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प्राधिकार से प्रकाशित
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सं. 45] नई दिल्ली, नवम्बर 28—दिसम्बर 4, 2021 शनिवार/ अग्रहायण 7— अग्रहायण 13, 1943
No. 45] NEW DELHI, NOVEMBER 28—DECEMBER 4, 2021, SATURDAY/ AGRAHAYANA 7— AGRAHAYANA 13, 1943

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)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 3 नवम्बर, 2021

का.आ. 815.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53(1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार भारतीय रिजर्व बैंक की सिफारिश पर एतद्वारा यह घोषण करती है कि उक्त अधिनियम की धारा 10 की उप-धारा (1) के खंड (ग) के उप-खंड (झ) के उपबंध इंडियन बैंक पर लागू नहीं होंगे, जहां तक इसका संबंध श्री शांति लाल जैन, प्रबंध निदेशक और मुख्य कार्यकारी अधिकारी, इंडियन बैंक को यूनिवर्सल सोम्पो जनरल इश्योरेंस कंपनी लिमिटेड में दिनांक 31.8.2024 तक या अगले आदेशों तक, जो भी पहले हो, नामिति निदेशक और गैर कार्यपालक अध्यक्ष के रूप में नामित करने से है।

[ईफा. सं. 13/13/2018-बीओ.।]

एस. आर. मेहर, निदेशक

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the 3rd November, 2021

S.O. 815.—In exercise of the powers conferred by Section 53(1) of the Banking Regulation Act, 1949 (10 of 1949), Government of India on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-clauses (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Indian Bank in so far as it relates to the nomination of Shri Shanti Lal Jain, Managing Director and Chief Executive Officer, Indian Bank to the Board of Universal Sompo General Insurance Company Limited as a nominee Director and Non-executive Chairman, for a period up to 31.8.2024 or until further orders, whichever is earlier.

[eF. No. 13/13/2018-BO.I]

S. R. MEHAR, Director

नई दिल्ली, 8 नवम्बर, 2021

का.आ. 816.—बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री मदनेश कुमार मिश्रा के स्थान पर श्री समीर शुक्ला (संयुक्त सचिव, भारत सरकार, वित्त मंत्रालय, वित्तीय सेवाएं विभाग) को तत्काल प्रभाव से और अगले आदेशों तक, यूनियन बैंक ऑफ इंडिया के बोर्ड में निदेशक नामित करती है।

[ईफा. सं. 6/3/2012-बीओ-1 (पार्ट)]

एस. आर. मेहर, निदेशक

New Delhi, the 8th November, 2021

S.O. 816.—In exercise of the powers conferred by clause (b) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Central Government hereby nominates Shri Sameer Shukla (Joint Secretary, Government of India, Ministry of Finance, Department of Financial Services) as Director on the Board of Union Bank of India, with immediate effect and until further orders, *vice* Shri Madnesh Kumar Mishra.

[eF. No. 6/3/2012-BO.I (Part)]

S. R. MEHAR, Director

नई दिल्ली, 3 दिसम्बर, 2021

का.आ. 817.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड.) के उप-खंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अमिताभ कुमार के स्थान पर, श्री विपुल बंसल, संयुक्त सचिव, वाणिज्य विभाग को तत्काल प्रभाव से और अगले आदेशों तक भारतीय निर्यात-आयात बैंक (एक्विजिब बैंक) के निदेशक मंