statement dt.30.05.2009 of Shri. K.J. Joseph, Asst. Farm Supdt., RRS, Padiyur
M10	-	Statement dt.18.09.2009 of Shri.V.V.Thamban, RTD, RRS, Padiyur
M11	-	The original letters along with the covering letter dt.28.06.2011

नई दिल्ली, 18 फरवरी, 2020

का.आ. 271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स लैग ऑफिसर कमांडिंग इन चीफ, दक्षिणी नौसेना कमान, कोच्चि और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – एर्नाकुलम के पंचाट (संदर्भ संख्या 07/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुए थे।

[सं. एल-42011/77/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 271.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/2013) of the Central Government Industrial Tribunal-cum-Labour Court-Ernakulum, as shown in the Annexure, in the Industrial dispute between the employers in relation to The The Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi & Others, and their workmen which were received by the Central Government 17.02.2020.

[No. L-42011/77/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Monday the 27th day of January 2020, 7 Magha 1941)

ID No. 07/2013

Workman	:	Shri. K.P. Ali The Secretary, Butchery Workers Union (CITU) Kizhakkampilly House NAD P.O., Aluva Ernakulam - 683563 By Adv. K. Balachandran
Management	: 1.	The Flag Officer Commanding-in-Chief Southern Naval Command Kochi – 682004 By Adv.M.R.Jayaprasad
	2.	Shri. George Varghese Vipy's Agencies and Distributors Palluruthy Kochi – 682006 By Adv.T.C. Krishna

This case coming up for final hearing on 13.11.2019 and this Tribunal-cum-Labour Court on 27.01.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-42011/77/2012-IR(DU) dated 05.12.2012 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the action of the management of Southern Naval Command(SNC) in engaging a contractor for the supply of meat etc. and thereby stopping the work of 7 butchers working in the Butchery of SNC is justified ? If not, to what relief they are entitled ? ''

3. The Union filed their claim. The naval butchery was functioning at NAD, Aluva since 1960. The preparation and supply of fresh mutton and chicken to B.V.Yard was done from the butchery. The activity includes slaughtering also. The activities were carried out at the butchery by 7 workers such as 1. K.P.Ali, 2.P.B.Abdul Karim 3. S.Thankavelu, 4. M.M.Ashraf, 5. M.P.Kalid, 6. C.P.Najeeb and 7. Muhammadali. They were working in the butchery on a regular basis for 30-35 years. They were working on full time basis as civilian employees. The entire activities from the arrival of the animals, their feeding, slaughter, dressing, cleaning of carcasses, cleaning of animal waste, disposal of animal waste etc are done by these workers. They were not having any other employment nor any source of income. As slaughter activities are done at the naval premises round the clock accessibility for hygiene inspection was ensured. The workers were also subjected to medical examination every month at the instance of the principal employer. The workers were doing their work as per the instructions of Navy's B.V.Yard Veterinary doctors and other concerned officers. The complete work from beginning till the supply of mutton and chicken were done under the strict supervisions of Veterinary doctors and other Navy officials. The butchery was renovated spending lot of money. The workers were denied employment during the middle of 2011. It was an action on the part of the principal employer to get rid of the workers who got attached through an Union. In order to get rid of the workers, now contract is being given for supply of frozen chicken and mutton from outside. The very activities earlier carried on by the workers are now done by outside suppliers. For some time, Southern Naval Command introduce a contract system and these workmen were put under it. This was a name sake arrangement to deny the legal right of the workmen. The ultimate control of the workmen were in Southern Naval Command who was the principal employer who was fully supervising the work of the workmen. The action on the part of the principal employer denying employment to the workmen is illegal and is also in violation of the provisions of labour laws. Before denying the employment to the workman no compensation notice or notice pay was given to them. Even now the workers remained unemployed.

4. The 1st management filed written statement denying the above allegations. According to the 1st management, they entrusted the supply of materials from contractor on the basis of a policy decision by Govt of India vide Ministry of Defence letter no.DCV/VG/4239/P&F Mutton/NHQ/1990/D(N-IV)/10 dt.15.06.2010. Engaging contractors for supply of mutton and chicken is an ongoing activity every year. Hence it is not a new action on the part of the 1st management. The only change is that instead of fresh meat, contracts have been signed for pre-cut meat (frozen) since April 2011. The contracts have been signed with different suppliers every year and on expiry of the contract period neither the Naval authorities nor the contractors have any mutual obligation with each other. The contractors are selected by open tendering process by 1st management. Hence there is no question of stopping the work of the 7 butchers as alleged in the claim statement. Further they were never workers of Southern Naval Command Butchery but employed by contractors M/s.Vipys Agencies & Distributors (2nd management) to meet the contractual obligations for a specified period for one year specified in the tender documents. It is true that the management of Southern Naval Command engaged contractors for supply of meat, the only difference is upto 31.03.2011 the contract was supply of fresh meat and subsequently it is contract for supply of blasted pre-cut (frozen) meat as per the directions of Govt vide letter dt.15.06.2010.

5. It is true that naval butchery was functioning near Naval Armament Depot, Aluva since 1960. The livestock was to be inspected by Army Veterinary Officer before slaughter for its quality. It was also necessary to maintain high degrees of hygiene in the slaughter house. The contractors are obliged in terms of contract to pay rentals for the use of Govt Butchery and employ medically fit workers for the entire activities. The 7 workers in the dispute were not workers of the 1st management and they cannot be termed as civilian workers of the 1st management. The 7 workers in this dispute were the workers of M/s.Vipys Agencies & Distributors for the year 2010-11 and were drawing their wages from the said firm. The complete activities from arrival of animals to supply of mutton and chicken are carried out by the contractors and Navy never employed anybody for such activities. The contract rate is for meat/Kg and includes the labour charges also. The 7 workers in the industrial dispute are engaged by the contractors to meet the contractual obligation and the 1st management is in

no way responsible to them. The first person in the list of workers, Sri.K.P.Ali himself was a contractor and their claim that they have no other source of income is denied by the 1st management. They were engaged in environmental control, hygiene, removal of wild growth, sweeping etc. in Naval Armament Depot, Aluva as per contract no.NAD/AAO/7011/2010-11 dt.21.07.2010. Hence it is very clear that they were otherwise gainfully engaged in other works while carrying out part time contract butchery work with the 2nd management.

6. Butchering activity was carried on in Naval Butchery till 31.03.2011. The butchery workers employed by the contractors were also subjected to medical examination as per terms of contract. The inspection of live stock and carcasses by veterinary doctor was also done as part of the contract. The management of Southern Naval Command has no supervisory power over the workers. No renovation work was carried out in the butchery during the last 3 ½ years except the augmentation work done in 2009. Though there was a proposal for renovation of the butchery, it was not implemented because of the change in policy. The contract with 2nd management was for a period of one year from 01.04.2010 to 31.03.2011 and hence it cannot be said that the applicants were denied work all of a sudden. The 1st management never put these workers under any contract as it is the duty of the contractor to arrange meat as per the terms of contract. The cost of meat supplied by the contractor includes labour charges and hence there was no necessity for Southern Naval Command to interfere with the employment of workers engaged by contractors from time to time. The contract envisages the presence of the contract supervisor at the butchery for supervising their works. Hence there is no point in saying that the workers were under the control and supervision of the 1st management. Various contractors who were given contract for supply of meat engaged the workers and the 1st management had no role in engagement of these workers by the contractors. The workers were otherwise gainfully engaged as the first applicant had entered into conservancy contract with Naval Armament Depot, Aluva from time to time. The contract continued till 2013. The 1st management denied that they are liable to issue notice or to provide notice pay to any person on completion of the contract period. The contract in the instant case was terminated on 31.03.2011 on satisfaction of terms of contract.

7. The 2nd management also filed written statement denying the allegations in the claim statement. The 2nd management is engaged in the business of supplying meat to B.V.Yard, Kochi under Southern Naval Command. The 2nd management took up the contract with the 1st management for supply of meat being the lowest tender. The contract for supply of fresh meat was till 31.03.2011. The Southern Naval Command had a butchery of its own at NAD, Aluva. The slaughter activities were carried out in the said butchery. From 31.03.2011 onwards the slaughter activities were stopped and contract is being given for supply of frozen meat instead of fresh meat. From 2009-2010 and 2010-2011 the 2nd management was the successful bidder for supply of fresh meat. For previous years one Thomas Mathew and Cochin Marines were the suppliers of fresh meat. The 2nd management came to an understanding with local CITU Union with regard to the engagement of workers for slaughter of animals and 7 workers were being engaged for the same. In fact, the 2nd management was not allowed to bring his own workers because of the Union and the local workers. The slaughter of animals were done thrice in a week and the same was carried out during night. The work starts by 11 pm and will be over by 2 am. After the slaughter the 7 workers have no other work and they leave the premises. By 6 am, the veterinary doctor of the Southern Naval Command visit the slaughter house for inspection of the carcasses and two of the butchers would return to assist the veterinary doctor. The said work is done on rotation basis according to an understanding between them. The inspection work would take maximum of one hour and the meat would be transported to Naval Base. No permanent work force was necessary for the above work and all the 7 workers were carrying out the same as a part time work and were attending to other works during day time. After 31.03.2011, Southern Naval Command stopped contract for supply of fresh meat and from 01.04.2012 the contract was for frozen meat. There was no work in the slaughter house thereafter. The 7 workers referred to in the claim statement are workers of the 2nd management. They were local workers available near the slaughter house. The claim of the Union that the workers were working on a regular and full time basis is denied by the 2nd management. The allegation that they have no other employment or source of income was also denied by the 2nd management. Sri K.P.Ali, one of the worker mentioned in the claim statement along with his brother late Muhammed had earlier taken the contract for supply of meat. The 2nd management also denied that the work was of perennial nature. The slaughtering activity was carried out only thrice in a week and the work involved only a couple of hours. Their engagement came to an automatic end by 31.03.2011. The workers in the claim statement do not have any continuous service so as to claim any benefit under the industrial dispute Act. The 2nd management never appointed the workers nor terminated their service.

8. On completion of pleadings, the union examined WW1 and marked Exbts.W1, W1(a) to W1(e). The management examined MW1 and marked Exbts.M1 to M3. The marking of the management exhibits was objected to by the Counsel for the Union on the ground that the documents are copies. Hence the documents were marked subject to production of original for verification. The management thereafter produced the original documents which were returned after confirming the genuineness of Exbt. M1 to M3.

9. On the basis of the pleadings and evidence, the following issues are framed for adjudication.

1. Whether the action of the management of Southern Naval Command in engaging a contractor for supply of meat and thereby stopping the work of 7 butchers working in the butchery of Southern Naval Command is justified?

2. If not, to what relief they are entitled?

10. Issue No. 1

According to the learned Counsel for the Union, the Southern Naval Command is having a butchery at Aluva and 7 employees belonging to the Union were engaged for preparing fresh meat for supply to B.V.Yard including slaughtering activities. They worked on regular basis for the last 30-35 years. They were working on fulltime basis. They were working as civilian employees of the 1st management. They were handling the feeding, slaughtering, dressing and cleaning of carcasses and disposal of animal waste in the butchery. The workers were doing their work as per the instructions of Navy's B.V.Yard veterinary doctor. The workers were also being medically examined by the doctors from Southern Naval Command (SNC). The activities which were earlier done by these workers were put under some contract and these workmen were working with the contractor. The work is of perennial nature. It is substantially connected with the principle activities of Southern Naval Command. The Southern Naval Command as principal employer was having supervisory and disciplinary powers and was having ultimate and direct control over the workmen. According to the learned Counsel for the 1st Management, the 1st Management has entrusted the supply of fresh meat to various contractors and in the year 2011 the Ministry of Defence changed the policy of supply of meat to management establishments. Instead of fresh meat, the contracts are being awarded for pre-cut meat (frozen) since April 2011. The contracts are being awarded on open tendering basis and hence the contracts are being awarded to different contractors every year. The contracts upto 31.03.2011 was supply of fresh meat and during that period also different contractors were being engaged for supply of fresh meat. For 2009 to 2010 and 2010 to 2011, the contract for supply of fresh meat was awarded to the 2nd Management. The contract used to be awarded on a rate basis and there was no provision to engage any workers for the above purpose. The 1stManagement is having a butchery which used to be rented out to the party getting contract for supply of fresh meat. This is done to ensure the quality of meat supplied by the contractor to the 1st Management. Hygiene was the priority area and hence the 1st Management also used to get the workers engaged by the contractors medically examined by their doctor. With the same purpose in view, the animals brought to the butchery also used to be examined by the veterinary doctor of the 1stManagement. As already pointed out, all these things are done only to ensure the quality and hygiene of the meat supplied by the contractor. The Union produced W1 to W1(e) documents to substantiate their case that they were working with 1stManagement from 1988. Exbt.W1 dt.10.04.1988 is a note given by Asst. Base Victualling Officer to the Medical Officer-in-charge, NAD, Aluva for medical examination of civilian workers. According to Exbt. W1, 7 workers employed as butchers in Naval Butchery at NAD, Aluva was being sent for medical examination. Exbt. W1(a) dt.30.08.1988 is also a similar letter for getting the workers medically examined at MI room, NAD, Aluva. But Exbt. W1(b) dt.19.11.1990, shows that these employees are employed by a contractor in Naval Butchery, Aluva. Exbt. W1(c) dt.18.03.1991 & W1(d) dt.24.02.1993 shows that the employees were employed by the 2nd Management. The evidence of WW1 also shows that the workers were originally engaged by the 1st Management and they were put under some contract subsequently. He was not very clear about the dates. According to WW1, they used to work for 5-6 days in a week. According to the 2nd Management, the slaughtering is done only on two days and the workers used to work for a maximum of 3 days in a week. According to the 1st Management, they used to enter in to contract with various agencies for supply of fresh meat. The contract was for supply of meat and was not for engaging workers in the butchery. The butchery is given on rent to any agency which is awarded the contract for supply of fresh meat. The rates are fixed on per Kg basis which includes all the cost of material and labour. The management produced Exbt.M1 to establish their case that their contract with agencies are only for supply of fresh meat. On a perusal of Exbt. M1, it is seen that it is a tender document for supply of fresh meat to Command Logistic Officer, Southern Naval Command, Kochi. As per Exbt.M1, the Naval Butchery will be rented out to the agency and they are liable to supply meat at the rates prescribed to the 1st Management. According to the 1st Management, there was a change in policy of Govt wherein they were authorized to purchase pre-cut mutton instead of fresh mutton. Accordingly, they changed the contract for supply of pre-cut mutton instead of fresh mutton. According to the learned Counsel for Management 1, Exbt. M2 clearly shows the change in the policy of Govt with regard to the requirement of mutton in Indian Navy. As per Exbt.M2, the Indian Navy establishments are given an option to draw pre-cut mutton/chicken/fish in view of whole carcasses. It is seen that the earlier decision to purchase fresh meat is not fully taken out but only the management is given an option to go for pre-cut frozen meat. The learned Counsel for the 1stManagement also denied that the workers were not gainfully engaged after the contract is terminated. Exbt.M3(a) to M3(d) are contracts awarded to Sri.K.P.Ali by the 1st Management for

environmental control, hygiene, removal of wild growth and sweeping areas of Naval Armament Depot. According to the 1st Management, this contract was in force even before the contract for supply of fresh meat is terminated on 31.03.2011.

11. The learned Counsel for the Union relied on the decision of the Hon'ble Supreme Court in **Haryana State Electricity Board Vs Suresh**, 2000 KLC 540 to argue that the workers are entitled for regularization in view of the dictum laid down by the Hon'ble Supreme Court. In the above case, the issue involved was regularization of contract workers engaged by Haryana State Electricity Board for maintenance of their station. The Hon'ble Supreme Court found that the contract employees were working for more than 240 days in a year and the contract was sham. On the basis of those findings the Hon'ble Supreme Court upheld the decision of the labour Court for regularization of the employees. In this case, the contract is to supply fresh meat and the rates are fixed "per Kg of meat." From 1990 onwards, the contract is given to different parties. According to the contract, the Naval butchery will be provided to the contractor and he will have to engage workers for providing the required meat to the 1st Management. It has come out in evidence that the workmen were doing the work for different contractors and they were not allowing the contractors to bring their own workmen. The contractor will have to arrange for the livestock for slaughtering and engage workers for slaughtering and cleaning the premises. The livestock were inspected by an army veterinary officer. The workers were also required to undergo medical examination in the medical facility at NAD, Aluva to meet the hygiene requirements of the 1st Management. The 1st Management has proved through Exbt.M3 documents that Sri.K.P.Ali was being engaged to do other contract works even before. The contract for supply of fresh meat was terminated on 31.03.2011. In this context it is not possible to conclude that the contract entered by the 1st Management for supply of fresh meat was a sham. In the present case, the available evidence shows that the workmen were working from 10.04.1988 and they were working with contractors from 19.11.1990. Admittedly they continued to work with different contractors till 31.03.2011. But there is absolutely no evidence to show that the workers were working continuously for 240 days in a year. According to the workers, they were working for 5-6 days a week whereas according to the 2nd Management, they were working for a maximum of 2-3 days in a week. According to the 1st Management, they are not aware of the number of days these workers worked as they had no supervisory control over these workers. Normally in such circumstances, the payments made to the workers can be taken as a basis to arrive at whether the employees had continuous service of 240 days in a year. In this case according to the 1st Management, the contract is for supply of meat and the rates are fixed on "per Kg basis". The Union also did not make any attempt to get the details of payment of wages by the 2nd Management to prove their case that they worked continuously for more than 30 years with the management and 240 days before the change of contract . In view of the lack of evidence, the dictum laid down by the Hon'ble Supreme Court in **Haryana State Electricity Board Vs Suresh** (Supra) cannot be extended to the facts of this case.

12. In view of the above discussion, it is not possible to hold that the Southern Naval Command stopped the work of 7 butchers working in Southern Naval Command Butchery by awarding contract for supply of pre-cut meat to a contractor. Hence the issue is decided in favour of the management and against the Union.

13. <u>Issue No. 2</u>

In view of finding at Issue no.1, the Union is not entitled for any relief.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 27th day of January, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman:-

WW1 - K.P. Ali, dt. 27.04.2016

Witness for the Management:-

MW1 - Captain Kamlendar Sharma, dt. 06.06.2019

Exhibits for the Workman:-

W1 - Letter dt. 10.04.1988 to the Medical Officer-in-Charge, NAD, Aluva from Asst. Base Victualling Officer, B.V. Yard, Kochi

W1(a) - Letter dt. 30.08.1989 to The Medical Officer-in-Charge, NAD, Aluva from Asst. Base Victualling Officer, B.V. Yard, Kochi

W1(b) - Letter dt. 19.11.1990 to The Medical Officer, NAD, Aluva from Asst. Base Victualling Officer, B.V. Yard, Kochi

W1(c) - Letter dt. 18.03.1991 to The Medical Officer, NAD, Aluva from Asst. Base Victualling Officer, B.V.Yard, Kochi

W1(d) - Letter dt. 24.02.1993 to The Medical Officer, NAD, Aluva from Asst. Base Victualling Officer, B.V.Yard, Kochi

W1(e) - Letter dt. 05.08.2004 to The Medical Officer-in-Charge, NAD, Aluva from Command Admin & Personal Officer, Headquartes, Southern Naval Command, Kochi

Exhibits for the Management:-

M1 - Copy of the Tender document submitted by the contractor dt. 09.02.2010 for the period 01.04.2010 to 31.03.2011

M2 - Copy of government directions vide Ministry of Defence letter No. DCV/VG/4239/P&F Mutton/NHQ/1990/D(N-IV)/10 dt. 15.06.2010

M3(a) - Copy of the contact agreement received from the Naval Armament Depot, Aluva dt. 21.07.2010

M3(b) - Copy of the contact agreement received from the Naval Armament Depot, Aluva dt. 12.08.2011

M3(c) - Copy of the contact agreement received from the Naval Armament Depot, Aluva dt.17.11.2011

M3(d) - Copy of the contact agreement received from the Naval Armament Depot, Aluva dt. 15.02.2013

नई दिल्ली, 18 फरवरी, 2020

का.आ. 272.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 153/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुए थे।

[सं. एल-40012/162/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 272.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 153/1997) of the Central Government Industrial Tribunal-cum-Labour Court-Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/162/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 153/1997

I Party	**II Party**
Sh. Chandoji, C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad Malemar, Ashoknagar Post, MANGALORE – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, MANGALORE – 575 001.

Appearance :

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/162/95-IR(DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. P. Chandoji is proper, legal and justified? If not, to what relief the workman is entitled to?"**

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus :

> "*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*
>
> *Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.*
>
> *In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs*."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. P Chandroji S/o Dhakoji for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737705 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-7. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 273.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उपाध्यक्ष, भारत पर्यटन विकास निगम लिमिटेड, नई दिल्ली, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – 2 मुंबई के पंचाट (संदर्भ संख्या 21/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/164/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 273.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2014) of the Central Government Industrial Tribunal – cum-Labour Court- 2 Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice President, India Tourism Development Corporation Ltd., New Delhi & Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-42012/164/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/21 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIA TOURISM DEVELOPMENT CORPORATION LTD.

The Vice President,
India Tourism Development Corporation Ltd.,
Scope Complex, Lodhi Road,
New Delhi -

AND

THEIR WORKMEN

Mr. Sridhar Chandra Balan,
C/o. M. Sivapragsam, 2/434,
Riverview Colony, Link Road, Dr. Ambedkar Nagar,
Manapakkam,
CHENNAI – 600 125.

APPEARANCES :

FOR THE EMPLOYER	:	Mr. V. Philip, Representative
FOR THE WORKMEN	:	Mr. Nagraj N. Kankonkar, Advocate

Mumbai, dated the 21st January, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/164/2013–IR (DU) dated 25.02.2014. The terms of reference given in the schedule are as follows :

"1. Whether the termination of service of the applicant w.e.f. 17.10.2008, who had put in continuous service of 14 years without any break even though on contract basis which was renewed from time to time is liable to be regularized on the role of ITDC, whose branches are scattered all over the Country ?2. Whether the claim of applicant for back wages w.e.f. 17.10.2008 is justified ? 3. If so, to what relief workman is entitled to ?''

2. After the receipt of the reference, both the parties were served with the notices.

3. In view of pursis filed by the concerned workman, he wants to withdraw the reference in view of settlement. As such he does not want to pursue the reference and hence reference is disposed of. Hence order.

ORDER

Reference is withdrawn and hence disposed of with no order as to costs

Date: 21.01.2020

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 274.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 154/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुए थे।

[सं. एल-40012/146/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 274.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 154/1997) of the Central Government Industrial Tribunal-cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/146/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT: **JUSTICE SMT. RATNAKALA**

Presiding Officer

CR 154/1997

I Party

Sh. B. Shivanna,
C/o Sh. K. Nagesh Kumar,
Sh. Ganesh Prasad, Malemar,
Ashoknagar Post,
Mangalore – 575 006.

II Party

The General Manager,
Mangalore Telecom Dist,
Old Kend Road,
Mangalore – 575 001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/146/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. B. Shivanna is proper, legal and justified? If not, to what relief the workman is entitled to?"

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus :

"*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*

Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.

In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. B Shivanna S/o Beeregowda for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737687 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-16 in connected case CR 153/2007. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कार्यकारी निदेशक, भेल, रानीपेट, वेल्लोर तमिलनाडु, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – चेन्नई के पंचाट (संदर्भ संख्या 09/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुए थे ।

[सं. एल-42011/166/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 275.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2018) of the Central Government Industrial Tribunal-cum-Labour Court- Chennai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The The Executive Director, BHEL, Ranipet, Vellor, Tamil Nadue & Others, and their workmen which were received by the Central Government on 17.02.2020.

[No. L-42011/166/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

ID No. 9/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 07.02.2020

The General Secretary
BHEL/BAP Supervisors
BHEL, Ranipet
Vellore-632406 : 1st Party/Petitioner Union

AND

The Executive Director
BHEL, Ranipet
Vellore-632406 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Respondent : Advocates M/s. T.S. Gopalan & Co.

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42011/166/2016-IR(DU) dtd. 30.10.2018 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of the Management of BHEL, Ranipet that the members of the Supervisory Union are not workmen as defined in Section 2(s) of ID Act, 1947. If not, whether the demand of the Supervisors Union, BHEL – BAP Ranipet for wage upgradation to S1 to S3 Grade Supervisors is legal and justified? If not, to what relief the said workman are entitled to?"*

2. On receipt of the above reference from the appropriate Government the dispute was registered as ID No. 9/2018 and due notices were issued to both the parties for their appearance fixing the case to 17.12.2018. Since then, the case is dragged for such a long period till 03.02.2020 intervening almost 7 adjournments in the year 2019 and 2 more adjournments in the year 2020 including the date fixed on 03.02.2020 for appearance and for Claim Statement failing which for final order. Neither the Petitioners nor the General Secretary of the Union appeared or the Claim Statement has been filed. No prayer was made seeking adjournment either by any of the members of the Union nor the Authorized Representative, the General Secretary whereas the Respondent is found to have entered appearance through its Representing Counsel.

A little reference to the backdrop of the case needs mention that the Appropriate Government when sent the reference dtd. 30.10.2018 the copy of the reference was accordingly issued in favour of the Respondent viz. The Executive Director, BHEL, Ranipet, Vellore-632406 and to the Petitioner, The General Secretary, BHEL/BAP Supervisors, BHEL, Ranipet, Vellore-632406. The Appropriate Government also directed to the Petitioner-Parties raising the dispute shall file a Statement of Claim complete with relevant documents, list of reliance and witnesses before the Tribunal within a period of 15 days. It is well presumed the Petitioner Union must have received the copy of the reference dtd. 3010.2018 sent by the Appropriate Government. Since then no step is taken by Petitioner Union. On further perusal of the record it also reveals that as soon as the reference was received by this Tribunal, due notice was issued to the Petitioner Union as well as Respondents. The

receipt of the notice has been acknowledged by the concerned parties and the Respondent entered appearance by filing its Vakalatnama on 15.12.2018. But the Petitioner Union slept over the matter to comply the direction of the Appropriate Government or to raise their claim before this Tribunal despite of receipt of such reference. However, for the interest of justice this Tribunal suo-moto afforded sufficient opportunities to the Petitioner for appearance and presentation of their Claim Statement. The General Secretary of the Union or any of the aggrieved petitioners did not turn up. Thus, their non-appearance clearly says that the Petitioners or the Union has got no interest to proceed with the dispute. The non-cooperation and default in appearance of the Petitioner constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraphs, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the reference is answered against the petitioner.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 07.02.2020)

नई दिल्ली, 18 फरवरी, 2020

का.आ. 276.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सामान्य प्रबंधन दूरसंचार, भारत संचार निगम लिमिटेड, भोपल, (म.प.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – जबलपुर के पंचाट (संदर्भ संख्या 17/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.01.2020 को प्राप्त हुए थे।

[सं. एल-40012/105/2010-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 276.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/2011) of the Central Government Industrial Tribunal-cum-Labour Court- Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manage Telecom, Bharat Sanchar Nigam Ltd. Bhopal (M.P.) & Others, and their workmen which were received by the Central Government 28.01.2020.

[No. L-40012/105/2010-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/17/2011

Present: P. K. Srivastava, H.J.S.(Retd)

Shri Gopal Prasad Tiwari,
S/o Shri K.S.Tiwari,
R/o Bhamashah Marg, Ward No.9,
Seoni-Malwa,
Hoshangabad (M.P.) …Workman

Versus

The General Manage Telecom,
Bharat Sanchar Nigam Ltd.
New Market, Bhopal Circle,
BHOPAL (M.P.) ...Management

AWARD

(Passed on this 16thday of JANUARY-2020)

1. As per letter dated 22/3/2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-40012/105/2010(IR(DU)). The dispute under reference relates to:

> "***Whether Shri Gopal Prasad Tiwari is a workman within the provisions of Industrial Disputes Act and whether his service were terminated/retrenched by the Management of General Manager, Telecom, BSNL w.e.f. 16/4/2007 without following the provisions of law? What relief he is entitled to?***"

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that the workman was initially engaged as a casual labour by the department in Bhopal in computer section of General Manager Telecom, Bhopal on 11-11-1991. He remained on uninterrupted services of the Management till 12-5-1994 when his services were unlawfully terminated. He preferred O.A.No.1441-1996 before Jabalpur Bench of Central Administrative Tribunal which was disposed of vide order dated 1-11-1996 with a certain direction to the Department to ascertain the identity of the workman within two month and take appropriate steps thereafter. The workman also raised an Industrial Dispute against his unlawful termination before the Assistant Labour Commissioner Central Bhopal. A reference was made by the appropriate Government in this respect on 11-7-1994 for determination as to whether the action of Management in terminating the services of the workman w.e.f 12-5-1995 is justified and if not to what relief the workman was entitled to. Further more , since the order dated 1-11-1996 passed by Central Administrative Tribunal in O.A.No.1441/1996 was not complied by Management, the workman filed another O.A. before the Central Administrative Tribunal which was O.A.No.3/74/97 which was disposed of vide order dated 15-7-1998 with a direction that since the department had found that the workman was the same person who was actually engaged by the Management, department should take appropriate steps. In the meanwhile , as claimed by workman the reference case was decided by award dated 3-9-2001 holding the termination of the workman against law and directing his reinstatement without back wages with the benefit of counting the period of absence for the purpose of pension. This Award was confirmed by Hon'ble High Court of M.P. at Jabalpur vide order dated 25-3-2005 passed in W.P.No.6552/2001 preferred by the Management against the award with certain directions. The Management who had lost even before Hon'ble High Court, re-instated the workman and decided to conduct a full scale inquiry by issuing a charge sheet under Rule-14 CCS(CC) Rules 1965 on 22-23/1-2007 on two charges mentioned in the charge sheet which was served on the workman but before the workman could file its reply to the Charges, the Management terminated the services of the workman vide its letter dated 13-16/4/2007 paying him one month wages in lieu of notice and amount of Rs.21,579/- as retrenchment compensation. According to the workman his retrenchment is actually a penalty disguised as retrenchment order. The department first started a departmental inquiry, without completing the inquiry the department passed the retrenchment order with the object of punishing the workman who fought for his rights. This was inspite of the fact that while affirming the CGIT Award which provided the period of absence of workman from 12-5-1995 to 1-12-2006 to be counted for the purpose of his pension as well re-instatement of the workman from the date of his previous termination without back wages made the workman entitled to be confirmed temporary status in accordance with scheme issued by the Department vide letter No.45-95/97-SPB-1 dated 12-4-1991 and letter dated 66-9/91-SPB-1 dated 30-11-1992 providing temporary status to a full time casual labour in a department engaged prior to 10-9-1997. The workman was first engaged in service on 1-11-1991. Hence he became entitled to temporary status in the light of circular referred to above. His retrenchment is unlawful on this ground also . Further more, the said order is discriminatory because another similarly placed casual labour Sukhlal was granted status of temporary staff in the light of these circulars. Accordingly ,the workman has prayed for the relief of his re-instatement setting aside retrenchment order and directing the Management to grant him temporary status.

4. The case of the Management, as put in the written statement of defence is that the workman was never appointed in service as per Civil Service Recruitment norms. The charge sheet was issued to the workman about his conduct/behaviour. Regarding the charges mentioned in the charge sheet, the workman replied the charge sheet on 31-1-2007 which was not found to be satisfactory. After creation of BSNL, no work was available with the department, hence the services of the workman were terminated under Section 25(F) of the Industrial Disputes Act, 19457 (hereinafter referred to as the word "Act") by paying one month wages in lieu of one month salary and compensation which was received by workman , which is legal and proper and workman is entitled to no relief. The rest of the fact has been largely admitted by Management. The Management has accordingly prayed that the reference be answered against the workman.

5. The workman has filed and proved copy of order of Central Administrative Tribunal passed on 1-11-1996 in O.A.No.144/96, the copy of order dated 15-7-1998, copy of Award dated 3-9-2001 passed by CGIT , Jabalpur in Reference Case No.R-192-97 granting relief to co-worker Sukhlal, copy of order of Hon'ble High Court in W.P.No.4285/98 preferred by Sukhlal against the Award passed by CGIT-Jabalpur in case R-171-90 whereby the CGIT Award re-instating the workman Sukhlal with back wages was affirmed. Copy of Memo No.335/76 issued by Divisional Engineer on 7-2-2000 granting temporary status to co-worker Sukhlal which are Exhibits W-1 to W-10 respectively. The workman also filed and proved copy of application dated 9-1-2006, copy of order of Department dated 9-1-2006 passed under obligation, reinstating the workman in the order of Hon'ble High Court passed in W.P.No.6552/2001, copy of application dated 14-2-2006, 1-3-2006 and 20-4-2006 and letter of Management dated 30-5-2006 reliving the workman on the basis of retrenchment. The workman has also filed and proved the copy of his reply on charge sheet. The workman examined himself as witness on oath and was cross-examined by Management. The Management has examined Arun Kumar Balpandey,(D.E-legal) as witness and has also examined Yogendra Kumar (S.D.E-legal) on oath. Both the witnesses have been cross-examined by workman. The Management further filed affidavit of its witnesses Shri R.K.Barpatre and Syed Taheer Mamoor who were not produced for cross-examination by workman, hence their affidavit cannot be read in evidence in favour of the Management.

6. I have heard arguments of Mr. N.K. Salunke, learned counsel for workman and Mr. R.K. Soni, learned counsel for Management and have gone through the records and written argument filed by workman.

7. On perusal of the record in the light of rival arguments , make out the following issues for determination:-

1. **Whether Gopal Prasad Tiwari(applicant/workman) is a workman within the provisions of the Industrial Disputes Act,1947?**
2. **Whether the order dated (16-4-2007) retrenching the services of the workman is correct in law and fact?**
3. **Whether the workman is entitled to any relief?**

8. **ISSUE NO.1 AND 2.-**

Since both the issues are inter connected, hence they are being taken together. The word workman as defined in the Industrial Disputes Act,1947 is as under:-

Section 2(S):-

> **[(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison, or (iii) who is employed mainly in a managerial or administrative capacity, Sec. 5 The Industrial Disputes Act, 1947 . (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.] 1**

9. In the case in hand, though the Management has flatly denied that the workman was engaged by them at any point of time but the fact still remains that the workman was first serving with the Management as a Casual Labour, he was dis-engaged and there was an Award by CGIT-Jabalpur reinstating him which was affirmed by Hon'ble High Court and the re-instatement order of the workman passed by the Management which is Exhibit W-11 as well the retrenchment order dated 16-4-2007 establish the fact to hilt that the workman was under employment of the Management on the date when he was retrenched by the impugned retrenchment order, hence there is nothing to indicate that the workman is not a workman as defined in the Act. Accordingly the present workman is held a workman as defined under Section 2(S) of the Industrial Disputes Act.

10. As regards the retrenchment or impugned retrenchment order of the workman, his case is that in fact it is punitive because first adepartmental inquiry was instituted and a charge sheet was issued and anticipating the possible exoneration of workman from the charges, the Management adopted a route of retrenchment which is

unfair practice. Hence violative of Section 25(F) of the Act, whereas the Management has denied this allegation.

11. Before proceeding, it is necessary to refer here to some provision of the Act to make the position of law clear on this point which are Section 2(OO), Section 25(F), 25(G), 25(K) and 25(M) of the Act and Rule 76 and Rule 77 of Industrial Disputes Central Rules, 1957:-

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25K. Application of Chapter V-B.- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 2[one hundred] workmen were employed on an average per working day for the preceding twelve months. (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

[25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one

year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Industrial Dispute Central Rules-1957

76-Notice of retrenchment.—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service 1 Subs. by S.O. 2485, dated 20th May, 1985. 2 Subs. by S.O. 2485, dated 20th May, 1985. 3 Subs. by G.S.R. 289, dated 2nd March, 1982 (w.e.f. 13-3-1982). 4 Subs. by S.O. 2485, dated 20th May, 1985. The Industrial Disputes (Central) Rules, 1957 for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner:— (a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman; (b) where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and (c) where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Central Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned, at least one month before such date: Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to the Central Government, the Regional Labour Commissioner (Central), the Assistant Commissioner (Central), and the Employment Exchange concerned, within 3 days of the agreement.

77. Maintenance of seniority list of workmen.—The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

12. The description of these provisions, makes it clear that while Section 25(F) is about the general condition preceding to retrenchment of workman, the provision mentioned in Chapter 5(B) of the Act are the special provisions relating to lay of retrenchment and closure in certain establishments. According to Section 25(K) and provisions of Chapter 5(B) shall apply to an industrial establishment in which not less than 300 workman were employed on an average per working dayfor preceding 12 months. Section 25(M) deals with the conditions precedent in retrenchment of workman in establishment mentioned in Chapter 5(B) of the Act. From scanning the respective statements on oath given by the witnesses from both the sides and documents as referred

to above, it is established that there has been a chequered litigation between the workman and Management with regard to his employment/termination in which the department lost and was left with no option but to re-instate the workman without back wages and counting the period between his first retrenchment and re-instatement, thereafter for pensionary and other benefits as passed by Hon'ble High Court in W.P.No.6552/2001 affirming the Award of CGIT-Jabalpur in reference case No.192-1997. This is also established that a departmental inquiry was instituted against the workman and a charge sheet with two charges was served on him and without waiting for the ultimate result of the inquiry, the department decided to retrench the workman on the ground that his services are no longer required. This document is Exhibit W-7 filed and proved by the workman which is the retrenchment order. How his services are no longer required, the reason is not mentioned in the retrenchment order. Whether the post was abolished or department was closed or budget has lapsed. The fact that the services are no longer required without stating the reasons of no requirement is a vague preposition, unacceptable in law. In retrenchment cases the Management is bound under law for disclosing the reasons. It is the case of the Management that his services were terminated due to non-availability of work and since he was a daily rated causal labour, this is shown in the statement of Management witness Arun Kumar Bal Pandey. Same is the statement of other witness of Management Yogendra Sahu.

13. Now the question arises whether the condition of Section 25-G of the Act were followed in the case in hand or not. This provision states that ordinarily the workman who was the last person to be employed in that category is to be retrenched unless for reasons to be recorded the employer retrenches any other workman. There is no list of workman produced by Management to show ***inter-se*** seniority between the workman so that it can be seen whether the present workman was the last man who was retrenched or not? This fact becomes important in the light of the allegations of the workman that his retrenchment was by way of punishment without inquiry which he has detailed in his pleadings and evidence.

14. Further more judicial notice can be taken of this fact that BSNL is a huge organisation certainly employing more than 300 workman at one point of time in one year. There is nothing on record to show that provisions of Section 25(M) of the Act seeking the permission from the appropriate Government or authority was taken by Management to retrench the present workman or not.

15. In the light of the above discussion, the impugned retrenchment order cannot be sustained in law. Accordingly the retrenchment of workman vide impugned order is held bad in law. **Accordingly Issue No.1 and Issue No.2 is answered .**

16. **ISSUE NO.3:-**

In the light of finding recorded at Issue No.1 and No.2, the workman is held entitled to relief. The question arises as to what relief should be justified in the light of facts in the case in hand.

17. The settled proved facts are that the workman has been fighting a legal battle with the management since 12-5-1995 when he was first terminated by Management. The Court cases and orders referred to earlier in this judgment as well showing that there has been a chequered litigation between the parties in this respect in which ultimately the department lost and was forced to reinstate the workman without back wages but with benefits as mentioned in CGIT Award passed in Reference No.192-1997 affirmed by Hon'ble High Court in W.P.No.6552-2001. It is also established that the Management had probably made its mind not to allow the workman to continue in its service that is why first they instituted a departmental inquiry by serving charge sheet and fearlful of the ultimate result of the inquiry they took the route of retrenchment of the workman which has been held bad in law in this Judgment. This is a fight between David and Goliath in which David properly defeated Goliath. The learned Counsel for workmen has referred to **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Madhavidyalaya(D.ED) & Others (2013)10 SCC 324**. Para 37 of this judgment requires to be specifically mentioned in this respect:-

18. Para-37:- After noticing several precedents to which reference has been made herein above, the two Judge Bench observed:J.K. Synthetics case, SCC.pp-448-50, paras 17-21)

> "**17."There is also a misconception that whenever reinstatement is directed, 'continuity of service' and consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunal direct re-instatement they should apply their judicial mind to the facts and circumstances to decide whether'continuity of service'and /or consequential benefits should also be directed….**

18. Coming back to back wages, even if the court find it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially(and if so the percentage). That depends upon the facts and circumstances of each case. Any income received b the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned Rudhan singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back wages wee awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirments or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one , where the termination(dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry and the counrt confirms the finding regarding misconduct, but only interfered with the punishment being of the view that it is excessive and awards a lesser punishment , resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act(or any other similar provision)is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the discretion to award a lesser punishment. Till such power is excised the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution or punishment(in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed(in which event, there can be a consequential direction relating to continuity of service). What requires to be notes in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement: and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service not consequential benefits, follow as a natural or necessary consequences of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when te employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking actin for the misconduct committed by the employee. That should be avoided. Similarly in such cases even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the inquiry was held in respect of frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages etc will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of s serious misconduct was proved. It , however felt that the punishment was not warranted and therefore, In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all."

19.

20. Hence in the light of facts peculiar to the case in hand and keeping in view the preposition of law laid down by the Hon'ble Apex Court in the case referred to above the reinstatement of the workman with all back

wages and service benefits will be just and proper relief as per law. The workman also deserves to be awarded cost of litigation as Rs.10,000/-.

Issue No.3 is answered accordingly.

21. On the basis of the above discussion, following award is passed:-

A. The action of the management in retrenching workman Gopal Prasad Tiwari by General Manager Telecom, BSNL w.e.f 16-4-2007 is held bad in law.

B. The workman Gopal Prasad Tiwari is held entitled to be reinstated with all back wages and service benefits from the date of his retrenchment till date of his reinstatement. He is also held entitled to be considered in continuous service for the purpose of other service benefits.

B. The workman is held entitled to Rs.10,000/- as cost of litigation.

P. K. SRIVASTAVA, Presiding Officer

DATE: 16.1.2020

नई दिल्ली, 18 फरवरी, 2020

का.आ. 277.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, ऑर्डिनेंस फैक्ट्री, खमरिया, जबलपुर (म.प.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – जबलपुर के पंचाट (संदर्भ संख्या 106/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.01.2020 को प्राप्त हुए थे ।

[सं. एल-14012/15/2002-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 277.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 106/2002) of the Central Government Industrial Tribunal-cum-Labour Court- Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Ordinance Factory, Khamaria, Jabalpur & Others, and their workmen which were received by the Central Government 28.01.2020.

[No. L-14012/15/2002-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/106-2002

Present: P. K. Srivastava, H.J.S..(Retd)

Shri P. P. Singh
S/o Late Shri Bani Singh
54, Shanti Nagar, Damoh Naka
Jabalpur (M.P.) …Workman

Versus

The General Manager
Ordinance Factory, Khamaria,
Jabalpur-482005. …Management

AWARD

(Passed on this 2nd day of JANUARY-2020)

1. As per letter dated 18-7-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-1402/15/2002-IR(DU) The dispute under reference relates to:

"***Whether the Management of Ordinance Factory Khamaria, Jabalpur(MP) in terminating the services of Shri P.P.Singh, S/o Shri Beni Singh, Ex.Mazdoor T.No.A-3/993/59957 w.e.f 30/11/92 is justified? If not to what relief the concerned workman is entitled?***"

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that he was first appointed as Machinist-B in Ordinance Factory under the management and was discharging his duties to the satisfaction of the Management when he was framed for alleged theft of 1kg 600gm brass piece and was terminated in the year 1992 on this false charge. The departmental inquiry conducted against him in relation to this charge was not conducted properly in the light of principles of natural justice and the punishment to the charge was dis-proportionate. He raised a dispute before the Labour Commissioner. After failure of conciliation, reference was sent by the appropriate Government to this Court. The workman has prayed for relief of his reinstatement with all back wages and benefits.

4. According to the Management the workman was dismissed from service w.e.f. November-30-1992 for the charge of theft of Government material, unauthorized possession of government material, failure to maintain absolute integrity and conduct unbecoming of a government servant proved against him in departmental inquiry. The substance of charge was that he was apprehended on 1-9-1990 at about 12.20 hours for unauthorizedly carrying with him a brass rod kept concealed on his body at the gate No.7. It was also alleged that when he was suspected to be hiding something in his body and was asked to stop for search but he did not stop and ran away out of the gate. He was chased by a sentry who caught him at the gate, in this time the workman however managed to throw the brass rod on the ground which was collected by the sentry and brought to the security office of the Management. A seizure memo was prepared on the same date. A written report was submitted to the Management and inquiry was ordered against the workman. The charges were proved against the workman and inquiry report was submitted by the Inquiry Officer to the Controlling Authority who served a copy of the Inquiry Report on 22-8-1992 finding the act of the workman unsatisfactory, the workman was awarded the punishment of termination according to Rules. Also it was pleaded that dispute was raised after 10 years, hence was barred by delay and latches, accordingly the Management prayed that the reference be answered against the workman.

5. It is pertinent to mention here that a preliminary issue regarding the legality of departmental inquiry was framed by my learned Predecessor and was decided vide his order dated 21-3-2014 holding the inquiry not proper. A Review Petition against this order was filed by Management was also dismissed by my learned Predecessor by his order dated 30-10-2014 confirming the previous order passed by my learned Predecessor on preliminary issue no.1. A Writ Petition filed by Management No.216/2015 was also dismissed by Hon'ble High Court of M.P. Thereafter Management was given opportunity to prove his misconduct before this Court.

6. At the evidence stage, the Management examined its witnesses T.K.Rayghatak, G.R.Sinha, Subedar Major Bheem Singh and Balraj Singh in support of charge of misconduct. The workman relied on his statement of oath as his witness. The management proved the inquiry papers which can be referred to as and when required.

7. I have heard the arguments of learned Counsel for Workman Shri Vijay Kumar Tripathi and Shri A.K.Shashi for Management . I have gone through the records.

8. Following points arise in the case in hand for determination:-

   1. Whether the charge of misconduct is proved from the evidence on record?

   2. If the answer to Issue No.1 is yes then whether the punishment is shockingly disappropriate to the charge?

   3. Relief to which the workman is entitled?

8. **Issue No.1**:-The charge against the workman and its substance have already been detailed earlier in this judgment. The first witness of Management Shri T.K.Rayghatak who was the Junior works Manager at the time of incident has stated on oath that on 1-9-1990 when he was posted in the factory, he had signed the seizure memo as a representative of the section . It was mentioned in the seizure Memo that on 1-9-1990 at 12.20 hours the workman P.P.Singh was caught while taking away government property of 1.610 kg brass rod. He further stated that he was called through a telephone call and identified the workman and he has signed and sealed the packet also. In his cross-examination he admits that the workman was not caught in his presence and also that no recovery or search of the workman took place in his presence and in fact he reached at the spot after seizure memo was prepared and signed it.

9. The second witness of Management Shri G.R.Sinha also states that when he was working as a superintendent in the office and was present at Gate No.7, he saw two constables Kishen Singh and Balraj Singh conducting search of an employee who were coming out of the factory. They chased one employee and caught him with a brass rod. The employee was identified as the present workman Shri P.P.Singh. He was brought to the Security Office of the Management and a seizure memo was prepared. He further states that the constables who chased the employees told him that the employee had a brass rod which he threw it on the ground while running away. This witness has not been produced for cross-examination, hence his evidence cannot be held against the workman as it is un cross-examined.

10. The third Management witness is retired Major Subedar Bheem Singh. He states that on the date of event, he was on duty at Gate No.7. He saw that one employee was running out, his colleague constable Kishen Singh told him that he has some article which he has stolen. Two constables Kishen Singh and Balraj Singh chased him and caught hold of him. The brass rod was lying on the ground about which Kishen Singh told him that this brass rod was thrown away by the employee while he was running away. In his cross-examination, this witness has stated that he had not taken search of the workman, the fact that the brass rod was found lying on ground was told to him by constable Kishen Singh.

11. Another witness constable Balraj Singh has stated that while he was conducting search of workers who were going out of the factory on the date of event 1-9-1990 at Gate No.7 with constable Kishen Singh, he heard the voice of constable Kishen Singh that one employee was trying to run away. Constable Kishen Singh told Bheem Singh, Subedar on duty that this employee has stolen some item. He and constable Kishen Singh chased the employee following the order of Subedar. Kishen Singh caught him at about 40 to 50 yards distance. He also reached the spot. Kishen Singh told him that this employee had a brass rod with him which he threw it on the ground . This employee was identified as P.P.Singh(workman). The brass rod lying on the ground was brought in office and was sealed. In his cross examination this witness has stated that Kishen Singh told him that this employee had brass rod with him which he threw out while running.

12. Constable Kishen Singh was not examined by the Management.

13. On the other hand, the workman has denied the charges in his statement of oath and has stated that he was wrongly framed.

14. The statements of all the Management witness referred above makes it crystal clear that the main witness was constable Kishen Singh and other witnesses including Constable Balraj Singh, were informed by Constable Kishen Singh that the workman had a brass rod with him which he has thrown on the ground.

15. Learned Counsel for the workman has referred to case law **Roop Singh Negi Vs. Punjab National Bank and Others(2009)2 SCC570** wherein it has been laid down by Hon. Apex Court that departmental proceeding is a quasi judicial proceeding. The charges leveled against the delinquent must be found to have been proved. In another case of **Union of India & Ors Vs. Gyan Chand Chattar (2009) 12 SCC 78** it has been laid down that in departmental inquiry when the charges are of criminal nature they cannot be held proved on mere probabilities and hearsay evidence.

16. Learned Counsel for Management referred to case law **Nand Kishore Prasad Vs. State of Bihar and Others(1978) 3 SCC 366** wherein it has been laid down that before the delinquent is found guilty of charge, there must be some evidence. Paragraphs No.19, 20 and 25 has been specifically referred to by learned Counsel. Paragraph No.19 of the judgment is relevant in this respect which is being reproduced as follows:-

Para-19:-"**Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallized by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character: therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India Vs. H.C.Goel, the "Principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules."**

17. In another case **R.S.Saini Vs. State of Punjab & Ors (1999)8 SCC 90** referred to by learned counsel for Management, it has been laid down that there must be some evidence with respect to charge for holding it proved. In another case **P.V. Balan Nair Vs. Superintendent of Post Offices Thalassery(2001)L.A.B IC 3201 Kerala** it was held that even temporary retention is also a misconduct.

18. If the above referred evidence is analysed on the parameters of law, it can be unhesitantly concluded that none of the witnesses have stated that they actually witnessed the workman possessing the brass rod, none of these witnesses stated that they actually witnessed the workman throwing away the brass rods. They simply relied on the statement of constable Kishen Singh taking it to be true. It is also not disputed that it was change of shift in the factory and many workers were coming in and going out at the time of alleged incident, hence I am of the considered view that there is nothing to be called evidence in support of charge. On the basis of above discussion the charge against the workman is held not proved. **Issue No.1 is answered accordingly.**

19. **Issue No.2:-**In the light of the finding recorded at Issue No.1, the punishment of termination of the workman is held un- justified in law and fact. **Issue No.2 is answered accordingly**.

20. **Issue No.3:-**Since the charges have been held not proved and punishment not justified in law, accordingly the workman is entitled to the relief claimed. Learned Counsel for Management has raised a question of delay on the part of the workman in raising the dispute. Learned Counsel has referred to case **Nedungadi Bank Ltd. Vs. K.P. Madhavan Kutty and Others(2000)AIR SCC 839** wherein it has been held that when a dispute was raised after seven years, the Hon,ble Apex Court held it bad due to latches. In another case **Chief Engineer (Construction)Vs. Keshava Rai (2005)11 SCC 229** wherein the dispute was raised after 5 years and it was held bad due to latches .

21. Learned Counsel for workmen has referred to **Irrigation Research Institute & Another Vs. Kapil Singh(2007)12 SCC 794** wherein it has been laid down that Labour Court cannot refuse to answer reference because of delayed approach but it can certainly modulate the relief . In another case **G.M. Haryana Roadways Vs. Pawan Kumar(2005)12 SCC 459** referred to by learned counsel for management, it has been held that settled law is that the mere factum of delay in raising a dispute by itself does not bring the dispute to an end, though it may be taken into account in the matter of grant of relief.

22. Industrial Disputes Act does not provide any limitation for raising a dispute. An industrial dispute is a fight between two unequals. It is like David fighting Golith. In most of the cases the workman are illiterate or semi-literate, ignorant of their rights, ill-advised hence they do not know what to do in such a situation. They do not have resources even to fight their cases. In the case in hand it has been found that the workman was awarded maximum punishment of termination on the basis of charge which could not stand before this Court, hence in my considered view ends of justice will not be served if such workman is denied of his rights only on the ground that he made some delay in raising the dispute or approaching the appropriate forum. Learned Counsel for Management has further referred to case law **Ashok Kumar Sharma Vs, Oberoi Flight Services AIR(2010)SCC 502** wherein it has been laid down that when the dismissal from service was for misconduct and was found unjustified, compensation could also be awarded considering the nature of employment and has submitted that compensation to the workman may also do full justice to the workman in the case in hand but I do not subscribe to this argument for the reason that the workman was a regular employee, had been in continuous service , he would have been entitled to service benefits s like promotion seniority superannuational benefits etc. which cannot be compensated by a lump sum amount, hence in the light of above finding the workman is held entitledto be reinstated from the date

of his termination setting aside his termination with full service benefits and treating him in continuous service. **Issue No.3 is answered accordingly**.

23. On the basis of the above discussion, following award is passed:-

A. The action of the management in terminating the service of Shri P.P. Singh, S/o Shri Beni Singh w.e.f 30-11-92 is held not justified in law and fact.

B. The workman is held entitled to be reinstated from the date of his termination setting aside his termination with full service benefits & wages treating him in continuous service.

24. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P.K. SRIVASTAVA, Presiding Officer

DATE: 2.1.2020

नई दिल्ली, 18 फरवरी, 2020

का.आ. 278.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दूरसंचार जिला अभियंता, राजगढ़, (एमपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – जबलपुर के पंचाट (संदर्भ संख्या 178/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.02.2020 को प्राप्त हुए थे।

[सं. एल-40012/203/2001-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 278.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 178/2001) of the Central Government Industrial Tribunal-cum-Labour Court- Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Telecom District Engineer, Rajgarh, (M.P.) & Others, and their workmen which were received by the Central Government 13.02.2020**.**

[No. L-40012/203/2001-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/178/2001

Present: P. K. Srivastava, H.J.S.(Retd)

Shri Nathuram Kaithwar,
S/o Shri Tulsiram Singh,
C/o Shri Girish Verma,
Village & PO Biaora,
Suthalia Road, Ravishankar Colony,
Rajgarh-465674 …Workman

Versus

The Telecom District Engineer
Rajgarh, At Biaora,
Rajgarh-465674 …Management

AWARD
(Passed on this 17th day of JANUARY-2020)

1. As per letter dated 21-11-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/203/2001-IR(DU) The dispute under reference relates to:

"***Whether the action of the management of Telecom District Engineer, Biaora in terminating the services of Sh.Nathuram Kaithwar S/o Shri Tulsiram Singh w.e.f.13-3-1999 is justified? If not, to what relief the workman is entitled for?*** "

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that he was appointed as casual labour in the Telecommunication Department w.e.f. 24-1-1991 under control of Sub-Divisional Officer, Biaora, District Rajgarh and then worked till 13-3-1999 without any break to the satisfaction of the Management and hence acquired the status of a permanent employee. He was terminated from service illegally without giving him notice or compensation inspite of the fact that he had completed more than 240 days in continuous service every year including the year preceding the dateof his termination. His termination is violative of Section-25(F)(G)(H) and (I) of the Industrial Disputes Act,1947 hence bad in law. The workman has requested for his reinstatement with back wages and all consequential service benefits, setting aside his termination.

4. The case of Management in its written statement of defence is that the workman was never engaged in any capacity by Management, hence his claim for reinstatement is frivolous, untenable and there is no question of his termination, therefore, Management has prayed that the reference be answered against the workman.

5. In evidence stage, the workman has filed and proved certificate regarding his work which is Exhibit W-1(7pages). He has further proved photocopy documents of different years to show that he did works, received the articles as a worker of Management. These documents are Exhibit W-2(10 pages), Exhibit W-3(4pages), Exhibit W-4, Exhibit, exhibit W-5 and Exhibit W-6. The workman has also examined himself on oath and has been cross-examined.

6. The Management has not cared to file any evidence or examine witness from its side.

7. At the time of arguments also, Advocate Shri Arun Patel was present for workman. His arguments were heard. No one was present for Management. The Management did not file any written arguments.

8. The perusal of records in the light of arguments reveals that following issues come up for determination in the case in hand:-

1. Whether the termination of the services of workman w.e.f. 13-3-1999 is justified in law.

2. Whether the workman is entitled to any relief?

9. <u>Issue No.1:-</u>

Before entering into evidence, it is proper to refer here to Section 25(F), 25(G), 25(H) and 25(I) of the Industrial Disputes Act,1947(hereinafter referred to as the Act) which is as follows:-

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons.

25I. [Recovery of moneys due from employers under this Chapter.- Repealed by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 section 19 w.e.f. 10-3-1957.

10. As noticed, it can be taken note of the fact that Management of BSNL is a huge organization employing more than 300 workers hence provisions of Chapter 5-B of the Act shall apply in the case in hand and though this point has not been pleaded from the workman side, but since it is a point of law, hence it can be considered without specific pleadings. Hence the Provisions of Section 25(K) and 25(N) shall apply in the case in hand which is as follows:-

25K. Application of Chapter V-B.- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 2[one hundred] workmen were employed on an average per working day for the preceding twelve months. (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

1[25N. Conditions precedent to retrenchment of workmen.- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review .

11. The workman has stated on oath that he was first appointed as a casual labour on 24-9-1991and remained in employment of Management till 13-3-1999 when he was terminated from service without any notice or compensation. He worked for more than 240 days in every year, including the year preceding his date of termination. He further stated that he had acquired the status of permanent employee but was not accorded this status. The nature of work was of permanent nature and since date of termination he is not in gainful employment. The workman has further proved the documents referred to earlier in this judgments He has been cross-examined by learned counsel for Management, considering his statement that there was no advertisement for the post. His name was not recommended by Employment Exchange. He did not appear in any examination for the post. His oral interview was taken by S.T.O A.K.Sahu alone. His job was digging pits, connecting and laying cable. His attendance was entered in the register maintained in the office. He admits that the documents proved by him does not contain any scam and denied that these documents are forged.

12. Perusal of the record, further reveals that vide order dated 15-7-2016, the workman was permitted to prove the documents filed by way of secondary evidence which he has done. It also comes out that Management had raised objections regarding proof of documents which was disposed of by my learned Predecessor vide his order dated 11-4-2017 and objections of Management were rejected.

13. From the evidence in form of documents and oral statement, the workman has been successful in proving prima facie that he was in continuous employment of Management as a casual labour for more than 240 days at least in the year preceding the date of his termination. Hence the burden shifts on Management to rebut the evidence of workman by evidence of Management which has not been done, hence the uncontroverted evidence of workman leads to a finding that the workman was in continuous employment of the Management for the period of 240 days in the year preceding the date of his termination and since this is also proved that no notice or compensation was given to the workman before his termination, his termination is violative of the Act and is bad in law**. Issue No.1 is answered accordingly.**

14. ISSUE NO. 2:-

In the light of findings at Issue No.1 the question arises as to what relief the workman is entitled to?. Whether he should be reinstated with all back wages and consequential benefits or awarding compensation will meet the ends of justice.

15. The learned counsel for workman has referred to two Awards passed by my learned Predecessor in reference to case R.No.124/2000 and R-115/2000 between the same parties on almost identical facts. In these awards, the workman were granted the relief of reinstatement with 25% back wages and without back wages respectively. It is to be mentioned here that these Awards and the findings in these awards are not a binding precedent for this Court.

16. Learned Counsel for the workman has further referred to Cases **Ajaypal Singh Vs. Haryana Warehousing Corporation(2015)6 SCC 321**, **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya(DED & Ors. (2013)10 SCC324**. Learned Counsel has further referred to case **Director Fisheries Terminal Division Vs Bhikubhai Meghajibhai Chavda AIR(2010) SCC1236** to buttress his claim of reinstatement of the workman with all back wages and consequential benefits.

17. The principles in this respect has been summarized in case of **Deepali Gundu Surwase (Supra)**. Para 37 of this judgment requires to be specifically mentioned in this respect:-

> **Para-37:- After noticing several precedents to which reference has been made herein above, the two Judge Bench observed in :J.K. Synthetics case, SCC.pp-448-50, paras 17-21)**
>
> **"17."There is also a misconception that whenever reinstatement is directed, 'continuity of service' and consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunal direct re-instatement they should apply their judicial mind to the facts and circumstances to decide whether continuity of service and /or consequential benefits should also be directed….**
>
> **18. Coming back to back wages, even if the court find it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially(and if so the percentage). That depends upon the facts and circumstances of each case. Any income received b the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned Rudhan Singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.**
>
> **19. But the cases referred to above, where back wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the**

termination(dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry and the court confirms the finding regarding misconduct, but only interfered with the punishment being of the view that it is excessive and awards a lesser punishment , resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act(or any other similar provision)is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the discretion to award a lesser punishment. Till such power is excised the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution or punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement: and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service not consequential benefits, follow as natural or necessary consequences of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when te employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly in such cases even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the inquiry was held in respect of frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages etc. will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of s serious misconduct was proved. It , however felt that the punishment was not warranted and therefore, In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all."

18. Though the workman has stated in his affidavit that he was not in gainful employment after his termination which is hard to believe after all he would certainly be doing some job for making both the ends meet. This is also worth mentioning that the workman is unskilled casual labour as claimed by him. Secondly as claimed by him he was first appointed in the year 1991 taking the fact that he would have been of 21 years of age at the time of his appointment, he would have completed more than 50 years of his life span. This is also not established that workman was appointed against a regular vacancy. He himself admits that he was a daily wager. Keeping these facts in view, the reinstatement of workman is not a proper relief to meet the ends of Justice. In my view a lump sum compensation of Rs.50,000/- to the workman will meet the ends of justice. **Issue No.2 is answered accordingly.**

19. On the basis of the above discussion, following award is passed:-

A. The action of the management of Telecom District Engineer, Biaora in terminating the services of Sh. Nathuram Kaithwar S/o Shri Tulsiram Singh w.e.f. 13-3-1999 is unjustified and not proper.

B. The workman is held entitled to a lump sum compensation of Rs. 50,000/-(Rupees Fifty Thousand only).

P. K. SRIVASTAVA, Presiding Officer

DATE: 17.1.2020

नई दिल्ली, 18 फरवरी, 2020

का.आ. 279.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बैंक नोट प्रेस, देवास, (म.प.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – जबलपुर के पंचाट (संदर्भ संख्या 123/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.02.2020 को प्राप्त हुए थे।

[सं. एल-16012/01/1996-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 279.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 123/1997) of the Central Government Industrial Tribunal-cum-Labour Court- Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bank Note Press, Dewas (M.P.) & Others, and their workmen which were received by the Central Government 24.02.2020.

[No. L-16012/01/1996-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/123-1997

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Narendra Kumar Dubey
S/o Shri Shriram Dubey
C/o Rajendra Singh Chauhan
251, Mahatma Gandhi Marg,
Dewas (M.P.) …Workman

Versus

The General Manager
Bank Note Press,
Dewas (M.P.) …Management

AWARD
(Passed on this 7th day of February-2020)

1. As per letter dated 12-5-1997 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-16012/1/96-IR(DU): The dispute under reference relates to:

> "***Shri Narendra Kumar Dubey, Atmaj Shriram Dubey ko Mahaprabhandak Bank Note Press, Dewas dwara date 12-8-1995 se anivarya seva nivrati dena uchhit hai./Yadi nahi to prarthi Shri Dubey kes tarah ke reyayat ke patra hain?*** "

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that he was appointed on 9-3-1986 as labour. He became sick on 29-1-1993 and intimated this fact to the Management by submitting an application for leave, thereafter, he could not perform his duties for sometime though he had send application regarding medical leave from time to time. He was issued a charge sheet dated 18-7-1993 wherein it was alleged that he was absent from duty w.e.f. 28-1-1993 till the date of charge sheet. The inquiry proceeded ex-parte against him and on the basis of defective inquiry in which findings regarding willful absence from duty were wrongly held

proved. The Disciplinary Authority passed the order dated 20-3-1994 removing the workman from service. The workman preferred an appeal before the Controlling Authority on 2-5-1994 who turned the order of removal into compulsory retirement vide its order dated 12-8-1995. According to the workman the inquiry conducted was not proper and legal. The charges were not proved and punishment was dis-proportionate to the charge. Accordingly the workman has prayed for his reinstatement with all back wages and benefits setting aside the impugned order dated 12-8-1995, compulsorily retiring the workman.

4. The case of workman is that the workman was issued a charge sheet on 18-7-1993. The charge was that he remained absent from duty w.e.f. 4-4-1992 to 17-8-1992. He was issued two memos on 6-5-1992 and 16-6-1992 for reporting on duty which were sent on his address by registered post and returned back unserved, being undelivered. He further submitted applications on various dates mentioned in the charge for remaining absent due to urgent work and illness of father. He reported on duty on 18-8-1992 and submitted a medical certificate from 4-4-1992 to 17-8-1992. He was allowed to resume duties thereafter, he again absented himself un- authorisedly from 2-9-1992 to 3-9-1992, 19-9-1992 to 24-9-1992, 1-10-1992 to 3-10-1992 and different spell of period up to 23-12-1992 as mentioned in the charge sheet. Furthermore, he absented himself again from 28-1-1993 to the date of charge sheet. Copy of charge sheet and documents were sent to his address but were returned back unserved. The workman did not participate in the inquiry, hence inquiry proceeded ex-parte on 24-11-1993. And 4-12-1992 and copies of proceedings were sent to his house address by post. The inquiry officer submitted his report on 8-12-1993 holding the charge of unauthorized and willful absence proved. It is further the case of the Management that a copy of the inquiry report dated 8-12-1993 was sent to the workman vide a Memo dated 14-12-1993. The workman submitted his comments on the inquiry report vide application dated 30-12-1993 stating that due to illness he could not attend his duty but failed to submit any medical certificate. The Disciplinary Authority granted opportunity for personal hearing on 6-3-1994 and directed the workman to produce his medical certificate dated 29-1-1993 to 2-3-1994 i.e. the period of his absence, but he failed to submit any documents. The Disciplinary Authority concurred with the finding of Inquiry Officer holding the charges proved, findings no proof of his long absence of duty due to illness and imposed the penalty of removal from service by order dated 20-3-1994. The workman preferred a departmental appeal before the Controlling Authority who converted the order of removal from service into that of compulsory retirement vide order dated 12-8-1995.

5. According to the Management, the workman was found guilty of long willful absence from duty. He was also habitual absentee without reason. There is no illegality in the inquiry conducted , the charges were rightly held proved and punishment is also proportionate to the charge. Accordingly it has been prayed that the reference be answered against the workman.

6. The following issues were framed by my learned Predecessor on the basis of pleadings vide his order dated 24-4-2007:-

1. Whether the inquiry conducted by Management against the workman is legal and proper?

2. Whether the Management has failed to prove the mis-conduct of the workman?

3. To what relief is the workman entitled to ?

ISSUE NO. 1:-

Issue No.1 was taken as preliminary issue. The parties were directed to lead evidence on preliminary issue. The workman examined himself and was cross-examined.The Management also examined its witness. Shri K.K. Pandey, Administrative Officer was cross-examined by workman.

7. Vide order dated 8-12-1994 my learned Predecessor decided preliminary issue No.1 holding the departmental inquiry not legal and proper. His this order is part of the award.

8. Thereafter Management was asked to lead evidence in support of charge.

9. The Management examined its witness Subhash Kumar, Officer H.R on oath. The Management has also proved documents copy of charge-sheet, copy of order appointing Inquiry Officer, copy of order appointing Presenting Officer(Exhibit M-1 and M-2 and M-3) respectively. The Management has further proved copy of order of Controlling Authority dated 20-3-1994, awarding punishment of removal. Copy of order of Appellate Authority dated 12-8-1995 converting the order of dismissal into that of compulsory retirement (Exhibit M-6 and M-8) respectively. The Management further filed and proved copy of order of Revisional Authority against revision filed by workman against the order of his compulsory retirement. His compulsory retirement was confirmed by Revisionary Authority by this order 30-9-1995 which is (Exhibit M-10). The Management also proved copy of Inquiry Report (Exhibit M-12), application of workman dated 3-3-1994 (Exhibit M-5). Another application of workman dated 2-5-1994 and the order dated 13-9-1995 which are Exhibit (M-9 and M-10). Exhibit (M-18 is the notice regarding inquiry sent by Inquiry Officer on 24-9-1993. (Exhibits M-13, M-14, M-

15) are memos dated 14-12-1993, 11-2-1994 and 27-2-1994 requiring the workman to appear before the Authority with his complete medical records i.e. details of the doctor's prescriptions, cash-memos regarding purchase of medicines and sickness and fitness certificate issued by the Doctor.

10. The workman did not examine himself thereafter, nor did he produce or prove any documents.

11. I have heard arguments of learned counsel for Management Shri N.K.Salvanke. The workman has preferred to file written arguments which is part of the record. I have gone through the written arguments as well as the records.**Issue No.1 is answered accordingly.**

12. **ISSUE NO. 2 IS AS FOLLOWS:-**

Whether the charges of unauthorized and willful absence from 28-1-1993 to 30-12-1993 stands proved against the workman from the evidence on record.

13. The pleadings of authorities in this respect have been detailed earlier in this order and may not be repeated. The management witness Sushil Kumar who happens to be an officer of the Management has proved the case of Management as mentioned in its written Statement of defence. It is in his statement that the workman absented himself since 28-1-1993 hence the charge sheet against the workman was issued on 18-7-1993 and inquiry was proceeded. Inspite of notice sent to his residential address he did not participate in the inquiry. He appeared after the inquiry was proceeded ex-parte against him and the Inquiry Officer submitted his Inquiry Report vide order dated 8-12-1993which was sent to the workman vide order dated 13-12-1992 to 14-3-1993 (Exhibit M-13) and the workman was asked to submit his case on the Inquiry Report. The workman submitted his reply dated 30-12-1993 wherein he stated that due to illness he was absent from duty. He had admitted in this letter that he had served memo dated 14-12-1993 with copy of Inquiry Report. The Disciplinary Authority directed the workman vide memo's dated 11-2-1994 and 27-2-1994 directing the workman to produce documents regarding the name and address of the Doctor as well as his registration number under whom the workman was under treatment. The workman was further directed to furnish the prescriptions of different dates and cash-memos regarding purchase of medicines and also the certificate regarding the sickness and fitness which he did not file , hence terming his defence not true, the Disciplinary Authority concurred with the finding of Inquiry Officer that the workman had willfully and unauthorizedly absented himself from duty.

14. The workman side has referred to a decision of Hon'ble Apex Court in Krishan Kant B.Parmar vs. Union of India (2012)3 SCC 178 wherein it was held that the question whether unauthorized absence from duty amounts to failure of devotion of duty or behavior unbecoming of a government servant cannot be decided without deciding the question whether the absence is willful or because of compelling circumstances.

15. The arguments submitted in this respect that every absence cannot be said to be willful though it may be unauthorized absence, there may be different circumstances like illness, accident, hospitalization etc. which may compel the employee to be absent but it cannot be said that the employee was willful in his absence and he failed to discharge his duties with devotion. Also it has been submitted that if allegations of unauthorized absence from duty is made, it should be proved that it was willful otherwise it will not amount to misconduct. There is no occasion to disbelieve with the argument from the workman side but the question still remains to be seen is whether in a circumstances when the parties have been required to prove the charges and it is proved before this Tribunal, it remains to be seen from the evidence on record whether the absence is willful or not?

16. In the case in hand, the workman has not disputed his absence. His case is that his absence was due to illness but workman could produce documents of his treatment, prescriptions, cash-memos regarding purchase of medicines or examine the doctor under whose treatment he was to prove the reasons behind his absence which was illness according to him. This burden lies on the workman because this fact is within the special knowledge of the workman. He has miserably failed to do so. His absence is a long absence of many months. It is also proved that his absence was unauthorized as he has failed to prove the reasons behind his absence. The only finding that can be recorded on the basis of evidence on record in this case is that the absence of workman in the case in hand is not only unauthorised but willful which is a misconduct in Service Rules. **Issue No.2 is answered accordingly**.

17. **ISSUE NO. 3:-**In the light of the finding recorded in Issue No.2 the charges attracts a major punishment including removal. This is also proved from record that the workman is a habitual absentee. He is in the habit of absenting himself unauthorisedly. The settled Principle of law is that this Tribunal is not an Appellate Authority with respect to punishment, in the case in hand also the Controlling Authority has been compassionate in converting the order of removal into that of compulsory retirement which cannot be said to be shockingly disproportionate to the charge.

Issue No. 3 is answered accordingly.

18. On the basis of the above discussion, following award is passed:-

A. The action of the management in compulsorily retiring Shri Narendra Kumar Dubey, S/o Shriram Dubey w.e.f 12-8-1995 is held to be legal and justified.

B. The workman is held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 7.2.2020

नई दिल्ली, 18 फरवरी, 2020

का.आ. 280.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, केंद्रीय कृषि मशीनरी प्रशिक्षण और परीक्षण संस्थान, सीहोर, (म.प.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – जबलपुर के पंचाट (संदर्भ संख्या 52/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/50/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 280.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2007) of the Central Government Industrial Tribunal-cum-Labour Court- Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Central Farm Machinery Training & Testing Institute, Sehore, (M.P.) & Others, and their workmen which were received by the Central Government 24.02.2020.

[No. L-42012/50/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/52/2007

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Parasram Sahu
S/o Shri Balaram Sahu, R/o Gondi Mohalla,
Near Railway Station Budhni,
P.O Budhni, District Sehore (M.P.) …Workman

Versus

The Director,
Central Farm Machinery Training & Testing Institute,
Tractor Nagar,
P.O. Budhni,
District Sehore (M.P.) …Management

AWARD

(Passed on this 12th day of FEBRUARY-2020)

As per letter dated 12th by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/50/1995-IR(DU). The dispute under reference relates to:

"***Whether the action of the management of the Director, Central Farm Machinery Training & Testing Institute, in terminating the services of their workman Shri Parasram Sahu in 1984 is legal and justified? If not, to what relief the workman is entitled to? .***"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in his statement of claim is that he worked as a Daily Wager in the services of O.P.Management since 1975. His services were terminated without any notice or compensation for the reason that an First Information Report was lodged by the management against him on 19-11-1984 with an allegatin of theft. He was acquitted from the charge of theft after trial. The workman raised a dispute with the Labour commissioner. After failure of conciliation,a report was sent by Labour Commissioner to Ministry. The Ministry refused to make a reference, hence the3 workman preferred a Writ Petition No.44/96 before Hon'ble High Court and it was under the directions of Hon'ble High Court, the Reference was made by the appropriate government to this Court.

3. According to the workman his termination is against Section 25(G) and 25(H) of the Industrial Disputes Act,1947. He has accordingly prayed for relief of his reinstatement setting aside his termination.

4. The case of the Management is that the workman was engaged as a daily wager on the basis of need. His attendance was taken in muster roll. He was a unskilled labour who involved himself in theft of Government property of the Management Institute. An FIR was registered against him on 19-11-1984 and stolen properties were recovered from his possession, thereafter, the workman never appeared on job. The Management has specifically denied that his engagement was terminated by Management. The case of Management is that the workman abandoned the job.

5. The Management further denies that the workman had been in continuous engagement of Management for a period of 240 days or more in the year preceding the date of his disengagement. Accordingly the Management has prayed that the reference be answered against the workman.

6. At the stage of evidence the workman filed his affidavit but did not turn up for cross-examination, hence he was discharged. The Management filed affidavit of its witness and proved copy of Muster Roll from April-1975 to Novermber-1984 which is Exhibit M-1. The workman did not appear to cross-examine the Management witness hence his opportunity for cross-examination was closed.

7. At the stage of argument also, the workman did not appear, hence the argument of Mr. A.K.Shashi, learned Counsel for Management were heard. The workman did not even file written submissions. I have gone through the records.

8. <u>The reference is the point in issue in the case in hand.</u>

9. Section 25(G) and Section (H) of the Industrial Disputes Act,1947 thus reads as follows:-

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons.

10. The settled preposition of law is that the burden to prove his engagement for continuous 240 days in the year preceding the date of his termination is on the workman. There is only an un-cross-examined affidavit of the workman because he never turned for cross-examination, thus such an affidavit cannot be read into evidence. In absence of other evidence, it is held that the workman has failed to discharge his burden to prove his case.

11. On the other hand the Management has filed affidavit of its witness who has proved the pleading of Management as referred above. The Management has further proved the copy of Muster Roll for the relevant period as Exhibit M-1. Perusal of Muster roll shows that the workman has worked only for 151 days in the year preceding the date of his alleged termination. The workman did not cross-examine the Management witnesses hence the affidavit is uncontroverted. On the basis of evidence of Management even it be taken that the workman was disengaged, his dis-engagement by the Management since he has not been able to prove his continuous engagement of 240 days in the year preceding the dis-engagement, the provision of Section 25(G) and Section 25(H) of the Industrial Disputes Act,1947 are not established.

12. Accordingly his dis-engagment is held legal and proper and the workman is held entitled to no benefit. The reference is answered accordingly.

13. On the basis of the above discussion, following award is passed:-

A. The action of the management "of the Director, Central Farm Machinery Training & Testing Institute, in terminating the services of workman Shri Parasram Sahu in 1984 is legal and justified

B. The workman is held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 12.2.2020

नई दिल्ली, 18 फरवरी, 2020

का.आ. 281.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, एचएलएल लाइफकेयर लिमिटेड, गौतमबुद्धनगर, (यूपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – चंडीगढ़ के पंचाट (संदर्भ संख्या 22/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुए थे।

[सं. एल-42012/95/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 281.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2015) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, HLL Lifecare Limited. Gautam Budh Nagar (UP).& Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-42012/95/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 22/2015

Registered on:-08.06.2015

Madan Lal Sharma S/o Dhaniram Sharma, R/o Chitrakoot Shiva Vihar,
P.O. Shamti, Solan-173212 (H.P.). …Workman

Versus

1. The General Manager, M/s HLL Lifecare Limited. (A Government of India Enterprise), B-14-A, Sector 62, Noida-201307, Distt. Gautam Budh Nagar (UP).

2. The Head of the Department (Consumer and Business Division), M/s. HLL Lifecare Limited. (A Government of India Enterprise), House No.2, Ground Floor, 4th Ex-Servicement Colony, Banas-wadi-560043, Bangluru, India. …Respondents/Managements

AWARD
Passed on:-03.02.2020

Central Government vide Notification No. L-42012/95/2015-IR(DU) Dated 26.05.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of M/s HLL Life Care Limited in terminating the services of Shri Madan Lal Sharma w.e.f. 01.04.2014 is illegal, arbitrary and violation of the Section 25 F of ID Act, 1947? If yes, to what relief the workman is entitled?"

1. Both the parties were put to notice and claimant Madan Lal filed statement of claim, with the averment, that he was initially recruited by the respondent-management company on 01.01.2009 as a Sales Representative and deputed in Himachal Pradesh at Solan. The claimant/workman started the sale operations initially under the guidance of Sh. Mukesh Kumar Surya and Sh. Arun Gangadhar and subsequently he was asked to report and seek orders/guidance from Arun Raina. Workman was reporting to Mr. Arun Raina till his illegal termination from service on 01.04.2014. In spite of the pay revision on 16.06.2010 the workman was re-designated as sales officer but on Arun Raina's recommendation, the salary of workman was reduced upto Rs.1,000/- without any enquiry in the matter. The workman was entitled for TA and DA for promotion and the sales of the company are required to be paid Rs.12,000/- approximately per month which was not paid to the workman in spite of the policy of the company till his termination. The workman was illegally terminated/retrenched without giving any show cause notice and enquiry and without complying the provisions of Section 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947. The termination of the services of the workman fall within the ambit of Section 2-OO of the Act and he completed more than 240 days in each preceding year before his termination which is arbitrary and violative of Article 21 and 41 of the Constitution of India. The termination of the workman on 01.04.2014 may kindly be treated as non-est in the eye of law and award the reinstatement to the workman by setting aside the oral termination from the service with full back wages and other consequential benefits.

2. Management-HLL Life Care Ltd. has filed its written statement, alleging therein that the facts alleged in the claim statement are self-contradictory with respect to the promotion and deduction of salary as per the recommendation of Arun Raina. The claim petition is moved after the five years and in between he has not raised this issue on any suitable forum which shows that claim is filed on false allegation. So far as the TA and DA is concerned for touring to promote sales has been given to the workman as per the tour programme of the workman and there were no complaints from workman so far TA and DA is concerned, since the year 2012 onwards in any form. It is further stated that claimant/workman was not an employee of HLL and he was recruited by Teamlease Services Pvt. Ltd. The workman was working under third party arrangement for HLL Life Care at Solan. The workman was on the role of Teamlease so, the question of threatening for his termination by Mr. Arun Raina does not arise hence, deny. The salary and other allowances were being provided by the Teamlease. The allegation made against Arun Raina for behaving with workman like his personal servant is totally false as he was posted at Pathankot and usually visits 1 to 2 days in a month to Solan for market visits. It is further alleged that Teamlease is under obligation to provide gratuity amount to the workman who is ready to pay the gratuity amount to the petitioner/workman after being impleaded by the Hon'ble Forum. The work of the claimant was not satisfactory and being outsourcing employee, respondent-company did not need to give any notice/charge-sheet etc. regarding his termination and the statement given by the workman that he is unemployed since his termination is false, misleading because he was employed by Multani Pharmaceuticals and he was terminated by them also. It is therefore, prayed that the claim petition filed by the workman may kindly be dismissed with cost in the interest of justice.

3. Workman has filed its replication to the written statement filed by the management-company, alleging therein that he was not employed by a so called Teamlease at any point of time. The work assigned to the workman was perennial in nature and was supervised by the officer of the company. M/s Teamlease has neither issued any appointment letter nor terminated his services. It is admitted that the petitioner joined Multani

Pharmaceuticals but he was removed from the services without any reason since then he is unemployed. Remaining facts are same as mentioned in the claim petition hence, need not to be repeated again.

4. Parties were given opportunity to lead evidence. Workman Madan Lal appeared in the witness-box and filed his affidavit Ex.WW1/A along with documents Ex.WW1/1 to Ex.WW1/22 and has been cross-examined by the representative of management Arun Raina. Claimant Madan Lal Sharma has stated in his cross-examination that he was employed by Sh. Mukesh Surya, Area Manager of respondent-company but letter of appointment was not issued to him in spite of the assurance given by the respondent-company till his termination. He has further admitted that he was paid salary by way of cheque issuing salary slip but it was issued in the name of some company. He has denied that he was engaged by Teamlease Services Pvt. Ltd. as is alleged by the respondent-management.

5. Management-company has examined Sh. Arun Raina, Marketing Executive, who has filed his affidavit Ex.MW1/A and has been cross-examined by the AR of workman. This witness has alleged in his cross-examination that workman was not the employee of HLL Life Care Limited but was employed through Team Lease Services Pvt. Ltd. who used to supply workmen. He has stated that Annexure 2 filed along with his affidavit is not a fabricated document. Witness Arun Raina has further stated that workman was performing duties of management after its employment through Team Lease Services Pvt. Ltd. and he used to monitor the work assigned to the workman as supervisory authority. He has admitted that Ajay Sharma was also a sales representative along with workman and Ajay Sharma is not employed by his company till the termination of the workman. This witness has stated that he does not know whether his company was registered under the Contract Labour Act to employ the labour.

6. I have heard the AR of the workman Sh. J.C. Bhardwaj and Sh. Arun Raina, Marketing Executive for the management and perused the file as well as written arguments filed by both the parties.

7. Learned AR of the workman has contended that workman was employed by the respondent-company through Mukesh Kumar Surya, Area Manager and worked initially under Mr. Arun Gangadhar and subsequently Arun Raina till his termination by Arun Raina. Learned AR further argued in the light of the documents annexed with the affidavit Ex.P-1 to P-11 that workman was performing his duty as sales representative under the direct control of Area Manager Arun Raina of the company and reporting each and every thing about the performance to Mr. Arun Raina as is proved by all the documents attached with the affidavit. Learned AR of the workman further contended that the factum of contract with Team leas Pvt. Ltd. by the respondent-company is not proved as agreement to this respect has not been filed by the respondent-management during the course of proceeding till the conclusion of the case and documents attached with the written arguments with respect to agreement of HLL Life Care and other documents pertaining to payment of salary etc. having no relevance as these documents are not duly proved by the witness of workman as such, it cannot be read in evidence as is held by the Hon'ble Supreme Court in the case of ***LIC of India & Another Vs. Ram Pal Singh Bisen, 2010 LLR 494, SC.*** Learned AR further argued that the evidence on record is ample proof that workman and respondent-management has direct relationship of employer and employee as is held by ***Kanpur Electricity Supply Corp. Ltd. Vs. Shamim Mirza, 2009 LLR 226, SC,*** and further contended that there is no dispute that it was Arun Raina, the Area Manager of the respondent-company, who was supervising the work of the workman and he has every control upon the workman while he was working for the respondent-company in the state of Himachal Pradesh as is held by The Hon'ble Supreme Court in the case of ***Bhilwara Dugdh Utpadak Sahakary Ltd. Vs. Vinod Kumar Sharma, 2011 LLR 1079, SC.*** Learned AR has further contended that claimant is a workman and false within the definition of workman as is defined under Section 2(S) of the Industrial Disputes Act, 1947, as the main work of the workman was to canvassing and promotion of sales products of the respondent-company whereas the definition of workman in Sale Promotion Employees(Condition of Service) Act 1976 under Section 2(d) is not applicable with respect to the workman. Learned AR further argued that management has neither raise the issue of non-applicability of Industrial Disputes Act, 1947 during the reconciliation proceeding nor during the proceeding before this Tribunal. Learned AR further argued that jurisdiction of the Industrial Tribunal for adjudication of industrial dispute is limited to the terms of reference as made by the appropriate government to this Tribunal for adjudication as is held by the Hon'ble Supreme Court in the case of ***Karan Singh Vs. Executive Engineer, Haryana State Marketing Board(2007) LLR 1233 SC.***

8. Representative of the management Sh. Arun Raina argued that present statement of claim with respect to the reference is not maintainable because the claimant does not fall under the definition of workman as per Industrial Disputes Act, 1947. The workman was engaged as a Sales Representative for promotion of sales of the products of the respondent-company through Teamlease Services Pvt. Ltd. an external manpower supply agency. He further argued that workman was not doing any type of work as enumerated in Section 2(S) of the Industrial Disputes Act, 1947 as such, he is governed by the Sales Promotion Employees(Conditions of Service)

Act, 1976. He further argued that sales representatives do not fall under the definition of workman as is defined in Industrial Disputes Act, 1947 as is squarely held by the Five Judges Bench of the Hon'ble Supreme Court in the case of ***H.R. Adyanthaya etc. Vs. Sandoz(India) Ltd. etc. 1995(1), SCT 278 and 2012(1) PLJR 214 Nalin SInha Vs. State of Bihar & Ors. By Hon'ble Patna High Court.*** He further argued that initially workman was engaged on 01.01.2009 on purely contract basis by M/s Teamlease Services Pvt. Ltd. for one year which was extended from time to time till the expiry of the contract on 01.04.2014, resulting the issuance of termination letter by M/s Teamlease Services Pvt. Ltd. to the workman. The terms and conditions of service of workman was governed by the appointing authority i.e. Teamlease Services Pvt. Ltd. He has further argued that the employees code number was provided by M/s Teamlease Services Pvt. Ltd. to the workmen i.e. EMPID No.370852 which has been mentioned by the workman in his affidavit filed as evidence in Annexure A-4 page 12 which is on record before this Tribunal. He further argued that workman himself has admitted in his cross-examination that he has no any appointment letter, salary slip, account statement of salary. He further contended that in fact there is no proof at all in the form of documentary evidence that he was employed by M/s HLL Lifecare Limited during the course of entire service. Representative of the management could contend that there is nothing on record to prove that there exists relationship of employer and employee with the respondent-management company and workman and it was not the respondent-company who paid salary etc. to the workman hence, petition is liable to be dismissed.

9. The first contention regarding the claimant is to be a "workman" as defined under Section 2(S) of the Industrial Disputes Act, 1947. In this connection, reference can be made to the decision of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

10. The dispute is not with respect to claimant being a workman instead dispute is with respect to claimant falling under the definition of workman as defined under Section 2(S) of the Industrial Disputes Act, 1947 or as defined under Section 2(d) of Sales Promotion Employees(Condition of Service) Act, 1976. Learned AR of the claimant/workman argued that the claimant was to do canvassing for promotion of sales of the products of the respondent-company and he was not doing any type of work as defined under Section 2(d) of the Sales Promotion Employees(Conditions of Service) Act, 1976. The definition of the employees under Sales Promotion Employees(Conditions of Service) Act, 1976, under Section 2(d) defines employee as sales promotion employees means any person whatsoever name called(including an apprentice) engaged in any establishment for higher or reward to do any work relating to promotion of sales or business but do not include who employed or engaged in a managerial or administrative capacity. The learned representative of the management argued that arguments advanced by the AR of workman is misleading because it is an admitted case that claimant/workman was engaged as **'sales representative'** and performing the duties for the promotion of the product of the company hence claimant falls within the ambit/definition given in Sales Promotion Employees(Conditions of Service) Act, 1976. Representative of the management has placed reliance in the case of ***H.R. Adyanthaya etc. Vs. Sandoz(India) Ltd. etc. 1995(1), SCT 278 and 2012(1) PLJR 214 Nalin SInha Vs. State of Bihar & Ors. By Hon'ble Patna High Court.*** The Larger Bench of Hon'ble Five Judges of the Supreme Court has specifically held that this Act applies to every engagement in pharmaceuticals industry. As per Hon'ble Supreme Court the work of sales promotion employees or medical representative is not covered under the term of skilled or unskilled manual, supervisory, technical work under the definition of Section 2(S) of the Industrial Disputes Act, 1947. The Hon'ble Supreme Court is of the view that merely the workman under the Industrial Disputes Act includes employee except those covered by four exceptions sales representative is not covered within the definition of workman. The work skilled as has been used in the context has to be

construed ejusdem generis. As per the Hon'ble Supreme Court, work of promotion of sales is distinct type of work as has been included within the definition of "workmen" under the ID Act. The same view is followed by the Hon'ble Patna High Court in the case of ***Nalin Sinha Vs. The State of Bihar & Ors.(supra),*** holding that a medical representative in view of not performing the duties of skilled or technical nature cannot be a workman under the ID Act hence, reference made to the Labour Court under section 10 of the ID Ac is without jurisdiction rendering the award a nullity in the eye of law. In the light of the ratio laid down in the above cases, the argument advanced by the AR of workman has no force because it is a admitted fact between the parties that claimant was performing the duties of sales representative of the company as such, the reference with respect to the claimant Madal Lal Sharma for adjudication to this Tribunal falls beyond its jurisdiction.

11. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

12. The facts regarding the payment of salary, the amount of salary, the manner and mode of salary has not been stated by the workman in his claim petition as well as affidavit filed as evidence. This Tribunal put specific question to the AR of workman with respect to the proof about the payment of salary by the management-company. Learned AR of the claimant replied that workman has sent e-mail to the company, which is a proof about the payment of salary by the respondent-company. Representative of the management-company asserted and argued that in fact crucial point to determine the relationship of employer and employee is payment of salary and workman has knowingly and intelligently concealed this fact in his claim statement as well as affidavit filed as evidence. Learned AR of the management-company further argued that specific question with respect to the payment of salary is asked by the management-representative during the course of cross-examination and workman reply is evasive to the extent that respondent-company was issuing salary slip in the name of some company. As per the representative of the company this claim petition is not filed with clean hands by the claimant/workman and he has concealed the material evidence regarding the payment of salary by M/s Teamlease Services Pvt. Ltd. There is no doubt that entire claim statement and affidavit filed as evidence by the workman is silent on this score which is a relevant factor to decide the relation of principal-employer and contractor or relationship of employer and employee as per the judgment of the Hon'ble Supreme Court. Not only to show but there is no any evidence with respect to the payment of salary either by the respondent-company or M/s Teamlease Services Pvt. Ltd. filed by workman in spite of the service during the year 2009 to 2014. The workman has clearly admitted in his cross-examination that payment was made through cheque by the respondent-company and he has account in Punjab National Bank in Solan but he could not dare to submit the bank-account in order to prove that it was the respondent-company and mot M/s Teamlease Services Pvt. Ltd. who used to issue cheque for salary to the workman. Thus, workman has concealed important evidence with respect to salary, forcing this Tribunal to draw an adverse inference against workman with respect to the salary and other emoluments payable to the workman by the respondent-company.

13. Representative of the management has drawn my attention to fortify his arguments about the engagement of workman by M/s Teamlease Services Pvt. Ltd. who has issued employee code number to the workman i.e. EMP ID 370852 and final payment made vide letter dated 24.07.2014 Annexure A-3 through cheque no.222384 dated 23.07.2015. Learned AR respectfully argued that workman has every right to disown the payment made through cheque bearing no.222384 dated 23.07.2015 but he did not dare to rebut the documents filed by respondent-company by producing his bank account with respect to non-withdrawal of the cheque as is mentioned in letter Annexure A-3 filed with the affidavit by management witness Arun Raina. Thus the basic feature of holding the relationship of employer and employee between the workman and management is totally lacking not only in the pleading but also in the evidence as oral and documentary submitted by the workman. Thus, it is crystal clear that the workman has failed to prove that he was directly paid by the respondent-company throughout his employment.

14. Secondly, so far as the question of control and supervision is concerned. Claimant has alleged that he has worked under the supervision and control of the Area Manager of the respondent-company. This fact is not disputed by the management-company in his written statement as well as affidavit filed as evidence by Area Manager Arun Raina. The Apex Court in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to***

regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

15. Thus, the principle enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of workman is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision of the respondent-company includes the authority of dismissal taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant is mum on this score and the workman as a witness have not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management-company. There is nothing on record to prove that it is the respondent-company who grants his leave or have authority to take any disciplinary action. In my considered opinion, mere saying of supervision or reporting regarding the sales of the production of the item of the company as alleged by the witness may not be called effective and absolute control. Such control is being emphasized to control the work of management-company for a specific work in insufficient manner done by the workman in the establishment.

16. Learned AR of the claimant/workman argued that documents filed by the management-company along with arguments with respect to the agreement dated 24.05.2015 between the respondent-company and Teamlease Services Pvt. Ltd. terms and conditions mentioned therein and pay slip of the workman Madan Lal Sharma could not be read in evidence as these documents are filed by the management company after the conclusion of proceeding and evidence by both the parities as is held by the Hon'ble Supreme Court in the case of ***LIC of India & Another Vs. Ram Pal Singh Bisen, 2010 LLR 494, SC.*** Hence, these documents are merely a bundle of lie and has no authenticity. Certainly, the arguments advanced by the learned AR of the workman has full force in the light of the judgment of the Hon'ble Supreme Court in of ***LIC of India & Another Vs. Ram Pal Singh Bisen(supra).*** But it is equally settled law that in case of Industrial Dispute Act, Evidence Act is not strictly applicable. If it is presumed that these documents could not be read in evidence even then the argument of the representative of the management has force due to mistake committed in filing the agreement pertaining to the year 2005 between respondent-company and M/s Teamlease Services Pvt. Lt.. The agreement executed between the management-company and M/s Teamlease Services Pvt. Ltd. in the year 2005 could not be placed in the affidavit filed by the witness of the management-company Arun Raina. The copy of agreement of 2015 has been attached with affidavit due to human mistake and on this basis alone, the agreement of 2005 executed between the management-company HLL Lifecare Limited could not be thrown out in the straightway unless there is a overwhelming evidence produced by the claimant/workman that he was an employee of M/s Teamlease Pvt. Ltd. In this connection, learned representative of the management has drawn my attention towards the judgment of Hon'ble Supreme Court in the case of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S Singh Vs. State of Punjab and other(1999)8 SCC page 90,*** and in the case of ***State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013*** and argued that under Industrial Disputes Act where charges or facts has to be proved on the basis of preponderance of probability and it has not to be proved beyond reasonable doubt. I have gone through the judgments cited by the representative of the management and is of the opinion that the evidence tendered by workman orally or documentary is not better placed than the evidence tendered by the management-company either oral or documentary. To my mind, the facts and arguments alleged by the management could be negated by the workman by filing the documents pertaining to appointment, payment of salary or bank accounts, which should be in his possession. But workman has not care to rebut by filing cogent evidence.

17. So far as the oral appointment by the management-company is concerned, there is nothing in the form of pleading that he was appointed by the company-officials orally. It cannot be said that in spite of the several requests for letter of appointment, company official did not heed to the request of the claimant/workman and he remained in service throughout five years without any appointment letter. It is fairly settled that if the facts not pleaded in pleading, it cannot be read in evidence. Thus, factually the evidence about appointment, payment of wages or salary, disciplinary action, leave etc. are completely lacking on the part of the workman whereas evidence adduced by the management-company appears to be truthful with respect to the payment of salary etc.

which the workman could easily negated by filing overwhelming evidence about the payment of salary, wages etc. But for the reasons best know to him, he did not care to file even a single document pertaining to payment of salary made by the respondent-company. Thus, the main ingredient about the proof of relationship of employer and employee between the management and workman is altogether lacking for which this Tribunal is constrained to hold that there did not exist relationship of employer and employee between the management-company and claimant/workman.

18. So far as the breach of Section 25-F of the Industrial Disputes Act, 1947 is concerned, it is amply proved that workman had rendered 5 years of service with the respondent-company but workman is unable to prove that he was directly employed by the management-company HLL Life care Limited. As such, there is no need on the part of the company to give notice as is envisaged under Section 25-F of the Industrial Disputes Act, 1947 or retrenchment compensation in lieu of one month notice. Contrary to this, the evidence produced by the management-company through annexure R-3 full and final settlement has been made to the claimant/workman through cheque no.222384 dated 23.07.2015 which is not denied by the workman even during the course of arguments.

19. Having gone through the above observation factually and legally, this Tribunal is of the considered opinion that the reference made by the Central Government Ministry of Labour for adjudication to this Tribunal is beyond the jurisdiction of this Tribunal in the light of the judgment of Hon'ble Supreme Court of India in the case of ***H.R. Adyanthaya etc. Vs. Sandoz(India) Ltd. etc. 1995(1), SCT 278.*** It is also pertinent to mention that even on merit, workman could not prove that he was directly employed by the management-company as a sales representative and directly paid by the company instead evidence adduced by the management-company that he was an employee of M/s Team leas Services Pvt. Ltd. is trustworthy and reliable. Hence, this Tribunal is of the considered opinion that claimant/workman has failed to prove that he was terminated by the respondent-company on 01.04.2014 which was under obligation to give notice under Section 25-F of the Industrial Disputes Act, 1947 or compensation in lieu of notice. Hence, reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 282.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, टेलीकम्यूनिकैटिन, भोपाल (म.प.) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – जबलपुर के पंचाट (संदर्भ संख्या 99/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुए थे।

[सं. एल-40012/83/2000-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 282.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/2000) of the Central Government Industrial Tribunal-cum-Labour Court- Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telecmmunicatin, Bhopal (M.P) & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/83/2000-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/99/2000

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Kamla Prasad
S/o Munnilal Yadav,
C/o Shyam Upadyay Gas Agency,
Mangalwaria, Narsinghpur (MP) …Workman

Versus

The Chief General Manager
Dept. of Telecmmunicatin
Hoshangabad Road, M.P.Circle
Bhopal (M.P)-462001

The Telecom District Engineer
Rajgarh at Biaora
Rajgarh (M.P.) …Management

AWARD

(Passed on this 17th day of JANUARY-2020)

1. *As per letter dated 31-5-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/83/2000/IR(DU). The dispute under reference relates to:*

> "***Whether the action of the management of Chief General Manager Telecom in terminating the services of Sh. Kamla Prasad S/o Shi Munnilal Yadav w.e.f. May 97 is justified?If not, to what relief the workman is entitled?***"

2. After registering the case on the basis of reference, notices were sent to the parties.

3.

4. The case of the workman as stated in his statement of claim is that he was appointed as casual labour in the Telecommunication Department w.e.f. 1-6-1989 under control of Sub-Divisional Officer, Biaora, District Rajgarh and then worked till May-1997 without any break to the satisfaction of the Management and hence acquired the status of a permanent employee. He was terminated from service illegally without giving him notice or compensation inspite of the fact that he had completed more than 240 days in continuous service every year including the year preceding the date of his termination. His termination is violative of Section-25(F)(G)(H) and (I) of the Industrial Disputes Act,1947 hence bad in law. The workman has requested for his reinstatement with back wages and all consequential service benefits, setting aside his termination.

5. According to the Management the workman was engaged as a casual labour for a specified period and specific work. His services were automatically discontinued after completion of the work, hence no question of notice or compensation arises. The workman has never completed 240 days at any point of time including the year preceding the date of his termination.

6. According to the Management, the workman has worked for 58 days in the year 1990, for 211 days in the year 1991 and for 30 days in the year 1992.

7. In evidence, the workman has not filed any documentary evidence. He has examined himself on oath and has been cross-examined. The Management has also not filed any documentary evidence. The Management has examined its witnesses on oath who has been cross-examined.

8. No one appeared on behalf of the Management at the time of arguments, hence argument of learned counsel for workman Shri Arun Patel were heard. I have perused the records as well.

9. The perusal of records in the light of arguments reveals that following issues come up for determination in the case in hand:-

1. Whether the termination of the services of workman w.e.f. May-1997 is justified in law.

2. Whether the workman is entitled to any relief?

10. **Issue No. 1:-**

Before entering into evidence, it is proper to refer here to Section 25(F), 25(G), 25(H) and 25(I) of the Industrial Disputes Act,1947(hereinafter referred to as the Act) which is as follows:-

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons.

25I. [Recovery of moneys due from employers under this Chapter.- Repealed by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 section 19 w.e.f. 10-3-1957.

11. As noticed, it can be taken note of the fact that Management of BSNL is a huge organization employing more than 300 workers hence provisions of Chapter 5-B of the Act shall apply in the case in hand and though this point has not been pleaded from the workman side, but since it is a point of law, hence it can be considered without specific pleadings. Hence the Provisions of Section 25(K) and 25(N) shall apply in the case in hand which is as follows:-

25K. Application of Chapter V-B.- (1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than 2[one hundred] workmen were employed on an average per working day for the preceding twelve months. (2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final.

1[25N. Conditions precedent to retrenchment of workmen.- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant

or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review .

12. The burden to prove continuous employment for 240 days in the year preceding the date of his termination is on the workman who alleges. A self Service Statement of the workman which is not corroborated by any documentary evidence and has been denied by the Management witness on oath cannot be held sufficient to record a finding of proof of engagement of workman for 240 days or more in the year preceding the date of his termination, hence holding that the workman in the case in hand could not prove his continuous employment for a period of 240 days and more, hence his termination/dis-engagement cannot be faulted n law**, Issue No.1 is answered accordingly.**

13. ***ISSUE NO. 2:-***

In the light of the findings recorded in Issue No.1, the workman is held entitled to no relief. **Issue No.2 is answered accordingly.**

14. On the basis of the above discussion, following award is passed:-

A. ***The action of the management*** **of Chief General Manager Telecom in terminating the services of Sh. Kamla Prasad S/o Shi Munnilal Yadav w.e.f. May 97 is held justified and proper.**

B. ***The workman is held entitled to no relief.***

P. K. SRIVASTAVA, Presiding Officer

DATE: 17.1.2020

नई दिल्ली, 18 फरवरी, 2020

का.आ. 283.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सहायक अधीक्षक, डाकघर, रोपड़ (हरियाणा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – चंडीगढ़ के पंचाट (संदर्भ संख्या 103/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18/02/2020 को प्राप्त हुआ था ।

[सं. एल-40012/94/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 283.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103/2014) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Asstt Superintendent of Post Offices, Ropar (Haryana) & Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-40012/94/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 103/2014

Registered on:-02.03.2015

Sh. Balwinder Kumar, S/o Sh. Sagar Chand, R/o VPO Jhinjari,
Tehsil Anandpur Sahib, Distt. Ropar. …Workman

Versus

1. Asstt. Superintendent of Post Offices, Ropar Sub-Division, Ropar.

2. Sub-Post Master, Sub-Post Office Kotla, Power House, Distt. Ropar. …Management

AWARD
Passed on:-06.08.2019

Central Government vide Notification No. L-40012/94/2014-IR(DU) Dated 29.01.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Post Ofice, Ropar in terminating the services of Sh. Balwinder Kumar S/o Sh. Sagar Chand w.e.f. 04.06.2014 is just, valid and legal? If not, to what benefits the workman is entitled for and what directions are necessary in the matter?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he was appointed as GDSMD(Gramin Daak Sewak Mail Delivery) on temporary basis for 89 days by the management from 24.02.2009, having qualification of being 10+2 passed and eligible for regular vacant post. Workman remained in service upto 30.09.2002 in pursuance of initial appointment and thereafter giving 3-4 days notional break he was allowed to resume duty w.e.f. 04.10.2009 in pursuance of order dated 03.10.2009 issued by the management. Thereafter, workman remained in service continuously with notional break of 3-4 days without any extension order upto 03.06.2014. It is also alleged that although, workman was continuously working with the management but in January 2012 to March 2012, Sub-Post Master shown the break in paper and salary was prepared in the name of Rajesh Kumar, nephew of the workman only to show the discontinuity and notional break but the salary was paid to the workman as he was performing duties with the management-department for the relevant period. The action of the management showing the discontinuity and notional break for three months in papers is illegal and is in violation of Section 25-T of the ID Act, which amounts unfair labour practice. Similarly, in the month of January, February 2013 also shown break in papers and salary was prepared in the name of Rajesh Kumar, nephew of the workman, who was minor and was not eligible for the job for the period 21.03.2014 to 28.03.2014. He was working with the management but in papers 9 days break was shown by showing the charge given to Kamal, GDSMD(Regular)only to further shows the discontinuity in service of the workman. The workman again worked from 24.03.2014 to 03.06.2014 and his services were ultimately terminated on 04.06.2014 without any order/notice or any retrenchment compensation in violation of Section 25-F of the Industrial Disputes Act, 1947 while the workman had completed more than 240 days of service in each calendar year and he had also completed more than 240 days of service in 12 months prior to the impugned termination. The services of the workman were terminated on 04.06.2014 for the post which was still vacant and was not filled up by any regular incumbent. The impugned termination of the workman on 04.06.2014 is illegal, arbitrary and is in violation of Section 25-F and 25-T of the Industrial Disputes Act, 1947. The workman is unemployed and has not been gainfully employed from the date of termination. It is therefore, prayed that the termination of the services of the workman be set aside being illegal and violative of the provisions of ID Act and management be directed to reinstate the workman along with continuity of service and full back wages in the interest of justice.

2. Management-Superintendent of Post Offices, Chandigarh, have filed written statement, with the averment that workman was engaged as outsider GDS MD(Gramin Dak Sewak) Mail Deliverer on stopgap arrangement w.e.f. 26.02.2009 at Kotla Power House Sub-Post Office for 89 days vide office memo dated 24.02.2009 with the undertaking that he will not claim regularization as his services are purely temporary. He was engaged for performing the duties for 5 hours in a day only. The services of the workman were further engaged for 89 days from 03.10.2009 and further he was engaged for 89 days from 30.12.2009. Similarly, the workman was again engaged for 89 days from 03.06.2014 on need basis. The department initiated the process for taking regular appointment for the said post and the workman was given an opportunity to compete with the other candidates but having only 28.9% marks in the matriculation, he could not be selected against those

persons who have better marks vide Annexure M-1. The workman did not continue in service upto 30.09.2009, as alleged by him in the statement of claim. He has not completed 240 days from the date of his engagement as he was relieved on 31.12.2011 by Sh. Rajesh Kumar, an outsider GDS MD w.e.f. 03.01.2012 to 29.03.2013 and accordingly, the salary was also paid to Sh. Rajesh Kumar for the said period. Thereafter, the applicant was engaged for 89 days upto 31.12.2012. It is denied that the applicant was working but the charge was shown to be given to Kamal Dev GDS MD(Regular) for the period 21.03.2014 to 28.03.2014 to show discontinuity in service as alleged. It is admitted by the management that lastly claimant was engaged from 29.03.2014 to 03.06.2014 and was disengaged from 04.06.2014 due to the appointment of regular incumbent. He has not completed 240 days in 12 months prior to the date of disengagement. Therefore, Section 25-F of the ID Act is not attracted and notice or one month salary in lieu of notice is not required according to ID Act. Management had denied that the workman was not gainfully employed after his disengagement and is earning his livelihood and getting the amount he was drawing from the management before his disengagement. It is requested by the management that reference may be answered in negative and claim statement is liable to be rejected with cost.

3. Both the parties were given opportunities to lead evidence. Workman, Balwinder Kumar, has submitted his affidavit Ex.A-1 along with documents Ex.A-2 andA-3 and matriculation certificate Ex.A-4 as a part of his statement. He has denied the suggestion that at the time of his appointment he had assured that he will not claim regularization. This witness has accepted that he used to work for five hours and did not appear in any examination to get his regular appointment. He has further denied the suggestion made by the learned counsel of the management that he did not work continuously and Rajesh Kumar was not appointed to show a break in the service. Ex.W1 is the service extension for 89 days. Similarly, W3 is the matriculation examination certificate of Rajesh Kumar, showing his date of birth 13.12.1995 which is relevant for the purpose for deciding whether he was major or minor at the time of the alleged engagement by the management.

4. Respondent-management has filed affidavit of Manoj Kumar, Sr. Supdt. Post Offices, Chandigarh., who has submitted his affidavit Ex.MW1/A along with documents Ex.M1 for the recruitment of claimant for the post of GDS MD. The management witness Sh. Manoj Kumar while cross-examined by the workman-counsel has admitted that his knowledge is based on the record of the department regarding the case in question before the Tribunal. He has denied that workman had worked from 26.09.2009 to 03.06.2014 continuously in the department. This witness has further stated that the actual work in the month of January, February and March 2012 and for the month of January, February 2013 was done by Rajesh Kumar and his attendance was marked also. This witness has stated that he has no record regarding attendance and date of birth of Rajesh Kumar. He has further denied the suggestion that workman rendered his services for 240 days before his termination on 04.06.2014 but admitted that he is not in a position to tell that how many days workman rendered his services before his termination. Thus, the evidence led by this witness clarified that workman was initially engaged on 26.02.2009 and disengaged on 04.06.2014 with break and he cannot tell the working days of the workman before last preceding one year from his alleged termination.

5. I have heard Sh. R.P. Rana, Ld. Counsel for the workman and Sh. Anish Babbar, Ld. Counsel for the management and perused the record carefully.

6. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he had worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47**.

7. There is hardly any dispute with the preposition of law as propounded in the aforesaid cases. However, the factual scenario in the present case is bit different, inasmuch as the management in its written statement has clearly admitted the factum of employment of the claimant inasmuch as it has been stated that the workman was engaged in the office of Superintendent of Post Offices in the month of February 2009 on a stop gap arrangement where he worked with considerable break upto June 2014. As such, it clearly establishes relationship of employer-employee between the management and claimant. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The***

definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

8. It is a specific case of the workman/claimant that he was engaged as GDSMD by the management on daily wage basis w.e.f. 29.02.2009 and worked till 04.06.2014 when his services were illegally terminated. Thus, he in fact had competed more than 240 days of service in each calendar year but despite that no notice or compensation in lieu of notice period was given to him prior to termination of his services by the management. The affidavit filed by the workman/claimant is in line with the averments made in the claim petition.

9. In cross-examination, the claimant/workman has denied the suggestion of management counsel that he has not completed 240 days in each year or preceding year of his alleged termination on 04.06.2014. It may be mentioned that management has not adduced any evidence whatsoever in order to substantiate its stand that he was not engaged in the month of 2009 and had not worked for 240 days in each calendar year or preceding year of his alleged termination. It is pertinent to mention here that claimant/workman had filed an application on 04.11.2015 for summoning/production of record by the management i.e. attendance register, pay roll, daily dak registry list which are in the custody of the management. In the reply, it has been stated by the management vide objection dated 20.01.2016 that original record is not required to be filed in Court and applicant may summon the witness along with record as prayed in the application but the same is not required to summon without any witness. Thus, management has safely tried not to produce the relevant documents which are necessary to prove the continuation of the services of the workman with the management from 24.02.2009 to 04.06.2014. The suggestion made by the management vide its objection is not tenable in the eye of law as management is under obligation to produce relevant documents to ensure the actual working period and services rendered by the workman during the disputed period. In my opinion, management is also under obligation to file on record the attendance register or pay roll and daily dak delivery list, which is most important document to prove or deny the real controversy between the workman/claimant and management. Daily dak delivery list is maintained by actual person of day to day working of GDSMD for delivery of letter registry and other parcels sent through post to the concerned person may have decisive factor for entire dispute. The management has not produced the aforesaid records merely by objecting that these documents are not required to be filed in the Court. During the course of arguments, learned counsel of the management could not satisfy the Tribunal when question put by me regarding the importance relevancy and utility of these documents to decide the real controversy between the parties. In these circumstances, this Tribunal is constrained to draw adverse inference against the management under Section 114(g) of the Evidence Act for non-production of requisite records and to believe the version of the claimant/workman that he worked with the management for over 240 days in each calendar year before his alleged disengagement/termination by the management.

10. There is another aspect of the matter as claimant has filed on record photocopy of the matriculation examination certificate of his nephew Rajesh Kumar issued by Punjab School Education Board as Annexure W-3. Learned counsel of the workman has drawn my attention towards the date of birth mentioned in the mark sheet of the Rajesh Kumar, which is 13.12.1995. Learned counsel further argued that version of the workman finds support from this document that actually he worked with the management for the month of January, February and March 2012 and from January and February 2013 but salary was prepared in the name of Rajesh Kumar nephew of the workman only to show artificial break in service of the claimant/workman. Learned counsel of the workman argued that by virtue of the date of birth of Rajesh Kumar, it was not possible for the management to engage him as GDSMD because he was minor at the relevant time. But in order to face saving device management adopted noble style by preparing salary in the name of Rajesh Kumar while the payment is made to the claimant/workman. Management has an opportunity to prove the payment made to Rakesh Kumar by filing salary papers and attendance register of Rajesh Kumar. The argument advanced by the learned counsel for the workman is in the line of the settled legal position that any minor cannot be assigned work in any establishment during the course of his minority. Against this, no evidence is led by the management while witness Manoj Kumar has admitted in his cross-examination that he has no record regarding the date of birth of Rajesh Kumar. But management did not care to file relevant documents pertaining to Rajesh Kumar and its reluctance for not filing the relevant documents is ample proof that there was something wrong with management in respect of workman. Hon'ble Supreme Court has specifically held in the case of ***Union of India***

Vs. Sardar Bahadur(1974)4 SCC 618, R.S Singh Vs. State of Punjab and other(1999)8 SCC page 90, and in the case of ***State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013*** that cases relating to the industrial dispute has to be decided on preponderance of probability rather than the proof beyond reasonable doubt. Thus, evidence adduced by the workman/claimant regarding his notional break appears to be true and I am fortified for this conclusion by the evidence led by the workman regarding the engagement of Rajesh Kumar a nephew of workman for six months from January to March 2012 and January, February 2013. It is pertinent to mention that management has though admitted the engagement of Rajesh Kumar but it has not denied either in written statement or in evidence led by the management that Manoj Kumar is not the nephew of the claimant/workman. Further question arises that why management chose to engage Rajesh Kumar in place of claimant/workman for the relevant period in spite of the fact that he was minor at the relevant time and could not be engaged for the duty of GDSMD. I am of the opinion that actually it was workman/claimant who was working with the management and performing his duty as GDSMD during the period for which Rajesh Kumar is shown to be engaged by the management. That is why, management knowingly concealed the relevant documents pertaining to Rajesh Kumar about his date of birth or other documents which are executed by the workman/claimant during his duty at relevant time and other documents pertaining to attendance etc. In view of this discussion, the contention of the management that the workman did not worked 240 days in each calendar year does not hold ground.

11. Now the vital question arises for consideration is whether the termination of the services of the claimant/workman by the management from 04.06.2014 is in accordance with the law or is violative of Section 25-F of the Act? Accordingly testimony of the workman/claimant the work of GDSMD on which he was working was of permanent nature and his services were terminated on 04.06.2014 without joining the new incumbent in place of claimant/workman without giving notice or one month salary in violation of Section 25-F of the Act. It is neither the case of the management that a notice or compensation in lieu of notice was given to the workman prior to the date of his termination from 04.06.2014 nor such evidence is adduced by the management on record. Contrary to this, management has admitted in his written statement that workman/claimant was not given any notice or one month salary before his retrenchment/termination because he has participated in the proceeding of appointment of regular incumbent and was declared failed by virtue of the marks obtained by him in his matriculation. Management has filed document Ex.M-1 pertaining to comparative list of selected candidates for the post of GDSMD in which Ajay Kumar, Dilpreet Sharma, Ranjit Kumar Sharma, Miss Neelam Sharma and Krishan Kumar have been shown selected for the post of GDSMD Kotla Power House, having more marks than claimant/workman Balwinder Kumar, from 83.69% to 72.46% against the marks of the claimant Balwinder Kumar 28.9% only. It is pertinent to mention that claimant/workman has not challenged the selection or selection process but he has challenged his termination against the principles laid down in Section 25-F of the Industrial Disputes Act, 1947. I am not convince with the argument of the learned counsel of the management that workman/claimant was given opportunity to appear in the selection process for regular appointment and due to his failure, there was no need to give him one month notice or one month salary before his retrenchment in the light of the provisions of Section 25-F of the ID Act. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the management to be illegal and void under the law. Since there is no evidence on record that any valid notice was issued by the management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the management in terminating the services of the workman is held to be illegal and void.

12. Now the residual question which arises for consideration is whether the claimant/workman is entitled for reinstatement in service with full back wages who was continuously in the employment of management from 24.02.2009 to 04.06.2014 with notional break on temporary basis which is extended from time to time upto 03.06.2014. There is no show cause notice or memo issued to the claimant/workman. He has pleaded that he is unemployed from the date of his termination and this factum is further proved by the workman in his affidavit filed as evidence and cross-examination by the learned counsel of the management. The management has not adduced any evidence to show that the claimant/workman has gainfully employed after the termination.

13. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limted(1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of

workmen must ordinarily lead to the reinstatement of the services of the workmen along with payment of back wages.

14. However, Hon'ble Apex Court in the case ***General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L & S) 716,*** observed as under:-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of award, which our experience shows is often quite large, would be wholly inappropriate.*** A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."

15. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324*** has held as under:

> "The propositions which can be culled out from the aforementioned judgments are:
>
> ***"i) In case 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 was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the workman wads gainfully employed and was getting wages equal to the wages he wads 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."***

16. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

17. Having regard to the legal position as discussed above and the facts of the case, this Tribunal is of the firm view that the claimant herein is entitled for the compensation rather than reinstatement into service on the same post. Looking the nature of the salary and years of the workman in the service with the management, it will meet end of justice if compensation of Rs. 4,00,000/- is awarded in favour of the workman and in case, this amount is not paid within one month from the date of publication of the award, the workman shall be entitled to the said amount with 6% interest from the date of notification of the reference till realization.

A. K. SINGH, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स पंजीयक, राष्ट्रीय प्रौद्योगिकी संस्थान, डीम्ड विश्वविद्यालय, कुरुक्षेत्र (हरियाणा)और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – चंडीगढ़ के पंचाट (संदर्भ संख्या 64/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुआ था ।

[सं. एल-42012/227/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 284.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 64/2015) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, National Institute of Techology, Deemed University, Kurukshetra, (Haryana) & Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-42012/227/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present: Sh. A.K. Singh, Presiding Officer

ID No. 64/2015

Registered on:-25.02.2016

Dinesh Kumar S/o Chinta Mani, R/o Vikas Nagar Colony,
Near NIT Campus, Kurukshetra. …Workman

Versus

1. The Registrar, National Institute of Techology, Deemed UniversityKurukshetra-136119.
2. The HOD/Chairman, Department of Business Administration,
National Institute of Technology,
Deemed University Kurukshetra-136119 …Respondents/Managements

AWARD

Passed on:-04.02.2020

Central Government vide Notification No. L-42012/227/2015-IR(DU) Dated 17.02.2016, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management No.1 Registrar, National Institute of Technology and Management No.2 HOD/Chairman, Department of Business Administration, National Institute of Technology, Deemed University, Kurukshetra in terminating the services of the workman Sh. Dinesh Kumar S/o Chinta Mani is legal and justified? If not, what relief the workman is entitled to and from which date?"**

1. Both the parties were put to notice and claimant Dinesh Kumar filed statement of claim, with the averment, that he was employed by the management on 21.02.2007 on the post of Peon on contract basis as per the DC rates in the Department Business Administration, NIT Kurukshetra, after following the due procedure and recruitment of selection without any appointment letter. Subsequently, Government of India enacted National Institute of Technology Act, 2007 and the workman continued to work in NIT, Kurukshetra from 21.02.2007 and remained in continuing service till 27.05.2013. Thereafter, break in service was given for the

first time since the initial appointment on 21.02.2007. Subsequently, by virtue of the advertisement notice no.18/2013 and subsequent interview conducted by the management he was appointed on 08.08.2013 as Lab Attendant on contract basis for the period of 6 months by issuing letter of appointment. Accordingly, the workman joined duty on 08.08.2013 and continued to work till 30.06.2014 by virtue of extension given to the workman by the management. Workman was not allowed to work after 30.06.2014 without giving any notice and issuing letter of removal/termination of the services. There is no provision in the first statute regarding outsourcing the services of the staff to be appointed on contract basis and in violation of sub-Clause 16 of Clause 23 and Clause 27 the services of the workman is terminated by the management. This is also the violation of Section 25-F of the Industrial Disputes Act, 1947. The engagement of contractor M/s Radha Krishan Cooperative L/C Society Ltd. Kurukshetra, from 01.08.2014 and termination of the services of the workman along with other persons employed on contract basis is against the provisions of law. It is therefore prayed that the services of the workman be regularized as Lab Attendant in NIT Kurukshetra, with the consequential benefits, continuity of service and past wages for the intervening period till the date of joining.

2. Management has filed its written statement, alleging therein that the Government of India, MHRD framed the first statutes for all the NITs and the same was notified and the NIT Kurukshetra is also governed by the same Act as well as first statutes. There is no post of Lab Attendant existed in the institute however, as per the decision of Board of Governors, held in 32nd meeting on 03.01.2014, it was decided that institute has to enter into a service-contract after quantifying the work with the reputed service contractor by inviting open tenders and following all the formalities, M/s Radha Krishan Cooperative L/C Society Ltd. Kurukshetra, is awarded contract for outsourcing employees from 01.08.2014 to 31.07.2015 as per service contract Annexure R-3. Hence, all the persons working earlier on contract basis on DC rate as Lab Attendants have been relieved on 30.06.2014. It is further stated that claimant does not fall within the definition of workman by virtue of employment on contract for limited period. It is denied that claimant was engaged continuously upto 30.06.2014. The Department of Business Administration was established by the institute in the year 2006 under self-finance mode and all the appointments of this department faculty and non-faculty is made on short term basis. The workman was never engaged continuously upto 27.05.2013 as such, no question of inadvertently in break in service as alleged in the claim petition. In view of the above facts, the petition is not maintainable and is liable to be dismissed with cost.

3. Workman has filed its replication, alleging therein that the workman is authorized to be regularized and management has violated Section 25-F of the Industrial Disputes Act as well as by virtue of violation of principle of natural justice. Remaining facts are same as mentioned in the claim petition hence, need not to be repeated again.

4. Parties were given opportunity to lead evidence. Workman Dinesh Kumar has filed his affidavit in evidence as Ex.WW1/A and has been cross-examined by the learned counsel of management. The workman has admitted in his cross-examination that no advertisement was issued by the management at the time of his appointment as Peon on DC rates on contract basis. He has further stated that he was engaged as Lab Attendant in MBA department which was initially under SFS but since 2011 it has become a regular department. He has further stated that he worked upto July 2014 against the facts alleged in the claim petition that services of the workman is terminated on 30.06.2014. He has further stated that he is unable to inform that any person is engaged as Lab Attendant after his removal. This witness has denied the suggestion that on the expiry of the contract, he stood discharged from service.

5. Management has examined Sh. Ishwar Singh, Superintendent, who has stated that he was doing job of Senior Store Keeper from the year 1995 in NIT and working as Superintendent in the year 2013. He has further admitted that claimant Dinesh Kumar was doing the job from the year 2007 on contract basis through DC rate and worked till 2014 with break upto 5-10 days. He has further stated that restructuring was done for the non-teaching regular staff but not of the contractual staff and workman was not given retrenchment compensation because he was working on contractual basis. In December 2014, M/s Radha Krishan the service provider were hired and the staff with requisite qualification is recruited through service provider.

6. I have heard the learned counsel of workman Sh. Parveen Gupta and learned counsel of management Sh. A.S. Virk and perused the file and documents which are on record.

7. Learned counsel of the workman argued that it is not disputed that workman was employed in the year 2007 and rendered his services upto 30.06.2014 after the policy decision of the NIT Kurukshetra for engagement through labour contractor agency. Learned counsel further argued that this is an admitted fact on the part of the management that he was further appointed after the break from service from 28.05.2013 to 07.08.2013 when he was again appointed on the basis of interview conducted by the management for Lab Attendant and join on 08.08.2013 till his termination on 30.06.2014. Learned counsel further argued that it is admitted fact that neither notice under Section 25-F is issued to the workman nor any retrenchment

compensation in lieu of notice is awarded as is required under Section 25-F of the Industrial Disputes Act, 1947 as such, the termination of the workman is against the law and he is entitled for reinstatement with back wages and other consequential benefits arising from the service.

8. Learned counsel of the management argued that workman himself has admitted that he was appointed on contractual basis by virtue of the interview conducted by the respondent-management since 08.08.2013 for 6 months and his services were extended for further 6 months and ultimately he was discharged from duty on 30.06.2014 due to the policy decision of the management for hiring the required staff through labour contractors or agencies. Learned counsel further argued that workman has entered into a contract as per appointment letter issued on 07.08.2013 attached by the workman himself as Ex.C-3 in which condition no.3, 4, 5 and 8 are relevant for the purpose of the adjudication of the present reference. As per conditions mentioned therein, there was no need to serve a notice to the workman after the expiry of the 6 months and further extension was also subject to the terms and conditions mentioned in Ex.C-3 hence, there was no need for issuing a notice before discharging since 30.06.2014. Learned counsel further argued that by virtue of the appointment of the workman on contractual basis and as per DC rates, Section 25-F of the Industrial Disputes Act, 1947 is not applicable being provision of General Act for all the workmen as such, there is no breach of section 25-F of the Industrial Disputes Act and reference is liable to be answered in negative against the workman.

9. Before averting to the controversy between the parties, it will be pertinent to mention that by virtue of the facts alleged in para 4, 6 and 9 of written statement, it is not disputed that workman Dinesh Kumar serves the respondent-institution initially from 21.02.2007 to 02.07.2013 when his services come to an end. Subsequently, he was posted again from 08.08.2013 for a period of 6 months by virtue of appointment letter dated 07.08.2013 Ex.C-3 on contract basis subject to execution of specific contract on non-judicial stamp with certain condition incorporated in the appointment letter. This is also not disputed that by virtue of subsequent extension workman/claimant rendered his services upto 30.06.2014 when institute/respondent management decided to engage labour contractor for the supply of the person for security services, maintenance services, electrical maintenance, housekeeping, technical assistant and allowed the services of contractor as per advertisement Notice No.12/2014. It is also not disputed that initial tenure of workman from 21.02.2007 to 02.07.2013 was as a daily wager on DC rate which ended on 02.07.2013 and subsequent engagement of workman since 08.08.2013 by virtue of interview conducted by institute-management of NIT.

10. In the above background of admitted facts, the sole question which requires for consideration is alleged termination(stopping further extension) from 30.06.2014. Question which arises for consideration is whether it is in accordance with law or against the violation of the Section 25-F of the Industrial Tribunal Act and in violation of settled principle of natural justice vide para 15 of claim petition? Learned counsel of claimant has drawn my attention towards the judgment of Hon'ble Supreme Court in the case of ***Mohan Lal Vs. Manageemnt of Bharat Electronics Ltd. 1981 Law Suit (S.C.) 263,*** and argued that every termination is retrenchment within Section 2(00) of the Industrial Disputes Act, 1947, if it does not fall except in excluded cases where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of workman, retirement of workman on reaching the age of superannuation as per contract between employer and employees, or termination of services of workman on the ground of continuous ill health. As per argument of learned counsel, case of workman/claimant does not fall any of category mentioned above and NIT-management was under legal obligation to give notice under Section 25-F of the ID Act as workman has completed more than 240 days since his appointment on 08.08.2013 upto 30.06.2014 and overall seven and half years of service including a short break from 27.05.2013 to 07.08.2013.

11. It is a settled position of law that facts not specifically denied need not to be proved by evidence. Moreover, workman had rendered his services from 08.08.2013 to 30.06.2014 as Lab Attendant in the MBA department of the respondent-management University i.e. about 10 months. The terms and conditions mentioned in the appointment letter dated 07.08.2013, workman was required to perform duty 6 days a week without any compensatory leave in lieu of working on Saturday, Sunday and gazette holidays. As per term and condition no.4, he was entitled for one day leave on the completion of one month service In the light of the terms and conditions mentioned in para 3 and 4 of the appointment letter. Hence, in the light of non-availability of the other evidence on the part of respondent/management, this Tribunal is of the considered opinion that factum of 240 days working before the alleged termination on 30.06.2014 is proved.

12. The question which is relevant for the consideration in the light of the facts alleged and admitted between the parties is non-serving of notice by the respondent-management under Section 25-F of the Industrial Disputes Act, 1947. Learned counsel of the workman has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Jasmer Singh Vs. State of Haryana & Anr. 2015(Law Suit) SC 32,*** and argued that management was under legal obligation to serve notice under Section 25-F of the Act by virtue of

completion of 240 days of continuous service of the workman in preceding year before his termination. Learned counsel further argued that the extended period by the management for service of the workman after the initial period of 6 months from 08.08.2013 should be treated as temporary employment and workman should be treated as temporary employee as such, management is under obligation to comply the provision of Section 25-F of the Industrial Disputes Act, 1947. Contrary to this learned counsel of the management argued that the fact of the alleged case law is altogether different as such, it is not applicable in the present case. Learned counsel of the management further clarifying his argument stated that in the case of ***Jasmer Singh Vs. State of Haryana & Anr.(supra),*** employment was not on contractual basis and extended period of workman was treated as daily paid worker. Learned counsel of the management further argued that so far as the case in hand is concerned, it was purely on contractual basis as is admitted by the workman during cross-examination as well as terms and conditions enshrined in appointment letter dated 07.08.2013 Ex C-3. Learned counsel further argued that workman has executed a specific contract on non-judicial stamp paper duly certified by the notary club for contractual engagement with all the conditions incorporated in the appointment letter. The conditions mentioned in para 5, 6 and 7 of letter of appointment runs as follow:-

> ***"5. This engagement can be dispensed with/without any notice at any time and before the expiry of period of contract or if the specific work against which they have been engaged is no longer in existence and if your work and work and conduct not found satisfactory in any manner whatsoever as decided by the institute.***
>
> ***6. That your contractual engagement shall stand terminated on the last day of work of the contract and on this date, after completion of the work, you will automatically, stand relieved.***
>
> ***7. That this contractual engagement is not an employment in any manner whatsoever and it is a contract of work.***
>
> ***8. For regular appointment, you will have to apply afresh as and when the policy advertised/notified.***

13. From perusal of the appointment letter dated 07.08.2013, it is undoubtedly proved that the appointment of the workman was on contractual basis and payment had to be made on DC rates. It is a specific clause in para 5 that his engagement can be dispensed with/without notice at any time before the expiry of the period of contract or the specific work against which he has been engaged is no longer in existence and if his work and conduct not found satisfactory in any manner. It is further stated in condition no.7 that this contractual engagement is not an employment in any manner whatsoever and it is a contract of work. It is pertinent to mention that workman is claiming right of re-engagement on the basis of the appointment through Ex.C-3 and has alleged that requirement of Section 25-F is applicable with respect to his case. Legally speaking, I am not convince with the argument advanced by the learned counsel of workman because if he had been appointed on the basis of this appointment letter then each and every condition is fully binding on both the parties. As per condition no.5 of the appointment letter, the engagement of the workman can be dispensed with or without notice at any time before the expiry period of contract or the specific work against which he has been engaged is no longer in existence. To my mind, the extension granted to the workman after the appointment of initial 6 months on contract basis as Lab Attendant would be governed by the same terms and conditions as is alleged in the initial appointment letter Ex. C-3. Hence, if he was discharged from service on 30.06.2014 after the policy decision of the respondent-management, it cannot be said that any notice whether under the contract itself is required to be complied and workman was required to be heard before his discharge from service for that legal purposes. Workman himself was aware about the terms and conditions of appointment and he had never objected at the time of joining his services as Lab Attendant in the MBA Department. Hence, there is no need for issuing a notice under Section 25-F of the Industrial Disputes Act, 1947 with respect to the alleged termination or discharge of the workman by virtue of the individual contract entered into between the workman as well as management.

14. Having gone through the above factual and legal matrix, this Tribunal is of the considered opinion that provision of Section 25-F of the Industrial Disputes Act, 1947 is not applicable in the light of the contract entered into between workman/claimant and NIT-management. The NIT-management was within its right to discharge the workman after 30.06.2014 by virtue of policy decision of management to engage the services of contractor. Hence, award is answered accordingly against the workman/claimant.

A. K. SINGH, Presiding Officer

नई दिल्ली, 18 फरवरी, 2020

का.आ. 285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधीक्षक, डाकघर, करनाल (हरियाणा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – चंडीगढ़ के पंचाट (संदर्भ संख्या 36/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुआ था।

[सं. एल-40011/23/2015-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 18th February, 2020

S.O. 285.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2015) of the Central Government Industrial Tribunal-cum-Labour Court- 2 Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintendent, Post Office, Karnal, (Haryana) & Others, and their workmen which were received by the Central Government on 18.02.2020.

[No. L-40011/23/2015-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 36/2015

Registered on:-10.09.2015

Smt. Sheela W/o Late Sh. Mange Ram R/o Village Garhi Sinkanderpur,
Distt. Panipat. …Workman

Versus

Superintendent of Post Office, Department of Posts,
Karnal Division Karnal (Haryana)-132001. …Management

AWARD
Passed on:-05.02.2020

Central Government vide Notification No. L-40011/23/2015-IR(DU) Dated 26.08.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Postal Department of Ambala in not giving appointment so son of the deceased workman on Compassionate appointment is justified? If not, what relief he is entitled to?"**

1. Both the parties were put to notice and claimant/worklady filed her statement of claim, with the averment, that her husband late Sh. Mange Ram was working with the management to the post of Gramin Dak Sevak (GDS MD). The husband of the worklady was very hard working employee and died on 06.12.2015, leaving behind seven legal heirs, who were duly dependent upon him. He was the only bread earner in the family and there was no other source of income in the family. Worklady belongs to the Scheduled Caste and after the death of the husband, her elder son Parvesh applied for the job on compassionate ground but he was not considered by the management on the ground that he was not having the qualification of Middle School. The younger son of the worklady Parveen was 13 years old at that time and after passing the Middle Examination in the year 2011, she applied for appointment of her younger son and submitted the necessary documents. In spite of submitting all the required documents, the worklady visited the office of the management on several occasions to get appointment of her son on compassionate ground but the management has not paid

any heed to the request of the worklady without any reason whatsoever. The appointment is not made by the management. Having no other alternative, the worklady filed the demand notice and failure of conciliation proceedings and the matter is referred to this Tribunal for adjudication. The action of the management in not considering her case is totally illegal, arbitrary, discriminatory and is in violation of Section 14 and 16 of the Constitution of India. Hence, it is prayed that the present reference may kindly be decided in favour of the management and it may kindly be directed to give appointment to the son of the claimant on compassionate grounds.

2. Respondent-Superintendent of Post Office has filed its written statement, alleging therein that Extra Departmental Agents/Gramin Dak Sewaks are held to be holding Civil Posts as such, the instant claim petition is liable to be dismissed on this ground. The claim petition is liable to be dismissed for the delay and latches as the husband of the worklady died on 06.12.2005 and she was conveyed about the denial for the appointment of Parvesh on compassionate grounds vide letter no.A-160/B/com dated 12.07.2006 Annexure R-1 attached with the written statement. It is further alleged that compassionate appointment cannot be claimed and granted as a matter of right or hereditary. It is further alleged that compassionate appointment cannot be granted after a lapse of reasonable period and it is not a vested right which can be exercised at any point of time in future. It is not a continuous process in which case of all family members are to be considered unless one of such candidate is approved for appointment. It is further alleged that this is beyond the scope of Article 16 of the Constitution of India and as such an appointment in any case not to be treated as an alternate mode of appointment. It is not disputed that the husband of the claimant Mange Ram has worked has worked as GDSMD at Kabri BO from 02.06.1980 and he died on 06.12.2005. It is further submitted that the matter of compassionate appointment of elder son Parvesh has already been considered and rejected on 07.04.2014 by the Circle Office Committee and the same was conveyed to the claimant Sheela vide office letter no.R&E/24-2/06/GDS dated 07.04.2014. It is further alleged that applicant is not entitled for the appointment of her son on compassionate grounds as departmental rules do not permit to reconsider the matter of compassionate appointment at this stage. Hence, it is respectfully prayed that the claim statement filed by the applicant may kindly be dismissed with cost.

3. Worklady/claimant has submitted her affidavit along with affidavit of Parveen Kumar as evidence but inspite of the several opportunities neither she nor her son Parveen turned up for cross-examination by the AR of management, forcing this Tribunal to close the opportunity of the worklady with the observation that the affidavit filed by the worklady and his son shall not be read in evidence.

4. Respondent-management has filed affidavit of Sh. J.K. Gulati, Senior Superintendent, Post Offices, Karnal Division, Karna, in respect of the facts alleged in the written statement. None is turning on behalf of the worklady/claimant to cross-examine this witness as such, facts alleged in the affidavit of the witness of the management stands uncontroverted and unrebutted.

5. I have heard the AR of the management Sh. Alankrit Bhardwaj in the absence of the worklady and her AR.

6. Before averting to the controversy between the parties it is pertinent to mention those facts which are admitted between the parties. Appointment of the workwoman's husband Mange Ram in the Post-Office Department of Post Karnal Division, Karnal, the date of death and rejection of the application of the elder son of the worklady Parvesh is not disputed as per written statement. The application of younger son Parveen had also been decided by the respondent as is alleged in the claim petition.

7. The question which remains for consideration is whether this Tribunal is competent to pass an order for reconsideration and appointment of the claimant-son Parveen on compassionate ground. It is relevant to mention that workwoman and her son Parveen Kumar did not turned for cross-examination by the management as such the facts alleged in the claim petition could not be deemed to be proved. Furthermore, there is nothing on record in the forms of rules and regulations filed by the workwoman to prove that application of Parveen Kumar is rejected against any rules prescribed with respect to the compassionate appointment in the department of respondent.

8. In fact the whole object of granting compassionate employment is to enable the family to tied over the sudden crises. The object is not to give a remember of such family a post much less for a post hold by the deceased what is further, mere death of employee in harness does not entitled to his family to such source of livelihood. The Government or the Public Authority concerned has to examine the financial condition. The family will not be able to meet the crises i.e. job is to be offered to the eligible member of the family. The Hon'ble Supreme Court in ***Umesh Kumar Nagpal Vs. State of Haryana & Others (JT 1994(3) SC, 525),*** has held that compassionate appointment cannot be granted after a lapse of the reasonable period which must be specified in the Rules. The object being to enable the family to get over the financial crisis which had faced at

the time of the death of the sole bread-earner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

9. It is pertinent to mention that more than 15 years has been passed from the date of death of workwoman-husband and there is nothing on record at present that workwoman and her son Parveen are still going through economic hardship as is envisaged in respect of compassionate appointment. Going through the principle laid down by the Hon'ble Supreme Court ***Umesh Kumar Nagpal(supra),*** and lapse of considerable time from the death of the workwoman-husband is relevant for the purpose of compassionate appointment. This Tribunal is of the considered opinion that after a lapse of more than 15 years, it is not desirable nor legally possible to direct the management to consider the compensate appointment of the workwoman son Parveen Kumar.

10. Hence, in my considered opinion the action of the management of Postal Department of Ambala in not giving appointment to son of the deceased/worklady on compensate ground is justified and worklady is not entitled for any relief as is claimed in claim petition and the reference is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का.आ. 286.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स किरीबुरू मेघाहातुबुरू आयरन ओर माइन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 173/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.02.2020 को प्राप्त हुआ था।

[सं. एल-26011/4/2000-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 286.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 173/2000) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Kiriburu Meghahatuburu Iron Ore Mines, and their workman, which was received by the Central Government on 14.02.2020.

[No. L-26011/4/2000-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No. 173/2000

Employer in relation to the management of Kiriburu Meghahatuburu Iron Ore Mine

AND

Their workman

Present: Shri Dinesh Kumar Singh**,** Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the workman : None

State: Jharkhand. Industry:- Iron

Dated 29.01.2020

AWARD

By Order No. L-26011/4/2000-IR(M) dated 31/05/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industry Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand raised by Meghahatuburu Shramik Sangh against the management of Kiriburu Meghahatuburu Iron Ore Mine is justified? If so, to what relief the workmen are entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the union/workman left appearing before the Tribunal. Thereafter again regd. notice was issued to the concerned union/workman but even then no one appeared on behalf of the workman/union. Now Case is pending since 03/07/2000 and workman/union is not appearing before Tribunal. So, it is felt that workman/union has lost his interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का.आ. 287.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मेघाहातुबुरू आयरन ओर माइन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 176/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.02.2020 को प्राप्त हुआ था।

[सं. एल-26011/1/2000-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 287.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 176/2000) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Meghahatuburu Iron Ore Mines, and their workman, which was received by the Central Government on 14.02.2020.

[No. L-26011/1/2000-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947.

Reference: No. 176/2000

Employer in relation to the management of Meghahatuburu Iron Ore Mine's

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman : None

State: Jharkhand. Industry:- Iron

Dated 29.01.2020

AWARD

By Order No. L-26011/1/2000-IR(M) dated 29/05/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industry Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management to deny promotion with pay-scale to the workmen of store discipline as Asstt. Store Keeper (ML-1) Rs. 1425-2203/- Store Keeper (ML2) Rs. 1560/--2600/- Store Keeper Gr. I (ML-3) Rs. 1690-2761/- are justified? If not, to what relief the workmen are entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter regd. notices were issued to both the parties but even then no one appeared on behalf of the workman/union. Now the Case is pending since 03/07/2000 and workman/union is not appearing before Tribunal. So, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D.K. SINGH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का.आ. 288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, सांगली के पंचाट (संदर्भ संख्या 30/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-30012/23/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 288.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2014) of the Labour Court, Sangli now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Petroleum Corporation Limited, and their workman, which was received by the Central Government on 17.02.2020.

[No. L-30012/23/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, LABOUR COURT, SANGLI.

(Presiding Officer Mr. S. D. Bauchkar)

Reference (IDA) No. 30/2014

CNR No. MHLC-1000-0335-2014

Between :-

The Executive Director,
Hindustan Petroleum Corporation Ltd., HindustanBhawan,8,
Shoorji Vallabdas Marg, Ballard Estate, Mumbai 400 038. …First Party;

AND

Shri. Vasant Ganpati Dabade,
R/o. Laxminagari Apartment, Flat No. 6, Neminathnagar,
Vishrambag, Sangli 416410 …Second Party

Claim :-

In the matter of reference under section 2-A read with section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act, 1947' for short).

Appearance :-

Advocates for the First Party : Shri. S. S. Shevade with S. K.Patil
Advocate for the Second Party : Shri. K. H. Kulkarni

AWARD

(Delivered on23rd December, 2019)

1) The Government of India, Ministry of Labour and Employment vide its order No. L-30012/23/2014-IR(M) (Exhibit O-1) dated 28.10.2014 and corrigendum dated 18.08.2015 (Exhibit O-6) has referred the present Industrial Dispute for adjudication to this Court with the following schedule :-

> "Whether the action of the management of Dy. General Manager, LPG Western Zone, Hindustan Petroleum Corporation Ltd., Mumbai in terminating the service of the workman Sh. Vasant Ganpati Dabhade, LPG Operator w.e.f. 15.06.2012 is justified and legal ? If not, to what relief the workman is entitled to ?"

2) After receipt of order of reference (Exhibit O-1), notices (Exhibit O-3 and O-2) came to be issued to the respective parties. In response to notice, the Second Party entered his appearance and filed his Statement of Claim vide Exhibit U-5. The First Party appeared and filed its Written Statement vide Exhibit C-2.

3) The Second Party in his statement of claim has submitted that he was permanent workman of the Respondent Industry since 01.08.1988. He was employed as a Machine Operator for the work of LPG refilling on the machine at the LPG Plant of the First Party at Hazarwadi (Bhilwadi), Taluka : Palus, District : Sangli. The First Party terminated his services vide written order dated 15.06.2012 served on him on 28.06.2012. This order of termination is subject matter of the present reference proceeding. The First Party is a public sector undertaking. The First Party is an 'industry' as defined in section 2(j) of the I.D. Act, 1947 vis-a-vis, the Second Party is a 'workman' as defined in section 2(s) of the said Act. His last drawn wages were around Rs.35,000/- per month. His service record is clear, unblemished and there are no grave and serious cases of any misconduct against him. His work performance was satisfactory under the yearly performance appraisal pro-gramme run by the First Party. He was given a charge-sheet dated 23.12.2010, alleging unauthorized absence on work on 54 days during 2008, 2009 and 2010. The alleged absence on work was for 18 days in 2008, 21 days in 2009 and 15 days in 2010. The First Party initiated domestic enquiry into the said charge-sheet. The charge-sheet mentioned the following misconducts under certified standing orders:-

(i) Habitual negligence or neglect of work [Standing Order No. 31(5)];

(ii) Habitual absence without leave or absence without leave for more than 21 consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory reasons [Standing Order No. 31(7)]; and

(iii) Breach of any standing order applicable to the establishment or any rules made thereunder [Standing Order No. 31(37)].

Though, the charge-sheet mentioned various misconducts such as negligence, breach of standing order, the entire charge-sheet speaks of the instances of absence and no instances of negligence or neglect of work or breach of standing order are mentioned. A farce of domestic enquiry was made. The Second Party attended the enquiry and submitted his defence. It was conducted in a most mechanical and stereotype manner in three sittings.

4) The Second Party has further submitted that he has two children, a daughter and son. Unfortunately, both are born deaf. They are unable to speak anything as they are unable to hear since their birth. The Second Party and his family members were shocked, when they realized the handicapped state of their children. The Second Party tried his best to give them medical treatment to cure the deafness. However, no treatment helped him to cure the defect. It was later learned to the Second Party that the deafness in the children is due to a genetic disorder caused due to close and reciprocal relation marriages in the family. However, till then the family life and also the mental state were under stress and strain. As a result, there are some instances of absence on work. After issuance of charge-sheet in 2010, there is no absence on work by the Second Party till he was terminated in June-2012. This fact is completely overlooked by the Enquiry

Officer as well as by the Disciplinary Authority. The Enquiry Officer concluded the enquiry without giving any consideration to the submission of the Second Party and filed his enquiry report dated 30.06.2011 to the First Party. The First Party sent its copy to the Second Party by its letter dated 21.07.2011. Almost after a period of one year, since the submission of the enquiry report dated 30.06.2011, the First Party issued the termination order dated 15.06.2012. The punishment of discharge from the service imposed by the First Party is too harsh, shockingly disproportionate and not commensurate with the gravity of alleged misconduct. The discharge order is without taking into consideration the mitigating circumstances and humanistic approach, but by a rigid, dumb, cruel, unsympathetic and inhuman thoughts of so-called discipline. The Second Party preferred a departmental appeal against his termination under standing order No. 35 of the Certified Standing Orders within two months from the cause of action. However, after a period of above two years, the Appellate Authority rejected the appeal by its order dated 23.12.2013 and confirmed the termination order passed by the Disciplinary Authority. The Second Party raised a dispute by approaching the Central Labour Commissioner's Office at Pune where the said authority tried to settle the dispute. However, the First Party was adamant in settling the dispute. Therefore, a failure report was sent to the Central Government at New Delhi and the said Government made the present reference for adjudication of the industrial dispute. The Second Party has relied upon the documents namely charge-sheet, enquiry report, order of termination, memo of departmental appeal, medical reports of children and yearly performance report of the Second Party.

5) The Second Party has prayed that an enquiry be made and the order dated 15.06.2012 passed by the Disciplinary Authority / First Party be declared illegal, baseless, bad, unjustifiable, unreasonable and void and it be quashed and set aside and the reference be allowed fully in his favour. The Second Party has claimed reinstatement to the original post with full back wages and all consequential benefits, continuity of service with due seniority.

6) The First Party in its written statement has submitted that the Second Party was a habitual absentee.He remained absent from duty unauthorizedly without any intimation to and / or prior permission of the First Party. He was absent on 18 days in the year 2008, 21 days in the year 2009 and 15 days in the year 2010. Therefore, he was issued a charge-sheet dated 23.12.2010 for said absence as per the provisions of the Certified Standing Orders, applicable to the workmen working in marketing establishments of the First Party management including the Second Party. He was charged for the misconduct namely (i) Clause 31(5) : habitual negligence or neglect of work; (ii) Clause 31(7) : habitual absence without leave or absence without leave for more than 21 consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory reasons; and (iii) Clause 31(38) : breach of any standing order applicable to the establishment or any rules made thereunder. The Second Party submitted his reply to the charge-sheet vide his letter dated 05.01.2011. Since, his reply was not found satisfactory, it was decided by the Disciplinary Authority to conduct a domestic enquiry to inquire into the charges. Accordingly, Shri. G. K. Patel, the then Plant Manager, Hazarwadi, LPG Plant was appointed as Enquiry Officer. Shri. Amit K. Sonar, the then Operations Officer, Hazarwadi, LPG Plant was appointed as Presenting Officer. The Enquiry Officer conducted the enquiry proceedings on various dates 14.02.2011, 20.02.2011 and 12.04.2011 in three sittings as per procedure in line with principles of natural justice. The Second Party was provided with an opportunity to appoint a defence representative from his co-workmen of his choice. However, he chose to defend his case on his own. During the course of enquiry proceedings, the Second Party contended / pleaded that he remained absent mainly on account of his mother's sickness and children's problem. However, he did not produce any oral / documentary evidence in support of his pleadings. Further, he could not produce any oral / documentary evidence of obtaining approval of his supervisor for the period of absence. As per the procedure, the employee has to submit leave application for obtaining approval of his supervisor before proceeding on leave and such application is subject to the availability of leave balance to his credit. In case employee is not able to submit leave application due to medical reasons, he has to verbally inform his supervisor and subsequently obtain his approval by producing medical certificates, immediately after resuming the duties. However, the Second Party did not produce any evidence during the course of enquiry proceedings that he had obtained any approval of his supervisor for the period of his absence or he had requested his supervisor for post facto approval of his leave, in case it was for medical reasons. Upon completion of enquiry proceedings, the Presenting Officer submitted his summation report vide his letter bearing No. GKP/ENQ dated 15.04.2011. It was forwarded to the Second Party for submitting his defence summation report, if any. However, the Second Party did not submit his comments on the Presenting Officer's report / defence summation report. Thereafter, the Enquiry Officer submitted his enquiry report vide his letter dated 30.06.2011. All the charges came to be declared as proved. A copy of Enquiry Officer's report was forwarded to the Second Party by the Disciplinary Authority for submitting his comments, if any, vide letter dated 21.07.2011. The Second Party submitted his say vide his letter dated 29.07.2011 to the Enquiry

Officer's report wherein he could not bring out any additional inputs / defence in support of his case other than those already contended by him during the course of enquiry proceedings. Upon receipt of this reply, matter was reviewed by the Disciplinary Authority. The Disciplinary Authority independently reviewed the entire records of the enquiry and concurred with the findings of the Enquiry Officer holding the Second Party guilty of the levelled charges. While reviewing the previous service records of the Second Party, the Disciplinary Authority found that earlier also the Second Party was issued two charge-sheets for the misconduct of unauthorized absenteeism. Earlier, the Second Party was issued charge-sheet dated 21.02.2007 for remaining absent unauthorizedly from duty during the period 2005-2006 for 109 days i.e. 29 days in the year 2005 and 80 days in the year 2006. In the said charge-sheet matter, after due enquiry proceedings, the Disciplinary Authority found the Second Party guilty of all the charges. However, the Disciplinary Authority took a lenient view in the matter and vide its order dated 17.12.2007 imposed the punishment of reduction to lower in the scale. The Second Party was issued yet another charge-sheet dated 03.03.2008 for remaining absent from duty for 30 days during the year 2007. After due enquiry, he was found guilty of all the charges. However, the Disciplinary Authority took a lenient view in the matter in order to give one more opportunity to the Second Party to improve upon his conduct. Accordingly, the Disciplinary Authority vide its order dated 13.01.2009 imposed the punishment of demotion to lower grade from MO4 to MO2 without reduction in basic salary. While imposing the punishment in the instant case, the Disciplinary Authority concluded that the Second Party is a chronic habitual absentee who despite being punished twice for the same misconduct of unauthorized absenteeism, did not improve his habit of remaining absent unauthorizedly. The Disciplinary Authority also found that the Second Party continued to remain absent even after issuance of instant charge-sheet. The Second Party was absent for 19 days during the period December-2010 to February-2012 apart from availing 74 days of various types of leave to his credit during the said period. The Disciplinary Authority has also concluded that the Second Party's unauthorized absenteeism is not only disrupting the day-to-day functions of the First Party management, but also creating an atmosphere of indiscipline at the location. The Disciplinary Authority found that despite ample opportunity to the Second Party to rectify himself, no improvement in his attendance was found and accordingly, the Disciplinary Authority opined that the Second Party is no longer interested in his job and that no fruitful purpose would be served by retaining the Second Party in the services of the First Party. The Disciplinary Authority further found that the charges established against the Second Party in the domestic enquiry are of grave and serious nature which warrants for major punishment of dismissal from the services of the corporation. However, considering his age and other extenuating factors, the Disciplinary Authority vide its order dated 15.06.2012 took a lenient view and awarded the Second Party the punishment of discharge from the services of the First Party Corporation as per clause 32(1)(f) of the Certified Standing Orders. The Second Party submitted an appeal to the Appellate Authority. The Appellate Authority upon review of the contentions raised by the Second Party as well as after going through all the record and proceedings, found no infirmity in the order of punishment of discharge. Accordingly, the Appellate Authority vide its order dated 23.12.2013 upheld the order of the Disciplinary Authority and dismissed the appeal.

On the strength of these pleadings, the First Party has submitted to reject the reference with costs.

7) On completion of pleadings of both the parties, issues came to be framed at Exhibit O-7. Issue No. 1 and 2 being regarding legality and validity of the domestic enquiry and findings of the Enquiry Officer came to treated as preliminary issues and have been decided vide Part-I Award dated 06.07.2018. The enquiry has been declared as legal, proper and fair and the findings of the Enquiry Officer have been declared as not perverse.

8) The Second Party examined himself at Exhibit U-11 as a evidence against remaining issues. He came to be cross- examined by the First Party. He finished his oral evidence vide pursis Exhibit U-12. The documents relied upon by the Second Party are with list Exhibit U-6. The Second Party has produced pay slip for the month of March-2012 with list Exhibit U-10. The First Party did not record oral evidence and filed pursis to that effect at Exhibit C-10. The documents relied upon by the First Party are with Exhibit C-2. The First Party has produced printed copy of the Standing Orders with Exhibit C-6.

9) I have heard learned Advocate Shri. K. H. Kulkarni, for the Second Party and learned Advocate Shri. S. K. Patil, for the First Party. Learned Advocate for the First Party has placed on record synopsis of arguments at Exhibit C-12.

10) The remaining issues are reproduced below. I am recording my findings against these issues, with reasons to follow :-

	ISSUES	FINDINGS
3)	Whether the punishment of discharge imposed upon the Second Party-Workman is shockingly disproportionate ?	**In the 'negative'.**
4)	Whether the Second Party is entitled to the reliefs, as claimed ?	**In the 'negative'.**
5)	What Award ?	**Asperfinalaward.**

-: ARGUMENTS :-

11) Learned Advocate Shri. K. H. Kulkarni, for the Second Party in his arguments submitted that the Second Party was working as LPG Operator with the First Party. He was charged for the misconduct of remaining absent without prior permission / approval of leave and the period of absence alleged was 54 days. Learned Advocate submitted that a domestic enquiry was conducted into the charge-sheet and thereafter the Second Party has been discharged from the services. Learned Advocate submitted that this court has found the enquiry and the findings of the Enquiry Officer as legal and proper. Learned Advocate submitted that though the enquiry and the findings of the Enquiry Officer have been found as legal and proper, the punishment of discharge of services for absence of 54 days is shockingly disproportionate. Learned Advocate submitted that by virtue of provisions of section 11-A of the I.D. Act, 1947, if the Labour is satisfied that the order of discharge / dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lessor punishment in lieu of discharge or dismissal as the circumstances of the case may require. Learned Advocate submitted that the Second Party has two children having hearing syndrome since birth and are unable to speak and hear properly. Learned Advocate submitted that due to medical treatment to them, he could not attend his duties on some days during March-2008 to November-2010. He has submitted this fact in the course of enquiry. Learned Advocate submitted that this absence was not intentional. Learned Advocate submitted that therefore the punishment of discharge is shockingly disproportionate. Learned Advocate submitted that the Complainant in his affidavit of evidence has submitted that he has no desire for reinstatement and therefore, he be granted compensation to the tune of entire amount of back wages for the intervening period. Learned Advocate submitted that the First Party is a public undertaking. The First Party should have considered the fact that the absence of the Second Party was not intentional. Therefore, the Second Party is entitled to the compensation as claimed in the affidavit.

12) On the other hand, learned Advocate Shri. S. K. Patil, for the First Party vehemently submitted that this court has declared the departmental enquiry and the findings arrived at the domestic enquiry as legal and proper. Learned Advocate submitted that the Second Party was issued charge-sheet of misconduct for remaining absent during March-2008 to November-2010. The absence of the Second Party was on many occasions. It is without prior permission and / or approval. He was habitual absentee. In the course of departmental enquiry, he has been found guilty. The Disciplinary Authority after considering the fact that the charges have been proved and further considering the past service record of the Second Party has imposed the punishment of discharge. In-fact, the punishment of dismissal was proper. However, the Disciplinary Authority took lenient view and discharged the Second Party from the services. Learned Advocate submitted that the absence of the Second Party was during the period 2008 to 2010. Learned Advocate referred to the charge-sheet and pointed out the dates of absence. Learned Advocate submitted that it is not that the Second Party was absent continuously for a particular period. Learned Advocate submitted that he remained absent on number of occasions and thus, there was habitual absence on his part. Learned Advocate submitted that the First Party is a public sector undertaking and the employee with such absence and further having punished on two occasions for remaining absent, after departmental enquiries, cannot be retained in the employment. Learned Advocate submitted that the argument of the Second Party that his both the children are suffering from hearing syndrome and therefore, he could not attend the duties for their treatment cannot be accepted as reason for not following the discipline in the corporation. Learned Advocate submitted that every person has problems in life. Learned Advocate submitted that such persons should be more careful and should not indulge in any act which will affect their family. Learned Advocate heavily submitted that the conduct of the Second Party in the present proceeding be considered. After order of reference, he filed statement of claim. However, thereafter he continuously remained absent from the proceeding. Learned Advocate submitted that after judgment on preliminary issues, the Second Party even did not turn in the court for hearing on remaining issues. Therefore, his evidence against remaining issues was closed and the matter was posted for final arguments. He did not care to attend the matter. The First Party filed its synopsis of arguments. Thereafter, the Second Party appeared on 04.02.2019 and requested for setting aside order of no

evidence against him. Learned Advocate submitted that perusal of Roznama of the present proceeding, clearly reveals that the Second Party remained negligent in the present proceeding. Learned Advocate submitted that this conduct of the Second Party is also relevant considering the fact that he has been discharged for the charge of remaining absent from duties. Learned Advocate submitted that the Second Party has claimed compensation. Learned Advocate submitted that when the order of discharge is justified by the documents on record, the Second Party is not entitled to any relief, moreover compensation. Learned Advocate submitted that the conduct of the Second Party seeking compensation is nothing but an attempt to seek charity from other's pocket. Learned Advocate submitted that charity should come from his own pocket. Learned Advocate submitted that the question of payment of compensation in lieu of reinstatement arises when the relations between the parties are strained. Learned Advocate therefore submitted that considering the fact that the Second Party was charge-sheeted on three occasions for remaining absent from duties without leave, the alleged family problems of the Second Party cannot be the basis for grant of compensation to him when the order of punishment is justified by the documents on record. Learned Advocate submitted that the reliance of the Second Party on the provisions section 11-A is also misleading. Learned Advocate submitted that no doubt this court has power to interfere with the punishment, however; the jurisdiction vested with this court in this respect is limited. Learned Advocate in his synopsis of arguments has recorded that the standing orders does not incorporate the term "wilful" to be a condition to attract the proving of an act of misconduct. Therefore, the grounds stated by the Second Party for his absence have no credibility or value in claiming leniency or challenging the quantum of punishment. The Learned Advocate relied upon various judgments as recorded herein below:--

(I) Brihan Mumbai Municipal Corporation And The General Secretary BEST Workers Union [1998 (80) FLR 940 (Bom)], (II) M. D. Kawade And Mahindra Engineering & Chemical Products Ltd. [2000 (85) FLR 217], (III) Delhi Transport Corporation And Sardar Singh [2004 (102) FLR 1031], (IV) Francis Xavier Vs. Magna Graphics (I) Pvt. Ltd., decided on 17.03.2005 (Hon'ble Bombay High Court), (V) Larsen and Toubro Grahak Sahakari Sanstha Maryadeet And Tanaji Kashinath Vishwe [2006 (108) FLR 367], (VI) M/s. L & T Komatsu Ltd., And N. Udaya Kumar [2008 (116) FLR 1139], (VII) Managing Director, Krishna Sahakari Sakhar Karkhana Ltd. And Sampatrao Ganpati Mohite [2006 (108) FLR 975], (VIII) Tata Engineering & Locomotive Company Ltd., Vs. Mr. Suhas Madhukar Mulay [2008 LLR 74], (IX) Rabiya Khatun (Smt.) and ors. Vs. M.S.R.T.C., Akola [2009 ICLR 299], (X) Union of India and others Vs. Bishamber Das Dogra [(2010) 1 Supreme Court Cases (L&S) 212], and (XI) Life Insurance Corporation of India And R. Dhandapani [2005-06 SCLJ 917], to submit that the punishment of termination of services is just and legal in case of proved misconduct of absence from duties.

Learned Advocate further referred to Bharat Forge Co. Ltd., vs. Uttam Manohar Nakate [2005 (104) FLR 812], to submit that past cloudy record is a relevant factor. It is obligatory for the workman to plead and prove the acts of victimization. Learned Advocate further referred to the judgment of Hon'ble Bombay High Court in the matter of Kolhapur Zilha Sahakari Dudh Utpadak Sangh Vs. Shivaji Shankar Pharakate [2009 (I) CLR 286] to submit that industry survives on discipline and court should not condone indiscipline. Learned Advocate referred to B. C. Chaturvedi And Union of India [1996 (72) FLR 316] and Chief Executive Officer Krishna District Co-op. Central Bank Ltd., Vs. K. Hanumantha Rao [2017 (152) FLR 131], to submit that judicial review is not appeal from a decision but a review of the manner in which the decision is made. Power to judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. It is for the disciplinary authority to decide whether the concerned workman is fit to continue or not. The Learned Advocate relied upon (I) Anna Transport Corporation Ltd. Vs. The Presiding Officer, Labour Court [1999 (82) FLR 765 (Mad)], (II) Tata Press Employees Union Vs. Tata Infomedia Ltd. [2010 (2) Bom. L.C. 625 Bombay High Court], (III) Bharat Petroleum Corporation Ltd Vs. Ramesh R. Passi [2010 I CLR 425], (IV) Hombe Gowda Edu. Trust And State of Karnataka [2006 (108) FLR 584], (V) Bharat Heavy Electricals Ltd., And M. Chandrashekhar Reddy [2005 (104) FLR 306], (VI) Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd., [2008 III CLR 85], and (VII) Damoh Panna Sagar Rural Regional Bank And Munna Lal Jain [2005 (104) FLR 291], to submit that long service also cannot be a point for reducing the punishment in case of proved misconduct. To exercise jurisdiction under section 11-A of I.D. Act, 1947, the Labour Court has to record a finding that the employer was not justified in awarding punishment of dismissal. Section 11-A is not a source of arbitrary power for the Industrial Tribunal or the Labour Court and the power conferred has to be exercised judicially. The discretion has to be structured in accordance with the settled principles of law and cannot enable Tribunal to exercise an unchartered discretion without a reasoned foundation. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law laid down by Hon'ble Supreme Court clearly demonstrates that the Tribunal would

not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. No unlimited jurisdiction is vested with the Tribunal under section 11-A. The decision of the Labour Court should not be based on mere hypothesis. It cannot overturn a decision of the Management on ipse dixit. Its jurisdiction under section 11-A of the Act although is a wide one, must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinize and analyze the evidence but what is important is how it does so. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. The Learned Advocate relied upon (I) Hoshirpur National Transporters (P) Ltd., Vs. Presiding Officer, Labour Court Jalandhar [2007 III CLR 810 (P & H)], (II) Principal Daund Taluka Arts and Commerce College Daund Vs. Mechandra Sahebrao Bhavar [2009 (1) Bom.LC 610 (Bom)], (III) Management of Regional Chief Engineer P.H.E.D Ranchi Vs. Their workmen Rep. By District Secretary [2018 (2) Bom.LC (SC)], and (IV) Reetu Marbles Vs. Prabhakant Shukla [2010 (I) CLR 10], to submit that it is necessary for the workman to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself and / or family. The employer is also entitled to prove it otherwise against the employee, namely that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is on the employee. Payment of full back wages upon an order of termination being declared illegal cannot be granted mechanically. It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry. No strait-jacket formula can be evolved nor a rule of universal application be adopted to grant back wages. A claim for back wages has to be proved. The employee has to discharge the burden by producing adequate material before the court. When the employee fails to do so, the claim for back wages shall have to be dismissed. That is the law and the law which all Courts and Tribunals are duty bound to follow. There must be a full and complete and candid disclosure. A disclosure in part which withholds material facts would amount to a complete abuse of the process and a court must take a strict view. Learned Advocate further submitted that the First Party is a public sector undertaking. The money of the public should not be squandered on persons who have committed grave and serious acts of misconduct and show no remorse or reform for their callous behaviour. Learned Advocate submitted that the Second Party has not tendered any evidence that he made any attempt to secure alternate employment during the intervening period. Learned Advocate submitted that the Second Party in his cross-examination has clearly admitted that he did not make any efforts for employment due to his ill- health. Learned Advocate submitted that to get the back wages, the burden is on the employee to prove that he was unemployed during the intervening period and / or made efforts to secure alternate employment. Learned Advocate finally submitted to reject the demands of the Second Party.

-: REASONS :-

13) <u>Reasons in respect of issue No. 3 :-</u>

I have carefully considered the submissions of both the parties. I have also considered the documents produced with Exhibit C-2 by way of annexures and the authorities produced on record. The Second Party was charge-sheeted for remaining absent from duties without information to / approval of leave of the supervisor of the First Party. The total period of absence is of 54 days and it was during the period 2008 to November-2010. This absence has been proved as without prior approval. The reasons for absence recorded by the Second Party in the course of departmental enquiry are that his children are having hearing syndrome and are unable to speak and hear properly since birth. Further, his mother was not keeping well in health and was required to be taken to the doctor regularly for medical treatment. It is seen that the Second Party further submitted that keeping in view the aforesaid circumstances and on humanitarian grounds, the First Party should give him a chance to improve and take a lenient view. It is seen from the enquiry report (Annexure M-6) that the Enquiry Officer inclined to disbelieve the contentions of the Second Party and recorded that the said contentions appear to be alibi raised by the Second Party in order to justify his unauthorized absence. The Disciplinary Authority after considering the report of enquiry and further considering past record of the Second Party concluded that the charges proved against the Second Party are of grave and serious nature warranting major punishment of dismissal from the services of the First Party Corporation. However, the Disciplinary Authority took lenient view considering the age of the Second Party and other extenuating factor and awarded the punishment of discharge from the services of the First Party Corporation as per clause 32(1)(f) of the Certified Standing Orders and accordingly, discharged the Second Party from the services vide order dated 15.06.2012 served on the Second Party on 28.06.2012 (Annexure M-11). It is seen that wages in lieu of notice period also came to be paid to the Second Party. It is seen that the Second Party was also charge-sheeted on 21.02.2007 for remaining unauthorizedly absent for 109 days during 2005

and 2006. It is seen from Annexure M-9 that the Second Party admitted the said absence and had submitted that owing to his children's ailment and his mental agony, the absence from duty was caused. The Disciplinary Authority observed that the Second Party is regular in his duties at the relevant time and therefore, the Disciplinary Authority decided to give him an opportunity to reform himself and by taking lenient view imposed the punishment of reduction to a lower stage in the scale as per clause 32(1)(d) of the Certified Standing Orders. Accordingly, basic salary of the Second Party was reduced from Rs.9,725/- to Rs.8,835/- with immediate effect.

It is seen that the Second Party was also charge-sheeted on 03.02.2008 and enquiry was conducted. In the said enquiry, the Second Party recorded the same reasons for his absence. The Disciplinary Authority has recorded that the Second Party has failed to produce any medical prescription, pathological reports etc. justifying the reasons for his absence and further, failed to get his leave approved. The Disciplinary Authority decided to take lenient view (Annexure M-10 dated 13.01.2009) by observing that the Second Party was regular in his duties at that point of time. The Disciplinary Authority further recorded to give him a last and final opportunity to reform himself. The Disciplinary Authority imposed the punishment of demotion without reduction in basic salary with immediate effect. Accordingly, the Second Party was demoted from MO4 to MO2. It is seen from the order in appeal (Annexure M-12 dated 13.12.2013) against the punishment of discharge that the Appellate Authority found that the Second Party did not produce any medical certificates/reports pertaining to his mother's / children's treatment in support of his contentions. The Appellate Authority after taking into consideration the First Party Corporation's records observed that he has no reason to disbelieve the contentions put-forth by the Second Party with regard to his contention that his children are physically challenged. The Appellate Authority has further observed the said fact does not ipso facto confer any right to defy the First Party Corporation's Rules / Regulations and proceed on leave without prior intimation to / information to / approval of his supervisor. The Appellate Authority agreed to the report of enquiry and conclusions of the Disciplinary Authority and dismissed the appeal of the Second Party.

14) It is seen that the charge-sheet involved in the present matter was issued on 23.12.2010. The Enquiry Officer submitted his report of enquiry on 30.06.2011. It is seen that copy of Enquiry Officer's report was served on the Second Party vide notice dated 21.07.2011 and his comments were sought. It is seen that thereafter the Disciplinary Authority passed the order of discharge on 15.06.2012. It is seen that the Disciplinary Authority took about a period of one year to take decision on the report of enquiry. It is seen that the Disciplinary Authority as recorded herein above, has considered the past record of the Second Party. Admittedly, the Second Party was punished two times for the misconduct of unauthorized absenteeism and was given an opportunity to improve his habit of remaining absent unauthorizedly. It is seen that though the Disciplinary Authority took a year to take decision on the enquiry report, it is pertinent to note that the Disciplinary Authority has observed that the Second Party again remained absent for 19 days during the period from December-2010 to February-2012, apart from availing 74 days various types of leave to his credit during the said period. It is seen that though the Second Party has submitted that he was not absent after issuance of charge-sheet; however, he has not denied the aforesaid absence of 19 days and leave on 74 days during December-2010 to February-2012. Thus, it is seen that there was no improvement in the habit of remaining absent unauthorizedly. No doubt, it is not in dispute that children of the Second Party are having hearing syndrome to a great extent; it is seen that the date of birth of daughter of the Second Party is 24.06.1993 (Exhibit U-6/2) and date of birth of son of the Second Party is 25.12.1996 (Exhibit U-6/5). It is seen that though the Second Party recorded that his mother was not well and children are having hearing syndrome, he did not care to get his leave approved on that count at the relevant point of time. Therefore, considering the past record of the Second Party and non-improvement in his habit of remaining absent unauthorizedly, the punishment of discharge imposed on the Second Party is not shockingly disproportionate. Further, no mala-fides, bias, victimization and / or unfair labour practice have been recorded against the First Party by the Second Party in respect of the said punishment and / or departmental action. Therefore, the punishment of discharge imposed on the Second Party is not shockingly disproportionate. Accordingly, my finding against issue No. 3 is in the'negative'.

15) <u>Reasons in respect of issue No. 4 :-</u>

As recorded herein above, the punishment of discharge is not shockingly disproportionate. The Second Party has submitted for compensation by submitting that he is not interested in reinstatement. However, as recorded herein above, the punishment being not shockingly disproportionate and / or by way of bias, mala-fides, victimization, unfair labour practice, the Second Party is not entitled to any of the reliefs

claimed. Accordingly, issue No. 4 stands answered in the "negative". Hence, In terms of issue No. 5, I answer this reference as under:-

-: AWARD :-

(a) The action of the management of Dy. General Manager, LPG Western Zone, Hindustan Petroleum Corporation Ltd., Mumbai, in terminating the services of the workman - Sh. Vasant Ganpati Dabhade, LPG Operator, w.e.f. 15.06.2012 is justified and legal.

(b) The Second Party is not entitled to any of the reliefs.

(c) True copies of Award be forwarded to the appropriate authority for further course of action.

S. D.BAUCHKAR, Presiding Officer

Sangli

Date: 23.12.2019

नई दिल्ली, 19 फरवरी, 2020

का.आ. 289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कारपोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 118/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.02.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 118/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Limited and other, and their workman, which was received by the Central Government on 14.02.2020.

[No. Z-16025/4/2020-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

I.D. No. 118/2015
Dtd: 23.01.2020

BETWEEN :

Sri S. Sathiamoorthy
S/o Srirangan : 1st Party/Petitioner

AND

1. The Management
Bharat Petroleum Corporation Ltd.
Athur & Kadapparai Village, Athur Post
Karur-639002 : 2nd Party/1st Respondent

2. The Authorized Signatory
Nandini Service Station (BPCL Dealers)
529/1A, T.V.S. Road, Kothagondapally
Hosur-635109 : 2nd Party/2nd Respondent

Appearance:

For the First Party/Petitioner	:	Advocate, Sri T. Vincent
For the Second Party/1st Respondent	:	M/s. T.S. Gopalan & Co.
For the Second Party/2nd Respondent	:	M/s. R. Sundara Kamesh Marthandan

AWARD

This is an Application under 2A(2) of the Industrial Disputes Act.

2. The Applicant's case in brief is that he joined on 02.05.2010 as a Driver of a Tanker Lorry bearing no. TN 70 A-6052 belonging to the Second Respondent, a Contractor under the First Respondent. He was continuously rendering his service as a Driver without any blemish, While the matter stood thus he was refused to work on 27.10.2012 by the Manager of second Respondent on the ground of misconduct. Liabilities was fixed on him for shortage of 10 litres of Petrol and 6 litres of Diesel from the respective single tank of Petrol and three tanks of Diesel loaded in the Lorry. It is further briefed by the petitioner that even he was refused employment on 27.10.2012 by the Manager of the Second Respondent, he dared to approach him once again on dtd. 10.11.2012 and requested for allotment of the job which was refused. The petitioner approached the owner of the Vehicle on several occasions to revive his job, but it was in vain. He approached the Union Leader who put forth the grievance of the petitioner before the Second Respondent and requested to provide employment and to pay the salary. On such request the Manager of the Second Respondent paid only Rs. 5,000/- to the petitioner towards salary arrears but did not provide any employment to him. Whereas the petitioner was entitled for a salary arrears of Rs. 12,500/- and allowances for 36 trips for three months. The matter was never settled before the Respondent which occasioned the petitioner to approach the Asstt. Labour Commissioner, Puducherry. Due to default and non-cooperation of the Respondents the dispute could not be resolved before the ALC. Thus the instant application under 2A was filed before this Tribunal by the Applicant seeking his reinstatement and backwages with consequential benefits.

3. Both the Respondents entered appearance and filed their respective Counter Statement denying almost all the averments. The First Respondent is a Government of India Undertaking engaged in the marketing and distributing Petroleum Products. It has several installation locations throughout the country including Karur in Tamil Nadu where the petroleum products are stored in stationary tanks and delivered to retail outlets. The Second Respondent has got a retail outlet at Hosur, Tamil Nadu. For the purpose of transportation of the petroleum products from the installation location of the First Respondent to its retail outlet the Second Respondent uses Tanker Lorry bearing no. TN 70A-6052. The First Respondent pleads that the Second Respondent was never a Contractor under it nor there exists any relationship with the Second Respondent. The Driver employed by the Second Respondent can never come within the purview of Employer-Employee relationship with the First Respondent. The First Respondent is not even aware of the engagement or disengagement of the Applicant by the Second Respondent, if any at any point of time as it is none of its business.

4. The Second Respondent through its Authorized Signatory files Counter Statement denying the averments of the Claim Petition with regard to the allegations of refusal of employment made by the Manager of the Second Respondent. But it is a categorical pleading of the Second Respondent that the petitioner was never refused employment but he himself voluntarily stopped to report for work since 27.10.2012 and tendered the letter of resignation on 28.11.2012. The Second Respondent further denies the claim of the petitioner towards the arrear salary of Rs. 12,500/- and also denied the further claim of 36 trips conducted by the petitioner within a period of three months. Its specific pleading is that it does not owe any money to the petitioner. The entitlements/dues of the petitioner was settled by disbursing cash of Rs. 10,000/- to him with due acknowledgement. It is further pleaded that the petitioner had received the settlement amount in full satisfaction so far his claim is concerned against the Second Respondent. It is also pleaded that after tendering resignation, the petitioner has been gainfully employed, thus, the petitioner is not entitled to any relief as sought for.

5. The petitioner submitted his rejoinder emphasizing that there exists the employer-employee relationship in between him and the First Respondent. He denies the pleas averred in the Counter Statement of the Second Respondent regarding the settlement and disbursement of Rs. 10,000/- in his favour by Second Respondent. It is also denied to have tendered any resignation on 28.11.2012 voluntarily, but was forced to tender the resignation letter. He was impressed upon that unless he tenders the resignation letter his entitlements / dues cannot be settled in his favour. The petitioner in his rejoinder further claims that all the documents are fabricated and manufactured by the Second Respondent for the purpose of the case.

The following issues emerged in the pleadings of both the the parties.

(i) If the action of the Second Respondent in terminating the Applicant from his job on dtd. 27.12..2012 is not legal and justified?

(ii) If so, to what relief the petitioner is entitled?

Issues No. (i) & (ii)

6. Since both the issues are interlinked inter-alia, taken up together for a common discussion. Admittedly, both the Respondents entered appearance by filing their respective Counters, the Appellant filed his rejoinder. It reveals from the documents on records including the order sheets that since the date of registration of the case i.e. on 02.09.2015, there was no substantial progress due to non-cooperation of the parties. The petitioner himself withheld to adduce his Evidence in Chief despite of sufficient opportunities though afforded by the Tribunal Since the petitioner did not turn up, the First Respondent was directed to adduce evidence. Accordingly, the First Respondent adduced evidence through one of its witness Sri J. John Bosco, the Chief Manager, ER (HRS) IC. Even then the petitioner did not turn up to cross-examine this witness. The First Respondent declines to adduce any more evidence and closes its case. The Second Respondent found to have remained absent on all the listed dates. However, for the interest of justice, the Second Respondent since enterd appearance and filed its counter statement was directed to adduce evidence if any. But no evidence is adduced on behalf of the Second Respondent. Accordingly the case was closed and listed for argument.

7. At the outset it would not be out of place to mention that since the petitioner himself withheld to appear in the dock for his examination, none of the documents could be marked Exhibit. But for the better appreciation and for a fair adjudication of the instant dispute, all the documents on record along with the Claim Statement and the Counter Statement filed by the both Respondents alongwith the Evidence-in-Chief adduced by First Respondent are taken into account .Since the petitioner's claim of refusal of employment / termination from job by the Manager of the Second Respondent has not been substantiated by any oral or documentary evidence, such plea cannot sustain in favour of the petitioner. It is worthwhile to mention that despite of repeated adjournments enabling the Petitioner to avail the opportunities, the petitioner did not turn up to substantiate the averments averred in the Claim Statement. Not a single scrap of document has been filed on his behalf to convince that he was terminated by the Manager of the Second Respondent. On the other hand, the Second Respondent categorically mentioned in its Counter Statement that the petitioner voluntarily stopped reporting for work since 27.10.2012. Besides, the Counter Statement also reflects that the petitioner has tendered a letter of resignation on 28.11.2012. The photocopy of such letter of resignation has been filed by the Second Respondent. The Second Respondent produced a number of documents alongwith the Counter Statement. But those documents were not marked exhibited as the Second Respondent preferred not to examine any witness on its behalf. However, on a bare perusal of the documents filed by the Second Respondent, it reveals that the petitioner tendered his resignation and also received some entitlements (Rs. 10,000/-) towards the final settlement. Even if the petitioner denies the fact of receipt and settlement in his rejoinder, he himself fails to establish his stand by withholding himself from the dock for his examination in chief and cross-examination. Thus, the plea of the Second Respondent cannot be discarded in toto.

8. The First Respondent in support of its Counter Statement adduces evidence through none else the Chief Manager, ER (HRS South), Sri J. John Bosco. It reveals from his evidence that he was well acquainted with the facts of the case. He categorically states in Chief that the First Respondent is a Government of India Undertaking establishment engaged in manufacture and distribution of petroleum products having installation unit at Karur in Tamil Nadu. The Second Respondent having a retail unit at Hosur, was responsible to collect the petroleum products from the installation unit through its Tanker No. TN 70A 6052. As such, the First Respondent is in no way responsible for the employment / termination of the Petitioner-Driver if any made by the Second Respondent. The Second Respondent was never a Contractor under it. On the other hand the First Respondent has got a "Principal to Principal" with Second Respondent so far the business is concerned. It maintain the relationship only run the business of sale of petroleum products and to carry the products to the notified Dealers. It is not a case of Contractor deploying his employees to the Establishment of Principal Employer to work in connection with the work of the Establishment. The witness also in support of the Counter Statement adduces that the First Respondent is not a proper and necessary party to the dispute.

9. As such, in view of the discussion held in preceding paragraphs, it is found that the petitioner failed to establish his claim in any manner against both the Respondents. The Tribunal is not in a position to adjudicate the issues settled On the other hand, in absence of cogent and reliable material evidence the Tribunal is not in position to adjudicate the issues as settled earlier. The non-appearance and non-participation of the petitioner is held to be a deliberate avoidance of the proceedings initiated by the petitioner himself.

The issues are answered against the petitioner.

In the result the petitioner is not entitled to any relief as sought for

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 23rd January, 2020)

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/1st & 2nd Management : None

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
	Nil	

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 19 फरवरी, 2020

का.आ. 290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स राउरकेला स्टील प्लांट, सेल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 64/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.02.2020 को प्राप्त हुआ था।

[सं. एल-26011/26/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 290.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 64/2016) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Rourkela Steel Plant, SAIL, and their workman, which was received by the Central Government on 14.02.2020.

[No. L-26011/26/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 64 OF 2016

Dated Bhubaneswar, the 22nd January, 2020

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

The C.E.O,
M/s. Rourkela Steel Plant, SAIL,
Rourkela, Dist. Sundargarh (Odisha) – 769 011. …First party management

AND

The President,
Ispat Labour Union, Qr. No. A/158,
Sector – 13, Rourkela – 769 009. …Second party Union

Appearances:

Sri P.K. Sahoo. : For first party management

Sri N.K.Jena. : Second party workman himself

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-26011/26/2016 (IR(M)) in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (here in after referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the alleged deduction in leave encashment equal to 174 days HPL from the arrears payment made to Shri Nirod Kumar Jena as per office order No. PER/PP/HPL/14/2 dated 24.4.2014, by the management of SAIL, Rourkela Steel Plant is legal and justified ? If not, what relief he is entitled to ?"

2. Being noticed a statement of claim is filed by the individual workman wherein it has been pleaded that the concerned workman joined in the establishment of the first party management on 17.10.1973 and he was superannuated on 31.8.2013. According to him, he was earned leave of 234 days and half pay leave of 484 days to his credit on the date of superannuation. As per the prevailing service condition he was entitled to reimburse the Earned Leave for 234 days and Half Pay Leave of 240 days at the time of superannuation as a result of which he was paid Rs.19,41,428.64 P on 19.11.2013 towards his gross retiral entitlement But, the management again made a revised calculation of his final settlement of retiral benefit on 26.11.2014 and directed a recovery of an amount of Rs.1,43,107/- by granting reimbursement of E.L. and H.P.L. for a total period of 300 days leave. It is his claim that revised calculation and order of recovery being made one year after the payment of the benefits is illegal and it is not sustainable in the eye of law. The Office Order issued by the Corporate office dated 18.12.2013 of SAIL that leave encashment at the time of retirement will be restricted to 300 days (both E.L. and H.P.L. taken together) cannot be applicable to him as he was superannuated before the order came into force and his retiral benefits including encashment of E.L. and H.P.L. were already settled when the above circular/order was issued. Having aggrieved by the said revised calculation of retiral benefits and the recovery order, he made a representation to the C.E.O. on 22.12.2014. But, his grievance petition was not addressed by the management. Hence, he moved the labour machinery through the second party union to raise an industrial dispute. The conciliation proceeding before the labour machinery having been failed, the reference is made for adjudication of the dispute..

3. The management of Rourkela Steel Plant has resisted the statement of claim taking a stand that the dispute being related to an individual employee cannot be an 'industrial dispute' as defined under the Act and as such, the reference is not maintainable. Besides, it is the case of the management that the leave rules of Public Sector Undertaking like, SAIL is framed by the Ministry of Heavy Industries and Public Enterprises. Department of Public Enterprises (D.P.E.), the Government of India is the competent authority to frame policy and guide lines in regard to leave rules after its approval by the Board of Directors. After finalization of the leave rules by the D.P.E., the Corporate office of SAIL, New Delhi issued an order No.PER/PP/HPL/13/1 dated 18.12.2013 stating that leave encashment at the time of superannuation will be restricted to 300 days (both E.L. and H.P.L. taken together) and the said office order was to be effective from 29.7.2013. Taking into consideration the said order, it was intimated to all concerned of the Heads of Personnel and Finance of Plants/Units of SAIL that necessary adjustment shall be made from the payment which are due from the Company to the employees, who had superannuated in between 29.7.2013 to 28.12.2013, in case payment of leave encashment at the time of retirement has been made to them beyond 300 days. According to the management, since the disputant workman was granted reimbursement for 234 days E.L. and 240 days H.P.L., a revised calculation was made and order of recovery for an amount of Rs.1,43,107/- was passed since leave encashment on both the count of E.L. and H.P.L. was granted for more than 300 days in total. Therefore, there is no illegality or irregularity in the order of recovery, as the concerned workman was paid excess amount than to his entitlement. Hence the management has prayed for rejection of the statement of claim.

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

i) Whether the reference is maintainable ?

ii) Whether the action of the management in deducting the leave encashment equal to 174 days H.P.L., from the arrear payments made to the disputant workman is legal and justified ?

iii) If not, what relief the workman is entitled to ?

5. To substantiate their respective cases, both the parties have adduced oral as well as documentary evidence. The concerned workman, Shri Nirodh Kumar Jena has been examined as W.W.1 where as, the management has examined it's Deputy General Manager(PL) IR & R of Rourkela Steel Plant as M.W.1 and filed the copy of the office Orders dated 18.12.2013 and 24.4.2014, Copy of settlement of accounts in favour of the workman issued on date 19.11.2013 and 26.11.2014 which are marked as Exts. A to D. The workman has relied upon the documents like copy of superannuation Order dated 30.5.2013, copy of statement of final settlement dated 19.11.2013, copy of the memorandum of agreement dated 1.7.2014, copy of revised final settlement dated 26.11.2014, copy of the appeal to the C.E.O., R.S.P.. copy of the written statement of the management submitted before the R.L.C(C), Rourkela, copy of the office orders dated 18.12.2013 and 24.4.2014 and copy of reference No. Accts/E.S-F.S/1925 dated 1.8.2014 marked as Exts. 1 to 9 in support of his claim.

FINDING

6. Since the maintainability of the reference is challenged by the management, the same needs to be answered first. It is the stand of the management that the dispute in the present case being prima facie an individual dispute cannot be an 'industrial dispute'. In the case at hand, the statement of claim is not filed by the Union or group of employees. The grievance of the concerned workman is not espoused through any union before this Tribunal. Relying upon a decision between the Bombay Union of Journalists & ors. Vs. The 'Hindu', Bombay and anr. reported in AIR 1963 SC 318, it is argued on behalf of the management that the dispute in the reference being an individual dispute cannot be referred and as such, the reference should be held not maintainable in the eye of law. If the term and schedule of reference is taken into consideration, only it can be prima facie said that the dispute sent for adjudication relates to an individual workman. But, it cannot be over looked that as per the reference Order made by the Government of India, the dispute was raised by the President, Ispat Labour Union, Rourkela. The concerned workman, Sri Jena may be a victim the office Order of the recovery but, the dispute seems to have been espoused before the labour machinery through the Union as emerges from the reference Order. Admittedly, the union has not filed the statement of claim in this case and the statement of claim is filed under the signature of the concerned workman. When the union had originally espoused the dispute, mere filing of statement of claim by the concerned workman cannot make the dispute individual one. The recovery was made on a decision of a circular of the management applicable to its employees more particularly ex-employees who were superannuated after 29.7.2013. In the case cited by the management the dispute was raised by the individual workman before the labour machinery and the union came to the picture supporting the cause of the individual workman when the management appeared before the Tribunal and challenged the maintainability of the reference. Hence, the citation relied upon by the management does not seem to be applicable in the case at hand. The original dispute being raised by the Union and the same being related to the service condition of the employee of the management with regard to his entitlement at the time of superannuation, it can be safely termed as an 'industrial dispute' as defined in the Act. Thus, the issue of maintainability of the reference is answered in favour of the workman.

7. Coming to the issue of recovery order, it is the pleading and evidence of the second party workman that he was granted and he availed reimbursement for 234 days E.L. and 240 days H.P.L. as his retiral benefits.

Except calculation and sanction order in regard to retiral benefit, no document or circular of the management relating to entitlement of an employee towards E.L. encashment or H.P.L. encashment prevailing at the time of superannuation of the workman is filed . Though a copy of the memorandum of agreement dated 1st July, 2014 is filed and marked as Ext.3 on behalf of the workman, the same is found totally silent as to the period of E.L. or H.P.L. that can be encashed/reimbursed at the time of superannuation. On the other hand, Ext.7 on the basis of which recovery seems to have been made reveals that SAIL issued an office Order that pending final decision on the issue of leave encashment at the time of retirement will be restricted to 300 days (both E.L. and H.P.L. taken together) as per D.P.E. letter No.2(14)/2012-DPE (WC) dated 17.7.2012. Thus, it shall be presumed that office order was already issued on 17.7.2012 restricting leave encashment for a total period of 300 days. The order dated 18.12.20.13 was issued subsequent to the suprannuation of the workman as a repetition of the decision dated 17.7.2012 by virtue of which leave encashment was restricted to 300 days on both count. When there was a direction from the appropriate authority that leave encashment at the time of retirement will be restrictged to 300 days before the date of superannuation of the workman, he was not entitled

to encashment of HPL for 240 days after encashment of El for 234 days. Therefore, it can be safely held that he was sanctioned or granted excess amount than to his entitlement towards EL and HPL. The order of recovery and revised settlement was issued only on the basis of the circular under Ext.B. There is no evidence or document in support of the claim put forth by the workman that excess payment towards riteral benefit, if any, is unrecoverable beyond one year after its settlement and disbursed. If the evidence of the parties in regard to Ext.7 or Ext.A read with Ext.B is taken into consideration, no illegality seems to have been committed by revising riteral settlement of the workman. Hence no illegality seems to have been made by issuing the revised settlement order i.e. office Order No. PER/PP/HPL/14/2 dated 24.4.2014. Accordingly this issue goes in favour of the management.

8. For the reasons and discussion made above, it is to be held that the statement of claim preferred by the workman has no merit for consideration and the same stands rejected.

Accordingly, the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का.आ. 291.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिंदुस्तान स्टीलवर्क्स कंस्ट्रक्शन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 79/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.02.2020 को प्राप्त हुआ था।

[सं. एल-29011/13/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 291.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Steelworks Construction Limited and other, and their workman, which was received by the Central Government on 14.02.2020.

[No. L-29011/13/2012-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 79 OF 2012

Dated Bhubaneswar, the 15th January, 2020

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

1. The General Manager,
Hindustan Steelworks Construction Ltd.,
At/Po Rourkela-11, Rourkela Steel Plant Premises,
Rourkela, Dist. Sundargarh.

2. M/s. Senapati Enterprises,
C/o. Subash Chandra Senapati,
At/Po Daily market, Rourkela, Dist. Sundargarh. …First party managements

AND

The General Secretary,
Ispat Labour Union, Qr. No. A-158,
Sector – 13, Rourkela, Dist. Sundargarh. …Second party Union

Appearances:

None. : For first party management No.1.

Shri K. Ray, Advocate : For first party management No .2

Shri N. K. Mohanaty : For second party Union/workmen.

AWARD

The Government of India, Ministry of Labour & Employment have referred the industrial dispute for adjudication vide its Order No. L-29011/13/2012 (IR(M)) dated 27.7.2012 for its adjudication in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (herein after referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the demand of the union from the management of Hindustan Steelworks Construction Limited, a contractor of Rourkela Steel Plant for regularization of the services of S/Shri Jayanarayan Karua, Abhimanyu Mohanty, Alekh Prasad Jena, Ram Singh and Sitaram Soren in the permanent role of the management by declaring the refusal of employment/retrenchment of these workmen as illegal and the demand for payment of wages and other service benefits to them with retrospective effect, is legal and justified ? What relief the workmen are entitled to ?"

2. Briefly stated the case of the second party union is that the disputant workmen 5 in numbers and named in the reference were under engagement of the first party management No.1 from the year 1975 through different contractor agencies including the management No.2 through whom they were last engaged. They worked under the direct supervision and control of the management No.1 till 3.4.2000 when they were informed about the foreclosure of the contract between the management No.1 and the contractor management No.2.and thereafter they were disengaged by the management No.1 without compliance of statutory provisions of Section 25-F and 25-G of the Act. It is the claim of the second party that the management No.1 was maintaining attendance register of the disputant workman, sanctioning their leave and allotting them works to be discharged by them. Their salary was paid by the said management. The contractor agencies including the management No.2 were their employers in the namesake only. They were entitled to commission on the bill of wages of the workmen. Though, different contractors were given contract to supply labourers to the management No.1 on different periods, the same set of labourers i.e., the disputant workmen were engaged to carry out the job contract. The management No.2 entered into a contract with the management No.1 for supply of contract labourers in 1995 and accordingly the disputant workmen were employed in the management No.2 as contract labourers when they were disengaged on 3.4.2000. In the year 1992 the disputant workmen filed a writ before the Hon'ble High Court for regularization of their services by the management No.1. Keeping in view of their long and continuous engagement in the office of the management No.1. The said writ was disposed of with a direction for regularization of their services by their employer. In spite of such an order when there was an attempt to discontinue their services, they preferred another writ vide O.J.C. No.13571/1997 for their permanent absorption by the management No.1 and for payment of equal wages at par with the regular employees working in the similar capacity in the management No.1. Being noticed in the said writ, the management No.1 took a vindictive stand and foreclosed the contract executed with the management No.2 with effect from 1.1.2000. Thereafter the management No.1 discontinued the engagement of the disputant workmen with effect from 3.4.2000. Hence, a dispute was raised before the labour machinery resulting in the reference as mentioned earlier since the attempt of conciliation between the parties were failed before the labour machinery. It is the claim of the union/disputant workmen that since their disengagement or retrenchment was illegal due to non-compliance of statutory requirement as provided under section 25-F of the Act, they shall be reinstated with full back wages and all service benefits. Further, they shall be regularized in their service.

3. Being noticed, the management No.1 , H.S.C.L. and the management No.2 contractor agency filed their separate written statements. The management No.2 contractor has partially supported the pleadings of the union in its written statement and pleaded interalia that being labour supply contractor, he was engaged by the management No.1 to supply workers on commission basis for discharging miscellaneous duties like, cleaning and sweeping the office premises of the management No.1 and for serving drinking water and maintenance of the office. There were 14 numbers of contract labourers in the management No.1. The management No.1 floated a Voluntary Retirement Scheme in which 7 labourers obtained for V.R.S. One of the labourers dies and rest 6 labourers including the disputant workmen continued in their job till 3.4.2000 when his contract was closed. It is

his stand that the wages and other statutory payments of the disputant workmen were borne by the management No.1 and he was only getting commission on the bill of their wages. The disputant workmen were working in the management No.1 prior to the contract job was given to him in 1994. The workmen were under the direct control and supervision of the management No.1. He was no way connected with the employment and disengagement of the disputant workmen except executing a contract with the management No.1 for supply of contract labourers on commission basis.

The management No.1 filed its written statement refuting all allegations raised by the second party workmen and pleaded interalia that the disputant workmen were never employed by it either directly or indirectly. Job contract was given to the different contractors from time to time to carry out the work of cleaning and sweeping, supply of drinking water and maintenance of its office premises. The disputant workmen being labourers of different contractors were doing the above jobs. Their wages and statutory dues were borne by the contractor and the contractor was paid by it for the above job contract. There was no employer and employee relationship between it and the disputants. According to the management No.1, the disputants have approached the Hon'ble High Court in a writ application vide W.P.(C) No. 3537/1989 for regularization of their services in the management No.1 as well as for equal pay to that being made available to the employees of the same category by the management No.1 In the said writ, the Hon'ble High Court gave a finding that the workmen being engaged by opposite party No.3 (the present management No.2) were required to be given protection for continuance of their service and ordered that the services of the workmen were regularized till opposite party No.3 does it's work in Odisha. Therefore, the Tribunal has no jurisdiction to give another direction for regularization of the services of the disputant workmen by the management No.1.There being no relationship of employer and employee between it and the disputant workmen and finding in this regard having been determined by the hon'ble High Court in the afore-mentioned writ, the disputant workmen have no claim. The further stand of the management No.1 is that it was carrying out different construction work in the Rourkela Steel Plant on being issued with such work order. Since the work order issued in favour of it was completed, no further job contract was given to the contractor management No.2. The contract with the said management was closed on 1.1.2000. The said contractor or previous contractors were not given any contract for supplying labourers. As such, question does not arise for dis-engaging the disputant workmen without compliance of statutory requirements. Hence it was prayed by the management No.1 in the written statement for rejection of the statement of claim. It is pertinent to mention here that after filing the written statement, the management No.1 did not participate in the hearing of the proceeding for which, it is set ex-parte.

3. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

i) Whether the reference is maintainable ?

ii) Whether the reference sought for is covered by the orders of the Hon'ble High Court in O.J.C. No.3537/1989 as well as by order dated 9.7.2008 in O.J.C. No. 13571/1997 read with W.P (C) No.9584/2004 ?

iii) Whether all the workmen are engaged by the contractor M/s.Senapati Enterprises as decided by the Hon'ble High Court ?

iv) Whether the demand of the Union from the management of Hindustan Steelworks Construction Limited, a contract or Rourkela Steel Plant for regularization of the services of S/Shri Jayanarayan Karua, Abhimanyu Mohanty, Alekh Prasad Jena, Ram Singh and Sitaram Soren in the permanent role of the management by declaring the refusal of employment/retrenchment of these workmen as illegal and the demand for payment of wages and other service benefits to them with retrospective effect, is legal and justified ?

v) IF not, to what relief the workmen is entitled ?

5. The disputant workmen have examined one of them as W.W.1 and filed copy of the joint findings of date of joining of P.R.W. engaged by M/s. Senapati Enterprise, copy of payment slips, copy of the letter dated 15.9.1999 of H.S.C.L. in respect of job contract, copy of the letter dated 14.12.1993 of H.S.C.L.. copy of the salary sheet, copy of the order of Hon'ble High Court in O.J.C. No.3537/1989 dated 14.12.1992, copy of the order of the Hon'ble High Court datged 25.9.1997, copy of the letter of H.S.C.L. dated 3.4.2000, copy of the letter of M/s. Senapati Enterprise to H.S.C.L., copy of the order of the Hon'ble High Court dated 10.5.2001 passed in O.C.R.M.C – 102/2001 and copies of attendance of supply labour marked as Ext.1 to Ext.11 in support of their claim whereas, the management No.2 contractor has examined himself as M.W.1 and relied upon the documents like, copies of attendance statements of R.S.singh & others and copy of confidential

note-sheet dated 16.2.1994 showing supply of workers marked as Ext. A and Ext. B in support of its written statement.

FINDING

6. All the issues are taken up simultaneously for consideration since they are interlinked to each other.

The second party workmen/disputants have claimed that they were the employees of the management No.1 for all purposes even though they were shown contract labourers being engaged by the management No.2. Keeping in view the above pleading of the disputant workmen, o nus lies on the disputants to establish they were employees of the management No.1 in real sense. Except oral claim of W.W.1, there is no other credible documentary evidence to support the above claim. On the other hand, the close scrutiny of the copies of the documents filed and exhibited by the disputants go to show that the management No.2 contractor was given a job contract for maintenance of office of the management No.1 and as per the terms and conditions of agreement for such job contract, the management No.2 was required to bear the wages and other statutory benefits of the labourers engaged for the job contract. The copies of attendance sheets filed by the second party reveals that the attendance sheet is in the name of contractor, management No.2. The disputant workmen have not filed any scrap of paper or document to show that they were ever paid directly by the management No.1 for their alleged employment in its office. Ext. 6, the copy of the order of the Hon'ble High Court of Odisha dated 14.12.1992 passed in O.J.C. No.3537/1989 reveals that the disputants and some others preferred the writ seeking the relief of regularization of their services as well as pay equal to that being made available to the employees of the same category by H.S.C.L. (opposite party No.1) and in the said writ the management No.2 was the opposite party No.3. Though the relief was sought for against the present management No.1 for regularization of service and equal pay, the Hon'ble Court have observed in the said writ that the opposite party No.3 does not have work for its throughout the year or regularly for years together. Accordingly, it was ordered in the said writ to the effect that till opposite party No.3 does its work in Odisha, the writ petitioners would be kept in service in Odisha as regular employee. So far the equal pay was concerned, the opposite party No.3 (management No.2) was directed to pay its employees wages equal to that paid by H.S.C.L. Admittedly, such finding/observation or order of the Hon'ble High Court towards employment status of the disputants was neither challenged nor reviewed in any forum. Be that as it may, it cannot be accepted at this stage that they were employed or engaged by the management No.1 and they were paid wages by it. It cannot be over sighted that the management No.1 is a public sector Company and it must be having its own recruitment rules for appointment of its employees and the disputant workmen having failed to discharge their onus of showing their relationship with the management No.1, cannot be held that they were employees of the management No.1. There being no relationship of employer and employee between the management No. 1 and the disputant workmen, question does not arise for the management No.1 for disengaging or retrenching the disputants workmen as pleaded in the statement of claim.

7. When there is no evidence or materials to show that the disputant workmen were ever engaged by the management No.1 and they were paid wages by it for doing works of the said management, any retrenchment by the contractor, management No.2 without compliance of requirement of Section 25-F of the Act cannot help them to hold management No,1 liable for such illegal retrenchment. Similarly, when the disputant workmen were not the employees of the management No.1, question does not rise for it to regularize their services. Thus, the statement of claim preferred by the workmen seeking relief from the management No.1, H.S.C.L. have no merit for consideration and the same stands rejected.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का.आ. 292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स माला रॉय एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 52/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.02.2020 को प्राप्त हुआ था।

[सं. एल-29012/20/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mala Roy and other, and their workman, which was received by the Central Government on 14.02.2020.

[No. L-29012/20/2011-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 52 OF 2012

Dated Bhubaneswar, the 17th January, 2020

Present : Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar.

Between:
The General Manager,
M/s. Mala Roy & Others,
Jalahuri Iron & Mn. Mines,
At/PO – Khandbandh, Distt – Keonjhar (Odisha). …First party management

AND

Shri Ghasiram Lohar,
At – Kunda Poshi, PO – Raruan Goda,
Via – Karanjia, Distt – Keonjhar (Odisha). …Second party workman

Appearances:

NONE : For first party management

Shri K.N. Nanda. : For second party workman

AWARD

The Government of India, Ministry of Labour & employment have referred the industrial dispute for adjudication vide its Order No.L-29012/20/2011 (IR(M)) dated 1.5.2012 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (here in after referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the action of the management of M/s Mala Roy & others, Lessee, Jajahuri Iron & Mn.Mines, in terminating the services of Shri Ghasiram Lohar, without giving proper opportunity, is legal and justified ? What relief the workman is entitled ?"

2. The case of the second party workman as emerging from his statement of claim is that the first party management being an industrial establishment is in business of extraction of iron ore and the second party workman was working as a Clerk and posted at Jalahari Mines of the first party management when he was allegedly dismissed from service by the first party management. According to the workman, he joined in the management on 1.11.2005 as a Clerk and he was discharging his duty with all sincerily and diligently. On being informed over phone about sudden illness of his wife, he rushed to his village and remained absent from his duty till 26.11.2008 when he was dismissed from service by the first party management. It is his claim that he was working continuously and uninterruptedly from 1.11.2005 to 26.11.2008 and he was dismissed from service without compliance of provisions of Section 25-F of the Act and without initiation of a departmental proceeding for his alleged absence from duty. It is his plea that he sent intimation by post from his village assigning the reason of his absence from duty. The order of his dismissal without compliance of the requirement of Section 25-F of the Act is illegal and not sustainable in the eye of law. Hence he raised a dispute before the labour machinery as a result of which the present reference is made for adjudication of the dispute after conciliation effort being failed.

3. Being noticed the management filed its written statement refuting the allegations of the second party workman. It is it's stand that the second party workman was appointed with effect from 1.12.2008. After working for 18 days, he did not report to his duty and remained absent for two months. So the management was compelled to issue a show cause on 19.2.2009 for his unauthorized absence and asked him to report to duty immediately. Despite of such show cause, he did not join his duty. There was no termination of service of the workman by the management and as such the workman is not entitled to any relief as claimed by him. The management did not participate in the proceeding of the reference after filing its written statement for which it was set ex-parte.

4. On the aforesaid pleadings of the parties, the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

i) Whether the reference is maintainable ?

ii) Whether the action of the management of M/s.Mala Roy & others, Lessee, Jalahuri Iron & Mn. Mines in terminating the services of Shri Ghasiram Loha, without giving proper opportunity, is legal and justified ?

iii) What relief the workman is entitled to ?

5. On the aforesaid pleadings of the parties, the question for determination is whether the workman was in continuous service in the first party management from November, 2005 till his service was terminated with effect from 26.11.2008 and his termination was illegal and to what relief he is entitled.

In support of his claim, the workman has filed his sworn affidavit evidence and also examined himself to prove the documents relating to show cause notice issued by the first party management, training certificate and some other connecting papers which are marked as Exr.1 to Ext.4.

6. The affidavit evidence of the workman is nothing else than the repetition of his pleading in the statement of claim. Admittedly no document relating to the appointment of the workman or payment of wages is filed to establish that he joined in the first party management on November, 2005. But, Ext.1, which is a certificate issued in favour of the workman by Mine Training Centre, Barbil reveals that being authorized by the first party management he attended the training centre. Ext.2 which is a copy of correspondence made by the workman to the management reveals that the workman claimed in his reply to the management that he joined on 1.11.2005 and he was absent from duty from December,2008 to February, 2009 due to illness of his family members. Ext.2 is an unilaterial document being a letter of the second party workman himself. Mere perusal of the contents of the letter indicates that the workman failed to report his duty from 26.11.2008 onwards till he was issued with a charge sheet in the month of March,2009. The said letter of the workman is self explanatory as to his absence from duty. There is nothing in his correspondence in Exts.2 and 3 that he made any attempt to report in his duty after remaining absent from 26.11.2008 onwards. Neither there is any pleading in his statement of claim nor it has been asserted in his affidavit evidence that he had ever approached the management to allow him to join in his duty after remaining absent for a long period. Mere reading of the documents (Ext.2 and Ext.3) leads to an inference that the workman left his duty without prior information and he did not report to duty till he was issued with a show cause in February,2009. There is no document placed on behalf of the workman to suggest that there was refusal of employment to him. On the other hand, the papers/documents filed by the workman suggest that the management issued show cause to the workman for his unauthorized absence and instructed him to report duty immediately. The reference as well as the evidence and pleading of the workman is silent in regard to the date on which he was not allowed to work in the first party management. This being the pleading and evidence of the second party workman, I am constrained to hold that the workman was never refused employment or disengaged/retrenched by the first party management. In that view of the matter, the second party workman is not entitled to any relief as claimed in his statement of claim.

Accordingly reference is answered and Award is passed.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का.आ. 293.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड (सेल) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 22/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.02.2020 को प्राप्त हुआ था।

[सं. एल-26011/10/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2015) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Steel Authority of India Limited (SAIL), and their workman, which was received by the Central Government on 14.02.2020.

[No. L-26011/10/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 22 OF 2015

Dated Bhubaneswar, the 23rd December, 2019

Present: Shri B. C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

The Regional General Manager,
(BSO) SAIL, Plot No. 27/1, Bidyut Marg,
Sastri Nagar, Bhubaneswar (Odisha)-1. …First party management

AND

The Working President,
Hindi Mazdoor Sabha, Qr. No. 8/1,
Type-V-A, Unit-2, Bhubaneswar (Odisha)-9. …Second party workmen

Appearances:

Shri Subrat Mishra, Advocate : For first party management

Shri K. Ray, Advocate : For second-party workmen

AWARD

The Government of India, Ministry of Labour and Employment have referred the industrial dispute for adjudication vide its Order No.L-26011/10/2015 (IR(M) dated 1.6.2015 for its adjudication in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section10 of the Industrial Disputes Act,1947 (14 of 1947) (herein after referred to as the 'Act') and the terms of reference reads as follows:

> 'Whether refusal of employment of Sh.Chandan Kumar Khuntia and 4 other workmen working as sub-staff by the mgt erstwhile IISCO now merged with SAIL w.e.f. 1.10.13 without complying provisions under section 25(F) of ID Act, 1947 keeping an artificial break in service in each completed year is legal and/or justified ? If not, what relief the workmen are entitled to ?'

2. The case of the second party workman as emerges from the statement of claim filed through the Union is that they were appointed as Messenger/Sub-staff by erstwhile management IISCO on casual basis being selected by a committee of the management against sanctioned vacant posts. Appointment letter was issued to them after they became successful in an interview held by the committee. They joined as sub-staff in the office of the erstwhile management of IISCO at Bhubaneswar on different dates in between the year 2002 to 2003. They were working under direct control and supervision of the management of IISCO Ltd., Kolkata and they were paid monthly wages fixed on the basis of daily wage rate as applicable in the State of Odisha inclusive of D.A. and apart from the said monthly wage they were paid ex-gratia annually at the rate of 8.33% of total annual wages paid in the preceding year. Their salary was debited to their accounts directly by the management of IISCO Ltd., Kolkata. The disputant workmen except the disputant workman Smt. Dulani Jena were doing the job of loading and unloading of iron angles, channels and plates, weighing of loading trucks, preparation of weighing bills and other miscellaneous work and Smt. Jena was working as Messenger to supply water and carrying files to different seats in the office of the management. While they were in the job on casual basis, the IISCO Ltd. merged with SAIL in the year 2006 on account of IISCO being taken over by the SAIL. In the event of taking over of IISCO by SAIL, all the staffs of the IISCO including the disputant became employees of SAIL. It is the claim of the disputant workmen that they were transferred to the Central Marketing Organisation office of SAIL situated at Bhubaneswar and they were engaged as clerical staffs and Peons. While continuing as such, they made a representation to the Regional General Manager on 12.8.2013 for regularization of their services and by that time they had worked for more than 12 years uninterruptedly and the duty discharged by them was perennial in nature. But, the management retrenched them with effect from 1.10.201. Hence they raised a dispute before the labour machinery and the conciliation before the machinery having been failed, resulted in the reference as described in pre-para.

3. It is the claim of the disputant workmen that they had worked for more than 240 days in each calendar year of their12 years service and they were not provided with notice pay and retrenchment compensation at the time of their retrenchment. At the time of hearing, it has been pleaded that the workmen junior to them were given appointment whereas, their claim for regularization was not taken into consideration. Having worked in the Organisation for more than 12 years they had a legitimate expectation of being absorbed by the management, since they had requisite qualification for the posts against which they were working and they were appointed through a selection process. Their retrenchment without compliance of the requirements of Section 25-F of the Act was illegal and not sustainable in the eye of law. In the above back drops, prayer has been made for their reinstatement in service with back wages and other service benefits including for a direction to regularize their service.

4. The management of SAIL has filed its written statement refuting the allegations raised by the disputants. It is the stand of the management that the disputants were engaged by the erstwhile management of IISCO purely on casual and daily wage basis. As a daily wager, they were employed by the IISCO as and when their services were required. Hence, the claim of the disputants that they were appointed continuously and uninterruptedly for 12 years is not correct so also their claim of continuous engagement for 240 days in a calendar year. The IISCO was taken over by the management of SAIL in the year 2006. After merger of IISCO with the SAIL the disputants were engaged in the same terms and conditions as envisaged in their appointment letters. Thus, their engagement/employment under the present management was also purely casual and temporary as well as on daily wage basis. After taking over the management of IISCO, the stock yard of the IISCO at Bhubaneswar was closed and there was no need of services of the disputants. Hence, the engagement of the disputants was stopped as not required from September, 2013 onwards. It has also denied the claim of the disputants in regard to their engagement as Clerk and Messenger after merger of IISCO with the management of SAIL. It has also been pleaded that work done by the disputants was not perennial in nature. Since the disputants were engaged on casual and daily wage basis and the stock yard at Bhubaneswar was closed, there was no necessity for compliance of the requirement of provisions enumerated in Section 25-F of the Act before disengagement or refusal of employment to the disputants. The management being a Public Sector concerned has its own recruitment policy and rules. The disputants being engaged purely on temporary basis without adherence to the recruitment policy and rules cannot be absorbed or reinstated against any permanent or sanctioned post. Their appointment/engagement were also not against any sanction post. It is, therefore, prayed by the management for rejection of the claim statement.

5. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication of the dispute.

ISSUES

i) Whether the reference is maintainable under the Industrial Disputes Act ?

ii) Whether the refusal of employment of Sh. Chandan Kumar Khuntia and 4 other workmen working as sub-staff by the management erstwhile IISCO now merged with SAIL with effect from 1.10.2013 without complying provisions under Section 25-F of the I.D.Act,1947 keeping an artificial break in service in each completed year is legal and/or justified ?

iii) If not, what relief the workmen are entitled to ?

6. The second party has examined the disputants as W.W.1 to W.W. 5 and filed documents like, Copy of interview letter of Ratnakar Pradhan, copy of appointment letter of Ratnakar Pradhan, Copy of reimbursement of local travelling expenses, copy of cheques issued in favour of Ratnakar Pradhan dated 1.3.2007 and 2.7.2007, copy of the representation dated 18.1.2014, copy of representation dated 22.1.2014, copy of the courier receipt, copy of representation dated 28.1.2014, copy of postal receipt, copy of representation dated 2.6.2014, copy of postal receipt, copy of authorization, copy of failure of conciliation report, copies of attendance registers for the period from April,2004 to September,2013, copy of the appointment letter issued to sh. Chandan Kumar Khuntia, copy of the appointment letter issued to Sh. Kedarnath Sethi, copy of the interview letter issued to Sh. Dillip Kumar Mohapatra, copy of appointment letter issued to S. Dillip Kumar Mohapatra and copy of the appointment letter issued to Smt.Dulani Jena, which are marked as Exts.1 to 19 respectively, to substantiate their claim, wherein, the management has examined its Asstt. General Manager (Personnel & Administration), SAIL, Eastern Region, Kolkata as M.W.1 to refute the claim of the disputants.

7. The first point of objection raised by the management is that the reference is not maintainable on account of the same being made in a mechanical and casual manner despite the fact that the disputants were engaged temporarily and casually on daily wage basis as and when their services were needed. From the pleading and evidence of the parties including the appointment letters of the disputants marked as Exts.2, 15, 16, 18 and 19, it is found that there is no serious dispute to the fact that the disputants were engaged as sub-staff temporarily and on casual basis without having any claim for absorption as permanent employment. As per the appointment letters, they would be paid daily wage as applicable in the State of Odisha. Their engagement on such casual basis during the years from 2003 to 2013 is also not seriously challenged or disputed by the management. Refusal of employment/engagement with effect from 1.10.2013 is also admitted by the management in its written statement. No where it has been pleaded in the written statement or in the evidence led by the management to the effect that the disputants were paid notice pay in lieu of notice or any compensation before their retrenchment or refusal of employment. Keeping in view the definition of 'workman' as defined in Section 2(s) of the Act and provisions enumerated in Section 25-F of the Act, the disputants being ex-employees/workmen of the management is to be covered by the term 'workman' as defined in the Act. Having grievance against the management due to refusal of their employment, they had a right to put forth their grievances before the labour machinery. The conciliation before the labour machinery having been failed, the reference seems to have been made by the appropriate Government in accordance to the provisions of the Act. Therefore, the claim of the management that the reference was made mechanically without application of any mind is not correct. When there is pleading and evidence from both the sides to the effect that the disputants were engaged and paid by the IISCO as well as by the SAIL after merger of the IISCO with the SAIL, there exists employer and employee relationship between the parties. The dispute being related to the service conditions of the workmen i.e., refusal of employment, the same is undisputedly an industrial dispute and therefore, no illegality has been committed by the Central Government by referring the present dispute for its adjudication under the provisions of the Act.

8. The management has challenged the claim of the disputants mainly on a contention that the disputants were never engaged 240 days in a calendar year and their services being temporary, casual and daily wage basis, they had no right to continue in the job permanently or they were required to be noticed or compensated before their disengagement. It is also contention of the management that burden lies on the disputants to establish that they had worked for more than 240 days continuously and uninterruptedly in a calendar year preceding to their disengagement. As per the settled principles, initial burden lies on the workman to prove his continuous service of 240 days in a calendar year. Coming to the case at hand, all the disputants in their oral testimony have specifically and categorically stated that they had worked for more than 240 days in a calendar year where as, the management claims that they were engaged for 239 days in a year. On a close scrutiny of the copies of attendance registers produced before this Tribunal for the period from 2006 to September, 2013, it is apparent that the disputants were engaged for a period of 239 days minimum in the calendar year preceding to their retrenchment. On a close scrutiny and verification of the xerox copies of attendance registers produced by the management at the instance of the disputants, it is seen that signatures of the disputants are not found on the

dates from 21st to 30th/31st of each month and on counting of the signatures of the disputants in each month of the attendance registers it is found there are less than 20 signatures in each month even though in remark column the disputants have been shown to have attended duty for 20 days in each month except one month a year in which their attendance is shown 19 days. It is the contention of the disputants that copies of interpolated attendance registers have been produced to deny their claim. Admittedly the record reveals that xerox copies of attendance registers were produced by the management on the petition of the disputants. The management could have produced the original for verification and even if it is accepted the pleading advanced by the management that the disputants had worked 239 days in each year/calendar year, it can be safely inferred that to deny the benefit to the disputants, the management has advanced a plea that the disputants were engaged for 239 days in a calendar years and one day artificial break in their engagement has been taken to rectify the wrong, if any, committed by the management. In the above back drops and having regard to the management's failure to cause production of the original attendance registers, it shall be presumed that the disputants were employed and worked continuously and uninterruptedly for 240 days in each calendar year. Therefore, it is to be held that the disputants have discharged their onus to establish that they were working continuously and uninterruptedly for 240 days in a calendar year. Be that as it may, the burden shifts to the management to prove that their services were not continuous and uninterrupted for a period of 240 days in a calendar year. In this regard, the management has not adduced any credible and believable evidence other than the oral testimony of M.W.1. Further, the evidence of M.W.1 is based on record as he was not an official involved in engagement and deployment of disputants. On a close scrutiny of the documents filed by the disputants, it is emerging that the disputants were issued with letters to appear before a committee for a selection to be engaged on casual basis and they were issued with appointment letters. Though their service was temporary and casual basis, they worked for 240 days in a calendar year. (except an artificial break of one day from 2003 to 2013.) Further, their engagement/employment was also extended by the present management after merger of IISCO with it inspite of their engagement was temporary in nature under the ex-management. That apart, they worked for more than 7 years under the present management.

9. It is not in dispute that the provisions of Section 25-B and 25-F of the Act are applicable to a workman what ever his nature of appointment may be i.e., he be a temporary workman or regular workman. It is not in dispute that the disputants were not paid either notice pay or retrenchment compensation when they were refused employment despite the fact that they had worked for 240 days continuously and uninterruptedly in each calendar year of their engagement in between 2003 to 2013. Be that as it may, the refusal of employment amounts to retrenchment without compliance of requirement of Section 25-F of the Act. Therefore, their retrenchment from 1.10.20013 is illegal and unjustified.

10. Now coming to the issue of relief to which the disputants are entitled, it is the settled position of law that a relief of reinstatement with back wages is not automatic and may be wholly in-appropriate in a given facts and situation even though the termination or retrenchment of an employee is in contravention of the prescribed procedure. An order of retrenchment passed in violation of Section 25-F of the Act may be set aside but an Award of reinstatement is not automatic. In a given situation compensation instead of reinstatement may be appropriate to meet the ends of justice. But, the award of reinstatement with consequential service benefits or compensation instead of reinstatement depends on a host of factors like manner and method of appointment, nature of employment and length of service as well as other peculiar circumstances relevant to the case. As such, course of relief in each case will depend upon its own facts and circumstances. Keeping in view the above settled principles of the Hon'ble Apex Court in a catena of decisions it can be safely said that the citations referred by both the parties in their argument cannot be applied in a straight jacket formula in the present one. However, they may be taken into consideration while deciding the just and appropriate award to be passed in this case.

11. It is the consistent stand of the management that the disputants were refused employment as the stock yard of the management at Bhubaneswar was closed in 2013. It is in the oral evidence of the disputants that the stock yard located at Bhubaneswar is shifted to Tangi-Choudwar. The above facts find support from the cross-examination of M.W.1. It is admitted by M.W.1 that workmen of the SAIL are transferred from one place to another place. Had it been so, the disputants could have been engaged in the shifted stock yard at Tangi-Choudwar. The closure of stock yard at Bhubaneswar cannot be taken into consideration for substituting the award of compensation in place of reinstatement and consequential benefits. Similarly, engagement and employment of the disputants for more than 10 years can not be ignored while deciding the relief to be granted to them. It is in the evidence that the disputants were called to face an interview before their engagement as sub-staff. In the meanwhile they must have crossed their age limit to get a job in any Government or Corporate Undertaking. W.W.1 has categorically stated in Para 5 of his affidavit evidence that juniors to him joined in the erstwhile IISCO are still continuing in different branch sales office as well as plants of SAIL. M.W.1 has admitted that the management has different branch sales office. The oral testimony of W.W.1 in regard to

continuation of his juniors in service is not disputed in his cross-examination and the same has not been demolished in any manner. No specific pleading or evidence has been advanced by the management to refute such testimony of W.W.1. The principle of 'last come first go' is to be adopted while the employees are being retrenched. But the said principle does not seem to have been adhered to while refusing employment to the disputants at the time of closure of the stock yard. There is no term and condition in the appointment letters of the disputants that in case of closure of stock yard at Bhubaneswar, their engagement would be dispensed with. In the above facts and circumstances compensation may not be a appropriate relief in place of reinstatement with consequential benefits in the instant case even though the workmen were engaged temporarily on daily wage basis. Having regard to the above peculiar facts and circumstances, it is felt just and proper to direct the management to reinstate the disputants with 50% (fifty percent) back wages and other consequential relief accrued out of deemed continuance and the nature of reinstatement would be similar to the nature of their engagement at the time of their retrenchment and the disputants are entitled to revised wages adopted from time to time in the State of Odisha. The Award including the arrear wages is to be provided within three months of the Publication of the Award failing which the disputant workmen are entitled to get interest @ 6.5% (six and half percent) per annum on their dues arising out of the Award.

Accordingly the Award is passed and the reference is answered.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का.आ. 294.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आन्ध्र सीमेंट्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 114/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-29012/39/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 114/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited, and their workman, which was received by the Central Government on 17.02.2020.

[No. L-29012/39/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of January, 2020

INDUSTRIAL DISPUTE No. 114/2015

Between:

Sri Bailapudi Peda Kannaiah,
S/o Appala Naidu,
Mogilipuram (Village)
Sabbavaram (Mandal),
Dist.-Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President & Plant Head,
Andhra Cements Limited, Jaypee Group,
Visakha Cement Works, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 29012/39/2015-IR(M) dated 6.11.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of Company in not considering Sri Bailapudi Peda Kannaiah, S/o Appala Naidu in service in contravention of Section 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cement Company is legal and justified? If not, to what relief the concerned workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 114/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2020

का.आ. 295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आन्ध्र सीमेंट्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 111/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-29012/36/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 111/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited, and their workman, which was received by the Central Government on 17.02.2020.

[No. L-29012/36/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of January, 2020

INDUSTRIAL DISPUTE No. 111/2015

Between:

Sri Bandaru Demudu,
S/o Simhachalam,
Mogilipuram (Village)
Sabbavaram (Mandal),
Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President & Plant Head,
Andhra Cements Limited, Jaypee Group,
Visakha Cement Works, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/36/2015-IR(M) dated 6.11.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of Company in not considering Sri Bandaru Demudu, S/o Simhachalam, in service in contravention of Section 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cement Company is legal and justified? If not, to what relief the concerned workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 111/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2020

का.आ. 296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 158/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/104/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India, and their workman, which was received by the Central Government on 17.02.2020.

[No. L-17012/104/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of January, 2020

INDUSTRIAL DISPUTE No. 158/2014

Between:

Sri P. Srinivasa Rao,
S/o Late P. Pyditalli,
Door No.20-44-9, Relli Street down,
Mrs. A.V.N. College Road,
Visakhapatnam (A.P.)-530001 …Petitioner

AND

The Manager (E & OS),
Life Insurance Corporation of India,
Divisional Office, PB No. 411, Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam – 530004. …Respondent

Appearances:

For the Petitioner : Sri Nukala Venkateswara Rao, Advocate

For the Respondent : Authorised Representative

AWARD

The Government of India, Ministry of Labour by its order No.L-17012/ 104/2014-IR(M) dated 8.8.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of LIC of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Life Insurance Corporation of India, Divisional Office, Visakhapatnam in terminating the services of Sri P. Srinivasa Rao, Ex-Temp.Substaff w.e.f. 24.1.2013 is legal and justified? If not, to what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 158/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of service of notices, the Petitioner did not turn up. Several opportunities have been given to the Petitioner to attend the court to prosecute his case by filing claim statement. But the Petitioner failed to attend this Tribunal which clearly indicates that perhaps the Petitioner is not interested to prosecute his case and perhaps the dispute of the Petitioner has already been settled and the Petitioner has nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this 23rd day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2020

का.आ. 297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आन्ध्र सीमेंट्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 25/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-29012/14/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2016) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited, and their workman, which was received by the Central Government on 17.02.2020.

[No. L-29012/14/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 29th day of January, 2020

INDUSTRIAL DISPUTE No. 25/2016

Between:

Sri Bailapudi Chinna Kannaiah,
S/o Sh. Bangarayya,
Mogilipuram (Village)
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) … Petitioner

AND

The Senior Vice President & Plant Head,
Andhra Cements Limited, Jaypee Group,
Visakha Cement Works, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029.

…Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/14/2016-IR(M) dated 29.3.2016 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of Company in not considering Sri Bailapudi Chinna Kannaiah, S/o Bangarayya, in services in contravention of Section 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cement Company is legal and justified? If not, to what relief the concerned workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 25/2016 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 29th day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2020

का. आ. 298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 35/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.02.2020 प्राप्त हुआ था।

[सं. एल-12012/67/2011-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Jaipur as shown in the Annexure, in the industrial dispute between the management of Reserve Bank of India and their workmen, received by the Central Government on 19.02.2020.

[No. L-12012/67/2011–IR(B-1)]

B. S. BISHT, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी. प्रकरण सं. 35/2011

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. L-12012/67/2011–IR(B-I) दिनांक 17/10/2011

रामस्वरूप खाती ग्राम सकरपुरा पोस्ट–विरासना
वाया आंधी, तह. जमवारामगढ़,
जिला जयपुर।

बनाम

क्षेत्रीय निदेशक,
रिजर्व बैंक ऑफ इन्डिया,
रामबाग सर्किल, टौंक रोड़, जयपुर।

उपस्थित :

प्रार्थी की ओर से : कोई नहीं

अप्रार्थी की ओर से : डा. कुमकुम बुड्गुज्जर –प्रतिनिधि

: **अधिनिर्णय** :

दिनांक : 30–01–2020

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 17.10.2011 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (क) एवं 2–A के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया "Whether the action of the management of Reserve Bank of India, Jaipur in terminating the services of Shri Ram Swroop Khati w.e.f. 30.6.2009 is legal and justified ? To what relief the workman is entitled ?"

2. उपर्युक्त विवाद प्राप्त होने पर अधिकरण द्वारा दिनांक 29.11.2011 को उभयपक्ष को आहूत करते हुए प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. दिनांक 3.1.2012 को प्रार्थी की और से दावे का अभिकथन प्रस्तुत किया गया। जिसके संक्षिप्त अभिवचन इस प्रकार हैं। प्रार्थी की प्रथम नियुक्ति दिनांक 19.12.1995 को विपक्षी के अधीन सहायक वाईसमेन के पद पर हुई। नियुक्ति के बाद दिनांक 30.6.2009 तक प्रार्थी विपक्षी संस्थान में कार्यरत रहा। अप्रार्थी ने दिनांक 30.6.2009 को मौखिक आदेश द्वारा प्रार्थी को अवैध रूप से सेवामुक्त कर दिया। प्रार्थी जो कार्य करता था वह स्थायी प्रकृति का था और सेवासमाप्ति के समय भी यथावत था। प्रार्थी द्वारा नियमित किये जाने की मांग करने पर विपक्षी ने नाराज होकर सेवामुक्त किया। प्रार्थी को नियमित किये जाने तथा श्रम विधि के अन्तर्गत देय लाभों से वंचित किये जाने के उद्देश्य से प्रार्थी से प्रतिवर्ष एक प्रार्थना पत्र लिया जाकर पीस–रेट पर भुगतान किये जाने के आदेश दिये जाते थे। विपक्षी की यह प्रक्रिया अनुचित श्रम अभ्यास थी। सेवामुक्ति के पूर्व प्रार्थी को न तो कोई नोटिस दिया गया और न ही नोटिस वेतन एवँ छंटनी मुआवजे का भुगतान किया। विपक्षी ने प्रार्थी से कनिष्ठ श्रमिक को सेवा में रखा और नये श्रमिकों को भी भर्ती किया है। इस तरह अधिनियम की धारा 25 (एफ), (जी), (एच) एवं नियम 77 व 78 का पालन नहीं किया। प्रार्थी अपनी सेवासमाप्ति से लगातार बेरोजगार है। अतः दिनांक 30.6.2009 को की गई सेवामुक्ति अवैध घोषित करते हुए प्रार्थी को समस्त विगत वेतन परिलाभों एवं निरन्तरता सहित सेवा में बहाल किया जावें।

4. दिनांक 14.3.2012 को विपक्षी ने दावे के अभिकथन को अस्वीकार करते हुए यह कहा है कि प्रार्थी की सेवायें लकड़ी के सन्दूकों की मरम्मत करने हेतु अस्थायी रूप से ली गई थी। यह सेवा प्रत्येक सन्दूक की मरम्मत हेतु राशि निर्धारित कर अनुबन्ध के आधार पर ली गई। चूंकि प्रार्थी को विपक्षी द्वारा कभी नियोजित नहीं किया गया, अधिनियम की धारा 2 (S) के अन्तर्गत प्रार्थी कर्मकार नहीं है। इसलिये अधिनियम के अन्तर्गत यह दावा स्वीकार किये जाने योग्य नहीं है। विपक्षी को यह अधिकार प्राप्त था कि वह इस अनुबन्ध को आवश्यकता न रहने पर समाप्त कर दें या नवीनीकृत न करें। दिनांक 16.6.2009 को प्रार्थी ने मरम्मत प्रभार में 10 प्रतिशत वृद्धि की मांग की, लेकिन विपक्षी ने आवश्यकता का पुनरावलोकन किया और बक्सों की मरम्मत आगे न करवाने का निर्णय लिया। चूंकि प्रार्थी और विपक्षी के बीच नियोजक और कर्मकार के सम्बन्ध नहीं है इसलिये दावा किसी प्रकार पोषणीय नहीं है जिसे निरस्त किया जावें।

5. प्रार्थी ने दिनांक 18.6.2012 को अतिरिक्त कथन प्रस्तुत करते हुए कहा है कि प्रार्थी जो कार्य करता था वह विपक्षी संस्थान का नियमित एवं स्थायी कार्य था। प्रार्थी से सन्दूकों की मरम्मत के अलावा अन्य कार्य भी लिये जाते थे। विपक्षी द्वारा अपनायी गयी प्रकिया अनुचित श्रम अभ्यास है।

6. प्रार्थी ने अपने साक्ष्य में स्वंय प्रार्थी रामस्वरूप खाती को परीक्षित किया। कोई प्रलेख साक्ष्य में प्रदर्शित नहीं किया।

7. विपक्षी ने अपने साक्ष्य में जयश्रीकृष्ण रावत को परीक्षित किया। प्रलेखिय साक्ष्य में प्रदर्श–एम 1 व एम 2 प्रलेखों को प्रदर्शित किया।

8. दिनांक 7.6.2019 एवं 14.10.2019 को प्रकरण के पुराने होने के कारण प्रार्थी पक्ष को अपने तर्क प्रस्तुत करने हेतु अन्तिम अवसर दिये गये थे किन्तु 20.1.2020 को भी प्रार्थी पक्ष अकारण अनुपस्थित रहा और इस प्रकार इस विवाद में अपने पक्ष प्रस्तुतीकरण के प्रति उदासीनता दर्शायी। विपक्षी प्रतिनिधि दिनांक 7.6.2019 से इस प्रकरण में उनके तर्क सुने जाने का आग्रह करती रही हैं। इन परिस्थितियों में दिनांक 20.1.2020 को विपक्षी प्रतिनिधि के तर्क सुने गये और उपलब्ध साक्ष्य का परिशीलन किया।

9. विपक्षी प्रतिनिधि ने अपने अभिवचनों तथा विपक्षी साक्षी जयश्रीकृष्ण रावत के कथनों का उल्लेख करते हुए यह कहा है कि प्रार्थी स्वंय ने अपने शपथ पत्र में यह स्वीकार किया है कि उससे प्रतिवर्ष पीस–रेट पर भुगतान किये जाने हेतु एक प्रार्थना पत्र लिया जाता था। प्रार्थी ने यह स्वीकार किया है कि उसे बैंक ने कभी नियुक्ति पत्र नहीं दिया। उसने यह भी स्वीकार किया है कि बैंक को जरूरत होती थी तो लकडी के बक्सों की मरम्मत के लिये उसे बुलाया जाता था। वह जो बिल देता था बैंक उसका भुगतान करता था। प्रदर्श–एम 1 पत्र में उसने अपनी लिखित सहमति प्रस्तुत करना भी स्वीकार किया है। प्रदर्श–एम 2 पत्र द्वारा प्रार्थी ने 10 प्रतिशत भुगतान में वृद्धि करने की मांग की है। उनका यह भी तर्क है कि प्रार्थी ने ऐसा कोई दस्तावेज प्रस्तुत नहीं किये है जिससे विपक्षी द्वारा प्रार्थी को सेवा में नियोजित किया जाना प्रमाणित हो बल्कि इसके विपरीत प्रदर्श–एम 1 व एम 2 प्रलेखों के माध्यम से प्रार्थी और विपक्षी के मध्य बक्सों की मरम्मत के लिये प्रस्ताव करना और प्रार्थी द्वारा उसे स्वीकार कर लेना एक अनुबन्ध की उत्पत्ति करता हैं। अतः प्रार्थी द्वारा प्रस्तुत दावे को अस्वीकार किया जावें।

10. मैनें विपक्षी के प्रतिनिधि द्वारा प्रस्तुत तर्कों एवं उभयपक्ष द्वारा प्रस्तुत साक्ष्य पर ध्यानपूर्वक मनन किया। इस विवाद में निम्नलिखित विचारणीय बिन्दु उत्पन्न हुए है :–

विचारणीय बिन्दु संख्या 1 :– क्या प्रार्थी ने विपक्षी के अधीन सेवासमाप्ति तिथि दिनांक 30.6.2009 के पूर्ववर्ती एक कैलेण्डर वर्ष की अवधि में 240 से अधिक दिन की अवधि तक कार्य किया तथा विपक्षी ने धारा 25 (एफ) अधिनियम के प्रावधानों का अनुपालन नहीं किया ? ...प्रार्थी

विचारणीय बिन्दु संख्या 2 :– क्या विपक्षी ने प्रार्थी की सेवासमाप्ति के समय उससे कनिष्ठ व्यक्तियों को सेवा में नियोजित रखा तथा सेवासमाप्ति के उपरान्त भी समान पद पर अन्य व्यक्तियों को नियोजित करते हुए अधिनियम की धारा 25 (जी) एंव (एच) के प्रावधानों का उल्लंघन किया? ...प्रार्थी

विचारणीय बिन्दु संख्या 3 :– अनुतोष ?

11. **<u>विचारणीय बिन्दु संख्या 1</u>** :– प्रार्थी ने अपने अभिवचनों और साक्ष्य के दौरान यह कहा है कि उसकी प्रथम नियुक्ति विपक्षी के संस्थान में दिनांक दिनांक 19.12.1995 को वाईसमेन के सहायक के रूप में हुई थी। वह अपनी नियुक्ति के पश्चात दिनांक 30.6.2009 तक निरन्तर विपक्षी संस्थान में कार्य करता रहा। किन्तु प्रार्थी ने अपनी प्रतिपरीक्षा में यह स्वीकार किया है कि उसे बैंक ने कभी नियुक्ति पत्र नहीं दिया। यह बात सही है कि जब बैंक को जरूरत होती थी तो लकडी के बक्सों की मरम्मत व रखरखाव के लिये बुलाया जाता था। उल्लेखनीय है कि विपक्षी बैंक एक निगमित निकाय है जिसका गठन रिजर्व बैंक आफ इण्डिया एक्ट 1934 के अधीन किया गया है। किसी निगमित निकाय में किसी पद पर नियुक्ति हेतु नियमित चयन प्रक्रिया अपनायी जाकर ही नियुक्ति की जाती है। विपक्षी ने अपने कथन में प्रार्थी से लकडी के बक्सों की मरम्मत और रखरखाव का कार्य प्रति बक्सा मरम्मत की दर निर्धारित करते हुए संविदाजनित आधार पर करवाना कहा है। इस स्थिति में प्रार्थी की नियुक्ति विपक्षी द्वारा किये जाने का तथ्य किसी नियुक्ति पत्र के अभाव में प्रमाणित नहीं माना जा सकता। प्रार्थी यह स्वीकार करता है कि लकडी के बक्सों की मरम्मत जब भी बैंक को करवानी होती थी उसे बुलाया जाता था। विपक्षी द्वारा प्रदर्शित प्रदर्श–एम 1 से संलग्न एनेक्सचर 1 पत्र बैंक को लिखना प्रार्थी ने स्वीकार किया है। इस पत्र दिनांक 14.8.2008 में प्रार्थी ने लिखा है कि उसे बैंक द्वारा प्रस्तावित शर्तें और स्वीकृत दर 12 रूपये 65 पैसे स्वीकार है और वह अपनी लिखित सहमति प्रस्तुत कर रहा है। इसके पश्चात प्रार्थी ने

दिनांक 16.6.2009 को प्रदर्श–एम 2 (एनेक्सचर 2) पत्र जो की 4 पृष्ठों में है बैंक को लिखना स्वीकार किया है। इस पत्र में प्रार्थी ने दिनांक 19.12.1995 से विपक्षी के बक्सों की मरम्मत का कार्य करना वर्णित करते हुए प्रतिवर्ष प्राप्त किये गये भुगतान का विवरण भी दिया है। प्रार्थी ने बैंक से मरम्मत की चालू दर में 10 प्रतिशत की वृद्धि, मंहगाई को देखते हुए किये जाने का निवेदन किया है। विपक्षी साक्षी श्री जयश्रीकृष्ण रावत ने यद्वपि अपने प्रतिपरीक्षण में यह कहा है कि प्रार्थी और विपक्षी बैंक के मध्य कोई करार या अनुबन्ध नहीं हुआ था, किन्तु प्रदर्श–एम 1 विपक्षी के पत्र दिनांक 8.8.2008 के अवलोकन से यह स्पष्ट है कि विपक्षी द्वारा जुलाई 2008 से जून 2009 तक की अवधि के लिये प्रचलित मरम्मत दर को एक रूपया 15 पैसे प्रति बक्सा अभिवृद्ध करते हुए 12.65 पैसे प्रति बक्सा किया गया। इस पत्र के पैरा क्रमांक 5 में विपक्षी ने प्रार्थी को यह प्रस्ताव प्रेषित किया है कि ''यदि उक्त दर एवं हमारी शर्तें स्वीकार्य हों तो अपनी सहमति का पत्र इस पत्र की प्राप्ति के 7 सात दिन के भीतर हमें प्रस्तुत करें''। उक्त वर्णन से यह स्पष्ट है कि विपक्षी बैंक ने इस पत्र द्वारा मरम्मत हेतु दरों का प्रस्ताव प्रार्थी को प्रेषित किया था। इस प्रस्ताव को 14.8.2008 को प्रार्थी ने स्वीकार किया और अपनी सहमति लिखित में पत्र द्वारा विपक्षी बैंक को प्रेषित कर दी। इस प्रकार एक वैध प्रस्ताव पर प्रार्थी की स्वीकृती लकडी के बक्सों की मरम्मत हेतु वैध प्रतिफल के लिये सम्प्रेषित कर दिये जाने पर इस संव्यवहार में, एक वैध एवं प्रवर्तनीय अनुबन्ध के सभी आवश्यक तत्व विद्यमान होना प्रमाणित है। इसलिये विपक्षी साक्षी का कथन, अनुबन्ध के न होने के सम्बन्ध में किसी प्रकार स्वीकार्य नहीं है। प्रार्थी ने अपने प्रार्थना पत्र दिनांक 18.6.2012 द्वारा बिलों की प्रतियाँ और वाउचर्स विपक्षी से प्रस्तुत करवाये है। किन्तु इन बिलों और वाउचर्स को प्रार्थी ने अपने साक्ष्य में प्रदर्शित नहीं किया है। जहॉ तक दिनांक 19.12.1995 से 30.6.2009 तक प्रार्थी की उपस्थिति के अभिलेख का प्रश्न है। विपक्षी ने शपथपूर्वक यह कहा है कि उपस्थिति का ऐसा कोई अभिलेख उनके यहां संधारित नहीं किया गया। प्रदर्श–एम 1 व एम 2 पत्रों के परिशीलन से यह स्वतः प्रमाणित होता है कि प्रार्थी ने प्रति बक्सा मरम्मत की दर निर्धारित करते हुए अनुबन्ध के आधार पर बक्सों की मरम्मत का कार्य किया। इसलिये प्रतिमाह किये गये बक्सों की मरम्मत के अनुसार उसे भिन्न–भिन्न धनराशि का भुगतान विपक्षी द्वारा किया गया, जो एक समान नहीं था।

12. साक्ष्य के इस विवेचन से प्रार्थी की नियुक्ति विपक्षी के अधीन किसी भी पद पर किया जाना प्रार्थी प्रमाणित करने में सफल नहीं हुआ है। विपक्षी के अधीन सेवा की अवधि प्रमाणित करने का प्राथमिक सिद्धिभार स्वंय प्रार्थी पर ही आरोपित है। प्रार्थी किसी प्रलेखीय साक्ष्य के अभाव में इस तथ्य को प्रमाणित करने में सफल नहीं हुआ है। प्रार्थी ने यह तथ्य भी प्रमाणित नहीं किया है कि श्रम विधि के अन्तर्गत मिलने वाले लाभों से वंचित करने के उद्देश्य से उससे प्रतिवर्ष पीस–रेट पर भुगतान किये जाने सम्बन्धित प्रार्थना पत्र लिया जाता हो वरन् प्रार्थी ने तो यह स्वीकार किया है कि वह बैंक में जो बिल देता था बैंक उसका भुगतान करता था। भुगतान को लेकर उसके तथा बैंक के बीच कोई विवाद नहीं होता था। प्रदर्श–एम 2 पत्र जो कि 16.6.2009 को प्रार्थी ने बैंक को लिखा उसमें भी प्रार्थी ने मरम्मत की दर में 10 प्रतिशत वृद्धि का ही निवेदन किया है और यह नहीं कहा है कि विपक्षी द्वारा उसे नियुक्ति दी गई हो और उससे पीसरेट का अनुबन्ध दिखावटी रूप से किया गया हो।

13. साक्ष्य की इस स्थिति में प्रार्थी स्वंय को विपक्षी का कर्मकार होना तथा सेवासमाप्ति तिथि के एक कैलेण्डर वर्ष की पूर्ववर्ती अवधी में 240 दिन से अधिक कार्यरत रहने का तथ्य प्रमाणित नहीं कर सका है। इसलिये अधिनियम की धारा 25 (एफ) उपधारा (a) व (b) के अधीन प्रार्थी की सेवासमाप्ति के पूर्व एक माह का नोटिस दिये जाने अथवा नोटिस के बदले एक माह का नोटिस वेतन दिये जाने एवं छंटनी प्रतिकर दिये जाने की कोई विधिक आवश्यकता उत्पन्न ही नहीं हुई है। इसलिये विपक्षी द्वारा इन प्रावधानों का अनुपालन किये जाने का कोई अवसर ही प्रस्तुत नहीं हुआ। इस विवेचन के पश्चात यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

14. **विचारणीय बिन्दु संख्या 2** :– प्रार्थी ने अपने अभिवचनों और साक्ष्य के दौरान यह तो कहा है कि विपक्षी संस्थान में उससे जूनियर अनेकों श्रमिक अभी भी कार्यरत है। उसे सेवामुक्त किये जाने के पश्चात नये श्रमिकों को भी भर्ती किया गया है। किन्तु प्रार्थी ने उससे कनिष्ठ श्रमिकों के नामों का भी उल्लेख अपने कथन में नहीं किया, न ही ऐसे श्रमिकों के नियुक्ति पत्र अपने साक्ष्य में प्रदर्शित किये। प्रार्थी ने अपनी सेवासमाप्ति के उपरान्त समान पद पर विपक्षी

द्वारा नियुक्त किये गये व्यक्तियों के नाम व उनके नियुक्ति पत्र भी साक्ष्य में प्रदर्शित नहीं किये। विचारणीय बिन्दु संख्या 1 के अन्तर्गत प्रार्थी का विपक्षी के नियोजन में सेवारत होना ही प्रमाणित नहीं माना गया है। इसलिये विपक्षी से यह अपेक्षा नहीं की जा सकती है कि वह प्रार्थी के कथनानुसार किसी वरिष्ठता सूची का संधारण करें और नवनियुक्ति करते समय प्रार्थी को नियोजन हेतु वरीयता प्रदान करें। इसलिये विपक्षी द्वारा अधिनियम की धारा 25 (जी) एंव (एच) के प्रावधानों का उल्लंघन किया जाना भी साक्ष्य से प्रमाणित नहीं हुआ हैं। अतः यह विचारणीय बिन्दु भी प्रार्थी के विरूद्ध निर्णीत किया जाता है।

विचारणीय बिन्दु संख्या 3 :– उपयुर्क्त विचारणीय बिन्दु संख्या 1 व 2 पर पारित विनिश्चय के प्रकाश में प्रार्थी एवं विपक्षी के मध्य नियोजक–कर्मकार का सम्बन्ध प्रमाणित न होने से प्रार्थी की कथित सेवासमाप्ति अवैध छंटनी के रूप में प्रमाणित नहीं हुई है। प्रार्थी और विपक्षी के मध्य संविदाजनित सम्बन्ध आवश्यकता के आधार पर थे। विपक्षी द्वारा दिनांक 30.6.2009 को इस अनुबन्ध का अग्रसरण नहीं किया गया जिसे सेवासमाप्ति नहीं कहा जा सकता है।

15. प्रार्थी विपक्षी से कोई अनुतोष पाने का अधिकारी नहीं है। श्रम मन्त्रालय भारत सरकार द्वारा संदर्भित विवाद का अधिनिर्णयन इसी प्रकार किया जाता जाता है।

16. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाषनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 19 फरवरी, 2020

का. आ. 299.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई सी आई सी आई बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 चण्डीगढ़ के पंचाट (संदर्भ संख्या 2/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.02.2020 प्राप्त हुआ था।

[सं. एल-12012/47/2015-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 299.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.-II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of ICICI Bank and their workmen, received by the Central Government on 19.02.2020.

[No. L-12012/47/2015–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.2/2015

Registered on:-17.04.2015

Simardeep Singh S/o Rajinder Singh, R/o L2/761, New Gurnam Nagar,
S.W. Road Mandi Wali Bazar, Amritsar. …Workman

Versus

1. ICICI Bank Limited, Having its Registered Ofice, Ladmark, Race Course Circle, Vadodra, through its Chairman/Managing Director.

2. ICICI Bank Limited, 6th Floor, Trrans Trade Centre, Near Floral Deck Plaza, Seepz Midc Andheri East, Mumbai, through its Deputy General Manager(Retail Business Group).

3. ICICI Bank Limited, Regional Office: Nehru Siddhant Trust, Kendra Building, 2nd Floor, Feroze Gandhi Market, Ludhiana, through its Deputy General Manager. …Respondents/Managements

AWARD
Passed on:-03.02.2020

Central Government vide Notification No. L-12012/47/2015-IR(B-I) Dated 07.04.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of ICICI Bank Limited in terminating the services of Shri Simardeep Singh S/o Shri Rajinder Singh, w.e.f. 04.12.2012 is legal and justified? If not to what relief the workman is entitled to and from which date?"

1. Both the parties were put to notice and claimant Simardeep Singh filed statement of claim, with the averment, that on an application for a job in respondent-bank after considering the same, vide its letter dated 13.10.2011 offered the workman to join the ICICI Bank Probationary Officers Program (Training Program) on the terms and conditions set out in the letter. The repayment of the loan issued for training program was required to be paid after completion of the training program and joining the services of the ICICI Bank. It was a condition for repayment that no recovery of EMIs or interest during the training period will be affected except where claimant fails to complete the training program for any reason whatsoever. The EMIs for repayment of the loan are spread over a period of 60 months to ensure that there is minimal impact on the monthly earnings of claimant. The management-bank fulfilling all the requisite formalities conveyed to the workman vide above letter dated 13.10.2011 in pursuance of that, he joined the training program at Bangalore on 04.11.2011. The respondent-bank vide its e-mail dated 10.08.2012 congratulated the workman for completing 9 months of training program and directed the workman to report on 16.08.2012 at Internship Location, Pathankot Patel Chowk Branch and the workman join the said branch of bank. He was performing his duties diligently, honestly, sincerely to the satisfaction of his superiors. The workman vide its e-mail dated 03.11.2012 reported to his seniors about misbehavior with him by one of the employee of bank but the bank-management without probing the matter conveyed the workman vide impugned letter dated 15.11.2012 that his services are terminated from the date which letter served on him with further instruction for the repayment of outstanding loan amount of Rs.308513/-. The letter of termination was issued by the management without any show cause notice or charge-sheet or conducting any enquiry against the workman. He was not given opportunity of personal hearing before issuing the termination letter. The action of the management in terminating the services of the workman is totally wrong, illegal, mala fide, arbitrary and is not sustainable, being in utter violation of principles of natural justice. The order of termination is in violation of the provisions of Section 25-F- 25-G and 25-H as well as the bank's code of business conduct hence, is liable to be set aside. The claimant is a workman as defined under Section 2(S) of the Industrial Disputes Act, 1947 and had completed one year of continuous service with the respondent-bank before his illegal termination. The workman is unemployed since the termination of his services illegally by the bank-management and has not been able to find a suitable job. Hence, it is prayed that management be directed to reinstate the workman into service with full back wages, continuity of service with all consequential benefits on old terms and conditions.

2. Management-ICICI Bank has filed its reply, alleging therein that claimant had initiated proceeding before the Court of Civil Judge at itself for institution of a suit of declaration to the effect that the letter dated 15.11.2012 is wrong, illegal, void, arbitrary, ineffective as well as contrary to the law and contracts of employment and the same was against the defendant-bank, copy of the Civil Suit filed by the claimant is attached as Annexure R-1 with the written statement. The applicant does not fall within the definition of workman and is not a workman. The respondent-bank is a private bank and its employees are private employees and cannot enforce the contract of personal service with the employer which has been done in the present case. The claimant was an employee of the defendant-bank under the relationship between the parties to be governed by the Contract Act of personal service. The workman was terminated while he was under probation period at any given period of time. It is further alleged that it was claimant who applied to join the probationary officer program of the bank and on the basis of the application, he was selected as probationary officer program at ICICI Manipal Academy, Bangalore. The applicant was required to pay a sum of Rs.2.75 lacs along with payable service tax amounting to Rs.3,03,000/- to the Manipal Universal Pvt. Ltd. for joining the training program. The employment of the training program as a probationary officer with the bank was subject to the terms and conditions and repayment of loan to the bank. the bank being not satisfied with the services of the

applicant in terms of letter dated 15.11.2012 terminated the services of the applicant. The loan facility which was availed by the claimant was in no manner connected with the employment as the facility had been availed for the purposes of meeting the fees which the claimant was required to pay for undergoing training program and loan was required to be paid during the deduction from the salary paid. The letter dated 10.08.2012 was not an appointment letter but was only a congratulatory letter on the completion of 9 months course. The services of the claimant worth admittedly was as a probationer/intern and he was not required to be issued any show cause notice or any charge-sheet or any enquiry or opportunity of hearing as is alleged by the claimant. It is therefore, prayed that claimant is not entitled to be reinstated and is also not entitled to any continuity of service as has been claimed by him through reference.

3. Workman Simardeep Singh has filed its rejoinder, alleging therein that workman has rightly taken recourse to the conciliation proceedings and subsequently the matter has been referred by the appropriate government to this Hon'ble Tribunal for adjudication. The civil suit filed by the workman is withdrawn with permission to pursue his remedy to the appropriate forum as such, it does not debar the claimant to avail his remedy under the Industrial Disputes Act. There is no such provision under the Industrial Disputes Act that laid down the rule that employees of private-bank cannot seek remedy under the ID Act. The facts alleged in Para 7 of the written statement are misconceived, wrong and denied as the respondent-bank by claiming money of the amount spent on training of the workman and terming it as a loan cannot be count of service of the termination of the workman rather than to unfair labour practice on the part of the bank. The bank-management has misconceived the term of probation period as on probation. The term probation period is no where mentioned in the letter dated 10.08.2012 vide which the claimant was posted at Pathankot. The designation of the workman was a probationary officer, which is a designation assigned to bank-employees. The remaining facts alleged in the replication are same as alleged in the claim petition as such, it does not required to be repeated again.

4. In support of his case, the workman Simardeep Singh appeared in the witness box and tendered his affidavit in evidence which is marked as Ex.WW1/A along with documents Ex.WW1/1 to WW1/10 and has been cross-examined by the learned counsel of management.

5. Management has examined Ms. Nishtha Jolly, Manager, ICICI Bank Ltd., who has filed her affidavit Ex.MW1/A and cross-examined by the workman counsel.

6. I have heard Sh. Chanderdeep Singh, Ld. Counsel for the workman and Sh. Sandeep Suri, Ld. Counsel for management and have gone through the records carefully.

7. Learned counsel of the claimant Sh. Chanderdeep Singh argued in the line of the facts alleged in the claim petition that claimant was appointed in pursuance of the letter dated 13.10.2011 in ICICI Bank Probationary Officer Program (Training Program) on the terms and conditions set out in the letter. Learned counsel further argued that after completing training program and in pursuance of the conditions mentioned in it. Learned counsel further argued that claimant while charging his duty diligently, honestly, management of the bank terminated his services without any show cause notice or opportunity of hearing without assigning any reason which is against the principle of natural justice as well as provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is argued that in spite of the best effort by the workman, respondent-management paid no heed, resulting the present reference by the Government of India, Ministry of Labour. Learned counsel further argued that claimant is a workman as defined under Section 2(S) of the Industrial Disputes Act, 1947 and there existed relationship of employer and employee between the management and workman as such, this Tribunal has power to pass an order for reinstatement along with back wages to the workman.

8. Learned counsel of the management of ICICI Bank argued that claimant does not come within the definition of workman under Section 2(S) of the Industrial Disputes Act and there did not exist relationship of employer or employee and master and servant as is argued by the learned counsel of claimant. Learned counsel further argued that in fact claimant had joined the probationary officer program(training program) conducted by the ICICI Bank on the terms and conditions envisaged in Ex.W1 filed by the claimant himself. Learned counsel of management further argued that for the purpose of the proper disposal of the reference condition 1 and 6 of Ex.W-1 relevant in which it is specifically mentioned that claimant had to go 12 months of training program out of which he had to devote 9 months in classroom sessions(Trimester pattern) and remaining 3 months internship which had to be offered at the branch of Corporate Office of ICICI Bank. Learned counsel further argued that it was after the completion of training program claimant had to join the services of the bank in the grade of Assistant Manager(Band-I) on the terms and conditions governing the same and has to be communicated to him at the relevant time. Learned counsel further argued that before the completion of three months internship, claimant was stopped/terminated vide bank letter dated 15.11.2012 Ex.W-5 filed by the claimant itself. Learned counsel of the management argued that in fact at the time of the termination during the course of internship

which was part of training program does not amounts termination from service instead it is simply a discharge from training and letter is poorly drafted by the bank mentioning the word termination in it. Learned counsel further argued that it was a contract of employment between the claimant as well as management for one year training program and after that claimant has to be assigned or appointed as Assistant Manager which was never done by the management. Hence, question of application of provisions of Section 25-F, 25-G and 25-H do not arise. Learned counsel further argued that even if it is presumed that he was under probation even then termination of the claimant during the course of probation is in accordance with law and there is no need for enquiry or show cause notice or opportunity of hearing to the workman as is held by the Hon'ble Supreme Court in the case of ***Bawa Singh Vs. The Punjab State Co-OP. Supply and Marketing federation Ltd., CWP No.10597 of 1996, Haryana Warehousing Corporation Ltd. Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar, CWP No.11639 of 1993, Krishan Kumar Vs. The State of Haryana, CWP No.8911 of 1994. Sarbjit Singh Vs. Presiding Officer, Labour Court, Amritsar & Oths. CWP No.14827 of 1990, Managing Committee, Arya High School, Mandi Phul(Bathinda) Vs. Atma Prashad Singh & Oths. CWP No.2548 of 2009***.

9. The first bone of contention between the parties as per argument of the respective counsels is whether claimant is a "workman"? Secondly whether there was relationship of employer and employee between the parties?

> ***"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or an a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-***
>
> ***(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 *62 of 1957); or***
>
> ***(ii) Who is employed in the police service or as an officer or other employee of a prison; or***
>
> ***(iii) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercised, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"***

10. In this connection, reference can be made to the decision of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

11. There is no dispute about the proposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that the has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh(2005) 8 Sureme Court Cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikhubhai Meghajibhai Gavda(2012) 1 SCC 47.***

12. The question which is relevant for the disposal of reference relates with the relationship of employer and employee between the claimant and management. In this connection, learned counsel of the management has argued that in fact it was a contract not for employment but for training program of probationary officer as

is specifically mentioned in the letter of contract Ex.W-1. The expenditure with respect to the training program had to be incurred by the claimant amounting to Rs.3.03 lacs to Manipal Universal Learning Private Limited which was provided by ICICI bank on a subsidized loan as is mentioned in the alleged letter Ex.W-1. Learned counsel has drawn my attention towards the Ex.W-1 with respect to the program details and benefits mentioned therein. Para 1 and 6 of the Ex.W-1 are relevant for the purpose which runs as follows:-

> ***"1. The Training Programme will be conducted for a period of 12 months. The first 9 months would be devoted to classroom sessions (trimester pattern) at ICICI Manipal Academy, Bangalore and in the remaining 3 months internship would be offered at Branch or Corporate office/Office of ICICI Bank or any of its Group Companies/Subsidiary. On successful completion of the Training Programme, you will be offered employment with ICICI Bank or any of its Group Company/Subsidiary on the terms indicated below.***
>
> ***6. On successful completion of the Training Programme, you will join the services of the Bank in the grade of Assistant Manager (Band-I) on the terms and conditions governing the same and as communicated to you at that time. The detailed compensation structure in the grade of Assistant Manager(Band-I), exact location of posting, date of joining, etc. will be informed in due course.***

13. Perusal of the condition of Ex.W1 which is alleged by the claimant as letter of appointment reveals that on successful completion of the training programme claimant has to join the bank in the Grade of Assistant Manager(Band-I) on the terms and conditions governing the same which had to be communicated to him at that time. The detailed compensation structure in the grade of Assistant Manager(Grade-I), exact location of posting, date of joining, etc. would be informed in due course. There is no dispute that claimant was terminated during the course of internship vide letter Ex.W-1 dated 13.10.2011. The question which arises for consideration is whether the training programme conducted by the bank through Manipal Academy, Bangalore after depositing the fees amounting Rs.3.03 lacs could be deemed as employment. It is pertinent to mention that for employment there should be a workman employed in any industry to do any work to do any work managerial, unskilled, skilled etc. as is envisaged in Section 2(S) of the Act for hire or reward. Similarly, the terms wages has been defined Section 2(rr) which deals wages in terms of money which should if the term of employment where fulfilled, be payable to the workman in respect of his employment or work done in such employment and includes such of those things which are mentioned in the Clause I to C of the terms wages. Claimant has not alleged in his claim statement as well as affidavit filed as evidence that he was employed by the management for a specific salary, DA, grade and allowances as is required in the pleading for proper adjudication of the case.

14. Learned counsel of the claimant/workman argued in the light of the pay slip Ex.W-7 that claimant/workman was working with the management-bank as is evident from the pay slip issued by the bank for the month of November 2012 deducting the loan installment of Rs.1729/- from the account of claimant/workman bearing no.020401526839. Contrary to this, learned counsel of the management-bank argued that this is a forged pay slip, having no signature of any bank-authority to prove the version of the learned counsel of claimant/workman. In this connection, learned counsel of the management-bank has drawn my attention towards the termination of letter dated W-5 and argued that claimant was terminated through this letter on 15.11.2012 hence, payment of salary for the entire month of November as shown in Ex.W-7 falsify the argument advanced by the claimant/workman AR as well as genuineness of the document itself. Claimant has not submitted any passbook pertaining to the account no. 020401526839 which could be a decisive factor for the transfer of the aforesaid amount as a salary in the account of the workman. It is also pertinent to mention that as per so called agreement or contract Ex.W-1, management has to offer the post of Assistant Manager along with pay structure as is mentioned in Para 6 of the above contract letter. Claimant has not filed so far any appointment letter in pursuance of the completion of the training mentioning the pay structure for the post of Assistant Manager(Band-I) for the best reason known to the workman himself.

15. The Hon'ble Supreme Court in catena of cases including ***Kanpur Electricity Supply Corp. Ltd. Vs. Shamim Mirza, 2009 LLR 226 SC,*** has held that to prove the relationship of employer and employee is a question of fact which has to be decided by the adjudicatory forum as constituted under the Industrial Disputes Act by taking into account of cumulative effect of entire material as produced by the parties. It is pertinent to mention that all the documents filed by the claimant/workman does not inspire confidence that he was duly appointed by the management on salary basis as its employee instead the document relied by both the parties Ex.W-1 discloses that it is a letter of contract between the two parties for the participation in the probationary officer training programme for 12 months and after the successful completion of the training programme, ICICI Bank had to offer the post of Assistant Manager(Band-I) specifying the place of posting, salary etc. as per Para 6 of the letter of contract Ex.W-1. But there is nothing on record to prove that claimant has been offered the post of Assistant manager in writing and in pursuance of that, he was discharging his duties in Pathankot at the

time of the alleged termination. The entire evidence on record submitted by the parties, both oral and documentary reveal that this is a personal contract between the claimant and management for participating in the probationary officer program, subsequent offer of employment as Assistant Manager(Band-I) on certain terms and conditions which had to be decided after the completion of training. There is no dispute that management has neither assigned any reason or motive for the termination of the claimant/workman during the training nor stated in written statement to convince the Tribunal for valid and legal termination which was necessary to nail the truth by the Tribunal as is held by the Supreme Court in the cases of***Gujrat Steel Tubes Ltd. Vs. Gujrat Steel Tube Majdoor Sabha, AIR 1980, S.C. Page 616, and Bawa Singh Vs. The Punjab State Co-op Supply and Marketing Federation Ltd. Civil Writ Petition No.10597/1996***.

16. Furthermore, Para 11 of the alleged contract is also relevant, which envisaged the condition for terminating the trainee/claimant-workman from training programme subject to the condition mentioned in sub-para a, b and c which runs as follow:-

"11. Termination from the Training Programme: Your are liable to be terminated from the Training Programme in the event of:

a. Any breach on your part of the terms and conditions of the Training Programme that may be promulgated by the ICICI Manipal Academy/ICICI Bank from time to time.

b. Any incorrect information or documents furnished by yon.

c. Any act of commission and omission on your part which is prejudicial to the interest and reputation of the ICICI Bank/ICICI Manipal Academy.

17. The grounds mentioned in sub-para a, b and c are relevant to the extent that there is nothing on record to prove that claimant was terminated from the training programme in breach of any condition specified in Para 11 sub-Clause a, b and c of the contract/agreement letter Ex.W-1. The reference is regarding the termination of the claimant/workman by the management with respect to the service hence, breach of contract by the ICICI-Bank in the light of the terms and conditions mentioned in Para 11 gives a right to the claimant/workman to file a suit of damages for the breach of contract instead file a claim for reinstatement under the Industrial Disputes Act, 1947 which could not be proved by the claimant/workman.

18. So far as the case laws, relied by the management-counsel, at the time of argument, have no application in the present case because there is nothing on record to prove that claimant/workman was on probation as probationary officer at the time of alleged termination. To my mind, management could not take double benefit by saying that claimant/workman was a probationary officer and management was entitled to terminate the services without assigning any reason and furthermore, claimant/workman was not an employee of the management-bank at the same time. The appreciation of the entire evidence reveals that this is a case of breach of contract rather a industrial dispute as is referred by the Central Government, Ministry of Labour to this Tribunal for adjudication.

19. Having gone through the above legal and factual scenario, this Tribunal is of the considered opinion that the action of the management of ICICI Bank Limited in terminating the services of Shri Simardeep Singh S/o Shri Rajinder Singh, w.e.f. 04.12.2012 is neither legal nor justified in the light of the terms and conditions mentioned in Para 11 of the agreement/contract Ex.W-1 but this is a breach of a contract by the management as such, claimant/workman is not entitled for any relief which is within the jurisdiction of Civil Court rather than this Tribunal and the reference is answered in negative against the workman.

A. K. SINGH, Presiding Officer

नई दिल्ली, 19 फरवरी, 2020

का. आ. 300.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार श्री सरस्वती ग्रमीण बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 131/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.02.2020 प्राप्त हुआ था।

[सं. एल-12012/117/2004-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 300.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Hyderabad as shown in the Annexure, in the industrial dispute between the management of Sri Saraswathi Grameena Bank and their workmen, received by the Central Government on 19.02.2020.

[No. L-12012/117/2004-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 4th day of February, 2020

INDUSTRIAL DISPUTE No. 131/2004

Between:

Sh. T.V. Ramana Murthy,
C/o Sh. T.D.S. Subrahmanyam,
12-16-17, Arya Puram, Middala Street,
Rajahmundry – 533104. …Petitioner

AND

The Chairman,
Sri Saraswathi Grameena Bank,
Head Office,
Adilabad. …Respondent

Appearances:

For the Petitioner : Sri B. Kiran Kumar, Advocate

For the Respondent : M/s. S. Mujib Kumar, S. Vikramaditya Babu & K. Narsimhulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/ 117/2004-IR(B-I) dated 14.9.2004 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the Chairman, Sri Saraswathi Gra,eema Bank, Adilabad in dismissing the services of Sh. T.V.Ramana Murthy, Ex-Clerk cum Cashier Nennela Branch, Adilabad District, with effect from 25.7.1996 is justified? If not, to what relief the applicant is entitled for?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.131/2004 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The Petitioner was appointed as a clerk cum cashier on 12.9.1988 in the Respondents bank at Kuntala Branch, Nirmal Tq., Adilabad District through BSRB examination and since the date of joining the Petitioner was discharging his duties to the utmost satisfaction of his superiors as well as to the management of the Respondent bank and there is no remark against the Petitioner at any point of time while discharging his duties. The Petitioner has completed 8 years unblemished record of service and was always discharging his duties diligently for the development of the Respondent bank by maintaining cordial relationship with the customers of the Respondent bank. While the matters stood thus, in the year 1992, one Mr. T. Sampath Kumar took charge of Saraswati Grameena bank at Nennal branch where the Petitioner was working as a clerk cum cashier. After taking over charge of Nennal branch, he started harassing the Petitioner in one way or other, as the Petitioner is having good reputations/cordial relationship with the customers of the bank, and also for the reasons that always the customers were appreciating the efforts of the Petitioner for the smooth functioning of the bank. For this reasons Sri T.Sampath Kumar bore grudge on the Petitioner and started quarrelling with him

since no customer got good impression about Sri T.Sampath Kumar. It is stated that Sri T.Sampath Kumar committed so many irregularities while functioning as the Branch Manager and he intentionally shown such irregularities, as if it has been committed by the Petitioner by exposing his bossism on the Petitioner. It is further stated that Sri T.Sampath Kumar used to pass vouchers without signing and used to sign the same on the next date, forcing the Petitioner to follow his instructions. For this the customers of Nennal branch made complaints against the irregularities committed by Sri T.Sampath Kumar, further, Sri T.Sampath Kumar was in the habit of blaming the Petitioner for no fault of the Petitioner inspite of creating so many administrative problems. It is also stated that the Petitioner requested Sri T.Sampath Kumar to cooperate with him for smooth functioning of bank transactions and also not to create any allegations against him. But, Sri T. Sampath Kumar failed to consider the request of the Petitioner and tried to blame the Petitioner by issuing false instructions in order to commit irregularities. Since the functions of the bank got disturbed, left with no other option, the Petitioner made a complaint to the general manager of the Respondent bank at Adilabad complaining about the harassment of Sri T. Sampath Kumar on him and requested him for his intervention in the matter in order to avoid such things. But there was neither any response over the complaint of the Petitioner nor there was any change of attitude of Sri T. Sampath Kumar, but, Sri T. Sampath Kumar continued his acts and deeds developing bore grudge on the Petitioner. Thereafter, Sri T. Sampath Kumar was transferred from Nennel Branch and in his place one Sri Somji was appointed. The new Branch Manager Mr. Somji also left with no other option followed the procedure as adopted by Sri T. Sampath Kumar. It is further stated that while the matters stood thus, on 10.12.1992 notice to show cause was issued to the Petitioner alleging certain irregularities against the Petitioner that, wherein it had been stated that the Petitioner raised debit bills unauthorizedly, committed internal alterations in R & P day books, releasing crop loan instalment without the instructions of the Branch Manager, etc.. The Petitioner categorically stated in his explanation dated 21.12.1992 that he has never committed any mistake as alleged by the Respondent bank and always performed his duties by following the instructions of the Branch Manager. The Respondent bank considered the explanations submitted by the Petitioner and asked the Petitioner to inform his day to day activities to the General Manager at Adilabad Branch. It is also stated that, while the matter stood thus, the Respondent bank on 2.1.1993 again with the same charges as mentioned in the show cause notice dated 10.12.1992, asked the Petitioner to explain the charges personally. Again the Petitioner went to the main branch at Adilabad and explained the facts and circumstances to the Management. Thereafter, the Respondent Management issued another chargesheet dated 9.1.1993 alleging 5 more charges against the Petitioner which had been committed in the month of July 1992, September 1991, February 1992, May 1992. The Management issued the said charge sheets dated 2.1.1993 and 9.1.1993 against the Petitioner without showing any supporting reasons and issued the same only to harass the Petitioner for no fault on him. It is also submitted that the Respondent bank by creating more false charges against the Petitioner issued the chargesheet dated 9.1.1993 and the same are neither mentioned in the earlier show cause notice dated 10.12.1992 nor in the subsequent chargesheet dated 2.1.1993. If the Petitioner really committed such mistakes as alleged by the Respondent, the Respondent bank would have mentioned the same either in the earlier chargesheet dated 10.12.1992 or 2.1.1993 and would have called for explanation at that time only. Therefore, it is crystal clear about the harassment of the Respondent bank in issuing the said charge sheets with false and baseless charges which are created as an afterthought for the reasons best known to them. The Petitioner submitted a detailed explanation dated 1.2.1993 denying all the charges and explained the circumstances and practical difficulties. The Petitioner categorically explained charge wise narrating about the practical difficulties and stated that he has never committed any mistake as alleged against him, except following the instructions of the branch manager. It is stated that so far as charge No.2 is concerned, raising withdrawal slip to withdraw Rs.10,000/- in collusion with the Branch Manager was not proved. It is stated that the Petitioner and the Branch Manager were acquitted by the Hon'ble High Court vide its order dated 29.10.1999, which clearly shows that the Management created false charges against the Petitioner. It is further submitted that the Management of the Respondent bank by ignoring the explanation submitted by the Petitioner, straight away ordered for an enquiry into the alleged charges by appointing Mr.S. Ganga Reddy, the Area Manager, as an Enquiry Officer and Mr. A. Bhagya Raj, Officer, SSGB, H.O., as the Presenting Officer vide its letter dated 4.2.1993. The Enquiry Officer conducted the enquiry in a hasty manner by grossly violating the rules and regulations and also principles of natural justice on each occasion without affording any opportunity to the Petitioner to defend his case. The Enquiry Officer conducted the enquiry as an eye wash formality and most of the times conducted the enquiry without intimating the dates of the enquiry to the Petitioner . The Enquiry Officer posted the enquiry on 26.4.1993, but the Enquiry Officer neither gave any intimation to the Petitioner about the said date nor issued any enquiry notice to the Petitioner. On the said date i.e., 26.4.1993 the Enquiry Officer proceeded with the enquiry in absence of the Petitioner advising the Presenting Officer to present the case. The action of the Enquiry Officer in not giving the intimation to the Petitioner about the date of the enquiry, proceeding with the enquiry at the behest of the Presenting Officer clearly shows the partial attitude of the Enquiry Officer in conducting the enquiry. It is stated that as per Regulation 30(2) of the Staff Regulations of the Respondent bank, while conducting an enquiry, the Petitioner

has to be given reasonable opportunity to defend his case and the defence of the Petitioner shall be taken down in writing and read over to him. In this case, the Enquiry Officer neither gave reasonable opportunity to the Petitioner nor recorded his defence by violating the above said Regulation 30(2) and conducted the proceedings of the enquiry to the satisfaction of the Respondent bank, since all the proceedings are initiated against the Petitioner at the influence of some of the officers including Mr. T. Sampath Kumar, the then Branch Manager of Nennel Branch, who adopted irregular procedures and had harassed the Petitioner. It is stated that Mr. T. Sampath Kumar is also one who was the instrumental to give evidence on behalf of the Management against the Petitioner for most of the charges without looking into the fact whether the charges are related to him or not. Since Mr. T. Sampath Kumar committed several irregularities during his tenure at Nennel Branch, he blamed the Petitioner, as if, the same are committed by the Petitioner and he deposed evidence on behalf of the Management only to cover up such irregularities shown on his part. No opportunity was given to the Petitioner to cross examine any of the Management witnesses including Mr. T. Sampath Kumar and on the other hand all the proceedings have been dictated by the Presenting Officer as per his convenience which can be observed from the proceedings itself. In the enquiry the Presenting Officer straight away put the questions on the Management witnesses by dictating evidence and got them deposed. In fact, it is the duty of the Management witnesses to depose evidence on their own accord, but in the present case, they were dictated/led by the Presenting Officer. The Enquiry Officer simply observed the same without objecting and on the other hand gave permission, since all the proceedings are premanaged against the Petitioner to eliminate him from services. The Petitioner has not been given any opportunity to defend his case, despite insisting for the same by him. It might be the apprehension of the Presenting Officer/Management and Enquiry Officer that if the Petitioner is allowed in the enquiry with all opportunities, it may not be possible for them to conduct the enquiry as per their convenience. The total proceedings of the enquiry are conducted in absence of the Petitioner. The entire proceedings of the enquiry are totally biased, perverse and in violation of the service regulations of Bank and also principles of natural justice without offering any opportunity to the Petitioner to defend his case, and accordingly the Enquiry Officer submitted his report holding the charges levelled against the Petitioner were proved. It is further submitted that it is mandatory on the part of the Management to furnish a copy of the enquiry report to the Petitioner and call for explanation/comments from the side of the Petitioner over the findings of the enquiry. The Hon'ble Apex court and the Hon'ble High Court of Andhra Pradesh and Telengana had categorically reiterated the said principles time and again. But in this case the Respondent bank neither furnished the copy of the enquiry report to the Petitioner nor called for any comments/explanation from the Petitioner by following the mandatory procedure. Thus, the enquiry proceeding on which the Management dismissed the Petitioner from service, are not valid and liable to be set aside in view of non-furnishing of the enquiry report to the Petitioner to submit his explanation/comments and also in view of denial of such opportunity. The Petitioner was neither furnished the copies of the documents and he was deprived of the rights to go through the same to defend his case. The Petitioner was neither furnished with the documents nor was permitted to verify the same and as such, the whole enquiry proceeding are liable to be set aside. It is also submitted that during the course of the enquiry, so far as charge No.1 is concerned, no where MW1 and MW2 stated that the Petitioner committed irregularities as mentioned in the chargesheet and also nowhere stated that there are witnesses to such alleged charges. Further more, MW2 (Mr. T. Sampath Kumar) admitted that as per the attendance register, the manager attended in the office on 17.7.1992, but the manager signed in the attendance register on 23.7.1992 showing his presence on 17.7.1992. Being the Bank Manger and senior official, as to how MW2 permitted Mr. Somiji to sign in the attendance register on 23.7.1992 as present on 17.7.1992, and on what basis he permitted such irregularity, which clearly shows the attitude of MW2, who committed irregularities and who earlier harassed the Petitioner at Nennal branch. Similarly, MW3 did not depose in respect of charge No.2 that the Petitioner committed any irregularities as alleged in the chargesheet. On the other hand, MW3 admitted that there is an error committed by the manager in respect of his SB account number. MW2 also stated in respect of charge No.2 that the concerned voucher is sanctioned and passed by Mr. Soniji and accordingly amount was paid by the Petitioner. It is further submitted that so far as Charge No.3 is concerned, MW2 stated that he can identify the unauthorized postings made by the Petitioner in ledgers. MW2 (Mr. T. Sampath Kumar) neither filed the copies of the ledgers nor shown any iota of evidence that such postings are made by the Petitioner and the same was unauthorised. MW2 simply relied on the letter dated 26.9.1992 given by MR. Soniji, the then Branch Manager, but he failed to establish that, as to why such alleged letter was not brought to the knowledge of the Petitioner at the appropriate time. Only at the time of enquiry such letter is filed before the Enquiry Officer for the first time fabricating the same, since Mr. Somiji did not speak anything about the same prior to the enquiry. None of the witnesses have deposed that the Petitioner has committed such irregularities as alleged by the Respondent in respect of charge No.3 As regards charge No.4 is concerned, the Management witnesses stated that they have conducted snap inspections and they found some irregularity about worth of stamps, but, at no point of time, the Petitioner was intimated about the inspections as allegedly conducted or he was furnished the copies of the inspection reports and as such all the

proceedings were concocted by the Enquiry Officer as well as the Respondent Management, against the Petitioner. The Respondent also failed to produce the relevant documents to substantiate the same. As regards, charge No.5 is concerned the Petitioner has furnished the medical certificate and other prescriptions in respect of treatment done to his ailment. The Respondent Management without considering the same alleged it as an afterthought that the Petitioner was absent to his duties. As the Petitioner submitted the said documents in respect of his treatment and explained the reasons of his absence to the satisfaction of the Respondent Management, the Management never questioned the same at the appropriate time, much less, the Petitioner resumed to the duties. The Respondent bank all of a sudden, falsely included the alleged absence in the chargesheet along with other charges which are made as an afterthought only to make out a false case against the Petitioner. So far as Charge No.6 is concerned, no Management witness, i.e., Sri Chinna Ilaiah and Sri D.Rajanna stated that the Petitioner committed such irregularity as mentioned in the chargesheet. On the other hand the Respondent Management failed to produce any document in support of the alleged charge. The Petitioner has categorically explained in his explanation itself that the Branch Manager was frequently absenting in his duties but without pursuing the transaction of the bank he has passed some bills and for that reason some accounts have become overdrafts. The Petitioner has also stated in his explanation that he only rectified the same to avoid disturbances. So far as charge No.7 is concerned no witness is examined nor any document is filed by the Management to prove the same. In absence of the same the allegation in respect of charge No.7 is false and concocted. So far as charge Nos. 8 & 9 are concerned, no document is filed to show that the Petitioner has collected service charges as alleged in the charge sheets and the explanation submitted by the Petitioner in this regard is ignored by the Management. It may not be out of place to mention that due to frequent absence and irresponsible attitude of the Branch Manager, the transactions of the bank sometimes got delayed. It is the Petitioner who has put his persistent efforts to rectify the same with his due persuasion, but, instead of appreciating his efforts, he is rewarded by the Management with harassments and blaming by way of issuing charge sheets. As regards charge Nos. 10 & 11 are concerned, it is alleged that the Petitioner in collusion with Mr. K. Satyanaryana, one SB account holder, had committed certain irregularities with regard to issuing the cheques on 14.2.1992. But the said Sri K. Satyanarayana has categorically stated during the course of enquiry that he did not come to the bank on 14.2.1992 and did not ask anything. Sri K. Satyanarayana also clarified that he has neither presented any cheque nor has taken any payment as alleged and also categorically deposed that he is not suspecting anybody with regard to the same and he did not pay any amount to the Petitioner as alleged. Therefore, it is crystal clear that the management concocted all these charges falsely against the Petitioner with an intention to eliminate him from service by creating false case. It is submitted that the Enquiry Officer closed the proceeding on 19.5.1993 and after completion of enquiry no intimation has been given to the Petitioner in respect of the findings of the Enquiry Officer whether charges are proved or not or else if proved what are those charges, what is the conclusions of the Enquiry Officer, on basis of which the Enquiry Officer came to the conclusion. The Petitioner was neither furnished copy of the enquiry report nor was given any intimation about the same in respect of the result of the enquiry and he was kept in dark by the management. The Petitioner has also been requesting the management to close the proceedings, since the management failed to give any intimation even waiting about three years. All of a sudden on 15.4.1996 the Respondent management issued one notice to the Petitioner imposing the punishment of dismissal of service on the Petitioner stating that the charges are proved against the Petitioner. the Petitioner replied to the said notice by narrating the said facts and also stated that he was not furnished any of the papers in respect of the enquiry report. It is also stated that on 10.7.1996 the Respondent management sent a letter to the Petitioner fixing the date of personal hearing on 19.7.1996 at 11 AM. But due to his personal inconvenience the Petitioner sent a telegram to the proposed personal hearing on 16.7.1996 to postpone the personal hearing and accordingly the management postponed the personal hearing to 25.7.1996 at 11 AM. But, on the same day i.e., on 25.7.1996 the Respondent issued dismissal order to the Petitioner, dismissing him from service. The Respondent management on one hand gave opportunity of personal hearing on 25.7.1996 to the Petitioner, and on the other hand by ignoring the same and without permitting the Petitioner to avail such opportunity of personal hearing, same day issued dismissal order dated 25.7.1996 against the Petitioner which clearly shows the predetermined nature of the Respondent management, to pass any adverse order. It is also stated that the above action on the part of the Respondent management is arbitrary, illegal, unjustified, unconstitutional and in violation of the principles of natural justice and shows that the management with pre-intention to eliminate the Petitioner from his services, conducted a stage managed enquiry and dismissed him from service in a hasty manner. The action on the part of the Respondent/ management, in keeping silent for three years without intimating about the proceedings of the enquiry to the Petitioner, issuing notice proposing punishment of dismissal all of a sudden, dismissing the Petitioner from his service ignoring personal hearing, etc., clearly attributes its malafides for creating false case against the Petitioner and for dismissing him from service. The management failed to intimate any reason for causing the delay of three years. Otherwise the management would not have waited for three long years for imposing the dismissal on the Petitioner if at all the charges are genuine. It is also submitted that it is a clear case where the Respondent management victimised the Petitioner

for no mistake on his part and the action of the Respondent on all occasions depriving the rights and opportunities of the Petitioner clearly shows the unfair labour practice of the Respondent management and as such the Respondent management is liable to be prosecuted under Sec.25 (T) and 25(U) of the Industrial Disputes Act, 1947. It is further stated that the Petitioner made an appeal to the Respondent management requesting the management to reconsider its decision of dismissal on the Petitioner and also requesting the management to set aside the dismissal order. But the Respondent management failed to consider the same and also failed to give any reasons. The Respondent Management ignored the long and unblemished record of service of the Petitioner and by developing bore grudge on the Petitioner, dismissed him from service in a hasty manner and as such the order passed by the Respondent management in dismissing the Petitioner from service is in violation of the mandatory procedure as laid down by the Apex Court and thereafter dismissal order dated 25.7.1996 passed by the Respondent management is liable to be set aside. With the above averments the Petitioner submitted to declare the action of the Respondent management in dismissing the Petitioner from his service is arbitrary, illegal and not justified and consequentially to pass order directing the Respondent management to reinstate the Petitioner into service with full back wages, continuity of service and all other service benefits and also to pass such other orders and further orders which this court may deem fit and proper.

3. <u>The Respondent filed his counter with the averments in brief as follows</u>:

The Respondent appeared and filed the counter denying the averments made in the claim statement. At the outset, the Respondent has challenged the maintainability of the industrial dispute either under law or on the facts mentioned in the claim statement and has also stated that the Petitioner is not entitled to get any relief. It is stated that all the charges framed against the Petitioner are regarding the clear irregularities committed by him prior to joining of Sri Sampath Kumar on 21.7.1992 at Nennel Branch of the erstwhile Sri Saraswathi Grameena Bank, Adilabad District. The Petitioner has taken vain attempt to make out a case for obtaining reliefs from the Court. The allegations made by the Petitioner against Sri Sampath Kumar are false and frivolous. The Petitioner has committed several irregularities while working at Nennel branch as cashier cum clerk and at the relevant time Sri M. Somaji was the Manager. The Petitioner cannot plead excuse, and throw it on another official to cover up his misconduct in as much as he resorted to several malpractices charged against him. The allegation of the Petitioner that as because he has been acquitted from a criminal case a domestic enquiry cannot be conducted is totally false. It is the settled principles of Law that acquittal in the criminal case is not a bar to conduct domestic enquiry. All the irregularities committed by the Petitioner in the bank are prior to the joining of Sri L. Sampath Kumar. The Petitioner has taken futile exercise to blame Sri Sampath Kumar in order to cover up his wrong deeds. It is stated that the Petitioner has committed serious irregularities in verifying the signatures of the customers and balance available in the accounts and he has forged the signature of the account holders. As per the manual of instructions, it is the duty of the cashier cum clerk in passing the cheque. The Petitioner having committed serious irregularities which were proved in the domestic enquiry, he can not take defence that the court acquitted him in the crime of forgery. There is ample documentary evidence against the Petitioner in respect of each of the charges. The Respondent has also stated that the contents of the enquiry proceedings are to be taken into consideration as part of this counter and the evidence in respect of each charge in the domestic enquiry is not extracted in the counter to avoid repetition. Even though ample opportunity has been given to the Petitioner to participate in the enquiry, he deliberately absented himself to participate in the enquiry and filed this ID in a highly speculated manner making false and incorrect allegations. The Petitioner has exceeded his powers in releasing crop loan and demand loans. The medical prescriptions submitted by the Petitioner referred in charge No.5 had been scrutinized by the bank's Panel doctor who said that the prescription submitted by the Petitioner does not refer to the illness alleged suffered by him. It is further stated that the Petitioner has received the enquiry report on 19.5.1993 and was very much aware of the evidence available in each charge. The charges levelled against the Petitioner have been proved and there is no illegality in imposing the punishment of dismissal from service. There was never any violation/deviation of principles of natural justice and sufficient opportunity was given to the Petitioner at every stage of the enquiry. The Petitioner never choose to participate in the domestic enquiry and after passing of the dismissal order for the first time he has come up with several fanciful objections in the ID. The Respondent has never followed any unfair labour practice. Therefore, it is not liable to prosecute under Sections 25(T) and 25(1) of the Industrial Disputes Act. It is further stated that basing on this evidence on record the gravity of the charges and the magnitude of the irregularities committed by the Petitioner, the Appellate Authority confirmed the punishment. It is also submitted that at various places of the claim statement, the Petitioner admitted his fault but tried to throw the blame, on a officer who did not work in the branch at the relevant period. With all these above averments the Respondent submitted that the Department has fairly conducted the domestic enquiry in each of the charges framed against the Petitioner which was proved and the Enquiry Officer has submitted the enquiry report. The Disciplinary Authority having seen the gravity of the charges, has passed the dismissal order. There is no merit in the claim raised by the Petitioner and submitted for dismissal of the ID.

4. As per the averments made by both the parties, in their pleadings the following points are to be determined:

I. Whether the action of the Chairman, Sri Saraswathi Grameena Bank, Adilabad in dismissing the services of Sh. T.V.Ramana Murthy, Ex-Clerk cum Cashier Nennela Branch, Adilabad District, with effect from 25.7.1996 is justified?

II. If not, to what relief the applicant is entitled for?"

5. In this case, the Respondent organization has conducted one domestic enquiry. When it was posted for consideration of the validity of domestic enquiry, the Petitioner workman failed to challenge its validity for which vide order dated 8.1.2017, this court passed order holding the domestic enquiry conducted by the Respondent is legal and valid when no challenge was made from the side of the Petitioner.

6. I have already heard the Learned Counsels of both the sides in this matter.

7. **Point No.I**: The Learned Counsel appearing on behalf of the Petitioner contended that the Petitioner was appointed as a clerk cum cashier on 12.9.1988 in the Respondent bank at Kuntala Branch, Nirmal Tq., Adilabad District through BSRB examination and since the date of joining the Petitioner was discharging his duties to the utmost satisfaction of his superiors as well as to the management of the Respondent bank and there is no remark against the Petitioner at any point of time. The Petitioner has worked 8 years unblemished service and has always discharged his duties diligently for the development of the Respondent bank by maintaining cordial relationship with the customers of the Respondent bank. While the matters stood thus, in the year 1992, one Mr. T. Sampath Kumar took charge of Saraswati Grameena bank at Nennal branch where the Petitioner was working as a clerk cum cashier. After taking over charge of the above branch, the Branch Manager Mr. T. Sampath Kumar started harassing the Petitioner, as the Petitioner is having cordial relations with the customers of the bank. It is contended that Mr.T.Sampath Kumar bore grudge on the Petitioner and started quarrelling with him since no customer had got good impression about Sri T.Sampath Kumar. It is argued that Sri T.Sampath Kumar always trying to point out the irregularities of the Petitioner and used to show some irregularities which have not been committed by the Petitioner. It is contended that the Petitioner requested Sri T.Sampath Kumar to cooperate with him for smooth functioning of the bank transactions and also not to create any allegations against him. But, Sri T. Sampath Kumar did not listen to the request of the Petitioner and tried to blame the Petitioner by issuing false instructions in order to commit irregularities. The Petitioner made a complaint before the higher authorities, but there was no action to such complaint. There was no change of attitude of Sri T. Sampath Kumar towards the Petitioner, but, Sri T. Sampath Kumar continued his acts and deeds developing grudge on the Petitioner. Thereafter, Sri T. Sampath Kumar was transferred from Nennel Branch and in his place one Sri Somji was appointed. The new Branch Manager Mr. Somji also left with no other option followed the procedure as adopted by Sri T. Sampath Kumar. It is further stated that while the matters stood thus, on 10.12.1992 one notice to show cause was issued to the Petitioner alleging certain irregularities made by the Petitioner, wherein it had been stated that the Petitioner raised debit bills unauthorizedly, committed internal alterations in R & P day books, releasing crop loan instalment without the instructions of the Branch Manager, etc.. The Petitioner categorically stated in his explanation dated 21.12.1992 that he has never committed any mistake as alleged by the Respondent bank and always performed his duties by following the instructions of the Branch Manager. It is contended that considering the explanation submitted by the Petitioner the Respondent bank asked the Petitioner to inform his day to day activities to the General Manager at Adilabad Branch. It is also contended that, while the matter stood thus, the Respondent bank on 2.1.1993 again with the same charges as mentioned in the earlier show cause notice dated 10.12.1992, asked the Petitioner to explain the charges personally. Again the Petitioner went to the main branch at Adilabad and explained the facts and circumstances of the allegations to the Management. Thereafter, the Respondent Management issued another chargesheet dated 9.1.1993 alleging 5 more charges against the Petitioner which had been committed in the month of July 1992, September 1991, February 1992, May 1992. The Management issued the said charge sheets dated 2.1.1993 and 9.1.1993 against the Petitioner without showing any supporting reasons and issued the same only to harass the Petitioner for no fault on him. It is also contended that the Respondent bank by creating more false charges against the Petitioner issued the chargesheet dated 9.1.1993 and the same are neither mentioned in the earlier show cause notice dated 10.12.1992 nor in the subsequent chargesheet dated 2.1.1993. It is contended that if the Petitioner really committed such mistakes as alleged by the Respondent, the Respondent bank would have mentioned the same either in the earlier chargesheet dated 10.12.1992 or 2.1.1993 and would have called for explanation at that time only. Therefore, it is crystal clear about the harassment of the Respondent bank in issuing the said charge sheets with false and baseless charges which are created as an afterthought for the reasons best known to them. The Petitioner submitted a detailed explanation dated 1.2.1993 denying all the charges and explained the circumstances and practical difficulties. The Petitioner categorically explained it charge wise narrating about the practical

difficulties, and stated that he has never committed any mistake as alleged against him, and whatever he has done was as per the instructions of the branch manager. Even though the Respondent Management has ordered for an enquiry into the alleged charges, none of the witnesses have supported the charges, still the Respondent Management conducted the enquiry holding the charges as proved and the Petitioner was found guilty of the allegations and ultimately the Petitioner was dismissed from service. The principles of natural justice have not been followed while conducting the domestic enquiry. The Respondent Management initially lodged one police case and in that criminal case he has been acquitted. It is contended that he has not been given opportunity to participate in the domestic enquiry conducted by the Respondent Management. The principles of natural justice has not been followed while conducting the domestic enquiry. Therefore, the allegation made by the Respondent Management has been proved as false by the competent court. As a result, the action taken by the Respondent Management in terminating the services of the Petitioner w.e.f. 25.7.1996 is not proper and justified. And the same may be liable to be set aside and the Petitioner is entitled to get the benefit of reinstatement into service.

8. On the other hand the Learned Counsel appearing on behalf of the Respondent contended that the allegation made by the Petitioner against Mr. P. Sampath Kumar is totally false. All the irregularities committed by the Petitioner are prior to the joining of Sri Sampath Kumar on 21.7.1992 at Nennel Branch of the erstwhile Sri Saraswathi Grameena Bank, Adilabad District. The Petitioner has made out a case making allegations against Sri T. Sampath Kumar only to get reliefs from the Court. The allegations made by the Petitioner against Sri T. Sampath Kumar are false and frivolous. The Petitioner did not prefer to participate in the enquiry for the reasons best known to him. The Petitioner cannot take advantage of his wrongs and plead that principles of natural justice has been violated at the time of the enquiry. It is argued that on several days at the end of the day, the proceedings of the enquiry were furnished to the Petitioner, whereas all the irregularities committed by him are prior to the joining of Sri Sampath Kumar. It is futile exercise on the part of the Petitioner to submit the said officer for doing wrongs committed by the Petitioner. The Petitioner has committed serious irregularities in verifying signatures of the customers and the balance available in the accounts and he perused the signature of the accountholders. As per the manual of instructions, it is the duty of the cashier cum clerk in passing the cheque. The Petitioner having committed serious irregularities which were proved in the domestic enquiry, he cannot take defence that the court acquitted him in the crime of forgery and he is quite innocent. He also contended that there is ample documentary evidence against the Petitioner in respect of each of the charges. Even though ample opportunity has been given to the Petitioner to participate in the enquiry, he deliberately absented himself to participate in the enquiry and filed this ID case in a highly speculated manner making false and incorrect allegations. The Petitioner has exceeded his powers in releasing crop loan and demand loans. The medical prescriptions submitted by the Petitioner referred in charge No.5 had been scrutinized by the bank's Panel doctor who said that the prescription submitted by the Petitioner does not refer to the illness alleged suffered by him. It is further stated that the Petitioner has received the enquiry report on 19.5.1993 and was very much aware of the evidence available in each charge. The charges levelled against the Petitioner have been proved, and there is no illegality in imposing the punishment of dismissal from service. There was never any violation/deviation of principles of natural justice and sufficient opportunity was given to the Petitioner at every stage of the enquiry. The Respondent has never followed any unfair labour practice. Therefore, the Respondent is not liable to be prosecuted under Sections 25(T) and 25(1) of the Industrial Disputes Act. It is further stated that basing on this evidence on record the gravity of the charges and the magnitude of the irregularities committed by the Petitioner, the Appellate Authority confirmed the punishment. He further contended that the Management has issued 11 charges on the Petitioner and the charges have been established against the Petitioner. The Disciplinary Authority after verifying the enquiry report found the dishonesty and lack of integrity on the part of the Petitioner. The Petitioner has taken undue advantage of the absence of the Branch Manager and exercised his official power for which he was not empowered. The Petitioner has fraudulently withdrawn Rs.10000/- by a forged withdrawal slip and misappropriated the amount. The Petitioner also went on unauthorised leave and submitted bogus medical certificate. He made bogus entries in the books. He misappropriated Rs.460/- from Stamp account in absence of the Branch Manager and misused the amount. He further contended that being an employee of the institution like Bank which runs on faith and value, continuation of the Petitioner is fatal to the bank, for which the Respondent has rightly removed him from service. He submitted that the prayer of the Petitioner is liable to be rejected.

9. On consideration of the rival contentions of both the parties, it is seen that the Petitioner was working as a cashier cum clerk in the Respondent's bank at Kuntala branch, Adilabad District from 12.9.1988. During his career at Nennel branch, he has committed certain irregularities during the absence of the Branch Manager. The averments made by the Petitioner in his claim statement appears to be self explanatory in nature. Initially, chargesheet was issued to the Petitioner and he participated in the enquiry, but subsequently, the Petitioner did not prefer to participate in the enquiry. The Respondent Management has framed 11 charges against the

Petitioner. The Petitioner has only attended the preliminary enquiry held on 17.3.1993, but he did not attend in the subsequent hearings even after giving him sufficient time. Therefore, the Management was constrained to conduct an ex-parte enquiry. The Respondent bank has framed 11 charges against the Petitioner which were, i) he has unauthorizedly debited crop insurance claim amount of Rs.1,32,893-37, to head office account and misused the bank funds. ii) Withdrawal of Rs.10000/- on 18.2.92 by a forged withdrawal slip from SB A/c No.975. iii) Unauthorizedly released crop loan instalments to ACC-534 and 535. Iv) shortage of stamps worth Rs.460/-, v) sick leave-submission of bogus medical certificates, vi)SB ledgers –manipulation of figures – resulting overdrawings in the accounts, vii)Disbursement of crop loan to ACC-545 & ACC-340, viii & ix) Purchase of cheques issued by Smt. T. Sai Madhavi, x) purchase of personal cheque No.0582153 dated 13.2.1992 for Rs.2000/- in collusion with SB A/c holder No.1064, xi) purchase of personal cheque bearing No.0582154 dated 7.5.92 for Rs.2000/- in collusion with the account holder SB A/c No.1064. Even, the Petitioner did not prefer to challenge the validity of the domestic enquiry before this court. Ultimately, the same was held legal and valid by this court. When an employee of the bank did not deposit the amount and intentionally trying to adopt misappropriate customers money, people will loose faith from a public institution like bank and such type of employee should not be allowed to continue in the public sector bank. The Disciplinary Authority after verifying the entire enquiry report submitted by the Enquiry Officer has come to the conclusion that cheque of Rs. 2000/- issued by the Petitioner in favour of Sri KS Narayana was purchased on 7.5.1992 without collecting any service charges and was not sent for collection. Further, the amount was credited to SB a/c No.1064, and it has been established with the circumstantial evidence. Considering the above report of the Enquiry Officer, the Disciplinary Authority agreed with the findings of the Enquiry Officer and held that the charges established as above show the dishonesty and lack of integrity of the Petitioner. It is held that the Petitioner has taken undue advantage of absence of the Branch manager and has exercised the official powers for which he was not empowered. The Petitioner has fraudulently withdrawn Rs.10000/- and misappropriated the amount. It is further held that the employee also went on unauthorised leave and submitted bogus medical certificate. The Petitioner has also made bogus entries for his pecuniary gain and manipulated the figures in the ledgers and gave false information having altered the ledgers. The Petitioner has misused the PP facility for his pecuniary benefit. It is further held that the Petitioner has also misappropriated Rs.460/- from SB account in collusion with the Branch Manager and misused the amount. The Disciplinary Authority has opined that in an institution like bank where trust and faith are valued, an employee like the Petitioner should not continue. Further, an employee whose malafides are established is a threat to the organization, and as such considering all the gravity of the misconduct, and serious irregularities committed by the Petitioner, he was imposed capital punishment like dismissal from service. The Petitioner had been called upon to submit explanation, why proposed punishment should not be imposed on him. But the Petitioner did not submit his explanation, for which punishment of dismissal from service was imposed on the Petitioner. The documents available on record well proves that as the Petitioner being an employee of the Respondent bank have misappropriated public money, defrauded the bank and manipulated documents of the bank for his pecuniary gain, the Respondent bank has the right to impose the punishment of dismissal from service and as such, the punishment imposed on the Petitioner is justified.

Thus, Point No.I is answered against the Petitioner.

10. **Point No. II**: In view of the findings given in Point No.I, the Petitioner is not entitled to get any relief as prayed for. Hence, order.

Thus, Point No.II is answered accordingly.

Result:

The reference is answered as under:

The action of the Chairman, Sri Saraswathi Grameena Bank, Adilabad in dismissing the services of Sh. T.V.Ramana Murthy, Ex-Clerk cum Cashier Nennela Branch, Adilabad District, with effect from 25.7.1996 is justified and as such, the Petitioner is not entitled for any relief as prayed for.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 4th day of February, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2020

का. आ. 301.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच डी एफ सी बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 12/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.02.2020 प्राप्त हुआ था।

[सं. एल-12011/05/2014-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 19th February, 2020

S.O. 301.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the industrial dispute between the management of HDFC Bank and their workmen, received by the Central Government on 19.02.2020.

[No. L-12011/05/2014–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 12 of 2014

Parties: Employers in relation to the management of HDFC Bank Limited

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. D. Rudra, Senior Manager for HDFC Bank Ltd.

Mr. Joy Roy, Partner for Mamta Electric Co.

On behalf of the Workmen : None

State: West Bengal. Industry: Banking

Dated: 20th December, 2019

AWARD

By Order No.L-12011/05/2014-IR(B-I) dated 13.02.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether the action of the management of M/s. Mamta Electric Company, contractor of HDFC Bank Ltd. by retrenching the electricians without following statutory rules and regulations and non-compliance of Section 25F of the I.D. Act, 1947 is justified or not? If not, what relief the workmen are entitled for?"*

2. When the case was listed last for hearing on 19.12.2019, none was present for the union, though authorized representative of HDFC Bank Ltd. and M/s. Mamta Electric Company, contractor were present. It transpires from record that this reference is pending in this Tribunal since 24.02.2014 and all the parties entered appearance, but no step is taken by the union to file statement of claim inspite of sufficient opportunity. Management side also preferred not to file any written statement. Union is found absent since 19.06.2019, i.e., on two consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of retrenchment of the concerned electricians as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 20th December, 2019

नई दिल्ली, 21 फरवरी, 2020

का.आ. 302.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 158/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. एल-40012/142/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 302.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 158/1997) of the Central Government Industrial Tribunal – cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom ,Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/142/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 158/1997

I Party	**II Party**
Sh. Shankar Handa, C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar Post, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/142/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. K. Shankar Handa is proper, legal and justified? If not, to what relief the workman is entitled to?"

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus :

"*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*

Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.

In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. Shankar Honda S/o Mahalinga for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737707 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-15 in connected case CR 153/2007. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 303.—विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 160/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. एल-40012/152/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 303.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 160/1997) of the Central Government Industrial Tribunal cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/152/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 160/1997

I Party	**II Party**
Sh. P.V. Skariya C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar Post, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/152/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. P.V. Skariya is proper, legal and justified? If not, to what relief the workman is entitled to?"**

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002 (L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus :

> "*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*
>
> *Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.*
>
> *In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs*."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. P V Skariya S/o P.T. Varghese for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737706 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-14 in connected case CR 153/2007. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 304.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 161/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. एल-40012/154/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 304.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 161/1997) of the Central Government Industrial Tribunal cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/154/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 161/1997

I Party	**II Party**
Sh. Naveen Kumar C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar Post, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/154/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. Naveen Kumar is proper, legal and justified? If not, to what relief the workman is entitled to?"

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus:

"*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*

Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.

In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. Naveen Kumar S/o Ramayya Shetty for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737704 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-13 in connected case CR 153/2007. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 305.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 165/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था ।

[सं. एल-40012/150/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 305.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 165/1997) of the Central Government Industrial Tribunal-cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/150/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 165/1997

I Party	**II Party**
Sh. K. Santosh, C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance :

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/150/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. K. Santosh is proper, legal and justified? If not, to what relief the workman is entitled to?"**

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus :

> "*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*
>
> *Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.*
>
> *In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs*."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. K Santhosh S/o Shivaram for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737698

drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-10 in connected case CR 153/2007. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 306.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 166/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. एल-40012/159/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 306.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 166/1997) of the Central Government Industrial Tribunal cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/159/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 166/1997

I Party	**II Party**
Sh. K. GopalaKrishna, C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar Post, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/159/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. K. Gopalakrishna is proper, legal and justified? If not, to what relief the workman is entitled to?"

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002 (L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus:

"*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*

Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.

In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. K Gopalarishna C/o K. Nagesh Kumar for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737693 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-09 in connected case CR 153/1997. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 307.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स पंजीयक, मणिपाल विश्वविद्यालय, मणिपाल बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 15/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.02.2020 को प्राप्त हुए थे ।

[सं. एल-42011/32/2009-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 307.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15/2011) of the Central Government Industrial Tribunal-cum Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Manipal University, Manipal, Bangalore & Others, and their workmen which were received by the Central Government 18.02.2020.

[No. L-42011/32/2009-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 07TH FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 15/2011

I Party	**II Party**
The President, Manipal University Mazdoor Union (R), C/o B.M.S. office, Felix Pai Bazaar, Mangalore – 575 001.	The Registrar, Manipal University, Madhava Nagar, Manipal – 576 104.

Appearance

Advocate for I Party : Mr. K. B. Arasu

Advocate for II Party : Mr. K.S. Bhat

AWARD

The Central Government vide OrderNo. L-42011/32/2009-IR(DU) dated 20.04.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Manipal University in changing "leave pattern" of their employees w.e.f. July 2002 without complying with the provisions of Section 9A of the Industrial Dispute Act, 1947 is justified? What relief the workmen are entitled to?"**

1. The claim of the 1st Party Union is, it's members are the employees of the 2nd Party / Manipal University, without giving notice under Section 9A of the Industrial Dispute Act, the 2nd Party has changed the leave pattern and reduced the wage at 50%; but the leave facilities as existed earlier was there for last many years and became the service conditions; change is introduced abruptly in a meeting which was not meant for discussion. Undertaking is taken by the Management from the employees without giving them the details of the change. There is no settlement on these points. The employees who refused and protested were continued in their old pay scale, with changed leave rules; they are not given subsequent dearness allowance and conveyance allowance even though the same is not part of the change. The action of Management leads to unfair labour practice. The Management has revised pay scale and leave rules with reduced number of leave. Getting both of them accepted from the staff is not maintainable.

2. Counter to the above claim by the 2nd Party is, the decision to revise the salary with the reduction of leave as a package was offered to all the employees of the University vide circular dated 04.05.2002; they were given option to accept the same in the prescribed format on or before 20.05.2002. The financial benefits were extended with retrospective effect from 01.04.2002; leave reduction was w.e.f 01.07.2002. The increased monetary benefit was given in the revised pay in lieu of reduction of the leave. Approximately 3700 employees opted the new package and two of them did not; one such employee Sh. V M Swamy was terminated vide order dated 24.04.2004. Subsequently, a settlement was arrived with him vide order dated 16.01.2008 and he has received his full and final settlement. Another employee Sh. Purushotham who did not opt for the package, subsequently availed the same and is paid full arrears. The dispute pertains to those two individual employees and is not an Industrial Dispute. Section 9A of 'the Act' is not attracted in the present circumstance. As a generous gesture the 2nd Party introduced additional 13 days of leave w.e.f 17.01.2005 to all the employees, National and Festival holiday is increased with 3 days w.e.f 2007 thus, 16 days leave is given in addition to the leave provided under the package. The calculation sheet given by the 1st Party is totally incorrect.

3. Each of the Parties has adduced evidence to substantiate respective stand and submitted written argument.

4. The witness for the 2nd Party was its Legal Officer. While reiterating the counter statement averment, MW-1 produced table of calculation regarding monetary benefit in view of the revised package and 14 declarations given by different employees and Memorandum of Settlement entered by the Management with one of the employee who had not opted the package deal. He has asserted that, since the employees have accepted

the benefits of the revised package Section 9A of 'the Act' is not attracted; there is nothing to show that the employees who have opted for package were under coercion or pressure to accept the same or, are supporting this demand raised by the Union; the 2nd Party unilaterally introduced additional 13 days of leave w.e.f 17.01.2005 to all the employees, National and Festival holidays is increased for 3 days w.e.f 2007, in addition to the leave provided under the package, which is accepted by the employees without protest. During cross examination he admits that, 30 days earned leave is still available to Hostel employees.

5. The witness examined by the 1st party is its General Secretary who is also a former employee of the 2nd Party. Among other things, he has produced a calculation sheet showing a total loss incurred by the employees on account of 24 days leave reduction annually, inspite of enhancement of basic pay scale (This is a calculation submitted before ALC).

During the cross examination, he expresses ignorance to the suggestion that, monetary package is accepted by all the employees except himself and Sh. V.M. Swamy. However, he identified the Settlements Ex M-16 and Ex M-17 (Ex M-16 is Memorandum of Settlement dated 16.12.2008 and Ex M-17 is Memorandum of Settlement dated 20.01.2010). Though, he admits that he is a party to the proceedings dated 25.03.2002 and 16.04.2002 (pertaining to the deliberation held in respect of the pay revision and leave reduction package), he does not agree that all the suspicion raised by the Unions has been clarified. He admits that since 17.01.2005 additional 13 days leave is restored as against 24 days which was there earlier and 3 additional National and Festival leave holidays are given.

6. It is an admitted fact that, it was a package offered vide circular dated 04.05.2002 revising wages and leaves and the dispute is raised after a delay of 8 years. It is a fact that, WW1 and another employee Sh. V.M. Swamy who did not opt the above package have now severed their relationship by entering into settlement with the Management. None of the employees who are said to have been adversely affected by the circular of 04.05.2002 are examined as witnesses. There is no gain say for requirement of a notice of change under Section 9A of 'the Act' in respect of the matters which are enumerated in the 4th Schedule; leave with wages and holiday is one such condition of service at Sl. No. 5 of 4th Schedule.

As per the change vide circular of 04.05.2002, earned leave is reduced by 6 days, sick leave by 5 days and casual leave by 13 days thus, totally there is reduction by 24 days leaves. Anyhow, the 13 days leave is subsequently restored and 3 more National and Festival Holidays restores. Thus, tapering the reduction of leave by another 8 days. The 1st Party has calculated the loss of leave viz a viz the revision of their pay and would contend that, the revision has adversely affected the employees. But on a perusal of the said calculation sheet it reflects that, the calculation is done by assuming 24 days leave reduction as over time duty days.

They have raised a separate Industrial Dispute in respect of the pay revision, that being so there is no reason for the Union to tag reduction of leave with pay revision in the present Dispute.

The case of the 2nd Party in its essence is, the dispute pertaining to two employees who opposed the revision, since resolved by subsequent by Settlement and other employees since not adversely affected, no notice of change was required to be given. The calculation treating the reduced leave as over time is incorrect. Reliance is placed on Judgement of Hon'ble High Court of Orissa reported in 2004 LAB. I. C. 1121 in the matter of Orissa Mining Corporation Ltd., vs Orissa Mining Workers' Federation, where in, it was held that *'.... in a case where a change in condition of service which is not likely to affect pre-judicially to the workman, no notice is necessary to be given'.* Reliance is also placed on Judgement of the Apex Court in the matter of Harmohinder vs Kharga Canteen Ambala Canpt reported in CDJ 2001 SC 363, which reiterated the Law that, *notice to workmen is necessary only when, change adversely affects the workmen.*

7. The Dispute is raised after a delay of 8 years that too after enjoying the revision of pay that flowed in favour of the workmen from the circular of 04.05.2002. None of the workmen who are said to have been adversely affected are examined as witness in support of the claim. The calculation sheet that is produced is a part of the document Ex W-2 which is a petition submitted before the Conciliation Officer, hence cannot be counted upon for adjudication of the present dispute. In the absence of direct evidence by the 1st Party as to how the whole package deal adversely changes the condition of service of the workmen. I find no merit in their claim.

8. Several Judgements of the Higher Courts are relied by the 1st Party in which the principle that notice of change under Section 9A of 'the Act' is compulsory is highlighted. There is no quarrel to the said principle. The problem here is, there is no evidence by the adversely affected workmen. By the time the dispute was raised challenging the change effected by the circular of 04.05.2002, the employees had accepted the same as their condition of service and got used to it, otherwise the 1st Party would have placed some evidence touching the practical difficulty in encountering the change. The 'change' which the Union is harping upon appears to be

only theoretical and has no impression. From the evidence on record it can be gathered that before effectuating the circular of 04.05.2002, the Management had discussed the issue with the Unions who were active at that point of time. None of those Unions raised dispute about change of service condition.

9. For discussion Supra, the 2nd Party Management did not commit any illegality by not issuing notice of change under Section 9-A of 'the Act' before effectuating the circular of 04.05.2002.

AWARD

The reference is rejected

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 07th February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 308.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स पंजीयक, मणिपाल विश्वविद्यालय, मणिपाल, कर्नाटक और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 47/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.01.2020 को प्राप्त हुए थे ।

[सं. एल-42012/29/2009-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 308.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 47/2009) of the Central Government Industrial Tribunal-cum Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Manipal University, Manipal, Karnataka & Others, and their workmen which were received by the Central Government 31.01.2020.

[No. L-42012/29/2009-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 23RD JANUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 47/2009

I Party	**II Party**
The President, Manipal University Mazdoor Union, C/o BMS Office, Felix Pai Bazaar, Mangalore – 575001.	The Registrar, Manipal University, Madhav Nagar, Manipal Karnataka – 576104.

Appearance

Advocate for I Party : Self

Advocate for II Party : Mr. K.S. Bhat

AWARD

The Central Government vide Order No. L-42012/29/2009-IR(DU) dated 06.10.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of the Registrar, Manipal University, in terminating the services of their workman Sh. Govinda Bhandary w.e.f. 11.03.1998 is legal and justified? If not, what relief the workman is entitled to?"

1. The 1st Party Union has espoused the cause of the workman Sh. Govinda Bhandary / former employee of the 2nd Party who after a Departmental Enquiry was from service as a measure of Disciplinary action vide order dated 11.03.1998; he was Senior Grade Electrician cum Technician, CODS KMC Manipal.

It is the claim of the 1st Party that, the charge framed against the workman was based on false information; decision of the Enquiry Officer was against the evidence on record; the order is passed at the crucial stage of organising a Trade Union. Denial of 50% of salary upto 90 days from the date of suspension and 75% of salary for the remaining period after 90th day of suspension as maintenance allowance is violation of the service rule. The dismissal order is illegal and unjustifiable.

2. The 2nd Party in their Counter Statement justified the action taken against the workman, they have quoted the number of instances wherein, he was issued memos / warnings for the lapses/ dereliction of duty it is contended that, he is incorrigible and unfit for any institution much less and educational institution; he is not entitled for any relief.

3. The validity of Domestic Enquiry held against the 1st Party Workman is adjudicated as Preliminary Issue by holding the same as fair and proper.

4. The 1st Party Workman has adduced evidence before this Tribunal in respect of his contention of unemployment and victimisation.

5. Both parties have submitted their written briefs.

6. The allegations against the workman as per the Charge Sheet dated 03.12.1997 was to the effect that, on 04.08.1997 at 2:30 pm he had assaulted Junior Engineer Mr. K.L. Rao within the office premises during the office hours.

7. During the Enquiry, the prosecution examined 3 witnesses – complainant and two eye witnesses.

The 1st Party cross examined two witnesses only, but abandoned the enquiry in the middle. Thus, there was no cross examination of the 3rd witnesses and there was no defence evidence.

8. The MW-1 / Complainant deposed to the effect that, his duty is to set right any faults pertaining to electric connection; he used to assign attending the work to the CSE; on 04.08.1997 he had assigned a work to CSE and another Sh. Madhava Poojari; but CSE did not accompany Sh. Madhava Poojari, when he approached CSE to enquire in this regard he abused him by using scandalous word 'Rascal' and attempted to assault him by holding his collar; he took exception for carrying the ladder with him (to attend the work). However, one Sh. Gladson Salins who was present over there separated the two; still he continued to verbally abuse him.

The tone of cross examination to the witness was, neither CSE nor Sh. Madhava Poojari had experience in attending loose connection work which they were assigned on that day. He was compelled to carry the ladder to the assigned place which is not a Electrician's tool - Though both of them had pleaded with the witness that, they do not know the said work, he compelled them to do the assigned work.

The eye witness Sh. Gladson Salins was the 2nd Witness, whose deposition was not in full corroboration to the statement of the complainant / MW-1, his statement was to effect that MW-1 and CSE were arguing in loud voice about carrying the ladder and were about to come close to each other; at the time he separated them.

During the course of cross examination of this witness the CSE abandoned the enquiry thereafter the management examined their Engineering incharge who is a circumstantial witness. As per his statement, MW-1 complained to him that CSE made galata against him by holding his collar; immediately he reported the matter to his Superior Officer and at his instruction recorded / received the written statements of the complainant and three eye witnesses. Since the CSE had already abandoned the enquiry there was no cross examination to this witness also thus, enquiry was concluded and the Enquiry Officer has recorded his findings.

9. It is borne from the records that, the workman challenged the punishment before the Labour Court, Mangalore in I.D No. 84/2000. After a full-fledged trial, the learned Labour Court dismissed his petition on the ground of limitation, though it held that punishment order was too harsh; subsequently, he raised a dispute before Deputy Labour Commissioner and Conciliation Officer, Hassan and the dispute was referred by the State Government to the Labour Court, Mangalore and was registered in No. IDR 28/2007. The 2nd Party had challenged the jurisdiction of the State Government before the Hon'ble High Court in W.P No. 43521/2004 in respect of the disputes pertaining to its workmen. On 05.07.2007 the Writ Petition was allowed by holding that, the Central Government is the appropriate Government in such circumstances to take action under Industrial Dispute Act, 1947. Thus, the Labour Court, Mangalore rejected the reference vide order dated 04.11.2008 and the fresh dispute was raised before the Conciliation Officer (Central) and the matter was referred to this Tribunal.

10. The allegation against the 1st Party is, assaulting the Superior Officer during the office hours within the office premises, which act amounts to riotous and disorderly behaviour which is a serious misconduct.

During the enquiry it was submitted to the Enquiry Officer that, no separate Service Rules are framed for the 2nd Party.

11. In the complaint given at the earliest to the Director of General Services of the 2nd Party, it was alleged that, on 04.08.1997 at 2.30 pm the CSE manhandled and assaulted him in the presence of witnesses, the said document is marked as Ex M-2; the eye witness Sh. Gladson Salins diluted the allegations in his statement given in writing states that CSE talked loudly using filthy language whereas Complainant allegation was CSE held his collar for manhandling and assaulted another witness Sh. R.D. Rao in his statement did not subscribe to the allegations of manhandling, assault or using filthy language, another eye witness Achutha Kamat stated that, the CSE went inside the room of complainant and started talking in filthy language.

During the oral evidence the complainant stated that the 1st Party abused him by using the word 'Rascal' and attempted to assault him by holding his collar. The second witness / Sh. Gladson Salins stated that, both of them were shouting at each other. The Enquiry Officer without noticing the discrepancy within the case of the prosecution records that the delinquent is guilty of the charges. Instead of looking to the evidence of the prosecution as to whether same is in corroboration to the charges, the Enquiry Officer shifts the onus on the CSE for abandoning the enquiry proceeding and for not placing contra evidence same is against the elementary principles of Evidence Act. The statement of the first eye witness did not corroborate with the statement of the complainant, the other two eye witnesses whose statement was taken were not examined during the enquiry.

12. The stand of the CSE was, he is a Senior Electrician and had no experience in attending the work of loose connection problem of the KMC quarters. As per the complaint, the work was assigned to the Electricians Mr. Madhava Poojari and CSE.

During the cross examination of MW-1, the CSE had suggested that both of them had no experience in said kind of work and both of them had pleaded the same with the complainant which was not heeded to. Said Sh. Madhava Poojari was not examined during the enquiry; it appears his statement was also not taken during preliminary enquiry. Perhaps the real controversy between the complainant and the CSE was, he was insisted to carry ladder by himself to the work for which he was reluctant. Anyhow, the dereliction of duty or insubordination to the orders of the Superior Officer was not the allegation in the charge sheet, it was about manhandling / assault during the office hours at the work place which is not at all substantiated by the complainant itself. The finding of the Enquiry Officer which has ignored the discrepancy within the case of the prosecution definitely is perverse and the punishment order passed by the 2nd Party acting on the basis of the said perverse finding is definitely illegal and not justified.

13. The 2nd Party is of the stand that once the enquiry is held fair and proper it is not within the propriety of the Labour Court to interfere in the punishment order.

14. The Apex Court in the matter of Workmen Of Messrs Firestone Tyre ... vs Management & Others (With ... on 6 March, 1973 reported in 1973 AIR 1227, 1973 SCR (3) 587 quoted the principles laid down by larger Bench of in *Delhi Cloth and General Mills Co. Ltd. vs. Ludh Budh Singh(1)* reported in 1972 AIR 1031, 1972 SCR (3) 29 wherein among other things it was held that,

> "*When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the, findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide*".

The above position of law till date is firm and unsettled. The previous history of the workman was not a part of the charges. Had if the finding of the Enquiry Officer was accepted as plausible, and flowing from the evidence, his past records could be of some help to examine the question of proportionality of punishment viz a viz gravity of the charge proved. But when the enquiry finding itself is found defective there is no question of further probe on proportionality of the punishment order.

15. Now the workman is 66 years and the question of reinstatement would not arise; he is a skilled workman / Electrician.

In the said circumstance, I hold that he is entitled for a monetary compensation in respect of years of service lost by him in lieu of the punishment order. He has contented before this Tribunal that from the date of the dismissal he is unemployed, he has raised loans to educate his children, maintain his family in the standard he was living for several decades; his salary would have been Rs. 25,000/- per month had if his services were not illegally dispensed with, and his date of retirement would be on 05.08.2010.

Interestingly, there was no cross examination disputing his unemployment. However, counting upon the fact that he is a skilled workman I am of the considered opinion that back wages at 75% from the date of his dismissal to the date of his superannuation would serve the ends of justice being met.

AWARD

Reference is accepted

The action of 2nd Party in terminating the services of Sh. Govinda Bhandary is not legal and not justified.

The 2nd Party is directed to pay backwages at 75% from the date of his dismissal till the date of his superannuation within 60 days from today failing which the amount shall carry future interest at 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 23rd January, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 309.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स पंजीयक, मणिपाल विश्वविद्यालय, मणिपाल, कर्नाटक और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 05/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.01.2020 को प्राप्त हुए थे।

[सं. एल-42011/47/2008-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 309.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2009) of the Central Government Industrial Tribunal-cum Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Manipal University, Manipal, Karnataka & Others, and their workmen which were received by the Central Government 31.01.2020.

[No. L-42011/47/2008-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 23RD JANUARY 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 05/2009

I Party	**II Party**
The General Secretary, Manipal Academy of Higher Education Non Teaching Staff Association, C/o BMS Office, Felix Pai Bazar, Mangalore – 575001.	The Registrar, Manipal University, Madhav Nagar, MANIPAL – 576104 Karnataka.

Appearance :

Advocate for I Party : Mr. K.B. Arasu

Advocate for II Party : Mr. K.S. Bhat

AWARD

The Central Government vide Order No. L-42011/47/2008-IR(DU) dated 16.01.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Manipal University (earlier MAHE) is justified in revising the pay scales w.e.f. 01.04.1996 in respect of Non Teaching, Non Academic Staff without complying with the provisions of Section 9A of the Industrial Dispute Act, 1947? If not, to what relief the employees are entitle to?"**

1. The claim of the 1st Party is, The intended change brought under the revision of 01.04.1996 was brought to the affected employees from March 1997 to March 1998 by obtaining their signatures at the spot on a **'Pay and Cadre Fixation Sheet'**; the change was brought in respect of the non-teaching staff long back i.e. prior to intimation of change to the affected parties. The format of willingness given to the non-teaching staff for their consent (i.e. pay and cadre fixation sheet) did not consist of words as to consent of the employees signing the same. The consent was not for the proposed action but information of the action was already taken. Hence, it cannot be taken as the consent given by the employees for the change already brought to his service condition a year back. The introduction of reorganisation and revision of pay scales w.e.f. 01.04.1996 by the 2nd Party is in violation of provisions of Sec 9-A of 'the Act' and ab initio unenforceable and illegal.

2. The 2nd Party refused the claim allegation on the ground that, the Manipal University and its constituent units including the Academic Institutions, Hospitals had a total strength of about 2928 staff members / employees in the non-teaching category; the employees are recruited / appointed on different scales of pay with different qualifications, sometimes with comparable designations / duties and pay scales. The question of reorganising and rationalising the cadre structure of the non-teaching staff inter alia to provide adequate scope for their promotions to a higher grade; the pay scales and the designations were reorganised w.e.f. 01.04.1996 and were implemented in toto after obtaining voluntary acceptance from each and every non-teaching staff.

Accordingly, existing non-teaching employees are grouped by their present designation into cadre groups 1 to 21, with required minimum eligibility qualification mentioned in the corresponding column No. 2 of the Schedule "I" to the counter statement. The promotion cum upgradation for each individual employee within their respective cadre group will be based on the principle that – each individual employee should first be identified by his present designation for inclusion in one or other cadre group, ambiguity if any in identification may be referred to the University for clarification. All existing employees who satisfy the minimum eligibility qualification on completion of 15 years of service or more by 31.03.1996 shall be eligible for being fixed in the third level with scale of pay and designation as shown in Column No. 3 of the Schedule. Employees with less than 15 years of service by the due date but put in more than 5 years of service shall be fixed in the second level with the corresponding scale of pay and designation; employees who have less than 5 years of service will be fixed in the first level. The years of service in the present scale shall be calculated from the date of joining or from the date of probation whichever is later; period of training, temporary service, daily wagers, leave of

absence without pay should be excluded to compute the length of service, only the period of service in the present scale will be taken into consideration and not previous service in lower scales. In respect of employees who do not fulfil minimum eligibility qualification but have completed periods of service theirs scales may be upgraded as shown in the Schedule II. If they acquire minimum eligibility qualification or qualified in a departmental test as may be prescribed by the University they shall become eligible for fixing under Schedule I, until then the employee will have the personal scale as per Schedule II. All the employees have accepted the pay scales in the above said reorganisation; there is no violation of Sec 9-A of 'the Act'. Since they are monetarily benefited by the reorganisation there is no anomaly in the wage reorganisation. The salary revision took place on 04.05.2002 and then in the year 2005, till now there is no grievance from the employees. Only 1 or 2 out of the 5000 employees had approached the 1st Party Union after the introduction and implementation of the Scheme. The claim is belated and it is stale dispute.

3. By way of rejoinder the 1st Party further claimed that, they agree that Manipal University erstwhile MAHE is the 2nd Party. The consent of the employees taken by the 2nd Party while reorganising the pay structure has no legal sanctity since the same was obtained after a lapse of 1 year and is also against the provisions of UGC; 2nd Party being a university is also bound by the provisions of AICTE. The upgradation of salary should be linked to the policy guidelines of the Industry to which the said Organisation belongs; the anomalies caused by the revision of salary requires immediate redressal and the revision of salary, upgrading and grouping of designations come under the purview of 'the Act' accordingly Sec 9-A gets attracted. The disputes is related to the basic anomaly pertaining to 2928 employees and by not setting aside the anomalies the numbers have gone up in the successive years and whereby at present over 6000 employees are adversely affected due to this anomalies. The 2nd Party directed to grouping of the different designations and fixation of pay scales in conformity with the UGC pay scale and relied upon by the Institutions which are recognised by the UGC and AICTE. The pay structure revised by the 2nd Party had adversely affected over 90% of the employees.

4. The 2nd Party in justification examined their Legal Officer. The 1st Party examined its General Secretary and 6 concerned workmen. Both parties have filed their written arguments.

5. A direct reading of the Schedule to the order of reference would sound, whether the revision of pay is not legal, not justified for non-issuance of 9-A notice to the affected parties. If so, what is the relief for the workman.

6. Assuming for a while that, for want of statutory notice the entire pay revision is held void ab initio, automatically the workman will be back to square No. 1. Then pay structure of the Employees has to be freshly formulated by this Tribunal itself, but this Tribunal is not specially skilled to structure the pay scales. The Apex Court in a recent judgment reported in *2019 (1) Supreme 76 in the matter of Punjab State Power Corporation Ltd vs Rajesh Kumar Jindal and others*, at para 14 observed that "Ordinarily Courts will not enter upon the task of job evaluation which is generally left to expert bodies like Pay Commission etc. The aggrieved employee claiming parity must establish that they are unjustly treated by arbitrary action or discriminated……" same view was expressed in another case pertaining to the very same *Punjab State Electricity Board and another vs Thana Singh and others reported in 2019 (1) Supreme 114*. The larger Bench of the Apex court in the matter of *Delhi Transport Corporation Security Staff Union (Regd.) vs Delhi Transport Corporation and another* referred to its own earlier judgment in *Union of India vs P.V Hariharan, (1997) 3 SCC 568* wherein it was observed:

> "*We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the commendations of a Pay Commission. Change of Pay scale of a category has cascading effect. Several other categories similarly situated, as well as those situated above the below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is all being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter*."

7. That being the position of law, this Tribunal has to contain itself from substituting a new scheme in the place of the pay revision of 01.04.1996. Moreover, when the scheme was given effect to, the 1st Party Union was not in existence and the Unions operating in the 2nd Party did not oppose the Scheme. Subsequently vide several circulars pay pattern is said to have been revised till date; a copy of 20 such circulars is produced by the 2nd Party at the stage of argument. The pay revision of 01.04.1996 is challenged before the Conciliation Officer in the year 2008 after a vide time gap of 12 years. Though, the delay in raising the dispute by itself cannot be a ground to reject an Industrial Dispute at the threshold itself. It is a vital factor to be noted while moulding the

relief, in the event the action of the Management / Employer is not endorsed, and if reference is accpeted. The Apex Court in the matter of *Harmohinder Singh vs Kharga Canteen, Ambala Cantt, Civil Appeal No. 4024/2001 DD 09.07.2001* held that, *the provisions of Sec 9-A are no doubt mandatory but the preconditions of their applicability are that there must be a change in the condition of service and secondly the change must be such that it adversely affects the workmen in respect of any of the matters provided in the Fourth Schedule of the Act*.

8. That lands us to the position that, notice of change of service condition contemplated by 4th item of Schedule IV is mandatory to those of the employees whose service condition is adversely affected because of the change. That narrows down the area of probe that

i) Whether the pay scale revision in question has adversely affected the non-teaching and non-academic staffs?

ii) What is the number of such affected staff?

9. Though the point for reference is restricted about the consequences of non-compliance with the provisions of Sec 9-A of 'the Act', much is brought on record by the 1st Party regarding anomaly in grouping / regrouping the designations and parity / disparity and anomalies in the pay scales etc, but within the narrow conspectus of this reference the focus is only on the consequence of non-compliance of Sec 9-A of 'the Act'. The 1st Party along with their written arguments has placed a Table comparing the Basic Pay Scales of Manipal University with Karnataka State Government (KA) Basic Pay Scales, I have to say that the information furnished by this Table has no semblance to the issue which is in consideration under the present reference.

10. The 2nd Party would contend that to provide adequate scope for the promotion of the non-teaching staff with a higher grade with due regard to their basic qualifications and skills and also to reward them for their long period of service to the Institutions through upgradation of their existing pay scales, pay reorganisation was affected on 01.04.1996 and implemented in toto after obtaining voluntary acceptance from each and every non-teaching staffs. There is no violation of Sec 9-A of 'the Act' since all the employees have been monetarily benefited by the said reorganisation and there is no grievance from any of the employee. Subsequently, there was pay revision w.e.f. 04.05.2002 wherein all the employees of the University numbering approximately 5280 have accepted, again there was another revision in the year 2005 which is also accepted without any grievance. If the pay revision of 1996 is quashed on the imaginary ground of violation of Sec 9-A of 'the Act' it will affect subsequent revision which are based on 1996 revision and the pay scales for the workers will have to be reworked from 1996 to 2017 on the basis of pre-scales applicable to each of the 5000 and odd workers. The 1st Party have not stated which is that service condition set out in the Schedule IV of 'the Act' that has changed, if so in what way workmen are adversely affected. None of the workers have rejected the package of revision, even now if they do not want the revised package, they can reject the same in which case they would be continued under the old scale. None of the 1st Party workmen have rejected the pay revision hence it is clear that there is no issue of adversely affected.

11. In the back drop of the above now we will travel through the evidence to trace whether there is any material to presume *adverse affect* of pay revision on the concerned employee.

12. WW-1 is the General Secretary of the 1st Party Union who has averred in the affidavit evidence that information was given to individual employees after implementation of the revised scale of pay, that too after a lapse of 1 year; the 2nd Party had made some of the non-teaching staff eligible for higher pay scales without processing requisite qualification which amounts to favouring a section of employees and denial of justice to other members. However, it is not the case of this witness that he is one such adversely affected employee because of the pay revision. During the cross examination his understanding of change in the service condition was extracted thus '*I agree with the suggestion that according to me because the anomalies are not corrected in the new pay scales properly there is a change in the service condition as such there ought to have been notice under Sec 9-A*'. The witness expresses ignorance, if the pay scale of any of the employee is reduced under the re-fixation or the workers whose salaries are affected by anomaly, whether have given their individual representation to the Management. He further expressed his understanding to the *proposition degradation* used by him in his affidavit evidence thus:

> *'the degradation according to me to some of the employees whose designations were Electrician cum Technician were degraded as Electrician thereby according to me is a degrade. I cannot right now give the details of financial loss caused to the each individual employees, I do not know whether any employee has rejected the revised pay scale on the ground he has suffered injustice under it. The witness admits that subsequent to 1996 there has been further revision of pays in 2002, 2005, 2010 and 2012'.*

13. WW-2 is one of the concerned Party who does not spell out that he is the adversely affected employee because of the Pay revision, though he alleges that pay revision has resulted in pay anomaly. He is the person who is dismissed in the year 1998 much before the dispute is raised and he has received the payments under the pay revision of 1996. During his cross examination he comes with his grievance that his cadre of Senior Electrician cum Technician came to be degraded as Senior Electrician. His Writ Petition questioning the pay revision came to be dismissed consequent upon his dismissal, it was pointed during his cross examination that his designation is Senior Lab Technician as mentioned in his salary slips.

WW-3 is one of the concerned workmen who claims that because of the pay revision his designation is changed as Senior Plumber and his basic pay is fixed to Rs. 2060/-. Now he is getting less salary due to the restructure and reorganisation of the pay scale. As could be seen from his pay revision before reorganisation his scale of pay as Plumber was Rs. 910-2880 with Basic Pay Rs. 1320/- after reorganisation his designation is Senior Plumber-II with revised scale at Rs. 1900-3250 and the revised basic pay of Rs. 2060/-. His oral evidence cannot take over the documentary proof which meets the eye. It cannot be fathomed how his pay came down because of the revision.

14. WW-4 is another concerned workmen who joined the service as Hostel Assistant whose grievance is that because of the revision he is placed in a different pattern of fitment which is prejudicial to him and he has got less salary, he is the retired employee of the 2nd Party who has received all his benefits under the revised scheme. In his cross examination he expresses that he has suffered loss of about Rs. 3,000/- per month due to pay revision but as per his own document Ex W-26 before reorganisation as Hostel Assistant scale of pay was 720-1900 and the basic was Rs. 910/- on reorganisation he is designated as Mess Manager with the revised scale of 1550-2750 with the revised basic pay of Rs. 1620/-.

Again, his is the case of contradiction between documentary proof and oral / affidavit evidence. There is no material to accept his evidence that because of the reorganisation he is suffering a loss of Rs. 3,000/- per month.

WW-5 was the Electrician with the pay scale of 910-2880 with basic pay of Rs. 1100/- on reorganisation his designation is Electrician-II with revised pay scale 1550-2750 with the revised basic pay of Rs. 2390/-. Though during the cross examination, he stated that he suffered loss of Rs. 800/- per month because of the pay revision that was contrary to his own documentary evidence.

15. WW-6 was working as Hostel Assistant in the pay scale of 720-1900 with basic pay of Rs. 910/- after reorganisation he is designated as Mess Manager in the pay scale of 1550-2750 with the revised basic pay of Rs. 1620/-. He claims that due to revision he suffered loss of Rs. 5,000/- per month when questioned how does he arrive at that figure his only answer was I have calculation and I have done 29 years' service.

WW-7 was working in the Designation of Hostel Assistant with the pay scale of 720-1900 with basic pay of Rs. 910/- on reorganisation he is designated as Mess Manager with the revised scale of 1550-2750 and the revised basic pay of Rs.1620/-. Though he grieved that he gets less salary at Rs. 4,000/- per month when questioned how does he arrive at that figure, he follows the suite of WW-6 by station '*I have calculation for loss of Rs. 4,000/- per month*'.

16. Thus, we are left with the evidence where the 1st Party is unable to demonstrate that any of the witnesses have suffered monetary loss / adversely affected because of the pay revision of 1996. Much water has flown in the river between 1996 to 2009 when the matter reached this Tribunal for adjudication. The pay anomalies in designations and categorisation if any appears to have been taken by the individual workmen directly with the Management. In the absence of unimpeachable evidence that the employees were adversely affected because of the pay revision there was no legal obligation on the 2nd Party to issue individual notice of change to the concerned employees. Even now the individual employees are given option to exercise their option to take exit from the present revised pay scale as per the written submission made for the 2nd Party.

17. In view of the discussion supra, I hold that the 2nd Party is justified in revising the pay scales w.e.f. 01.04.1996 without compliance of the provisions of Sec 9-A of 'the Act'.

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 23rd January, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स चिकित्सा अधीक्षक, कस्तूरबा अस्पताल, मणिपाल, कर्नाटक और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 01/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.02.2020 को प्राप्त हुआ था ।

[सं. एल-42025/07/2020-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 310.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2012) of the Central Government Industrial Tribunal-cum Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Medical Superintendent, Kasturba Hospital,Manipal Karnataka & Others, and their workmen which were received by the Central Government 20.02.2020.

[No. L-42025/07/2020-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 07TH FEBRUARY 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

ID 01/2012

I Party	**II Party**
Sh. Vittala, S/o Thaniya Poojary, Chandu Thota House, Kote Village, P O, Udupi District - 574 105.	The Medical Superintendent, Kasturba Hospital, Madhava Nagar, Manipal – 576 104.

Appearance

Advocate for I Party : Mr. K. Shama Rao

Advocate for II Party : Mr. K. S. Bhat

AWARD

1. The petition is filed under Section 10 (2) of the Industrial Dispute Act, 1947 seeking the relief to set aside the termination order issued to the 1st Party workman by the 2nd Party and reinstate him with full back wages.

It is claimed that on 10.02.2011 he was issued charge sheet on certain allegations for which he replied denying the charges; not satisfied with his explanation 2nd Party initiated enquiry by appointing Enquiry Officer. After conducting Enquiry the Enquiry Officer held that "*the management of Kasturba Hospital, Manipal has failed to prove the allegation against the employee Sh. Vittala, Trauma Technician EC 558, Kasturba Hospital, Manipal as per the charge sheet dated 10.02.2010, accordingly charges against Sh. Vittala, Trauma Technician are not proved*." Rejecting Enquiry Officer's Report, the 2nd Party issued show cause notice dated 19.12.2010 stating that why it should not hold that the charges farmed against the petitioner is proved and why his services should not be terminated in the light of the charges proved considering his past bad record of service. He sent his reply to the show cause notice but his explanation was not accepted, termination order dated 03.05.2011 was issued. Appeal preferred by him is also rejected. The order of the Disciplinary Authority and the Appellate Authority are illegal; no valid ground is shown to reject the Enquiry Officer's report. The conclusion of the Management is perverse and against natural justice.

2. The claim is contested by the 2nd Party; justifying the action taken against him.

3. On completion of the pleading, two documents produced by the 2nd Party were taken on record and the matter was posted for argument on merits. In the mean while notice issued to the 1st Party returned with the endorsement "Deceased". However, there is no official confirmation of his death. Nobody claiming as his Class-I legal heirs have appeared to pursue the dispute.

4. The Documents produced by the 2nd Party were marked as Ex M-1 / order dated 23.09.2008 demoting the workman to the lower grade; Ex M-2 / his apology letter dated 16.06.2008.

5. Perused the records. On receipt of the Enquiry Report bailing him out of the alleged charges, the Disciplinary Authority issued a show cause notice; in the said show cause notice the Disciplinary Authority disagreed with the enquiry finding; it was categorically pointed out that the finding of the Enquiry Officer was not supported by the evidence.

6. The charge against him was, that on 27.11.2009 he travelled with a patient in the ambulance to Nanjappa Hospital of Shivamogga from Kasturba Hospital, Manipal; as per the procedure the Transport expenses is Rs. 6,259/- as against this he collected Rs. 7,900/- which is excess by Rs, 1641/- in this regard a complaint was lodged by the son of the patient. When enquired he admitted his misconduct and gave an apology letter to the medical superintendent. He has committed similar misconducts in the past and the allegations came to be proved and as a measure of punishment he was de-promoted with warrant, still he perpetuated his fraudulent activity.

7. During the enquiry the complainant was examined as one of the witnesses who identified his complaint, he had also stated that the CSE is a Gentleman, he does not feel that he has extracted more charges from him, in his complaint he has not alleged so. During the cross examination he admitted the suggestion, 'in respect of the amount paid by the Complainant the CSE had given him the details towards items, same received by the CSE like ventilation charges, service charges, oxygen charges, glucose charges and transportation charges'. He admits the suggestion that CSE had assured that after finalisation of the bill, remaining amount would be sent to his address. That prompted the Enquiry Officer to hold that the charges are not proved, but the Disciplinary Authority in the show cause notice while differing from the Report of Enquiry recorded its reasoning on the basis of the record itself i.e. the CSE very well knew the total number of kilometre on reaching the destination and charges of all items in the bill relating to transportation; he did not seek clarification from the Hospital or Management with regard to charges after returning from Shimoga; he had not informed the Management with regard to excess billing; he had credited Rs. 6259/- only to the Hospital and retained Rs. 1641/-, it is only after the Complainant gave his letter to the Hospital, consequent upon which the Hospital enquired the same about the excess amount, vide letter dated 08.01.2010, he agreed to pay the said amount to the Hospital, he had not assigned cogent reasons for withholding the amount for more than a month; in his letter he had not shown that he had intended to return the amount and he had not explained for charging the excess amount of Rs. 1641/-. That apart his past conduct in applying leave application on false ground to avoid investigation was also pointed out, another incident of such excess billing was also pointed out. The 1st Party had given his detailed explanation to the show cause notice which was not convincing.

8. In its termination order dated 03.05.2011 the Disciplinary Authority has discussed how the explanation given by the CSE to the show cause notice is not convincing to them. By considering his past records which were marked during the enquiry as exhibits and also on the basis of the evidence collected during the enquiry on the charges, he is dismissed from service vide order dated 03.05.2011.

9. Before this Tribunal they have produced an order passed by Medical Superintendent dated 23.09.2008 whereby the punishment imposed on him on a previous misconduct was reviewed and the punishment order was withdrawn with a warning note. Said apology letter is also produced as Ex M-2. It appears that the 1st Party was a habitual and despite giving opportunity to rectify himself, he perpetuated his wrongful conduct. It is in the propriety of the Disciplinary Authority to disagree with the finding of the Enquiry Officer if the evidence collected during the enquiry so suggests. In that view of the matter I do not find any impropriety in the punishment order imposed on the workman.

AWARD

The Petition is dismissed

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 07th February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,मैंगलोर दूरसंचार, मैंगलोर, कर्नाटक और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 170/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.02.2020 को प्राप्त हुआ था ।

[सं. एल-40012/157/95-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 311.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 170/1997) of the Central Government Industrial Tribunal cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 10.02.2020**.**

[No. L-40012/157/95-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 170/1997

I Party	**II Party**
Sh. Nagesh Kumar, C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar Post, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/157/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. K. Nagesh Kumar is proper, legal and justified? If not, to what relief the workman is entitled to?"**

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus :

"*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*

Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.

In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. K Nagesh Kumar S/o K. Chandrashekar for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737694 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-08 in connected case CR 153/1997. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 312.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रिष्ठ महाप्रबंधक, आयुध निर्माणी, अंबाझरी, नागपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – नागपुर के पंचाट (संदर्भ संख्या 19/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.12.2019 को प्राप्त हुआ था ।

[सं. एल-14012/19/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 312.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2016) of the Central Government Industrial Tribunal-cum-Labour Court- Nagpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Sr. General Manager, Ordnance Factory, Ambajhari,Nagpur Nagpur & Others, and their workmen which were received by the Central Government 24.12.2019.

[No. L-14012/19/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/19/2016-17

Date: 11.11.2019

Party No.1:(a) The Sr. General Manager,
Ordnance Factory, Ambajhari,
Nagpur-440021.

Party No.1:(b) Sri Anil Kichar,
M/s Sai Enterprises,
Naka No.10, Kamla Nagar, Amravati Road, Wadi,
Nagpur-440023.

V/s

Party No.2: Sri Sunil Deshpande & 31 other Contract workers,
Plot No.75, Mandpe Layout, 8th Mile,
Amravati Road,
Nagpur-440023.

AWARD

(Dated: 11th November, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the Industrial Dispute between the employers, in relation to the Management of Ordnance Factory and their workmen for adjudication, as per letter **No.L-14012/19/2016 – IR (DU) dated 15.07.2016,** with the following schedule:—

> **1."Whether the management of Ordnance Factory, Ambajhari and the contractor, M/s. Sai Enterprises have committed unfair labour practice w.e.f. 15.02.2016 as prescribed under item 5(a),(b) & (9) of the Fifth Schedule, the ID Act, 1947 by terminating the services of Sri Sunil Deshpande and 31 other contract workers?" 2. "Whether the termination of the services of Sri Sunil Deshpande and 31 other contract workers of Ordnance Factory, Ambajhari (list Attached) w.e.f. 15.02.2016 orally and without compliance of section 25-N & 25-S of chapter V-B read with section 2(g) of the ID Act, 1947 is legal and justified? If not, to what relief the contract workers are entitled?"**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due and they filed their respective authority i.e. on behalf of Ordnance Factory and workmen, their representative filed their authority, after issuing the notice on behalf of management [Party No1(a)] Mr. R.G. Agrawal filed a joint vakalatnama on 09.09.2016, but service of contractor [Party No.1(b)] notice return un-served. Petitioner notice served, but he is absent. 31 other contract workers are not present, but reference did not contained details of their workers. Reference did not include name of 31 workers.

Management filed an application to dismiss the reference which is marked as I.A. No. 1. This Court also issue the second notice to the petitioner, but he is absent after service of notice. It shows that petitioners are not interested to proceed further in this case. Moreover this reference is pending in this Court from 29.07.2016 in this way application of I.A. No.1 is accepted. Hence it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स डाक अधीक्षक, बीदर डिवीजन, कर्नाटक और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 51/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.01.2020 को प्राप्त हुआ था।

[सं. एल-40012/28/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 313.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2012) of the Central Government Industrial Tribunal-cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Superintendent of Posts, Bidar division, Karnataka & Others, and their workmen which were received by the Central Government 09.01.2020.

[No. L-40012/28/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD JANUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 51/2012

I Party	**II Party**
Sh. Jaihind, H. No. A-8-12, Multani Colony, Bidar - 585 401.	The Superintendent of Posts, Bidar division, Bidar - 585 401. Karnataka

Appearance:

Advocate for I Party : Party in Person

Advocate for II Party : Mr. Sathish. B

AWARD

The Central Government vide Order No. L-40012/28/2012-IR(DU) dated 03.12.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of management of Superintendent of Posts, Bidar, in terminating the services of Mr. Jaihind, workman w.e.f. 19.05.2012 is proper and justified? If not, to what relief the workman is entitled to?"**

1. 1st Party has appeared in person, instead of filing a claim statement setting forth the specific claim along with list of witness and list of documents; he has filed an application the language of which is incoherent along with some documents. It appears he had filed a petition before Central Administrative Tribunal in Original Application No. 48/2003 but copy of the said petition is also not made available. However, from the Photostat copy of the conciliation failure report of the RLC it probabalises that, Mr. Jaihind, Ex-Gardner raised the Industrial Dispute stating the CAT Bangalore has ordered the Management to maintain status quo as, his service was not terminated. He requested the Office to prevail upon the Management to revise the wages in accordance with the recommendation of 6th Pay commission and not to outsource the work of casual labour but to grant temporary status.

It can be further inferred from Conciliation Report that the Management contested his dispute stating that, they had engaged him as daily wage employee whose service was later terminated w.e.f 19.05.2001 by the Superintendent of Posts, Bidar Division, Bidar in accordance with the orders contained in the letter No. 4-4/2009-BCC dated 19.11.2010 received from the Director of General, Department of Posts; his disengagement from service cannot be construed to be a retrenchment under the Industrial Dispute Act. Discussions and conciliation proceedings were held but the party could not arrive at amicable settlement.

2. The 2nd Party filed their statement contending that, the 1st Party workman worked as Part time Contingent Gardner at Bidar Head Post Office on hourly basis for one hour daily. He is not engaged against any regular post in accordance with the Recruitment Rules; the utilisation of his service was stopped as per the order received from Director General, Department of post, New Delhi vide letter 4-4-2009/BCC dated 19.11.2010. He was at liberty to undertake any other work after fixed hour of work. His claim for full time or part time job could not be considered. Gardening work is now the part of duties of MTS (Multi Tasking Staff) earlier termed as Group-D, as per the policy decision of the Department his engagement is dispensed with; his application filed before the CAT (Central Administrative Tribunal) in Original Application No. 48/2003 is dismissed for want of merit. The 2nd Party is not an Industry as held by the Apex Court in its judgment dated 02.02.1996 in Civil Appeal No. 3385-86/1996.

3. In support of their case, the 2nd Party examined Superintend of Post Office, Bidar and produced the Photostat Copy of the application filed by the workman before the CAT and the order passed by the CAT dated 27.10.2003. The 1st Party has chosen not to cross examine the witness.

4. In view of the above uncontroverted facts, the inevitable conclusion is that the service rendered by the 1st Party as a Contingent Gardner on fixed hours with the 2nd Party does not fall within the category of continuous service contemplated by Section 25-B of 'the Act'. His disengagement as a consequence of the policy decision does not amount to retrenchment contemplated by Section 2 (OO) of 'the Act' and the 2nd Party was not bound to comply mandatory obligation contemplated by Section 25-F of the Act.

The action of the Management in terminating the services of Sh. Jaihind w.e.f 19.05.2012 in accordance with the policy decision taken by Director General of Posts is justified. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd January, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक,मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 164/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. एल-40012/149/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 314.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 164/1997) of the Central Government Industrial Tribunal-cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/149/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 164/1997

I Party	**II Party**
Sh. Laxman Poojari, C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar Post, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance :

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/149/95-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. Laxman Poojari is proper, legal and justified? If not, to what relief the workman is entitled to?"**

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus:

> "*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*
>
> *Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.*
>
> *In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs*."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. Laxman Poojari C/o K. Nagesh Kumar for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737702 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned

counsel for the 1st Party as Ex M-11 in connected case CR 153/2007. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, मैंगलोर दूरसंचार, मैंगलोर, बंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय – बैंगलोर के पंचाट (संदर्भ संख्या 163/1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. एल-40012/143/1995-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 315.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 163/1997) of the Central Government Industrial Tribunal-cum-Labour Court- Bangalore, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Mangalore Telecom, Mangalore, Bangalore & Others, and their workmen which were received by the Central Government 11.02.2020.

[No. L-40012/143/1995-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 03RD FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 163/1997

I Party	**II Party**
Sh. B. Jayanarayana C/o Sh. K. Nagesh Kumar, Sh. Ganesh Prasad, Malemar, Ashoknagar Post, Mangalore – 575 006.	The General Manager, Mangalore Telecom Dist, Old Kend Road, Mangalore – 575 001.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. Y. Hari Prasad

AWARD

The Central Government vide Order No. L-40012/143/1995-IR (DU) dated 26.07.1996 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Mangalore Telecom District in terminating the services of Sh. B. Jayanarayana is proper, legal and justified? If not, to what relief the workman is entitled to?"

1. This Tribunal vide Award dated 27.12.2001 rejected the reference. The matter was taken before the Hon'ble High Court in W.P No. 35066/2003 c/w 26849/2002(L-TER), the Hon'ble High Court allowed the writ petitions filed by the 1st Party vide common order dated 23.07.2007 and matter was remitted back to this Tribunal for fresh disposal.

It is from records that the 2nd Party Management challenged the said order before the Apex Court in Civil Appeal No. 4850/2014 (arising from SLP (C) No. 16792/2007), the Apex Court allowed the Appeal as per following terms vide order dated 22.04.2014 thus:

"*In the facts and circumstances of the case, we are of the opinion that a compensation of Rs. 50,000/- each to those workmen who had worked for more than 240 days and Rs. 25,000/- each to those workmen who had worked for less than 240 days, as decided by the Tribunal, shall meet the ends of justice.*

Accordingly, we direct the appellant to pay to each of the workmen the amount, as aforesaid, within three months from the date of receipt/production of a copy of this order, failing which it shall carry interest at the rate of twelve per cent per annum.

In the result, we allow these appeals, set aside the impugned judgment of the High Court as also the award and direct the appellant to make payment, as afore-stated. There shall be no order as to costs."

2. In pursuance of the above order of the Apex Court compliance memo is filed by the 2nd Party on 10.11.2016, along with Photostat copy of the receipt executed by the 1st Party workman Sh. B Jayanarayana C/o K. Nagesh Kumar for having received Rs. 25,000/- (Rupees Twenty Five Thousand Only) by cheque / DD No. 737686 drawn on Corporation Bank dated 18.09.2014. This receipt is marked with the consent of learned counsel for the 1st Party as Ex M-12 in connected case CR 153/2007. In view of the above there is no ensuing dispute between the parties. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 03rd February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 21 फरवरी, 2020

का.आ. 316.—केन्द्रीय सरकार कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए **गेल (इंडिया) लिमिटेड** के नियमित कर्मचारियों को एतदद्वारा उक्त अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट इस अधिसूचना के जारी होने की तारीख से एक वर्ष की अवधि तक लागू रहेगी।

2. यह छूट निम्नलिखित शर्तों के अध्यधीन है, अर्थात्:-

(1) प्रतिष्ठान छूट प्राप्त कर्मचारियों के नाम और पदनाम दर्शाते हुए कर्मचारियों का रजिस्टर बनाएगा;

(2) कर्मचारी उक्त अधिनियम के अधीन ऐसे लाभ प्राप्त करते रहेंगे जिनके वे इस अधिसूचना द्वारा मंज़ूर छूट के प्रचालन की तारीख से पहले अदा किए गए अंशदान के आधार पर हकदार होते;

(3) छूट प्राप्त अवधि का अंशदान, यदि पहले ही अदा कर दिया गया हो, लौटाया नहीं जाएगा;

(4) उक्त कारखाने या प्रतिष्ठान का नियोक्ता उस अवधि के संबंध में जिसके दौरान वह कारखाना उक्त अधिनियम के प्रचालन के अध्यधीन था (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है), ऐसे प्ररूपों में तथा ऐसे विवरण वाली विवरणी प्रस्तुत करेगा जो इससे कर्मचारी राज्य बीमा (सामान्य) विनियम, 1950 के अंतर्गत उक्त अवधि के संबंध में देय थीं;

(5) उक्त अधिनियम की धारा 45 की उप-धारा (1) के अंतर्गत निगम द्वारा नियुक्त कोई सामाजिक सुरक्षा अधिकारी या इसके द्वारा इस निमित्त प्राधिकृत निगम का कोई अन्य कार्मिक निम्न प्रयोजनों के लिए –

(क) उक्त अवधि के लिए उक्त अधिनियम की धारा 44 की उप-धारा (1) के अधीन प्रस्तुत किसी विवरणी में उल्लिखित विवरणों का सत्यापन करेगा; अथवा

(ख) पता लगाएगा कि उक्त अवधि के लिए रजिस्टर और रिकार्ड कर्मचारी राज्य बीमा (सामान्य) विनियम, 1950 की यथा अपेक्षित बनाए गए थे या नहीं; अथवा

(ग) पता लगाएगा कि इस अधिसूचना के अंतर्गत दी जा रही मंज़ूरी के विचाराधीन कर्मचारी, नियोक्ता द्वारा नकदी और वस्तु-रूप में प्रदत्त लाभों के हकदार बने रहते हैं या नहीं; अथवा

(घ) पता लगाएगा कि निम्न हेतु सशक्त किए जाने वाले उक्त कारखाने के संबंध में इन उपबंधों के लागू रहने की अवधि के दौरान अधिनियम के किसी उपबंधों का पालन किया गया था या नहीं–

(i) या आसन्न नियोक्ता उससे इस अधिनियम के प्रयोजनार्थ ऐसी सूचना की अपेक्षा करे जिसे वह इस अधिनियम के प्रयोजनार्थ आवश्यक समझता हो; या

(ii) ऐसे मूल या आसन्न नियोक्ता द्वारा अधिकृत किसी कारखाने, प्रतिष्ठान, कार्यालय या अन्य परिसरों में किसी उचित समय पर प्रवेश करे तथा उसके प्रभारी पाए गए किसी व्यक्ति से अपेक्षा करे कि वह कार्मिकों के नियोजन और मजदूरी के भुगतान से संबंधित लेखे, बहियां और अन्य दस्तावेज इस निरीक्षक या अन्य अधिकारी के समक्ष पेश करे और जांच करने दे अथवा ऐसी सूचना उसके समक्ष पेश करे जिसे वह आवश्यक समझे; या

(iii) ऐसे कारखाने, प्रतिष्ठान, कार्यालय या अन्य परिसर में पाए गए मूल या आसन्न नियोक्ता, उसके एजेन्ट या नौकर, या किसी व्यक्ति अथवा किसी ऐसे व्यक्ति की जांच करे जिसे उक्त निरीक्षक या अन्य कार्मिक, कर्मचारी मानने का यथोचित कारण रखता हो; या

(iv) ऐसे कारखाने, प्रतिष्ठान, कार्यालय या अन्य परिसर में बनाए गए किसी रजिस्टर, बही-खाते या अन्य दस्तावेज की प्रतियां बनाए या उद्धरण ले; या

(v) यथा विनिर्दिष्ट अन्य शक्तियों का प्रयोग करे।

(6) विनिवेश और निगमीकरण के मामले में, प्रदान की गई छूट निरस्त मानी जाएगी और तब नई इकाई छूट के लिए समुचित सरकार के समक्ष आवेदन कर सकती है।

[सं. एस-38014/28/2013-एसएस-I]

मदन चौरसिया, अवर सचिव

New Delhi, the 21st February, 2020

S.O. 316.—In exercise of the powers conferred by section 88 read with section 91 A of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the regular employees of the **GAIL (India) Limited** from the operation of the said Act. The exemption shall remain in force for a period of one year from the date of issue of this notification.

2. The exemption is subject to the following conditions, namely:-

(1) the establishment shall maintain a register of the employees specifying the names and designations of the exempted employees;

(2) the employees shall continue to receive such benefits under the said Act to which they would have been entitled to on the basis of the contribution paid prior to the date from which exemption granted by this notification operates;

(3) the contribution for the exempted period, if already paid, shall not be refundable;

(4) the employer of the said factory or establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) any Social Security Officer appointed by the Corporation under sub-section (1) of section 45 of the said Act or other official of the Corporation authorised in this behalf by it, shall, for the purpose of—

(a) verifying the particulars contained in any return submitted under sub-section (1) of section 44 of the said Act for the said period; or

(b) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(c) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(d) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to—

(i) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(ii) enter at any reasonable time, any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(iii) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or

(iv) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises; or

(v) exercise such other powers as may be specified.

(6) in case of disinvestment or corporatisation, the exemption granted shall stand cancelled and then the new entity may apply to the appropriate Government for exemption.

[No. S-38014/28/2013-SS-I]

MADAN CHAURASIA, Under Secy.

नई दिल्ली, 24 फरवरी, 2020

का. आ. 317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरणमें, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 12/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/170/2013-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2014*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/170/2013-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 27th day of December, 2019

INDUSTRIAL DISPUTE No. 12/2014

Between:

The General Secretary (Sh. Riaz Ahmed),
Singareni Miners & Engg. Workers Union (HMS),
Qr.No. C-34, Sector-I, Godavarikhani.
Karimnagar District. …Petitioner/Union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri (P.O.)
Adilabad district – 504231. …Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. Nandigam Krishna Rao, N.S. Pattabhi Rama Rao & J. Narsimhulu, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-22012/170/2013-IR(CM-II) dated 17.12.2013 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area., Mandamarri., Adilabad District., in terminating the services of Sri K. Sudarshan, Ex-Sr. Mining Sirdar, RK-1A Inc., Mandamarri Area with effect from 6.11.2007 is justified or not? If not, to what relief the applicant is entitled for?''

After receiving the above said reference this Tribunal registered the case as I D No. 12/2014 and issued notices to both the parties and secured their presence.

2. The Petitioner Union filed claim statement with the averments in brief as follows:

The workman Sri K. Sudarshan, was initially appointed on 21.5.1983 under the Respondent and thereafter he was promoted as Mining Sirdar. The workman is a sports person, who has won many awards in State level and National level in body building competitions. The achievements of the concerned workman were appreciated by the Respondent. The workman also won many prizes in Coal India Sports meet, at all India level. The workman has also got the distinction of working as Coach for Telengana Body Building Team, which participated in the National level competitions. While so, the workman has applied for leave for 3 years to acquire more competency or mastery over the body building at United States of America. Accordingly, the Respondent had given no objection certificate on dated 28.6.2003 to the workman to go to USA and he was relieved from duties on 1.7.2003 initially by granting one year leave on loss of pay. Thereafter, the leave period was extended by 1 more year i.e., upto 30.6.2005 vide proceeding dated 22.9.2004. Thereafter, the concerned workman has requested the Respondent to extend the leave for another period of 2 years i.e., upto the end of 2007, as the training period, which he was undergoing was not completed. The request for extension of leave of

the workman was not rejected by the authorities, and as such, he was under the bonafide impression that the authorities have accepted his request and his leave has been granted. While the matters stood thus, one charge sheet dated 31.5.2006 was issued to the workman by the Respondent, treating the period from 1.7.2005 to 31.5.2006 as absent, and the same was returned unserved. Consequently, one ex-parte inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service through proceeding dated 31.10.2007, with effect from 6.11.2007. It is stated that the inability of the concerned workman to resume duty after leave is neither willful nor wanton, but only on account of his interest to learn higher skills in body building and also due to the impression that he was granted leave, since it was not rejected. He was not aware of the conduct of any enquiry. Had the enquiry been conducted properly, giving due opportunity to the workman, the necessity to dismiss him from service could have been avoided. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 25 years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **Respondent filed counter with the averments in brief as follows**:

In the counter the Respondent while admitting some of the factual aspects to be true, has stated that the Workman was appointed in the Respondent's company on 21.5.1983 as Temporary Tunnel Mazdoor and was later drafted as General Mazdoor Category-I from 12.12.1987. He was subsequently promoted to the post of Mining Sirdar having acquired statutory certificate of Sirdar. The workman had requested for sanction of leave on loss of pay for one year to undertake Body Building Training in America and considering his request he was sanctioned one year leave on loss of pay vide letter dated 28.6.2003, wherein it was made clear that he should report for duty immediately on completion of one year loss of pay leave and that no further extension of leave shall be granted. Further the workman made another representation dated 18.3.2004 requesting sanction of loss of pay leave for a further period of three years to undertake body building training at America. Considering his request, the Respondent management sanctioned him one year leave on loss of pay from 1.7.2004 to 30.6.2005 with specific condition that he should report for duty on or before 1.7.2005 and no further extension of leave shall be granted. Inspite of this, the concerned workman made another representation dated 13.5.2005 requesting extension of loss of pay leave for further three years period from 1.7.2005. After examining his representation the General Manager (Personnel) vide letter dated 6.7.2005 informed him that in accordance with the guidelines circulated for sanction of loss of pay leave, "the maximum period of leave on loss of pay accumulated over the full service of the employees shall not exceed two years including Extra ordinary leave for employment abroad and study leave.". It was therefore informed to the workman that, since he has already been sanctioned maximum period of loss of pay leave i.e., for two years from 1.7.2003 to 30.6.2005, his request to sanction of loss of pay leave for further period of 3 years is not agreed to and he was advised to report for duty immediately. Since the workman did not report for duty from 1.7.2005, and as there was no further communication with regard to his inability to report for duty and continued to remain absent to duties unauthorizedly, his act constituted misconduct under company's Standing Orders No.25.31. Therefore, a charge sheet dated 31.5.2006 was issued and sent to his native address under registered post acknowledgement due but both the covers were returned undelivered by postal authorities. Hence, charge sheet as well as enquiry notice were published in Telugu daily Andhra Jyothi dated 19.9.2006 advising the workman to attend the enquiry on 3.10.2006. The workman neither attended the enquiry nor sent any communication or representation in this regard. The Enquiry Officer conducted an ex-parte enquiry. The workman was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman did not attend the enquiry, which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service and the same was returned undelivered by postal authorities. Hence, a notice was published in Telugu daily Andhra Jyothi dated 11.4.2007 advising the concerned workman to approach the office of the Respondent for his submissions. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was

constrained to dismiss the Workman from service. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo dated 19.3.2018, filed by the Learned Counsel for the Petitioner, not pressing the validity of the domestic enquiry, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 19.3.2018.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area., Mandamarri., Adilabad District., in terminating the services of Sri K. Sudarshan, Ex-Sr. Mining Sirdar, RK-1A Inc., Mandamarri Area with effect from 6.11.2007 is justified or not?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the workman argued that the workman was a sports man and he has participated in many events of the State level and National level competitions. The workman had applied for leave for three years to acquire knowledge for more competency for body building and he was intended to go to United States of America. Accordingly, the Respondent had given no objection certificate to the workman on dated 28.6.2003. Thereafter, the workman applied for leave on loss of pay for three years and went to U.S.A.. First his leave was granted for one year. Again the workman applied for leave and it was also granted for another one year. While the workman was at USA he applied for extension of leave, but no intimation was given to him whether the leave was granted or rejected. The workman had applied leave upto the end of 2007 during his stay at USA, and while undergoing training, the workman was issued with a charge sheet. The workman himself did not receive the charge sheet nor submitted any reply to the show cause notice. In his absence an enquiry was conducted holding that the workman was found guilty with the observation that the workman was a habitual absentee, and he was found guilty of the charges and his absence was unauthorized and his act constituted misconduct under the company's Standing Orders No.25.30 & 25.31. In fact the workman was not found absent unauthorizedly but under compelling circumstances he remained absent, as his absence was bonafide, he was with the impression that as because he had been to USA, taking permission to undergo training for body building, his leave will be granted and he will resume his duty after completion of the training period, but on his return to his native place he came to know about the unfortunate incident which took place in his absence. He also argued that the workman has not committed any misconduct, without giving any opportunity, of being heard action has been taken against him. The action taken by the authority is not proper and justified. When the workman has taken permission to proceed to USA for the purpose of training with the knowledge of the authority, the authority should not take such a drastic step to dismiss him from service, further more, when the workman remained absent with the knowledge of the authority, the authority should not impose such a heavy penalty and imposing of such a penalty is not proper. The authority has not considered the grievances of the workman correctly and has given capital punishment to the workman. The workman has prayed for his reinstatement into service and also to get all the benefits.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the workman has not intentionally joined in duty violating the orders of the authority, and remained absent years together unauthorizedly the act constituted misconduct under the company's Standing Orders No.25.31 and for this, charge sheet was prepared and notice was issued to submit show cause but as the workman did not submit any show cause, an enquiry was initiated. The workman did not participate in the enquiry. In the enquiry the workman was found guilty of the charges levelled against him, and the punishment imposed by the Respondent company is legal and justified. When the workman was not sincere to his duty, and not joined in his duty in time, he is not entitled to be reinstated into service.

9. Admittedly, the workman was a sports man and he has participated in many events in the State level and national level and with the knowledge of the Respondent management, the workman has applied leave for three years to go to USA, to under go training which had been required for his career. The Respondent had issued no objection certificate, thereafter the workman went to USA and he was relieved from duty on 1.7.2003. Initially he was allowed to go on leave on loss of pay for one year, again he applied for another two years for leave upto 2007. But the Respondent rejected his leave application. When the workman had been to U.S.A. to undergo training with the knowledge of the Respondent management, it was not possible on his part to

return to resume his duty before completion of the training. When the workman did not resume his duty it has been considered as unauthorized leave and he was considered as a habitual absentee and ultimately charge memo was issued, an enquiry was conducted, during the course of enquiry the Respondent was found him guilty and capital punishment was imposed. Ultimately, the workman has been dismissed from service. The entire act of the Respondent clearly indicates that the Respondent has not considered the case of the workman properly and in a mechanical manner action has been taken against the workman in his absence and like wise he has been given punishment. In such a circumstances, imposing capital punishment on the workman it is not proper. It is noticed that now, the workman is aged about 54 years. After dismissal of his services he has realised his mistake and has taken shelter in this court at the age of 54 years. He is now aged about 59 years and is searching ways and means to provide bread and butter to his family members. When the workman is a body builder and having reputed personality, he should not be neglected and should not be given capital punishment without proper enquiry. Now he is willing to work under the Respondent. In such a circumstances, atleast one chance should be given to the workman for his reinstatement into service. Admittedly several modes of punishment are enumerated in the company's Standing Orders. Though the workman is not a habitual absentee and is a first offender and has already earned name and fame for the Respondent's establishment. Before imposing punishment, the Respondent management should look into the condition of the workman as well as his family members. On consideration of the materials available on record in this case, the punishment imposed by the Respondent management for dismissal of service on the workman is too harsh. Therefore, it can safely be stated that the action taken by the Respondent management in imposing the punishment of dismissal from service is not justified and proper.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri K. Sudarshan is not proper and justified. After dismissal of service as stated above, when the workman has already realised his mistake and has come to the court with a prayer for reinstatement into service, he should be given a chance to serve for his family members as well as for the Respondent management. After dismissal of service, the workman has become jobless and he being the sole bread earner of his family now is unable to provide a square meal to his family members. In such a circumstances, the workman should be given a chance to maintain his livelihood and to work under the Respondent management. But in this case, the workman has not come to the court soon after the dismissal of his service. Therefore, in the opinion of this Tribunal, the workman is not entitled to get all the relief as claimed in his claim statement. But he is entitled to be reinstated into service and to work for the Respondent management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the reference is answered as under:

The action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area, Mandamarri, Adilabad District, in terminating the services of Sri K. Sudarshan, Ex.Sr. Mining Sirdar, RK-1A Inc., Mandamarri Area w.e.f. 6.11.2007 is not justified. The Respondent management is directed to reinstate the Petitioner into service as a Mining Sirdar within a period of 3(three) months from the date of receipt of the order, failing which the workman is at liberty to take shelter in the Court of Law.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 27th day of December, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 13/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/379/2007-आई आर (सीएम- II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2008) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/379/2007-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXUR

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan , Presiding Officer

Dated the 27th day of December, 2019

INDUSTRIAL DISPUTE No. 13/2008

Between:

The Vice President (Sri Byram Shankar)
Singareni Collieries Labour Union(C) (TNTUC)
H.No.15-2-446, Ramesh Nagar,
Godavarikhani
Karimnagar – 505209. …Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Divn.,
Godavarikhani -505209.
Karimnagar (A.P.) …Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri,Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/ 379/2007-IR(CM-II) dated 15.5.2008 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the Chief General Manager, M/s. S.C.C.Ltd., Ramagundam-I Division in imposing the penalty of reduction of two increments with cumulative effects on Shri P. Narsi Reddy, Security Guard is legal and justified? To what relief is the workman concerned entitled?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.13/2008 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The Petitioner workman Sri P. Narsi Reddy was working as a Security Guard at RG-I Division of SCCL and he was a member of Singareni Collieries Labour Union (TNTUC). While so, he was issued with a charge sheet, alleging that, on 7.3.2004 in 2nd shift Sri P. Narsi Reddy, the workman was deputed to work at 11A Incline, Long Wall Shed Main Gate and he was found chitchatting, standing outside the main gate, and Sri Subba Reddy, Security Guard and Latchi Reddy, General Mazdoors, who were deputed to work at 11A Incline, Long Wall Shed, Rear Side, were picking copper from the Electrical Scrap materials, with an intention to steal and the workman did not raise any objection. On receipt of the above charge sheet, the workman has submitted reply, stating that, the area of 11A Long Wall Shed was very vast, he was posted to work at the main gate, whereas Sri Subba Reddy and Sri Latchi Reddy were posted on the rear side of the Long Wall Shed. There were thick bushes grown in between the main gate and rear side of Long Wall Shed, and as such, the rear side portion of the Long Wall was not visible from the main gate. At about 5:15 hours, Sr. Inspector Md. Ibrahim came to the 11A Shed, the workman has opened the lock and permitted him. Consequent upon his entry, Sr. Inspector enquired, into the matter, where Sri Subba Reddy and Latchi Reddy are working. Accordingly, the workman informed him that, they are posted to work on the rear side of the Long Wall Shed and when he was proceeding to the rear side portion of the long wall, Sri Subba Reddy and Latchi Reddy came to the Inspector an informed about the electrical spare parts. Thereafter, those spare parts were kept in his bag by the Inspector and went away. Without considering any of the submissions made by the workman, an enquiry was conducted, whereat the workman was not given any opportunity, much less valid in nature. The enquiry proceedings were conducted and recorded in English and the workman's signatures were obtained. Conducting and drafting the enquiry proceedings in English is not only contrary to the circulars issued by the company, but also violative of the principles of natural justice. During the course of enquiry, the workman was not given opportunity to cross examine the management witnesses i.e., Mr. Ibrahim who is MW1, Mr. P. Sriramulu, Security Guard who is MW2. During the enquiry, the workman has categorically deposed that, on 7.3.2004 in II shift, the workman was allotted work at GDK No.11A, Longwall shed in gate No.1 i.e., main gate and Sri Venkata Subba Reddy, Security Guard and Mr. S. Latchi Rddy, General Mazdoor were posted at rear side of the Long Wall Shed. Around 5.15 PM when the workman was standing inside the main gate, two employees of BEML came to the main gate outside and the workman was responding to their question. In the meanwhile Sr. Inspector Sri Md. Ibrahim came to the Long Wall Shed and the workman opened the main gate for his entry. When Sr.Inspector asked regarding the whereabouts of 2nd and 3rd posts, the workman replied that they are working at their respective places rear side of the shed when Sr. Inspector was going to the rear side of the shed. Then Sri Venkatasubba Reddy and S. Latchi Reddy came to the Sr. Inspector and told about the electrical spares scrap. Then Sr. Inspector seen the electrical parts (scrap) and put it into the bag which they had taken along with them. It is submitted that, the Enquiry Officer has submitted his report holding the charge as proved. Thereafter, the workman was issued with a show cause notice, to which he has submitted his reply. But, without considering the submissions of the workman in proper perspective, office order dated 11.10.2004 was issued, reducing two increments with cumulative effect. Though the workman filed an appeal, the Appellate Authority has not considered the appeal. The workman was illegally implicated in the above false case by the Sr. Inspector. It is submitted that, maintenance of watch and ward duty on the rear side of the long wall shed, the work was entrusted to Sri Subba Reddy and Latchi Reddy. The workman has got no business to interfere with the duties of the other workman and he is not suppose to leave the main gate to watch what was going on, on the rear side of the long wall shed. The workman was not imposed with any charge sheet previously and he is going to attain the age of superannuation soon. At this juncture, imposing the penalty of stoppage of two increments with cumulative effect would certainly cause great hardships to the Petitioner and his family members. Assuming without admitting that, the findings of the Enquiry Officer and Disciplinary Authority are correct, even then, imposing of penalty of stoppage of two increments with cumulative effect would be certainly disproportionate. The workman prayed to modify the penalty, to that of any other lesser penalty by exercising the powers under Section 11A of ID Act in the interest of justice and also restore the increments deferred in terms of office order No.RGI/PER/S/46/5649 dated 11.10.2004 and to set aside the same and pass other order or orders as this Tribunal may deem fit and proper in the circumstances of the case.

3. Respondents filed their counter with the averments in brief as follows:

The Petitioner workman was appointed in the Respondent's Company on 29.9.1988 as Security Guard and posted to work at S & PC Department, Ramagundam-I. The workman retired from the services of the Company on attaining the age of superannuation i.e., on 31.12.2010. It is submitted that on 7.3.2004 in 2nd shift the workman was deputed to work at Gdk-11A incline at post No.1 i.e., main gate of Long Wall Shed. Sri V. Subba Reddy, Security Guard and Sri S. Latchi Reddy, General Mazdoor were also deputed to work at Gdk.11A incline Long Wall shed at Post No.2 i.e., rear side of the Long Wall Shed. At about 5.30 PM., during the inspection of crack Team heading by Sr. Inspector, S & PC, Ramagundam –I the Petitioner was found standing

outside the main gate and chit-chatting with outsiders. Sri V. Subba Reddy, Security Guard and Sri S. Latchi Reddy, General Mazdoor who was deputed to work at rear side of the Long Wall Shed found picking the copper from the electrical scrap materials with an intention to steal. When questioned, the workman had not bothered to give proper reply to the Sr. Inspector, S&PC, Ramagundam-I. Thus, the workman was issued with chargesheet dated 15.3.2004 with misconduct under Company's Standing Orders No.25.1, 25.3 & 25.5. The workman submitted his explanation dated 24.3.2004 which was examined and found to be not satisfactory, as such, an enquiry was ordered. Wherein the workman has fully participated in the enquiry, and was given full and fair opportunity to defend himself. He was explained the procedure of enquiry in Telugu language by the Enquiry Officer. Though he was permitted to cross examine the witnesses, the workman did not choose for cross examination of the witnesses. The workman has submitted his explanation to the show cause notice which was considered but found not satisfactory. It is submitted that as the charges levelled and proved against the workman were being grave and serious in nature and there were no extenuating circumstances to take a lenient view in the matter, the punishment warranted is that of dismissal. However, a lenient view had been taken for this time and he was imposed the punishment of reduction of two increments with cumulative effect vide order dated 11.10.2004. However, the workman made appeal after a lapse of one year six months period after imposing the penalty on him and the same could not be treated as appeal under Company Standing Order No.29 by the Appellate Authorities and lastly he passed order confirming the punishment imposed by the Disciplinary Authority vide order dated 4.4.2006. Hence, order No.RGI/PER/S/46/5649 dated 11.10.2004 issued by the Respondent is totally justified and the claim petition be dismissed as devoid of merits.

4. In view of the memo filed by the Petitioner workman conceding the validity of the domestic enquiry, the domestic enquiry conducted by the Respondent Management is held as legal and valid vide order dated 7.5.2013.

5. I have already heard arguments from both the sides.

6. **The Points for consideration are**:

I. Whether the action of the Chief General Manager, M/s. S.C.C.Ltd., Ramagundam-I Division in imposing the penalty of reduction of two increments with cumulative effects on Shri P. Narsi Reddy, Security Guard is legal and justified?

II. To what relief is the workman concerned entitled?"

7. **Point No.I**: The Learned Counsel appearing on behalf of the Petitioner has contended that the workman Sir P. Narsi Reddy was working as a Security Guard at RG-I Division of SCCL. He was deputed to work at 11A Incline, Long Wall Shed, 1st Post, Main Gate Sri Venkata Subba Reddy, Security Guard was sent to 2nd post and Latchi Reddy, was sent to 3rd post for duty. The 2nd & 3rd posts were situated at the backside of Longwall Shed. On that date at about 5PM when the workman was in duty in the main post, 2 labourers belong to BEML came to the main gate and the workman/Petitioner was enquiring with them. By that time Sr. Inspector Md. Ibrahim came to 11A Longwall Shed for inspection. Immediately the workman invited the Inspector by opening the lock of the main gate. During that time on enquiry, by the Sr. Inspector about workmen of 2nd post and 3rd posts, workman Sri P. Narsi Reddy informed that, they might be guarding their 2nd & 3rd posts. Thereafter the workman accompanied the Inspector to the 2nd and 3rd posts, wherein Venkata Subba Reddy and Lachhi Reddy came and informed about missing of electrical spare parts. Thereafter Sr. Inspector carried those electrical spare parts in his bag and left the spot. The Learned Counsel for the workman submitted that the workman has no knowledge about theft of electrical spare parts as because he was posted in the main gate. But without considering the submission of the workman a charge sheet was issued on the workman and enquiry was conducted and during the course of enquiry the workman was not given any chance to defend his case and lastly charge was proved and the workman was found guilty of the charges. The Disciplinary Authority without considering the submission of the workman passed the order imposing penalty of reduction of two increments with cumulative effect on the workman. Even though the workman preferred appeal, the Appellate Authority did not consider the grievances of the Petitioner and appeal was rejected. The workman is purely innocent. He was deputed to work in the first gate post of the main gate whereas Mr. Venkata Subba Reddy was sent to 2nd post and Mr. Lachhi Reddy was sent to 3rd post. The workman has no knowledge about the duty performed by both Mr. Venkata Subba Reddy and Mr. Lachhi Reddy. But, illegally the workman has been punished. It is submitted to set aside the order passed by the Respondents which is illegal and the order passed by the Respondent needs the interference of this Tribunal.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent contended that the workman was sent to work at 11A Longwall side, 1st post, main gate, whereas Mr. Venkata Subba Reddy was sent to 2nd post and Mr. Lachhi Reddy was sent to 3rd post. Even though, at the time of inspection by the Sr. Inspector, both Mr. Venkata Subba Reddy and Mr. Lachhi Reddy were found picking the copper scrap

materials with an intention to steal, the workman did not inform it to the Sr. Inspector at the time of his inspection. He is not performing his duty properly by the time of inspection of the Sr. Inspector, rather the workman was found chitchatting with outsiders. The workman has neglected to perform his duty properly even though he was entrusted to work in a responsible post, for this the workman has been issued show cause notice, but in turn the reply submitted by the workman was not satisfactory for which an enquiry was conducted. In the enquiry, the workman was given sufficient opportunity to defend his case. But the workman failed to defend his case properly and after enquiry, the charges levelled against the workman was proved and he was found guilty of the charges levelled against him, charges were proved and the workman was found guilty of the charges. Instead of giving capital punishment, a lenient view has been taken by the authority imposing the penalty of reduction of two increments with cumulative effect. The action taken by the Respondent's management is proper and justified which needs no interference of this Tribunal.

9. On consideration of rival contentions of both the sides, it is seen that the workman Sri P. Narsi Reddy was working as a security guard at RG I Division of M/s. Singareni Collieries Company Ltd., and he was posted to work at 11A incline, Longwall Side, Main Gate. At the time of inspection by the Sr. Inspector he was found chitchatting by standing at the outside of the main gate. Even though Mr. Venkata Subba Reddy and Mr. Lachhi Reddy were found picking electrical scrap materials with an intention to steal, the workman did not report it to the Sr.Inspector. Rather, while discharging his duty, he was found chitchatting with outsiders. This shows that the workman was not sincere in his duty. In this incident, explanation was called for. When explanation was not satisfactory, charge was framed, show cause notice was issued, the workman has submitted his explanation to the show cause notice stating that it was not his duty and he was not aware of picking of electrical scrap materials from 11 A Incline. The Respondent has conducted a domestic enquiry. In the domestic enquiry even though sufficient opportunity has been given to the workman to defend his case, he failed to defend himself from the charges, rather the domestic enquiry conducted by the Respondent was found legal and justified. In this case the Respondent has conducted the enquiry properly and found the workman was guilty of the charges. It was observed that the workman has neglected in his duty, in the enquiry he has been found guilty of the charges. The Respondent has imposed punishment imposing reduction of two increments with cumulative effect. The penalty imposed on the workman appears to be justified, since the workman has neglected in his duty and has not performed his duty sincerely, the Respondent has imposed the above punishment rightly which needs no interference of this Tribunal. In the opinion of this Tribunal, the action taken by the Respondent on the workman is legal and justified. Thus, Point No. I is answered accordingly.

10. **Point No. II**: In view of the observation made in Point No.I, the workman is not entitled to get any other relief.

Thus, Point No.II is answered accordingly.

Result:

In the result, the reference is answered in negative as under:

The action of the Chief General Manager, M/s. S.C.C.Ltd., Ramagundam-I Division in imposing the penalty of reduction of two increments with cumulative effects on Shri P. Narsi Reddy, Security Guard is legal and justified. Hence, the workman concerned is not entitled to any relief as prayed for.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the27th day of December, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 13/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22011/21/2018 -आई आर (सीएम- II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Chennai, as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 17.02.2020.

[No. L-22011/21/2018-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

CHENNAI

ID No. 13/2019

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 31.01.2020

K. Mathivanan & 52 Others
Represent by the General Secretary
Food Corporation of India Workers Union
58/1, Diamond Harbour Road
Kolkata-700023 : 1st Party/Petitioner Union

AND

1. The General Manager (Region)
Food Corporation of India
No. 8, Mayor Sathyamoorthy,
Chetpet
Chennai-600031 : 1st Party/Respondent

2. The Area Manager
Food Corporation of India
District Office
Chennai-600031 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : None

For the 2nd Party/Respondents : Advocates M/s. M. Imthias, M. Vijaya Kumar

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-22011/21/2018-IR(CM-II) dtd. 16.01.2019 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the action of Food Corporation of India to deny the demand of union to re-transfer 4 gangs of workers numbering 53 (list enclosed) from FSD, Avadi Depot to FSD, Egmore Deposit as assured by the management is justified or not? If not, to what relief the concerned workmen are entitled to?"*

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 13/2019 and notices were issued to both the parties for their appearance fixing the case to 25.03.2019. Since then, the case is dragged for such a long period till 03.01.2020 intervening almost 8 adjournments i.e. 7 adjournments in the year 2019 viz. 25.03.2019, 30.04.2019, 10.06.2019, 16.07.2019, 03.09.2019, 15.10.2019, 02.12.2019 and 1 adjournment in the year 2020 i.e. 03.01.2020 and then finally to 08.01.2020. It appears even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner's Union (represented through the General Secretary), there was no progress in the proceeding. Neither the Authorized Representative, the General Secretary on behalf of the Union nor a single Petitioner out of 53 Petitioners as per the list enclosed appeared before this Tribunal nor at any point of time moved any Petition for adjournment to file their Claim Statement. Thus, it is held that the neither the Petitioners individually nor being represented through the General Secretary of the Union are interested to proceed with their Claim raised in the dispute in view of the reference. The non-appearance and non-participation in the proceeding by the Petitioners or their Authorized Representative, constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the reference is answered against the Petitioners.

An Award is passed accordingly.

DIPTI MOHAPATRA, Presiding Officer

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 31.01.2020)

नई दिल्ली, 24 फरवरी, 2020

का. आ. 320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरणमें, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 25/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/345/2006-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/345/2006-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 29th day of January, 2020

INDUSTRIAL DISPUTE No. 25/2007

Between:

The President (Sri Bandari Lingaiah),
Singareni Collieries Employees Union (CITU),
Qr.No.39-1, SMG X Road,
Somagudem (P.O.) via Bellampudi,
Adilabad -504231. …Petitioner/Union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division, Mandamarri,
Adilabad district – 504231. …Respondent

Appearances:

For the Petitioner : M/s. A. K. Jayaprakash Rao, P. Sudha, M. Govind & Venkatesh Dixit, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No. L- 22012/ 345/ 2006-IR(CM-II) dated 19.3.2007 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Division in dismissing Sri Gumasa Mallaiah, w.e.f. 10.10.2002 is legal and justified? If not, to what relief is the workman entitled?''

After receiving the above said reference this Tribunal registered the case as I D No. 25/2007 and issued notices to both the parties and secured their presence.

2. The Petitioner Union filed claim statement with the averments in brief as follows:

The Petitioner union submits that the workman Sri Gumasa Mallaiah was initially joined the service of the Respondent in the year 1997 as Badli Coal Filler on compassionate ground. He was regular to his duties with unblemished record of service. While so, he could not be regular to his duties during the year 2000 due to his ill-health. While the matters stood thus, a charge sheet was issued to him by the Respondent alleging that the Workman absented for duty during the year 2000, which amounts to misconduct under company's Standing Order No.25.25. Unfortunately, the workman could not submit any explanation to the charge sheet and also could not participate in the enquiry. Subsequently, one inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service through proceeding dated 30.9.2002 w.e.f. 10.10.2002. It is stated that during the course of the enquiry the Workman has categorically stated about his inability to perform his duties regularly during the year 2000, which was only on account of his ill-health. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 5 years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **Respondent filed counter and also additional counter with the averments in brief as follows**:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 4.5.1997 as Badli Filler and continued to be in the same designation till his dismissal. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted by the Respondent is held as legal and valid vide order dated 17.8.2017, as none appeared to challenge the legality and validity of the domestic enquiry conducted by the Respondent.

5. Heard argument from both the sides under Sec.11(A) of the Industrial Disputes Act, 1947.

6. <u>In view of the above facts, the points for determination are</u>:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Gumasa Mallaiah is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **<u>Point No.I</u>**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case sympathetically while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 32 years, he is now aged about 45 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about 5 years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Gumasa Mallaiah is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **<u>Point Nos. II & III</u>**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Gumasa Mallaiah is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Division in dismissing Sri Gumasa Mallaiah w.e.f. 10.10.2002 is neither legal nor justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh and as such the reference is answered accordingly. So also the, award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 29th day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरणमें, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/97/2012-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/97/2012-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 31st day of January, 2020

INDUSTRIAL DISPUTE No. 30/2012

Between:

The General Secretary (Bandari Satyanarayana),
Singareni Telugu Nadu Trade Union Council (STNTUC),
h.No.5-295, Indiranagar, Opp.Bus Stand,
Mancherial, Adilabad-504208. …Petitioner/Union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Bellampalli Area, Goleti Township,
Adilabad district – 504292. …Respondent

Appearances:

For the Petitioner : M/s. S. Bhagawanth Rao & S.V.Rama Devi, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi P., Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No. L- 22012/97/ 2012 - IR(CM-II) dated 31.7.2012 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Bellampally Area, Goleti Township, Adilabad District., in terminating the services of Sri Peddaboina Mallaiah, Ex-Coal Filler, Goleti-2 Inc., SCCL Bellampally Area with effect from 22.5.2001 is justified or not? To what relief the applicant is entitled for?''

After receiving the above said reference this Tribunal registered the case as I D No.30/2012 and issued notices to both the parties and secured their presence.

2. The Petitioner Union filed claim statement with the averments in brief as follows:

The workman Sri Peddaboina Mallaiah was initially appointed on 23.3.1987 and he become permanent employee during his service in the Company. He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, he could not be regular to his duties during the year 1998 due to his ill-health. While the matters stood thus, a charge sheet dated 25.2.1999 was issued to him by the Respondent alleging that the Workman absented for duty during the year 1998, which amounts to misconduct under company's Standing Order No.25.25. Unfortunately, the workman could not submit any explanation to the charge sheet and also could not participate in the enquiry. Subsequently, one inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service through proceeding No.P.BPA/129/1855 dated 16.5.2001 with effect from 22.5.2001. It is stated that during the course of the enquiry the Workman has categorically stated about his inability to perform his duties regularly during the year 1998, which was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 14 years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **Respondent filed counter with the averments in brief as follows**:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 23.3.1987 as Badli Coal Filler and subsequently got regularized as Coal Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted by the Respondent is held as legal and valid vide order dated 19.3.2019, as the Petitioner did not turn up to challenge the same.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Peddaboina Mallaiah is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 48 years, he is now aged about 56 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about 14 years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Peddaboina Mallaiah is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Peddaboina Mallaiah is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the General Manager, M/s. Singareni Collieries Company Ltd., Bellampalli Area., Goleti Township, Adilabad District., in terminating the services of Sri Peddaboina Mallaiah, Ex-Coal Filler, Goleti-2 Inc., SCCL, Bellampalli Area, with effect from 22.5.2001 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh and as such the reference is answered accordingly. So also the, award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 31st day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स बी.बी.एम.बी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नंबर–2 चंडीगढ़ के पंचाट (संदर्भ संख्या 38/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-23012/4/2019-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2019)of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of M/s B.B.M.B and their workmen, received by the Central Government on 17.02.2020.

[No. L-23012/4/2019-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 38/2019

Registered on:-08.07.2019

Uchhab Ram S/o Bhola Ram, VPO Jai Devi, Tehsil Sunder Nagar,
Distt. Mandi(HP)-175001. …Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160001.

2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sunder Nagar-175018. …Respondents/Managements

AWARD
Passed on:-04.02.2020

Central Government vide Notification No. L-23012/4/2019-IR(CM-II) Dated 22.05.2019, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the alleged termination of the service of Shri Uchhab Ram S/o Shri Bhola Ram w.e.f. 10.12.2012 by the management of BBMB in violation of Sections 25F, 25G and 25H of the ID Act 1947 is just, fair and legal? If yes, what relief(s) the concerned workman is entitled to and from which date?**

1. On the receipt of the above reference, notice was sent to the workman as well as the managements/respondents. The postal article sent to the workman, referred above, is duly delivered to the workman. Workman is given sufficient opportunity to file claim statement but none turned up in spite of the opportunity afforded to file claim statement, which shows that the workman is not interested in adjudication of the matter on merit.

2. Since the workman has neither put his appearance nor has he led any evidence so as to prove his cause against the managements/respondents, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim Award'. It is also clarified that passing of the no claim award/no dispute award would not bar the workman from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 24 फरवरी, 2020

का. आ. 323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स बी.बी.एम.बी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नंबर–2 चंडीगढ़ के पंचाट (संदर्भ संख्या 37/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-23012/6/2019-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of M/s. B.B.M.B and their workmen, received by the Central Government on 17.02.2020.

[No. L-23012/6/2019-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 37/2019

Registered on:-08.07.2019

Lala Ram S/o Paras Ram, Vill-Katawari, PO-Upper Behli,
Tehsil Sunder Nagar, Distt. Mandi (HP)-175001. ...Workman

Versus

1. The Chairman, Bhakra Beas Management Board, Madhya Marg, Sector 19-B, Chandigarh-160001.
2. The Chief Engineer, Bhakra Beas Management Board,
BSL Project, Sunder Nagar-175018. …Respondents/Managements

AWARD
Passed on:-04.02.2020

Central Government vide Notification No. L-23012/6/2019-IR(CM-II) Dated 22.05.2019, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the alleged termination of the service of Shri Lala Ram S/o Shri Paras Ram w.e.f. 10.12.2012 by the management of BBMB in violation of Sections 25F, 25G and 25H of the ID Act 1947 is just, fair and legal? If yes, what relief(s) the concerned workman is entitled to and from which date?''**

1. On the receipt of the above reference, notice was sent to the workman as well as the managements/respondents. The postal article sent to the workman, referred above, did not return back hence, it is presumed by the Tribunal that postal service remained effected to the workman. However, workman is given an opportunity to file claim petition but none turned up in spite of the repeated opportunities and claim statement is not filed on behalf of the workman, which shows that the workman is not interested in adjudication of the reference on merit.

2. Since the workman has neither put his appearance nor has he led any evidence so as to prove his cause against the managements/respondents, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim Award'. It is also clarified that passing of the no claim award/no dispute award would not bar the

workman from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 24 फरवरी, 2020

का. आ. 324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 41/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/79/2012-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/79/2012-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 3rd day of February, 2020

INDUSTRIAL DISPUTE No. 41/2012

Between:

The General Secretary (Sh. Riaz Ahmed),
Singareni Miners & Engg. Workers Union (HMS),
C-34, Sector-I, Godavarikhani.
Karimnagar District-505209. …Petitioner/Union

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area, Godavarikhani,
Karimnagar district – 505209. …Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. S.M. Subhani & T. Padmaja, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-22012/79/ 2012 -IR(CM-II) dated 20.7.2012 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani in terminating the services of Sri Thandra Ramesh, Ex-Badli Filler, GDK-5 Inc., Ramagundam-I Area, Godavarikhani with effect from 6.4.2004 is justified or not? To what relief the applicant is entitled for?''

After receiving the above said reference this Tribunal registered the case as I D No. 41/2012 and issued notices to both the parties and secured their presence.

2. The Petitioner Union filed claim statement with the averments in brief as follows:

It is submitted in the representation of the Petitioner Union that, the workman Sri Tandra Ramesh was initially appointed on 4.2.2001 as Badli Filler. He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, he could not be regular to his duties during the year 2002 due to his ill-health and other family problems. While the matters stood thus, one ex-parte inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service vide office order dated 6.1.2004 w.e.f 11.1.2004. It is stated that the Workman has categorically stated about his inability to perform his duties regularly during the year 2002, which was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered two years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **Respondent filed counter with the averments in brief as follows**:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 4.2.2001 as Badli Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman did not attend the enquiry, which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner not to press the validity of the domestic enquiry conducted by the Respondent, the domestic enquiry conducted by the Respondent is held legal and valid vide order dated 4.1.2019.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Thandra Ramesh is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health as well as other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. The authority has not considered any of

the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 33 years, he is now aged about 41 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about two years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Thandra Ramesh is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Thandra Ramesh is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani in terminating the services of Sri Thandra Ramesh, Ex-Badli Filler, GDK-5 Inc., Ramagundam-I Area, Godavarikhani with effect from 6.4.2004 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the

company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh and as such the reference is answered accordingly. So also the, award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of February, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरणमें, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 44/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/78/2012-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/78/2012-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 3rd day of February, 2020

INDUSTRIAL DISPUTE No. 44/2012

Between:

The General Secretary (Sh. Riaz Ahmed),
Singareni Miners & Engg. Workers Union (HMS),
C-34, Sector-I, Godavarikhani.
Karimnagar District-505209. …Petitioner/Union

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area, Godavarikhani,
Karimnagar district – 505209. ….Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. S.M. Subhani & T. Padmaja, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-22012/78/ 2012 -IR(CM-II) dated 20.7.2012 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani in terminating the services of Sri K. Kista Swamy, GDK-2 Inc., SCCL. Ramagundam-I Area, Godavarikhani with effect from 28.12.1997 is justified or not? To what relief the applicant is entitled for?''

After receiving the above said reference this Tribunal registered the case as I D No. 44/2012 and issued notices to both the parties and secured their presence.

2. <u>The Petitioner Union filed claim statement with the averments in brief as follows:</u>

It is submitted in the representation of the Petitioner Union that, the workman Sri K. Kista Swamy was initially appointed as Badli Filler and later he was confirmed as Coal Filler. He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, vide proceeding dated 19.12.1997, the workman was dismissed from service by conducting an ex-parte enquiry. He was not aware of either issuance of charge sheet or its publication made by the Respondent in the newspaper. One ex-parte inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service vide proceeding dated 19.12.1997. It is stated that the Workman has categorically stated about his inability to perform his duties regularly which was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **<u>Respondent filed counter with the averments in brief as follows</u>**:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 2.4.1987 as Badli Filler and later he was promoted as Coal Filler w.e.f. 1.1.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The workman was issued with a charge sheet and he has submitted explanation to the charge sheet which was found not satisfactory. An enquiry notice was also issued to the workman. The Workman did not attend the enquiry, which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It

is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner not to press the validity of the domestic enquiry conducted by the Respondent, the domestic enquiry conducted by the Respondent is held as legal and valid vide order dated 4.1.2019.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri K. Kista Swamy is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health as well as other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 40 years, he is now aged about 48 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about two years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri K. Kista Swamy is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri K. Kista Swamy is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani in terminating the services of Sri K. Kista Swamy, GDK-2 Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 28.12.1997 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh and as such the reference is answered accordingly. So also the, award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of February, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 45/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/96/2012-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/96/2012-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 5th day of February, 2020

INDUSTRIAL DISPUTE No. 45/2012

Between:

The General Secretary (Sh. Riaz Ahmed),
Singareni Miners & Engg. Workers Union (HMS),
C-34, Sector-I, Godavarikhani.
Karimnagar District-505209. …Petitioner/Union

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Sreerampur Area, Sreerampur,
Adilabad district – 504303. …Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. S.M. Subhani & T. Padmaja, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-22012/96/ 2012 -IR(CM-II) dated 31.7.2012 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Area, Sreerampur, Adilabad Dist., in terminating the services of Sri Lakavath Ratna, Ex-Coal Filler, RK-7 Inc., Sreerampur Area, with effect from 1.7.2007 is justified or not? To what relief the applicant is entitled for?''

After receiving the above said reference this Tribunal registered the case as I D No. 45/2012 and issued notices to both the parties and secured their presence.

2. **The Petitioner Union filed the claim statement with the averments in brief which runs as follows:**

It is submitted by the representative of the Petitioner Union that, the workman Sri Lakavath Ratna was initially appointed in the year 1988 as Badli Filler and by virtue of his hard work he was confirmed as Coal Filler. He was regular to his duties and performing his duties upto the satisfaction of all his superiors till the year 2005. While so, he could not be regular to his duties during the year 2006 due to back pain, giddiness and other family problems. While the matters stood thus, one inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service vide office order dated 27.6.2007 w.e.f 1.7.2007. It is stated that the Workman has categorically stated about his inability to perform his duties regularly during the year 2006, which was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 19 years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **The Respondent though not filed counter but made the following submissions orally**:

Inspite of taking several opportunities the Respondent did not file the counter. But the Learned Counsel appearing on behalf of the Respondent submitted that the Workman was appointed in the Respondent's

companyin the year 1988 as a Badli Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman attended the enquiry, which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner not to press the validity of the domestic enquiry conducted by the Respondent, the domestic enquiry conducted by the Respondent is held as legal and valid vide order dated 10.11.2016.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Lakavath Ratna is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No. I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health as well as other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 47 years, he is now aged about 55 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about two years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Lakavath Ratna is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Lakavath Ratna is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Area, Sreerampur, Adilabad Dist., in terminating the services of Sri Lakavath Ratna, Ex-Coal Filler, RK-7 Inc., Sreerampur Area, with effect from 1.7.2007 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh and as such the reference is answered accordingly. So also the, award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 5th day of February, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवादमें केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 46/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/104/2012-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/104/2012-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 31st day of January, 2020

INDUSTRIAL DISPUTE No. 46/2012

Between:

The General Secretary (Sh. Riaz Ahmed),
Singareni Miners & Engg. Workers Union (HMS),
C-34, Sector-I, Godavarikhani.
Karimnagar District-505209. …Petitioner/Union

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Sreerampur Area, Sreerampur,
Adilabad district – 504303. …Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. S.M. Subhani & T. Padmaja, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-22012/104/ 2012 -IR(CM-II) dated 12.7.2012 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Area, Sreerampurin terminating the services of Sri Masu Bheemaiah, Ex- Caol Filler, RK-5 Inc., Sreerampur Area, with effect from 8.9.1999 is justified or not? To what relief the applicant is entitled for?''

After receiving the above said reference this Tribunal registered the case as I D No. 46/2012 and issued notices to both the parties and secured their presence.

2. The Petitioner Union filed claim statement with the averments in brief as follows:

It is submitted in the representation of the Petitioner Union that, the workman Sri Masu Bheemaiah was initially appointed on 31.7.1990 as Badli Filler and later he was confirmed as Coal Filler. He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, the workman met with mine accident, and sustained crush injury in his right hand with compound fracture D.P. litter finger, compound fracture D.P. of middle finger and other family problems. While the matters stood thus, he was issued with a charge sheet dated 15.2.1999 alleging that the workman remained absent during the year 1998, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one enquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service with immediate effect vide office order dated 8.9.1999. It is stated that the Workman has categorically stated about his inability to perform his duties regularly during the year 1998, which was only on account of his ill-health and other family problems.

But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 9 years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the Respondent management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **Respondent filed counter with the averments in brief as follows**:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 6.8.1990 as Badli Filler and subsequently regularized as Coal Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman attended the enquiry, which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view, and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner not to press the validity of domestic enquiry conducted by the Respondent, the domestic enquiry conducted by the Respondent is held legal and valid vide order dated 30.10.2019.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Masu Bheemaiah is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that the workman was hit by a mine accident and sustained crush injury on his right hand with compound fracture D.P. litter finger, compound fracture D.P. of middle finger and other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to injuries of mine accident and other family problems, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake

and has taken shelter in the court at the age of 40 years, he is now aged about 48 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about 9 years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Masu Bheemaiah is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Masu Bheemaiah is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Sreerampur Area, Sreerampur, Adilabad Dist., in terminating the services of Sri Masu Bheemaiah, Ex-Coal Filler, RK-5 Inc., Sreerampur Area, with effect from 8.9.1999 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh and as such the reference is answered accordingly. So also the, award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 31st day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 64/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/46/2015-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-22012/46/2015-R(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 6th day of January, 2020

INDUSTRIAL DISPUTE No. 64/2015

Between:

Sri Janagam Balaiah,
S/o Sri Rajaiah,
H.No.7-2-389, Janagama (V),
Ramagundam (M)-505209
Karimnagar Disttt. (Telengana State). …Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area,
Godavarikhani-505209.
Karimnagar Disttt. (Telengana State). …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. Nandigam Krishna Rao & N.S. Pattabhi Rama Rao, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/46/2015-IR(CM-II) dated 29.7.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the management of M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Dist., in terminating the services of Sri Janagam Balaiah, Ex- Coal Filler, GDK-5 Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 3.3.2004 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 64/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 6th day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 74/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.02.2020 को प्राप्त हुआ था।

[सं. एल-22012/42/2015-आई आर (सीएम-2)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 17.02.2020.

[No. L-2212/42/2015-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer
Dated the 6th day of January, 2020

INDUSTRIAL DISPUTE No. 74/2015

Between:

Sri Janagam Balaiah,
S/o Sri Rajaiah,
H.No.7-2-389, Janagama (V),
Ramagundam (M)-505209
Karimnagar Disttt. (Telengana State). …Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area,
Godavarikhani-505209.
Karimnagar Disttt. (Telengana State). …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : M/s. Nandigam Krishna Rao & N.S. Pattabhi Rama Rao, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/42/2015-IR(CM-II) dated 29.7.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the management of M/s. Singareni Collieries Company Ltd., Bhupalapalli Area, Bhupalapalli, Warangal Dist., in terminating the services of Shri Badam Rajendra Kumar, Ex- Coal Filler, KTK-1 Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 12/1/2008 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 74/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondent. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 6th day of January, 2020.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 24 फरवरी, 2020

का. आ. 330.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एल.आई.सी. आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 224/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.02.2020 को प्राप्त हुआ था।

[सं. एल-17012/25/1998-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 224/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of LIC of India, and their workmen, received by the Central Government on 24.02.2020.

[No. L-17012/25/1998-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/224/1999

Present: P. K. Srivastava, H.J.S..(Retd)

Shri V.K.Ojha,
Agent of LIC,
Jabadapara, No.5043-384
Kranti Sada, Sarkanda
Bilaspur (C.G.) …Workman

Versus

The LIC of India
The Sr. Divisional Manager,
LIC of India, Divisional Officew,
Pandhari, Raipur (CG) …Management

AWARD

(Passed on this 6th day of February-2020)

As per letter dated 18-6-1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-17012/25/98/IR(B-II): The dispute under reference relates to:

"***Whether the demand of Sh. Vijay Kumar Ojha, Ex.Agent of LIC that he should be treated as workman under the provisions of I.D.Act is justified? If so, to what relief he is entitled to? .***"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the applicant/workman as stated in his statement of claim is that He was first appointed as Agent with the Management in the year 1987. His Registration Number allotted was 5043:384. He continued to work as Agent till the year 1996. His job was to pursue the potential customers to purchase insurance policies of the O.P Company for which he was given commission. He was served a show cause notice on 11-6-1999 for action proposed against him under Rule 16(i) (b) and Rule 19(i) (b) read with Rule 10(vi) of the Agent Regulation, 1972. He submitted his reply but the Management terminated his agency on 29-7-1998. The appeal filed was also dismissed on 14-6-1999. According to the applicant, he is a workman as defined in the 'Industrial Disputes Act, 1947 (herein after referred to as the Act)'. He was continuously in employment of Management since 1987 to 1996. He used to sell insurance policy to the customers for which he was paid the commission. His services were terminated on the basis of an inquiry conducted against law and rules. His future commission for renewal of policies was also stopped which is against Rule 16(i) (b), hence illegal. Accordingly the applicant/workman has prayed that termination of his agency be set aside and he be reinstated as Agent with the Management and also commission on renewal of policies be paid to him.

3. The case of Management, as stated in its written statement of defense is that being an Agent of Management, the applicant is not an employee of the Management Company. According to Explanation-2 of Appendix Regulation No-.2 of Life Insurance Corporation of India(Staff)Regulation,1960, hence he is not a workman under the Industrial Disputes Act,1947(herein after referred to as the word 'Act'.) and is not entitled to any relief claimed. Further the case of Management is that he committed some misconduct while working as an Agent. He was issued a notice under Sub-Rule 16(1)(b) of Rule 19 of Life Insurance Corporation of India(Agents)Regulation,1972. He submitted his reply and the Competent Authority finding the

mischief established, terminated his Agency. The appeal against the termination order was also dismissed as per law by Appellate Authority.

4. Both the parties have filed documents, to be referred to as and when required.

5. Following issues were framed by my learned Predecessor on the basis of pleadings:-

1. ''Whether applicants claim is not maintainable on the ground that the application is not a workman within the definition of the Act."

6. I have heard arguments of Mr. Arun Patel on behalf of applicant and Shri Amitabh Bharti on behalf of Management. The Management has also filed written arguments which are taken on record. I have perused the records as well. Before entering into any discussion, certain provisions are required to be re-produced here which defines workman as follows:-

Section 2(s) and 2(k) of the Industrial Disputes Act,1947.

2[(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison, or (iii) who is employed mainly in a managerial or administrative capacity, or (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the\employment or non-employment or the terms of employment or with the conditions of labour, of any person;

7. The Corporation in exercise of the powers vested in it under clauses(b) and (bb) of Sub-Section(2) of Section 49 of the Act and with the previous approval of the Central government has made Life Insurance Corporation of India(staff)Regulations, 1960 which has got the statutory force of law, Regulation 2 of the said Regulations provides as follows:-

"2...they shall apply to every whole time salaries employee of the Corporation (in India) unless otherwise provided by the terms of any contract, agreement or letter of appointment.

Explanation: "Employee" excludes insurance agents and work-charged employees whose salaries are charged to particular property/properties or work/works. In the case of a female employee "he" and "his" are to be read as "she" and "her".

The Corporation likewise, in exercise of the powers vested in it under Section 49 of the sad Act with the previous approval of the Central Government has made Life Insurance Corporation of India (Agents) Regulations, 1972. In exercise of the powers conferred by Sub-Section(1) read with clause (cc) of Sub-Section(2) and Sub-Section(2A) of Section 48 of the LIC Act,1956(31 of 1956), the Central Government by a notification dated 10.5.1982 amended the Life Insurance Corporation of India(Agents) Regulation,1972 as Life Insurance Corporation of India(Agents) Regulation,1972. The agents appointe4d by the Corporation are governed by the said Agents Regulation,1972 which has got statutory force.

8. The Petitioner was appointed as an Agent by order dated 14-1-1987 specifically mentioning therein that his appointment and the service conditions shall be governed in accordance with the Agents Regulation, 1972.

9. From the definition of "workman" as defined under Section 2(s) of the Industrial Disputes Act, 2947 it will be observed that the workman should be in the employment and would be performing any manual, unskilled or skilled, technical, operation, clerical or supervisory job. Rule 8 of Agents Regulation,1972 narrates the functions of an agent of the Corporation as under:-

10.

(1) Every agent shall solicit and procure new life insurance business which shall not be less than the minimum prescribed in these regulations and shall endeavor to conserve the business already secured.

(2) In procuring new life insurance business, an agent shall:

(a) take into consideration the needs of the proposers for life insurance and their capacity to pay premiums:

(b) make all reasonable inquiries in regard to the lives to be insured before a recommending proposals for acceptance, and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten;

(c) take all reasonable steps to ensure that the age of the life assured is admitted at the commencement of the policy: and

(d) Not interfere with any proposal introduced by any other agent.

(3) Every agent shall, with a view to conserving the business already secured, maintain contact with all persons who have become policy-holders of the Corporation through him and shall:

(a) Advise every policy-holder to effect nomination or assignment in respect of his policy and offer necessary assistance in this behalf;

(b) Endeavor to ensure that every installment of premium is remitted by the policy-holder to the Corporation within the period of grace;

(c) Endeavor to prevent the lapsing of a policy or its conversion into a paid-up policy; and

(d) render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid down in relation to settlement of claims.

11. The Management has referred to **H.R.Adyanthaya Vs. Sandoz(India)Limited-AIR1994 SC 2608** wherein it has been held that a person to be workman under the Industrial Disputes Act,1947 must employed to do work of any of the categories vis-à-vis manual, unskilled, skilled, technical, operation, clerical or supervisory. It is further submitted that the liabilities of agents as enumerated in Agents Regulation,1972(Supra) is that they are engaged for canvassing insurance business and they are paid commission for it , hence they are not employees of the Corporation and accordingly since they are not in employment of Corporation, they cannot be treated as workman under the 'Act'. He has further referred to Section 2(rr) of the Industrial Disputes Act,1947 to buttress his arguments . Section 2(rr) of the "Act' reads as under:-

> **2[(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes- (i) such allowances (including dearness allowance) as the workman is for the time being entitled to; (ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles; (iii) any travelling concession; 4[(iv) any commission payable on the promotion of sales or business or both;] but does not include- (a) any bonus; (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force; (c) any gratuity payable on the termination of his service;]**

12. Learned Counsel further refers to case of **Vijay Kumar Ojha Vs. Superintendent of Police(C.B.I)(2001)3 MPLJ 246** where in it has been laid down that Agents are not employee of Life Insurance Corporation.

13. Though the workman side has tried to rebut this argument on the ground that agents are all paid commission and it makes no difference whether they are employed on commission basis or on regular salary but since they work under the directions of Management they will be deemed to be workman as defined in the 'Act' but I am not inclined to accept this argument because the basic difference between an employee and an agent is that an employee works under the directions of the employer in his internal working whereas the agent is free to work and is not under the control and direction of his Principal with regard to his internal working. Secondly the workplace and working hours of an employee are fixed but this is not the case of the agents of

Management, working on commission basis and they cannot be taken as employee and accordingly he cannot be said to be a workman as defined in the Industrial Disputes Act, 1947.

14. Since the applicant/workman has been held not be a workman as defined in the 'Act' any dispute between him and Management is not an Industrial dispute as defined in the 'Act'. Accordingly the claim of the applicant/workman is held not entertainable before this Tribunal.

The Preliminary issue has been answered accordingly.

15. On the basis of the above discussion, following award is passed:-

A. The demand of Sh. Vijay Kumar Ojha, Ex.Agent of LIC that he should be treated as workman under the provisions of I.D.Act is heldnot justified.

B. The applicant/workman is held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 6.2.2020

नई दिल्ली, 24 फरवरी, 2020

का. आ. 331.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 88/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/124/2006-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 24.02.2020.

[No. L-12012/124/2006-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14TH FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 88/2007

I Party	**II Party**
Sh. L. Chidanandacharya, Turuvanur District and Taluk, Chitradurga – 577517.	The Dy. General Manager, Canara Bank, Circle Office, Bailappanavar Nagar, HUBLI – 580029.

Appearance

Advocate for I Party : Mr. Anant. P. Savadi

Advocate for II Party : Mr. T.R. K. Prasad

AWARD

The Central Government vide Order No.L-12012/124/2006-IR(B-II) dated 26.06.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of management of Canara Bank in terminating the services of Sh. Chidanandacharya w.e.f 26.04.2004 is justified or not? If not, to what relief the workman is entitled?"

1. The 1st Party Sh. Chidanandacharya / NNND Agent (New Nithyanidhi Deposit Scheme), Turuvanur is the former employee of the 2nd Party / Canara Bank whose service is terminated as a measure of disciplinary action on certain allegations. Before terminating him from service, he was issued Charge Sheet and allegations were probed in a duly held Domestic Enquiry; on the Enquiry Officer submitting his report holding that the charges are proved; the 2nd Party passed the order dated 26.04.2004 in following terms;

"The NNND agency of Sh. T.L. Chidanandacharya vide agreement dated 04.01.1988 shall stand terminated forthwith in the terms of the said agreement."

In his Claim Statement the 1st Party has challenged the legality of the Charge Sheet served on him, lack of opportunity during Domestic Enquiry and also the finding of the Enquiry Officer as perverse. He alleges that his punishment is a measure of victimisation.

2. The 2nd Party refutes all the allegations levelled in the claim statement and justify their action in terminating his agency. The validity of the Domestic Enquiry conducted against the 1st Party is upheld by my learned predecessor, vide order dated 29.10.2013.

3. Thereafter, the 1st Party adduced evidence that he is unemployed. He alleges that, the then Manager Sh. K. Anjanappa suspected him for the adverse News published against him in the local newspaper and tortured him and thus he is victimised.

4. The allegation against the workman in the charge sheet was to the effect that,

(i) He is not visiting the customers of the Branch, who are having NNND Account, who want to remit the account.

(ii) He is engaged in generating false complaints against the Branch Manager.

(iii) He was absent (in the dates mentioned in the Charge Sheet) from the work.

(iv) He is not serious in work and he is involved in engineering the complaints against the interest of the Bank.

(v) He altered the names of the Joint Account depositors Smt. Laskmidevi and Sh. Thippeswamy in the application bearing RD A/c No. 1045 as well as in the ledger sheet by applying white fluid and tried to close the account by himself without Authority.

5. During the enquiry, eight witnesses were examined for the prosecution and 27 documents were marked for them. The CSE had the assistance of an employee of the Bank; he examined one witness on his behalf and produced 4 documents.

MW-1 was the then Manager of the Bank who has sent Report against the 1st Party to the Regional Office.

MW-2 was the Investigating Officer.

MW-3 to the MW-6 were the customers who were alleged to have complained against the Manager. The defence witness was none other than the brother of the CSE. Twenty seven documents was marked for the Management and four documents for the defence.

6. Both parties had submitted their written brief.

7. Before commencing the analysis of the evidence, the Enquiry Officer for his convenience framed three issues;

(i) Whether…. indulged in generating false complaints against the Branch Manager and trying to implicate him?

(ii) …. remained absent from his duties and failed to collect NNND amount from the customers…

(iii) Whether … altered the status of the RD A/c No. 1945…., and on analysis of evidence, recorded his finding to the above.

8. It emerged from the evidence of all the witnesses that there was no direct evidence against the workman in proof of the allegation that, he is generating false complaints against the Manager and trying to implicate him. However, the Enquiry Officer on his own infers from the complaint Ex M-13 that the complaint contains certain internal matters of the Branch, it appears that the complaint is generated from the insider of the

Branch. By harping upon the words used in the complaint like AOD and TOD he brings the needle to the 1st Party, since he is the only person who knows the word AOD and TOD.

He takes support from the deposition of MW-1 who had stated to the effect that, his Predecessor in office had informed that the CSE was indulging in writing false complaint and publishing adverse report against him in local Newspaper and one of his customer over phone had told him that, he was forced to sign the complaint against the Manager.

9. When questioned during cross examination about identity of the Customer, he named Sh. G. S. Thippeswamy. Said G.S. Thippeswamy was not examined as a witness during the enquiry. One M.R. Thippeswamy who was the 8th witness did not spell anything about the complaint. The statement given by him before the Investigation Officer was marked as Mex-19; wherein, he had stated that the CSE is not punctual in collecting the amount from him. The finding of the Investigating Officer in holding involvement the CSE in generating false / fake complaint against the Manager is only hypothetical without the basis of direct evidence, hence, grossly erroneous.

With regard to the 2nd issue regarding his absence from duty and not collecting NNND amount from the customers; the statement of the customers was very much before the Enquiry Officer. It was the defence that, because of the drought condition and increase in the activity of Self Help Groups the collection has come down.

10. MW1 in his letter addressed to the Regional Office (Mex-6), apart from alleging that the CSE who had remained absent from 02.05.2002 attended the office only on 17.06.2002 and did not offer any reasons for his absence, he also stated that,

> *"…..due to increase of Self Help Groups in villages the remittances of NNND agents are very much declined. In view of the poor collections and irregularity of agent we request to take steps to terminated his services".*

The Enquiry Officer has very much discussed about the side business in which the 1st Party is involved, but it was beyond the scope of Disciplinary Authority in alleging about his other business activities if his performance as Deposit Collector was perfect, as such a Deposit Collector unlike a regular employee is not governed by the service rules, he has no duty hours. The CSE himself has not disputed his frequent absences and pitfall in the collection of deposits. In that view of the matter, the finding of the Enquiry Officer that the issue No. 2 is proved does not call for any remark.

11. The 1st Party in statement given to the Investigating Officer had admitted the alteration in the RD Ledger Sheet and the account opening form No. 1945 and assigned his bonafide reasons for doing so. However, no loss was caused to the Bank by his act. Still the Enquiry Officer on observing that he had no authority to handle any of the ledgers in the Bank except the NNND register answered the third issue as proved.

The 1st Party contends that, the Defence documents produced by him were not taken for consideration by the Enquiry Officer or Disciplinary Authority. I have perused his documents- Ex D-1 is the photostat copy of the complaint given by DW-1 to the General Manager Canara Bank whereby, allegations were made against the Manager indirectly. Ex D-2 and Ex D-4 are the paperclips wherein there was derogatory material about the Manager. Ex D-3 was a Xerox copy of settlement arrived between the Bank Manager Sh. K Anjanappa and one Complainant. These documents cannot be counted upon since not having evidentiary value. When MW-1 was in the witness box, these documents were not confronted to him. Facts remain that he had altered the Bank records and the collection had come down causing loss to the Bank.

12. The schedule to the order of reference is drafted as if the services of the 1st Party workman are terminated, as such he was never in the service of the Bank as it's employee. When it is said under an agreement he is assigned the agencies of collection deposits, there will be mutual obligations on both the parties under the contract. It is not shown that, the termination of the agreement is in violation of the said contract dated 04.01.1988 entered between the parties.

He remained absent for number of days and the collection had come down. He is not appointed in accordance with the service rules governing the employees of the 2nd Party. He gets commission on his collection and the 2nd Party has terminated the agreement entered with him on the misconducts having proved against him. Though, I have exception to the finding of the Enquiry Officer in respect of the first issue, since his findings on issue number two and three is based upon the admitted facts, I have no reason to differ from the Disciplinary Authority in terminating the agreement of 04.01.1988 and endorse the action taken against the workman by the 2nd Party Bank.

AWARD

Reference is rejected

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 14th February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2020

का. आ. 332.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोरपोरे"ान बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 30/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/18/2009-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Corporation Bank, and their workmen, received by the Central Government on 24.02.2020.

[No. L-12012/18/2009-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14TH FEBRUARY 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 30/2009

I Party	**II Party**
Smt. Radharani M.S. D/o Siddappa, Behind KEB Road, Thyavanige – 577544, Channagiri Taluk, DAVANGERE	The Zonal Manager, Corporation Bank, Zonal Office, Morrsaviramutt Press Building, New Cotton Market, Hubli – 580029.

Appearance

Advocate for I Party : Mr. B.D. Kuttappa

Advocate for II Party : Mr. Pradeep S. Sawker

AWARD

The Central Government vide Order No. L-12012/18/2009-IR(B-II) dated 18.06.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the punishment of discharge from services imposed on Smt. Radharani M.S. by the management of Corporation Bank, Thyavanige Branch is legal and justified? What relief the workman is entitled to?"**

1. The 1st Party workman was working as a Part Time Messenger; she is discharged from service as a measure of Disciplinary Action on certain allegations having proved during the Domestic Enquiry.

In her claim statement, she questioned the fairness of procedure of enquiry, sufficiency of the evidence for the Enquiry Officer to reach his conclusion, alleges that Enquiry Officer was biased and his findings are perverse and the punishment order is passed without issuing her second show cause notice. She also assails the orders of the Disciplinary Authority and Appellate Authority that her excellent past records of service was not considered, entire case was not considered by them and Chief Manager is not the Disciplinary Authority for her. Further her grievance is the punishment order is harsh and excessive.

2. The 2nd Party in their Counter Statement while justifying the action taken against her refuted all the allegations levelled against the procedure of enquiry, enquiry findings, and the Disciplinary Action.

3. The fairness of the Domestic Enquiry is upheld by me vide order dated 24.04.2019.

4. The allegation against the workman as per the Charge Sheet dated 21.05.2007 was to the effect that,

while working as a part time Sweeper at Thyavanige Branch on 10.02.2007, she was entrusted by the Manager to carry the Cash from the strong room to the cash cabin. While carrying the cash, she clandestinely removed cash packet 100 currency notes of Rs. 500/- denomination; cash shortage was later detected and she was enquired; she denied her responsibility for the shortage. On the Branch Manager informing her of reporting the matter to the Police Authorities, she brought the missing amount from beneath the rack of the record room of the Branch….

5. On behalf of the Management twelve witnesses were examined and documents Ex M-1 to Ex M-33 were marked.

On behalf of the Defence four witnesses were examined and documents Ex D-1 to Ex D-5 were marked. Throughout the enquiry the 1st Party had the assistance of an Advocate.

6. The first witness for the prosecution was the Investigating Officer / MW-1; MW-2 was the then Branch Manager; MW-3 to MW-5 were the Peon, Clerk and Deposit Collectors of the Branch, MW-6 to MW-11 were the Customers / Outsiders who were present at the place of occurrence at the relevant point of time. MW-12 was the then Officer at the Thyavanige Branch and also joint custodian with the Branch Manager

There was two separate Investigation Reports before the Enquiry Officer, the first one was conducted by MW-1 and his Report was Ex M-1, the other Investigation was by the Zonal Security Manager, Hubli who was a retired Officer of the Army, said Report was marked as Ex D-4.

7. The CSO did not give her written reply to the Charge Sheet however, after recording the statement of the defence witnesses; the Enquiry Officer recorded her statement in respect of the incriminating evidence appearing against her in evidence of the prosecution witnesses. Her statement was to the effect that, as per the instruction of the Branch Manager she carried the cash to the cash cabin and kept the single lock box as well as open cash tray in the cash cabin, she was escorted by the Manager and the Officer to the cash cabin; she denies the prosecution story that, after the Branch Manger threatened her of lodging the complaint to the Police about the missing cash she removed the bundle of Rs. 50,000/- from the record room of the Branch which were hidden under a rack and handed over the same to him; her version was the Branch Manager called her to the record room and instructed her to take out the cash from the almirah accordingly she opened the almirah and found a cash packet there and handed over the same to the Branch Manager.

8. It is to be noticed that, she had the assistance of a Legal Expert/Advocate during the enquiry. Whatever questions were put during the course of cross examination to the prosecution witnesses and whatever defence evidence was adduced were all with the sense of responsibility and no margin can be given for the dents in the defence unlike the enquiries wherein charge sheeted employee defends either on his / her own or represented by an unskilled co-employee.

I have gone through the cross-examination evidence of the Branch Manager MW-2, there was no such suggestion from the defence side that he did not warn her of Police complaint and had instructed her to open the almirah in the record room and take out the bundle of notes. The tone of cross examination was it was pre-planned by himself, Sh. Halappa who is the joint custodian with him and also another official Smt. Savithri. With regard to Smt. Savithri another defence story was projected that the housemaid who was working at the residence of Smt. Savithri is none other than the aunt of CSO Smt. Renukamma / DW-2. After Smt. Savithri shifted from Thyavanige to Davanagere she insisted Smt. Renukamma also to move with her, on her refusal to go to Davanagere. Smt. Savithri and the Branch Manager informed her that they would recommend for the appointment of the CSO as PTS in the Branch. Since she refused to go over to Davanagere Smt. Savithri

threatened that, she would not allow CSO to continue her job at the Branch. Because of the above, one week thereafter the incident in question was deliberately created at the instance of Smt. Savithri.

9. Of course, the blanks in the case of the defence, does not matter if the prosecution has proved the charges. Since it is a Departmental Enquiry the standard of evidence required is, if the evidentiary material would probablise the happening on the parameter of preponderance of probabilities.

10. As per the prosecutions story, on 10.02.2007 the Manager along with the joint custodian Sh. Halappa took out the cash and the single lock box from the double lock at 10.15 am, since the regular sub-staff had not yet reported to the Branch, the assistance of the CSO who was a Part Time Sweeper was taken to carry the cash tray to the cash cabin; at 10.30 am the cashier Smt. Sakamma checked the double lock cash and found the missing of Rs. 50,000/- (one packet of Rs. 500/- denomination). Immediately Sh. B.D Halappa searched all the drawers and all the places; double lock cash was also verified but missing amount could not be traced; when enquired with the CSO firstly she refused her indulgence. On the Branch Manager telling her that matter would be reported to the Police, she went inside the record room searched, and took out the bundle of Rs. 50,000/- which was kept by her beneath the rack. The staff members, customers who were all present had witnessed her handing over the cash amount; in the afternoon she came to the Branch along with her mother and family members; her mother beat her daughter and pleaded amity in the presence of the customers and the staff members.

11. There is some missing link in the above case of the prosecution. As admitted by Sh. Halappa it is highly probable after the cash amount was kept in the cabin, they have not locked the cash cabin; the amount is retrieved at 11.30 am. But the defence was able to show that cash transactions had commenced at 10.26 am and went on smoothly upto 11.10 am. Ex D-1 is the list of 10 customers who transacted the cash with the timings, this document is not out rightly rejected by MW-2 the Branch Manager, his explanation was the entries in the computer may be the time shown in Ex D-1 but the amount was retrieved by 10.30 am. As per the statement of Smt. Sakamma the cashier, after entering the cash cabin at 10.30 am, she verified the cash and noticed the deficit between 10.30 am to 11.30 am. If that is so, there is a gap of 60 minutes between missing and returning. But the computer entry of the transaction would reflect (as per Ex D-1) that the transactions had commenced at 10.26 am and went on smoothly upto 11.30 am. As per the version of the cashier, they found deficit before commencing the transaction at 10.30 am and after the retrieval of the amount at 11.30 am, the cash transaction commenced. There is contradiction within the case of the prosecution, they are trying to patch up the oral evidence and the documentary evidence that though entries were made in the computer as reflected at Ex D-1, in fact the transaction commenced after retrieval of the cash amount at 11.30 am, but that is not a convincing explanation. Going by the version of the prosecution the CSO while carrying the tray was escorted by the officer Sh. Halappa and the amount is guarded by him till the cashier entered the cabin and took over the charge. Though, the witnesses have stated that she removed the cash bundle which was concealed under the rack in the record room, in fact it was only the CSO and the Branch Manager who were present in the record room when the amount was traced. Whether it is from the almirah as contended by the defence or from below the rack, things stand that none other than the Manager saw the exact place where the amount was lying.

12. The Manager (Security) who conducted the parallel investigation had bailed out the CSO on his observation like, in her past 3 years of service there was no complaint against her – in the past the Branch Manager had scolded her many times for her lethargic attitude – he had instructed the sub-staff Sh. T Rangaswamy to meet the loan defaulter on 10.02.2007 and then come to the Branch - she was working in the house of the official Smt. Savitri after her duty hours – and a fortnight prior to the incident there was misunderstanding between the two – part time sweepers services are not to be utilised for carrying of cash – though the incident occurred on 10.02.2007 the Security Manager, Hubli Zone was not informed about the same – the Branch Manager informed the Zonal Office about the incident on 12.02.2007 – the CSO had gone outside after keeping the cash inside the cash cabin if she wanted to steal the money she could have concealed the amount and taken it out – the Branch Manager had told her to search in the record room and had followed her and he had told her to pick up the cash from under the slotted angle rack and there was no witness who had seen the CSO going into the record room.

13. The observations and finding of the Manager Security cannot be ruled out as hypothetical. The Enquiry Officer though during the appreciation of his evidence has recorded the argument of the defence has not ruled out the lapses in the case of the prosecution specifically. The evidence does not point the needle either to the CSO or any other insider. The conclusion is arrived by the Enquiry Officer holding that the CSO responsible for the missing of cash transaction is, on the basis of the evidence only hence it cannot be inferred as a perverse or arbitrary finding. The Disciplinary Authority had proposed the punishment of discharge from service with superannuation benefits and without disqualification for future employment, gave her a personal hearing, however agreed with the Enquiry Report on appreciation of evidence concluded that she has betrayed

the trust and confidence reposed in her by the Bank. The punishment since does not come in the way of her future employment, I endorse that the punishment is proportionate to the gravity of the misconduct proved and there is no illegality.

AWARD

Reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 14th February, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 24 फरवरी, 2020

का. आ. 333.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. आरसी–10/2013 एवं आर–57/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/42/2012-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. RC-10/2013 & R-57/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 24.02.2020.

[No. L-12012/42/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/RC/10-2013 & R-57/2013(merged)

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Dwarka Prasad Soni
S/o Shri Bhogiram Soni
H.No.1279, Bhantalaiya
Premsagar Road,
Babu Niwas, Jabalpur (M.P.) …Workman

Versus

The Chief Manager,
Union Bank of India, Nodal Office,
Jail Road, Agra Hills,
Bhopal (M.P.) …Management

CGIT/LC/R-57-2013

Shri Dwarka Prasad Soni
S/o Shri Bhogiram Soni
H.No.1279, Bhantalaiya
Premsagar Road,
Babu Niwas, Jabalpur (M.P.) …Workman

Versus

The Chief Manager,
Union Bank of India, Nodal Office,
Jail Road, Agra Hills,
Bhopal (M.P.)

The Branch Manager
Union Bank of India, SBS
High Court Campus,
Jabalpur (M.P.) …Management

AWARD

(Passed on this 10th day of FEBRUARY-2020)

1. This case is proceeded against management on the basis of petition/ statement of claim filed by workman under Section 2A(2&3) of Industrial Dispute (Amended)Act 2010.

2. In response to same dispute a reference is received as per letter dated 1/3/2013 by the Government of India, Ministry of Labour, New Delhi. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/42/2012-IR(B-II) The dispute under reference relates to:

> "***Whether the action of the management Union Bank of India in the dismissing the services of Shri Dwarka Prasad Soni, Ex-Peon w.e.f. the date of conviction for offence i.e. 24-1-2008 is legal and justified. What relief the applicant is entitled to?*** ."

3. In both the cases the facts and evidence are common hence both the cases have been amalgamated and evidence has been recorded in Rc-10-2013.

4. The facts are almost admitted between the parties which are that the workman while working as an employee of the Management Bank was convicted for charge under Section 138 of the Negotiable Instruments Act,1881(in sort to be referred as the word 'Act') for issuing of three cheques of one lakh each against the loan taken by the workman from the complainant Santosh Kumar Sahu which were dishonored due to lack of sufficient fund. The cases were Criminal Case No.27538/06 decided on 17-11-2007. He was convicted simple imprisonment for 3 years and fine of Rs.1, 45,000/-. The second was Criminal Case No.27359/06 wherein he was convicted for six month simple imprisonment and fine of Rs.2,90,000/- decided on 17-11-2007. This conviction was appealed against and was confirmed by AppellateCourt in Criminal Appeal Nos. 557/07 and No.558/08. The Management in provision of Section 1(b) of Banking Regulations Act 1949 in terms of provisions contained in Para-3(b) Bi-PartiteSettlement dated 10-4-2002, served the workman a notice seeking his explanation within 15 days from the date of receipt of notice . The applicant did not submit any explanation and the Disciplinary Authority dismissed the workman from the services of the bank from the date of his conviction i.e. 24-1-2008. The workman has challenged his dismissal on the ground that it is harsh and not proportionate. The Management has defended its action in the light of Para-3(b) of the Bi-Partite Settlement No.6 of 2002 and Section 10(1)(b) of the Banking Regulation Act,1949, with the case that the bank cannot afford to have a convicted person as its staff because it will adversely affect the reputation of the Bank resulting into loss of business.

5. Both the sides have produced their oral and documentary evidence to be referred to as and when required.

6. I have heard argument of learned counsel for Workman Shri Shailesh Mishra and for Management/Bank Advocate Shri Shailendra Pandey. I have gone through the written arguments filed by the Management.

7. On perusal of the record in the light of the rival arguments makes out following issues to be decided:-

1. Whehther actionof Management in terminating the services of applicant/workman on the ground of his conviction under Section 138 of the 'Act' in two cases is justified in law or not?

8. The main arguments for learned counsel for applicant/workman is that the alleged transactions resulted into conviction of the workman under Section 138 of the 'Act' is firstly between two individuals in individual capacity, secondly it has no connection to the official duties of the workman and thirdly the bank has not been put to any loss due to these transactions, furthermore the charge under Section 138 of the 'Act' is not an act of moral turpitude. The learned Counsel has further referred to Para-3(b) of the Bi-Partite Settlement No.6 of 2002 and has submitted that the impugned dismissal order does not show that the Disciplinary/Controlling Authority exercised its discretion and recorded any findings as to why the workman deserves the maximum punishment of dismissal, hence this order is bad in law on this score also. Learned Counsel has referred to case of **Ibrahim Kannu Vs. State of Kerala 2005(4)KLT 1034** and judgment of Hon'ble High Court of Madhya Pradesh at Jabalpur in **Writ Petition No.3254/2016 Manoharlal Pandey Vs. Water Resource Department.** The Management has submitted that Para-3(b) of the Bi-Partite Settlement No.6 of 2002 empowers the Management to impose the punishment of dismissal to an employee who has been convicted for a criminal charge and further

submission was that the bank cannot afford to have a convicted person as its employee on its role as it will affect the general reputation of the bank resulting into loss of business.

9. Before entering into any discussion Para-3(b) of the Bi-Partite Settlement No.6 of 2002 dated 10-4-2002 reads as follows:-

"If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 6."

10. A bear reading of this provision shows that in case of conviction, apart from dismissal from service any lesser form of sentence as mentioned in Clause-6 of the Bi-Partite Settlement may also be awarded. Para-6 of the Bi-Partite Settlement reads as follows:-

An employee found guilty of gross misconduct may:

(a) be dismissed without notice or

(b) be removed from service with superannuation benefits i.e. pension and /or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment:or

(c) be compulsorily retired with superannuation benefits i.e. pension and /or Provident Fund and Gratuity would be due otherwise under the rules or Regulations prevailing at the relevant time and without disqualification from future employment :or

(d) be discharged from service with superannuation benefits i.e. pension and /or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment:or

(e) be brought down to lower stage in the scale of pay up to a maximum of two stages;

(f) have his increments/stopped with or without cumulative effect; or

(g) have his special pay withdrawn; or

(h) be warned or censured or have an adverse remark entered against him;

(i) Or be fined

11. Learned Counsel for Management/Bank has referred to **Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank(2010)8 SCC 573** where in a bank employee who was entrusted Rs.5000/- from bank to deposit it with the post office as telephone bill which he misappropriated and was convicted with Charge under Section 409 of IPC. The Bank dismissed the employee holding the charge an act of moral turpitude which was upheld by Hon'ble Apex Court. In the case referred to above by learned counsel for workman it has been laid down that the offence under Section 138 of the 'Act' that when this transaction was between two individuals in their private capacity not connected to their official working, is not an act of moral turpitude.

12. According to the Bi-Partite Settlement Para-5(s) the conviction of an employee by a Criminal Court of law for an offence involving moral turpitude is a gross misconduct for which dismissal may be done as punishment in the light of Para-6(a) of the Bi-Partite Settlement. Para-5(s) and Para-6(a) of the Bi-Partite Settlement reads as follows:-

Para 5(s):- Conviction by a criminal Court of law for an offence involving moral turpitude.

Para-6(a):- Be dismissed without notice

13. Since it is not the case of the bank and dismissal order also does not show that the dismissal order was passed as a punishment using powers under Section 5(b), Para5(s) and Para 6(a) hence it will a futile exercise to probe into the fact whether the charge leading into conviction was an act of moral turpitude or not. In the case in hand the workmen have been dismissed from service using powers under of Para-3(b) of the Bi-Partite Settlement No.6 of 2002.

14. From the evidence on record, it is also established that the alleged transactions regarding issuance of cheque which was dishonored leading into conviction in two cases under Section 138 of the Negotiable Instruments Act were between two private individuals in their individual capacity. This is also established that bank was not put to any financial loss. The impugned order of dismissal does not show that the Authority which passed the said order considered the point as to why a lesser punishment could not be fit in this case because the provision also provides dismissal or lesser form of punishment in such a situation when power under Para-3(b)

of the Bi-Partite Settlement No.6 of 2002 is used by the Authority. The dismissal order also does not show that what lead the Authority to pass the maximum sentence which is order of dismissal and what aggravating and mitigating circumstances were considered by the Authority. The second settled proposition of law is that when the Authority is vested with discretion it has to be exercised judiciously otherwise it may lead to arbitrariness which has happened in the case in hand.

15. In the light of above discussion the order of Authority awarding dismissal in the case in hand as punishment cannot be said to be justified in law and it will be proper for the Authority to consider the point of sentence keeping in view the nature of transactions, the previous service record of the workman and his length of service and then come to a conclusion as to whether the workman deserves maximum punishment of dismissal or any other lesser form of punishment as mentioned in Clause-6. The issue is answered accordingly.

16. On the basis of the above discussion, following award is passed:-

A. Penalty of dismissal of Shri Dwarka Prasad Soni, Ex-Peon from service w.e.f 24-1-2008 in terms of Para-3(b) of the Bi-Partite Settlement No.6 of 2002 dated 10-4-2002 is held not justified in law.

B. The Authority is obligated to pass a fresh order considering all the facts aggravating and mitigating taking into the nature of transactions, which lead into conviction, previous service record of the workman and his length of service recording a finding as to what punishment whether dismissal or other punishment will be justified in the case in hand.

P. K. SRIVASTAVA, Presiding Officer

DATE: 10.2.2020

नई दिल्ली, 24 फरवरी, 2020

का. आ. 334.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनाईटेड बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना (बिहार) के पंचाट (संदर्भ सं. 08 (सी)/2019 03(सी)/2014 59/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/19/2012-आई आर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 24th February, 2020

S.O. 334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08(C)2019 03(C)2014 59/2012) of the Industrial Tribunal, PATNA (BIHAR) as shown in the Annexure, in the industrial dispute between the management of United Bank of India, and their workmen, received by the Central Government on 24.02.2020.

[No. L-12012/19/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No.:- 08 (C) of 2019 03 (C) of 2014 59 of 2012

Between the management of The management of Chief Regional Manager, Bihar Regional Office, United Bank of India, IInd Floor, Abhay Bhawan Fraser Road, Patna (Bihar)-800001 and their workman Sri Prem Kishore, S/O- Sri Ramanand Singh, Vill. + P.O- Purushottampur, Dist.- Muzaffarpur, Bihar, Pin-842002.

For the management : Sri Umesh Kumar Roy, S.P.F No.- 32560 Senior Manager

For the Workman : himself represent

Present:-

Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dated- 31st January , 2020

By the notification order no.-L-12012/19/2012-IR(B-II) New Delhi,dated- 30.08.2012 the Govt. of India // Bharat Sarkar, Ministry of Labour / Shram Mantralaya, New Delhi referred under clause (d) of sub-section(1) and sub-section(2A) of section-10 of the Industrial Dispute Act, 1947 (hereinafter to be referred to as " the Act") the following dispute between The management of Chief Regional Manager, Bihar Regional Office, United Bank of India, IInd Floor, Abhay Bhawan Fraser road, Patna (Bihar)-800001 and their workman Sri Prem Kishore, S/O- Sri Ramanand Singh, Vill. + P.O- Purushottampur, Dist- Muzaffarpur, Bihar, Pin- 842002 for adjudication to the Cent. Govt. Indus. Tribunal-cum-Labour Court No.-2, Dhanbad. However, in the light of L-12012/19/2012-IR (B-II) New Delhi, Dated- 13.03.2014 Govt. of India// Bharat Sarkar Ministry of Labour/ Shram Mantralaya, New Delhi, and the Cent. Govt. Indus. Tribunal-cum-Labour Court No.-2, Dhanbad transferred the

Reference Case No.- 59 of 2012 vide letter no.- LCT 1/2010/346 dated- 16th July, 2014 to State Industrial Tribunal, Patna.

SCHEDULE

"Whether the action of the management of United Bank of India in terminating the services of Sh. Prem Kishore, S/O- Sri Ramanand Singh, we.f. 20.01.2009 without adhering the provision of I.D. Act, 1947 is legal and justified? Whether the demand of Sh. Prem Kishore for regularization and payment of due wages is just and proper? What relief the workman is entitled to?"

2. First of all it is worth to mention that earlier by order dated- 19.07.2016 this reference case was disposed off and award was passed holding action of the management of United Bank of India in terminating the services of Sri. Prem Kishore is not legal and justified. It was further held that demand of Prem Kishore for regularization and payment of dues wages is just and proper and as such the management was directed to regularized the workman.

3. The aforesaid award dated- 19.07.2016 passed by this tribunal was challenged before the Hon'ble Patna High Court in C.W.J.C No.- 8641 of 2016. The Hon'ble Patna High Court after hearing the parties at length quashed the award / order passed by the tribunal and referred the matter back to this tribunal to decide the same on its own merit.

4. In view of the aforesaid order and direction of the Hon'ble Patna High Court, a petition along with order of the Hon'ble Court was filed by the workman on 15.07.2019 and accordingly notices were issued to both the parties. Both the parties appeared and advance theird argument in this case.

5. The case of the workman Sri Prem Kishore is that he came to know that one post of sub-staff is vacant in United Bank of India, Purushottampur branch. He came to know regarding this from the notice pasted on the notice board of the bank. The workman applied for the aforesaid post and after interview he was selected to work although no appointment letter was issued by the bank to him. As such from 09.03.2005 the workman started working in the branch. The workman has further mentioned in para-5 of his written statement regarding the period for which he worked in the bank in the year 2005 & 2006. The case of the workman is that he worked in the bank when ever the permanent sub-staff of the bank Mr. Upendra Mishra was on leave. His further case is that in the year 2007 he worked from 11.07.2007 to 01.08.2007 when aforesaid sub-staff Mr Upendra Mishra had gone to Kolkata for training. It is further claimed that from 02.08.2007 to 19.01.2009 the workman continuously worked against the vacant sanctioned post of sub-staff of Mr. Upendra Mishra who was relived on 01.08.2007 to join new post at Mohali. All on a sudden on 20.01.2009 when the workman reported his duty to the bank branch manager orally terminated his service. The workman asked his termination letter, but no such letter was given to him. The further case of the workman is that Purushottampur branch of the bank was inspected by the then Chief Manager in the month of January 2008 and during inspection the workman faced interview once again before the Chief Manager and branch manager for his confirmation on the permanent vacant post of sub-staff. The branch manager sent letter on 16.07.2008 for the approval to Chief Manager but the management bank kept mum and no letter regarding confirmation / regularization was issued by the management. The workman was initially paid a sum of Rs. 25/- per day which was increased from time to time and on the last day he was paid Rs. 70/- per day. The workman used to receive his salary after passing of voucher in different P/L heads. The workman used to receive his salary fortnightly and weekly basis. The workman used to perform duties of a peon (Daftari grade-4) which includes opening and closing of the bank branch, ledger transfer and other works fully mention in para-10 of his written statement. The workman used to work for more than 9 hours in a day throughout the year under direct control and supervision of official of the bank. His further case is that separate duty register was maintained for his work showing payment of wages

made to him from time to time and another register called P/L was used to maintain by the branch in which the payment made to workman were shown under different heads.The further case of the workman is that he made several complaints and used the various platforms of Right to Information Act and also filed writ application before the Hon'ble Patna High Court and after disposal of the writ application be received various documents. This workman claimed himself to be a regular employee on vacant permanent sanctioned post of sub-staff peon grade 4 due to transfer of Mr. Upendra Mishra. The workman has stated that his service was terminated in mala fide manner. The workman has claimed that he rendered much more than 240 days in past 12 calendar months from the date of his termination and this was protected by the provisions of Section 25-F of the Industrial Dispute Act, 1947 and before termination no notice, notice pay or retrenchment compensation was paid to him as per the provisions of Section 25-F of the I.D.Act. The workman has prayed for reinstatement in service of the bank with full back wages and other consequential benefits and for his regularization.

6. The case of the management is that the reference is without jurisdiction and in fact Prem Kishore is not a workman in terms of section-2(S) of the Industrial Dispute Act. Sri Prem Kishore was never employed by the bank hence there was no employer-employee relationship between the bank and alleged workman. The case of the management is that in fact Prem Kishore deployed his diesel generator set on rent for the purpose of emergency power supply to United Bank of India, Purushottampur Branch in case of power failure as per the terms and condition of the agreement reached between the United Bank of India, Purushottampur Branch as lessee and Sri Prem Kishore as lessor which has been dully renewed from time to time with appropriate enhancement of rent. Sri Prem Kishore is being duly paid as per the agreed terms and conditions of the said agreement. The management bank never offered any employment to disputant Sri Prem Kishore at any point of time and in absence of any such employer-employee relationship between the bank and the disputant Sri Prem Kishore, the question of his retrenchment from service in terms of the Industrial Dispute Act, 1947 does not arise. The bank has never issued any appointment letter to the disputant Sri Prem Kishore. Moreover, the Bank prohibits recruitment / engagement of outsiders for Bank's works and thus, the question of regularization of his services does not arise. United Bank of India, Purushotampur Branch never engaged Sri Prem Kishor for voucher entry, date entry or for any work related to other books of account and allegations of the disputant Sri Prem Kishor made in this regard are false, fabricated, malafide and are made with an ulterior motive to obtain public employment in sheer disregard of established procedure for public recruitment. The Bank has made full and final payment to the disputant Sri Prem Kishor for the occasional work of sanitation if any, or any other work of similar nature done by him in case of exigencies at the said branch. These payments made on random basis must not be confused as engagement on daily basis. Moreover, this does not confer any right in favour of the disputant Sri Prem Kishor to claim for public employment. The management has further stated that it is categorically denied that the disputant Sri Prem Kishor had been continuously engaged / worked for a period of 240 days in a calendar year, as alleged. It is submitted that the disputant was mere a service provider of his diesel generator for emergency power supply to the Purushottampur Branch of the Bank against remuneration as agreed vide agreements referred above and was never engaged either on daily basis or temporarily or permanently by the Bank. The management has stated that Sri Prem Kishor is not entitled to any relief or remady as prayed for.

7. In this reference the disputant Prem Kishore examined himself as well as one another witness Sri Ram Swarath Rai in support of his case.

W.W-1 Prem Kishore in his deposition has stated that in the year 2005 he saw on the notice board of the United Bank of India, Purushottampur branch regarding the employment of one post of Daftary in the bank. He applied for the same and was selected for the aforesaid post after facing interview and he was employed as a daily wages employee but no appointment letter was given to him. This witness has further stated that he was engaged by the branch manager only when permanent employee Sri Upendra Mishra was on leave. The branch manager used to take work from him as a daily rated employee for which initially he was paid Rs. 25/- per day which was increased to Rs. 70/- per day. He worked in the branch from 01.07.2007 to 01.08.2007 when aforesaid Sri Upendra Mishra had gone for training to Calcutta. Later on 01.08.2007 aforesaid Upendra Mishra was relieved from the branch to join at Mohali branch and thereafter he used to work on the vacant post of Sri Upendra Mishra continuously from 02.08.2007 to 19.01.2009. When on 20.01.2009 he went to the branch to perform his duty he was orally informed by the than branch manager Sri Ashok Kumar Jha that his services are no longer required in the branch. When he demanded his service termination letter, no such letter was given to him nor any reasonable reason was given for his termination. He has further stated that when he demanded for his regularization after promotion of aforesaid Upendra Mishra, he was terminated from the service on 20.01.2009. He has further stated in para-10 of his deposition regarding various works performed by him in the bank. This witness has further stated that in January 2008 he once again faced interview before the Chief Manager Sri P.N.Sinha inpresence of the then branch manager. One letter dt- 16.02.2008 was sent by the branch manager to the Chief Manager for regularization of his service but instead of regularization his service was

terminated. He used to make his attendance in separate attendance register on the basis of which he was paid in different P/L heads. Before terminating him on 20.01.2009 no notice, notice pay or retrenchment compensation was paid to him. This witness in his cross-examination proved Exts. W/6 to W/10 in support of his case and claim.

This witness was cross-examined at length by the management. In his cross-examination he has categorically admitted that he has not furnished copy of the notice which was pasted on the notice board regarding the vacancy and he has also not furnished any copy of the application form which he had furnished in the bank for his employment. He has also admitted that neither any interview letter, nor appointment letter was received by him from the bank. He has further admitted that notice regarding the interview was also on the notice board but the copy of the same has not been furnished by him before this tribunal. He has further stated that the branch manager orally appointed him. There were 08 to 10 candidates who appeared for interview but he does not remember the exact date and month of the interview. This witness in his para-34 of his cross-examination has admitted that he has deployed his generator set in the branch in the bank and the same is running since 2004 as per the agreement with one P.K. Electric of which this witness is the proprietor / owner. This agreement has been renewed from time to time since 2004.

W.W-2 Ram Swarath Rai in his deposition has stated that he knows Prem Kishore whom he used to see working in Purushottampur Branch of United Bank of India. He used to see him performing different works in the bank. This witness has identified token register in the handwriting of Prem Kishore. This witness has proved Ext.- W/12 which is the pass book of this witness which was issued by Prem Kishore and which also bears the handwriting of Sri Prem Kishore. This witness has further stated that that when ever Upendra Mishra was on leave, Prem Kishore used to work in his place. He saw Prem Kishore working in the branch continuously since 2007 to 2009. He has further stated that he was also present in the branch on 20.01.2009 when his services were terminated by the branch manager.

This witness in cross-examination has stated that he is a retired Army personnel and he used to receive his pension from Purushottampur branch of United Bank of India and in this connection he used visit branch once or twice per month. This witness has further stated that the house in which the branch of the bank is lying belongs to the father of Sri Prem Kishore.

8. On behalf of the management only one witness namely Sri Arun Kumar Sinha, Chief Manager, Patna Regional Office was examined. This management witness in his deposition has stated that Prem Kishore was never employed by the bank and as such employer-employee relationship between the bank and Prem Kishore does not exist. In fact Prem Kishore has deployed his diesel generator set on rent for the purpose of emergency power supply to United Bank of India, Purushottampur branch in case of power failure. The bank never offered any employment to Sri Prem Kishore at any point of time and no appointment letter was ever issue to him. He has further stated that a branch manager is not authorized to initiate any process for providing permanent / temporary employment to any person. Prem Kishore is not a workman and he is merely a service provider of his diesel generator for emergency power supply to the branch as per the terms and conditions of the agreement duly agreed between him and the branch concerned. Prem Kishore was paid for the occasional work if any done by him in case of exigencies at the said branch. This witness has further denied that Prem Kishore had continuously worked for a period of 240 days in a calendar year as claimed by him. This witness has proved Ext.-M which is the letter dt- 18.09.2009 issued by Chief Regional Manager to Prem Kishore which has been marked as Ext.-M. This witness has further proved the letter dated- 22.12.2011 with all its annexures issued by one Umesh Prasad Singh, AGM, Patna.

This witness in his cross-examination has stated that he never worked in Purushottampur branch of the bank but by holding the post of Chief Manager under which the Purushottampur branch comes, he got knowledge regarding Prem Kishore after going through the file connected with him. Prem Kishore only used to operate generator set in the branch and occasionally perform some work for which he was duly paid. He was paid Rs. 50-60 as per the nature of the occasional work performed by him. This witness has further denied that Prem Kishore performed the duty of sub-staff as there was no sub-staff posted in the branch. He has proved the vouchers which have been marked as Ext.-W. These vouchers do not bear the signature of the person who received the amount but contains the name. He also proved the photo stat copy of the token register which has been marked as Ext.-W/1 in this case but he failed to say as to in whose handwriting the same is. He also proved of photo stat copy of pass book which has been marked as Ext.-W/2. He also proved the peon book marked as Ext.-W/3 but he denied that it is in the handwriting of Prem Kishore. In the same way he also prove Ext.-W/4 which is account opening-cum- delievery register. He has further proved the letter dated- 02.07.2009 written by Chief Manager which has been marked as Ext.-W/5. He has further stated that as Prem Kishore was remained present in the branch due to deployment of his generator set and he used to do some occasional work of the bank in the mean time for which he was duly paid. This witness has further stated that Purushottampur branch of the

bank is a very small branch and there was no Daftary in the branch and it is wrong to say that Prem Kishore worked on the vacant post of Daftary. As Prem Kishore was not appointment by the bank therefore, there was no question to terminate him.

9. Some more documents have been brought by Prem Kishore which have been duly marked Exts. Ext.-W/6 series is agreement for generator with one Ramanand Singh who was later on duly appointed by the bank.

Ext.-W/7 is the letter dated- 06.01.2012 written by Prem Kishore to ALC (C) Patna.

Ext.-W/9 is the letter dated- 20.01.2009 written by Prem Kishore to Chief Regional Manger regarding payment of his wages.

Ext.-W/10 is the letter dated- 16.02.2009 which the reply of Ext.-W/9.

Ext.- W/11 & W/12 are regarding the photo stat copy of pass book of one Ram Swarath Rai (W.W-2) maintained in the Purushottampur branch of United Bank of India.

10. While disposing the writ application bearing C.W.J.C No.:- 8681 of 2017 dt- 20.06.2019 the Hon'ble Patna High Court observed as such:-

> "Having considered the rival contention of the parties, the proving of number of days of 240 days is basically and primarily onus is upon the workman to assert and prove that he had worked 240 days in preceding twelve months from the date of termination order and the management has failed to comply the provision of Section 25(F) of the Industrial Disputes Act, which is condition precedent and in absence of the compliance, theorder is void."

11. The Hon'ble Court further observed that the tribunal committed an error of law and misdirect himself in shifting the onus upon the management inasmuch as finding has been recorded about the number of days of work done by him in preceding 12 months from the date of termination.

12. It is apparent from the order of the Hon'ble Court that the matter has been remanded back to this tribunal to ascertain the facts whether the workman Sri Prem Kishore has actually worked for at least 240 days in preceding 12 months from the date of his termination i.e 20.01.2009.

13. Heard both the parties at length. The workman himself appeared on his behalf and advanced his argument placing reliance on different documents which are on the record in face of different Exts. He mainly relied upon Ext.-W & Ext.-W/1. Ext.-W are the different vouchers by which payment was made to the workman for the different types of work performed by him and Extr.-W/1 is the token register which the workman claims to be in his own handwriting. Relying mainly upon the aforesaid two exhibits the workman claims that he worked more than 240 days in the preceding 12 months on the date he was removed from service. He further submitted that he worked for more than 240 days therefore he was protected from section 25 (F) of the Industrial Dispute Act which was not complied in this case and he was arbitrarily removed from service by the management. As such he is entitled to be reinstated with full back wages and also regularization in service.

14. On the hand the learned representative of the management / bank submitted that Prem Kishore is not a workman in terms of Section 2 (S) of the Industrial Dispute Act. He was never offered any appointment by the bank in the year 2005 and he also failed to prove either by documentary or oral evidence that he had applied for the post of Daftary. He further submitted that Prem Kishore himself admitted in his deposition that interview letter and appointment letter was not given to him. As Prem Kishore was never employed by the bank as such there was no employer and employee relationship between the bank and Prem Kishore. Branch Manager is not a authorized person to initiate any process for providing and type of employment to any person. The demand of payment of due wages by Prem Kishore does not arise because he was never appointed by the bank and as such this demand is not just and proper. The bank has paid to him for the petty jobs occasionally taken by him such as cleaning the branch premises, going to post office, repairing of electric fittings of the branch, assisting in loading of cash boxes etc. Prem Kishore is a mere service provider being the proprietor of M/S P.K Electricals and he has deployed his diesel generator set for the purpose of power supply to the branch of the bank, for which an agreement was reached between the bank and Prem Kishore. It was further submitted by the management that Prem Kishore was never engaged for voucher entry, data entry or for any other work related to books of account and claim of Prem Kishore in this regard are false, fabricated, malafide and were made with ulterior motive to obtain public employment through back door. Prem Kishore never continuously worked for a period of 240 days in a calendar year. He furnished a large number of vouchers, documents etc to mislead to this tribunal and has utterly failed to prove that he had worked for 240 days. He further submitted that as per the case of Prem Kishore he was appointed on the vacant post of Daftary but the vouchers and documents which have been furnished by Prem Kishore have nothing to do with the work of Daftary and he has also failed to produce any evidence of daily attendance which is must for any workman appointed by the bank. The representative of

the bank further submitted that the deposition of Ramswarth Ray another witness examined in this case by Prem Kishore in support of his case has no evidentiary value and he has failed to establish anything substantial. In fact he is friend and neighbour of Prem Kumar. It was further submitted by the management that Prem Kishore is himself confused as to for which post notice for appointment was given and on which post he got himself appointed. Some time he claims that worked as a casual worker from 2005 to 2007 and some time as a daily wage worker from 2007 to 2009 but in his examination-in-chief he has stated that it was appointed by the branch manager on the vacant post of Daftary as a daily wage worker. Daftary is not a daily wage worker and he is given salary as per the provisions applicable to the bank employees. He has further submitted that the claim of the Prem Kishore is falsified from his own documents which is on the record in the form of Ext.-W/6 which relates to appointment of one Ramanand Singh. There was also agreement for deployment of generator set in the another branch by one Ramanand Singh for which agreement was entered between him and the management bank. Aforesaid Ramanand Singh was later on appointed in the bank after following due procedure by given him call / interview letter and also appointment letter. But in this case Prem Kishore has failed to bring on record any such interview letter / appointment letter in support of his case. The learned representative further submitted that Prem Kishore is not confident himself as to how many days he worked in the 12 calendar months preceding the alleged date of his termination i.e 20.01.2009. He in his different written arguments furnished in this case mentioned different working days. Prem Kishore in his written argument dated- 02.07.2015 has stated that he worked for 353 days relying upon Ext.- W & W/1, but he in his written argument dated 03.09.2015 relying upon same exhibits mentioned that he worked for 240 days. The representative of the management further submitted that the vouchers in the form of Ext.-W which have been submitted in large bunch do not fully support the claim of working days as has been claimed by Prem Kishore. None of voucher bears the signature of Prem Kishore anywhere. Although he claims that all the vouchers are in his name but after minutely going through the aforesaid vouchers it appears that some are in the name of the other persons and most of others do not bear the name of any person much less Prem Kishore. The voucher (Ext.-W) which is on page 65, relates to one Umesh Rai and an another at page 147 relates to Arun Kumar. The vouchers which are on page no.-37,38,44,58,76,77,78,80,82,86,92,96,98,100,101,104,109,114to117,119,123, 124,129,130,132 to 137 and a number of other vouchers which are on different pages do not bear the name of Prem Kishore as has been claimed by him. The management representative denied that the document which are in the form of Ext.-W/1are in the handwriting of Prem Kishore as has been claimed by him. Prem Kishore also failed to prove that they were in his own handwriting. The learned representative of the bank submitted that Prem Kishore was duly paid for the work if any performed by him in the branch which is apparent from Ext.-W and as he did not perform any work in the branch from August 2008 onward therefore he was not paid at all. Ext.-W/9 which is the letter dated- 20.01.2009 regarding payment of dues wages address to Chief Regional Manager by Prem Kishore does not show that the same was received by any official / staff of the bank. This letter has been written on the date of termination itself. No any other letter has been brought on record written by Prem Kishore earlier regarding demand of dues of wages. No registryslip has also been filed showing that the aforesaid letter was sent by registry. All these facts show that Prem Kishore did not work for 240 days in 12 calendar months immediately preceding his alleged date of termination i.e 20.01.2009.

15. After hearing both the parties and going through the pleadings, documents and evidence brought on record by the parties, it is apparent that neither from the document, nor from the evidence available on the record the claim of Prem Kishore gets support. His consistant case is that he got knowledge regarding the vacant post of Daftary from the notice board of bank and after that he applied for the same and was finally selected and appointed but no such notice, interview letter or appointment letter has been furnished by him supporting his claim. His claim for appointment is further falsified from his own documents Ext.-W/6, in which case a generator operator was employed after facing interview and he also got appointment letter. Ext.- W and W/1 also do not fully support the case of Prem Kishore that he worked for more than 240 days, as most of the vouchers of Ext.-W do not bear the name of Prem Kishore and some are in the names of other persons and it has also not been proved that Ext.-W/1 is in the handwriting of Prem Kishore. Both the aforesaid exhibits also do not bears the signature of Prem Kishore. The decisions which have been relied upon by Prem Kishore are not at all fully applicable in the facts and circumstances of the case as those ruling are with regard to the persons who were either duly appointed or who worked at least for 240 days which is not the case here. This is a fact that bank premises is situated in the house of Prem Kishore and he has also deployed generator set for power supply to the branch. Prem Kishore being the son of landlord of the branch premises and for operating the generator set used to sit in the branch. His services might have been taken for petty jobs in case of exigencies at branch, for which payments were instantly duly made. The payments made on random basis may not be confused as engagement on daily basis. Moreover, this also does not confer any right in favour of Prem Kishore to claim for public employment. It appears that claim of Prem Kishore is not legal and the same has been made with ulterior motive to obtain public employment through back door in sheer disregard of established procedure for public recruitment.

16. In view of the discussions made above I am of the view that the workman utterly failed to prove that he worked for 240 days in preceeding 12 calendar months from date of his termination on 20.01.2009.

Accordingly it is hereby held that the action of the management cannot be said to be illegal and unjustified and Prem Kishore is not entitle for any relief either reinstatement or regularization or for demand of any due wages. This award is effected after date of publication and gazette.

This is my award accordingly.

Dictated & Corrected by me.

31.01.2020

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 25 फरवरी, 2020

का. आ. 335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 103/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.02.2020 प्राप्त हुआ था।

[सं. एल-12011/60/2015-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th February, 2020

S.O. 335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 25.02.2020.

[No. L-12011/60/2015-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR
NO. CGIT/LC/R/103/2015

Present: P. K. Srivastava, H.J.S..(Retd)

The General Secretary
Rashtriyakrit Bank Karmachari Sanghthan,
F-1, "Karmbhumi Tripti Vihar,
Opp. Engineering College, Ujjain (M.P.) …Workman

Versus

The Chief General Manager
State Bank of India
Zonal Office, L.H.O, Hoshangabad Road,
Bhopal (M.P.)-11 …Management

AWARD
(Passed on this 31st day of December, 2019.)

1. As per letter dated 12/10/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-12011/60/2015IR(B-I) The dispute under reference relates to:

"Kya Rashtriyakruth bank karmachari sanghathan dwara Shri Tapan Sisodiya ko Stat Bank of India Khanmdwa Prabhandhak dwara Shri Sisodiya ke karya se anupasthit rehne ke karan denak 23-7-2014 ke patra dwara swaichek seva samapti maan lena ke karyavahi ko anuchit mante hue punah seva mein bahali ke mang kana nyayochit hai, yadi haan to Sisodiya kes anutosh ka bhagi hai?"

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that he was first appointed in State Bank of Indore, now merged with State Bank of India on 4-9-2008 in Sanawad Branch of the Bank as a clerk. He had been doing his job with all sincerity and honesty. He had developed piles hence he could not attend office for 422 days in the year 2011, leave for which was not sanctioned by the bank. On 4-5-2013, the deceased recurred and submitted that his father also had heart ailment and he was busy in all these and sent oral information to the Management regarding his absence. The Management issued an order on 22-5-2014 terminating his services on the ground on abandonment of service by him. Thereafter he made representation requesting the management to condone his absence which was dismissed by the management vide order dated 18-9-2014. He was not informed about the Appellate Authority hence he could not file appeal in time. He did file appeal when he came to know about the authority, the appeal was also dismissed by the Disciplinary authority. He raised a dispute before the Labour Commissioner and after failure of conciliation the reference was made by the appropriate government for adjudication . The workman has requested to reinstate him after setting aside his termination.

4. The case of Management is that the workman, while working as clerk cum cashier in Sanwada Branch absented himself unauthorisedly for 422 days from 11-1-2010 to 29-12-2010 and 30-12-2010 to 26-11-2011. Thereafter the case of Management is that the workman, while working as clerk cum cashier in Sanwada Branch absented himself unauthorisedly for 422 days from 11-1-2010 to 29-12-2010 and 30-12-2010 to 26-11-2011. Thereafter he again absented himself unauthorisedly from 4-5-2013 to 23-7-2014 .Till voluntary cessation of his employment the Management had served notice to the workman for his unauthorised absence on 12-9-2013 and 26-2-2014 requiring him to join his job but he did not care to join and never reported for duty. Hence final notice intimation for voluntary cessation of employee was sent to the applicant on 22-5-2013 at his residential address requiring him to report on duty within 30 days from notice failing which it will be deemed that he had voluntarily vacated himself from service, this notice was served on him. The workman did not respond to this notice also and did not report for duty within 30 days. He never submitted any explanation/leave application for his absence as mentioned above. Hence the Management served another intimation dated 18-9-2014 regarding voluntary abandonment of service on 23-7-2014. The workman did not respondent to this final notice also. The workman after he was terminated due to voluntary cessation of employment, did submit an application with few medical certificates requesting to permit him to join duties, but these medical certificates did not cover the entire period of absence and his prayer was not granted. The workman preferred an appeal before the Appellate authority on 20-12-2014 which is time barred and which is not provided in the 5th Bipartite Settlement and was rejected accordingly. According to the Management, the action of Management is legal and proper. Accordingly the management has sought a relief for answering the reference against the workman.

5. At the stage of evidence, the workman did not examine himself. He did not produce any witness but he filed photocopy of documents earlier which were denied by Management required to be proved but he did not care to prove it. The Management examined Chief Manager Shri N.K.Sankle on oath and stated in corroboration of the case of the Management as stated above and has proved documents Exhibit M1 to M4, to be referred to as and when required. He has been cross-examined by workman. At the stage of argument, written arguments were filed from the side of the workman Advocate Shri Vijay Kumar Tripathi submitted oral arguments on his behalf and has filed written arguments which is on record. I have perused the written arguments from both the sides and the record.

6. **The reference is the point of determination for the case in hand.**

7. The workman has admitted his absence for the period stated. He has made certain excuses for his absence which is on medical grounds which he has not proved. His bare pleading cannot be substituted as evidence, hence there is every reason to hold that the absence was wilful and unauthorised. The Management has referred to Clause 17 of 5th Bipartite Settlement which is being reproduced as follows:-

"17, Voluntary Cessation of Employment by the Employee:"

(a) **When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any**

time thereafter give a notice to the employee at his last known address calling him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service."

8. The evidence in the form of statement of Management witness on oath and the documents Exhibit M1 to M4 clearly establishes that firstly the workman was absent from duty for a long period without getting his leave sanctioned and without justification hence the finding of the Management that he voluntarily abanded his duties cannot be held unjustified in law. Clause 16 of the Para of 5th Bipartite Settlement referred to by Management in its written argument is being reproduced as follows:-

"Voluntary Cessation of Service-(1) Clause 17 of the settlement will apply only in cases of desertion i.e. where there is absence from duty without any intimation. If there is an intimation from the employees but the absence is unauthorised otherwise, the Bank should take action in terms of disciplinary procedure laid down in previous settlements and not in terms of Clause 17 of the Fifth Bipartite Settlement."

9. The Management has further referred to case law **Syndicate Bank Vs. General Secy. Syndicate Bank Staff Assn.,(2000)5 SCC 65**, in the case **of Punjab & Sindh Bank Vs. Sakattar Singh(2001) SCC 214**, in the case of **Central Bank of India Vs. Vijay Krishna Nema (2009)5 SCC 567** and **Bank of Baroda Vs.Anita Nandrajog,(2009)9 SCC 462** in this respect which support the stand taken by management in the present case.

10. On the basis of above discussion, holding the action of management in terminating the workman Tapan sisodiya on the ground of voluntary abandonment of service by him due to his long unauthorised absence is held legal and proper and the reinstatement of the workman is not justified in law.

11. Accordingly, there is nothing on record to hold that the termination of the workman is violative of law. The workman is held entitled to no relief.

12. In the result, award is passed as under:-

A. The action of the management of State Bank of India. Khandwa Branch in terminating the Service of Shri Tapan Sisodiya on 23-7-14 on the ground of voluntary abandonment of service by him is held legal and justified.

B. The workman is held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 31.12.2019

नई दिल्ली, 25 फरवरी, 2020

का. आ. 336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण ओंरगाबाद के पंचाट (संदर्भ संख्या 14/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.02.2020 प्राप्त हुआ था।

[सं. एल-12025/01/2020-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th February, 2020

S.O. 336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2018) of the Indus.Tribunal-cum-Labour Court Aurangabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 25.02.2020.

[No. L-12025/01/2020-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

ORDER BELOW EX.O-1 IN REFERENCE (IDA) No. 14/2018

(CNR: MH-LC-20-1944-2016)

Between :

1 Zonal Manager,
State Bank of Hyderabad
Region III, Zonal Office,
Aurangabad 431001 …First Party

AND

Shri Balanath Kacharu Dhanedhar,
Post. Chikalthana
Tal. Kannad Dist. Aurangabad …Second Party

AWARD

1. The Desk Officer, Ministry of Labour, Govt. of India has referred said dispute for adjudication by exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 for absorbing the second party in the post of permanent full time safai Karmchari.

2. As per postal endorsement below Ex.O:2, it shows that the second party is not found on the given address. It also shows that the second party has not given his correct address, due to this reason notice was not served against both the parties. Till today, the second party has not given his correct address, even, he has knowledge about the Reference of the said dispute to this Court. This itself shows that he is not interested to proceed with the said matter. Therefore, same is disposed off. Hence, I pass the following Award.

AWARD

1. The Reference is disposed off.

2. No order as to costs.

3. The copy of the Award be sent to the Desk Officer, Ministry of Labour, Govt. of India, New Delhi as per Rules for publication.

C. V. JOSHI , Presiding Officer & Judge

Date : 21.09.2019

नई दिल्ली, 25 फरवरी, 2020

का. आ. 337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 41/2000 और 80/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.02.2020 प्राप्त हुआ था।

[सं. एल-12012/360/99-आई आर (बी-1),

सं. एल-12012/19/2003-आई आर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th February, 2020

S.O. 337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 41/2000 & 80/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 25/02/2020.

[No. L-12012/360/99-IR(B-1),

No. L-12012/19/2003-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/41/2000

Present: P. K. Srivastava**,** H.J.S.(Retd)

The Regional Secretary,
State Bank of Indore Employees Union,
Disitrict Unit, Vidisha c/o
State Bank of Indore, Nagar Palika Bhawan
Vidisha (M.P.) …Workman

Versus

The Dy. General Manager
State Bank of Indore,
Bhopal Zonal Office-4,
Bhopal (M.P.)-462001. …Management

AND

NO. CGIT/LC/ R-80-2003

The General Manager (Operations)
State Bank of Indore,
Head Office,5-Yeshwant Niwas Road,
Indore (M.P.)-452001. …Workman

Versus

The General Secretary
Nationalised Bank Karmachari Sanghatan
Sanveer Road,
Ujjain (M.P.) …Management

AWARD

(Passed on this 6th day of JANUARY-2020)

1. As per letter dated 24-1-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/360/99/IR(B-I) The dispute under reference in R-41/2000 relates to:

> "***Whether the Management of State Bank of Indore had followed the laid down procedure in imposing penalty on Shri S.S.Shrivastava, Cashier-cum-Godown Keeper and (i) whether the penalty was commensurate with the acts of the workman/ (ii)whether the action of management in positively responding to the appeal of one Shri Basant Choudhary and declining the appeal of Shri S.S.Shrivastava was reasonable and just and***
>
> ***(iii) Whether the action of stopping Head Cashier allowance to Shri S.S.Shrivastava is just, reasonable and legal. If not, to what relief the workman is entitled to ?*** ."

As per letter dated 28/3/2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/19/2003-IR(B-I) The dispute under reference in R-80/2003 relates to:

> "***Whether the action of the management of State Bank of Indore of depriving Shri S.S.Shrivastava with the benefit of Assistant Head Cashier at the time of his retirement is justified? If not, what relief the applicant concerned is entitled to ?*** ."

2. The deceased workman Shri S.S. Shrivastava is substituted by his wife Smt. Sarita Shrivastava. Since both the cases are related to each other and the facts being common, hence though they have proceeded separately but are being decided by one common order. After registering the case on the basis of reference, notices were sent to the parties.

3. According to the workman represented by Union, the workman was first employed as peon in the year 1969 in the Vidisha Branch of the then /state Bank of Indore. Subsequently he was promoted as Cahier cum Godown keeper in the year 1980, thereafter he was promoted as Head Cashier in the year 1981. According to workman he was charged for committing certain alleged irregularities in course of his working. Four other employees of the bank out of which two were officers and two were clerks were also charged for the same charges of irregularities and inquiry was held against the workman and other employees . The inquiry officer in a pre-determined and biased manner violated all the principles of natural justice and proceeded with the inquiry only to fill in the formality. The workman was not given documents during the inquiry. He was deprived of the opportunity to cross-examine the witnesses and to defend his case effectively. The inquiry officer submitted the inquiry report and wrongly held the charges against the workman proved. The workman was issued punishment order vide letter dated January-14-1994 depriving him of special allowance for the post of Head Cashier on permanent basis and also holding him not entitled for any monetary benefits for his suspension period. During the inquiry also the suspension period was treated to be off duty and his annual increments for 5 years was also withheld. According to the workman his punishment was discriminatory. He filed departmental appeal but his appeal was dismissed whereas the appeal of co-delegate Basant Choudhary was entertained . According to the workman, punishment awarded is highly excessive and disproportionate to the charge. Accordingly the workman has prayed for setting aside the order of punishment and decision of the Appellate Authority holding the punishment not legal, excessive, harsh and dis-proportionate to the charges proved.

4. According to management the workman, while working in as Head Cahier committed certain acts, omissions and irregularities which were detected and he was placed under suspension vide order dated April-19-1989. He was served a charge sheet dated August 22-1989. Apart from the workman , two officers and two clerks were also charge-sheeted for committing grave irregularities and misconduct with the workman for the charge of manipulating the accounts and committing grievous misconduct. The workman submitted his reply. The inqury was entrusted to S.K.Pal an officer of the Head Office. The workman was granted the services of defence assistant. The inquiry Officer after issuing notice and adopting procedure as well following the principles of natural justice conducted the inquiry and submitted his inquiry report on April-8-1981 holding the workman guilty for misconduct for the charges proved. The Disciplinary Authority agreed with the finding of the Inquiry Officer and issued a show cause notice to workman on October-28-1992 proposing punishment of dismissal for the charges proved. The workman did submit a reply on November-12-1992. The Disciplinary Authority, taking a lenient view imposed the impugned punishment though the misconduct was so serious that the workman could have been terminated for this. The workman did not prefer appeal within the prescribed period of 45 days as mentioned in para 19.14 of Bi-Partite Settlement rather he filed an appeal after seven months , hence his appeal was dismissed by the Controlling Authority. According to Management, the inquiry was conducted properly. The charges were found proved and punishment was lenient. Accordingly the Management has requested that the reference be answered against the workman.

5. A preliminary issues as follows was framed by my learned Predecessor on the basis of pleading vide his order dated October-21-10-2013**:-**

"1. Whether the inquiry conducted against workman is legal and proper?

2. Whether the misconduct alleged against workman is proved from evidence in Enquiry Proceedings?

3. Whether the punishment of stoppage of Head Cashier Allowance of workman by Management of IInd party is legal and proper?

4. If so, to what relief the workman is entitled to?"

6. **Issue No. 1:-** On the basis of evidence on record my learned Predecessor held the departmental inquiry legal and properly conducted and answered preliminary issue No.1 against the workman. The order dated February-1-2016 is part of the Award. **Issue No.1 is answered Accordingly.**

7. **Issue No. 2:-** The inquiry report and inquiry papers have been proved by Management which is on record It comes out that there were total nine charges of various omissions and commissions as well as irregularities were leveled against the workman which involved sanction of loan to fictious persons and borrowers out of which Charge No,2, 4A and 4B was regarding impersonation and wrongly permitting the subsidy to be utilized . There is nothing on record to indicate that the findings of Inquiry Officer with regard to proof of the charge is not justified in any manner. After having gone through the inquiry proceedings and evidence on record, I also hold the charges against the workman proved. **Issue NO.2 is answered accordingly.**

8. **Issue No. 3:-** The perusal of the record reveals that the charges of misconduct was found proved against the workman, providing maximum punishment of dismissal. Hence the discretion of Departmental Authority in not dismissing the workman and awarding punishment other than dismissal cannot be held to be harsh, and excessive keeping in view the seriousness of the charge. **Issue No.3 is answered accordingly.**

9. **Issue No. 4**:-Accordingly on the basis of finding recorded above, the workman is held entitled to no relief. **Issue No.4 is answered accordingly.**

10. **The following award is passed in R-41/2000**:-

A. The action of the management of State Bank of Indore in imposing penalty on Shri S.S.Shrivastava, was commensurate with his act, hence is held legal and justified.

B. The action of management in positively responding to the appeal of one Shri Basant Choudhary and declining the appeal of Shri S.S.Shrivastava was reasonable and justified.

D. The action of stopping Head Cashier Allowance to workman is just, legal and reasonable. He is held entitled to no relief.

11. **The following award is passed in R-80-2003:-**

A. The action of the management of State Bank of Indore in depriving Shri S.S.Shrivastava with the benefit of Assistant Head Cashier at the time of his retirement is held justified.

B. The workman is held entitled to no relief.

P.K. SRIVASTAVA, Presiding Officer

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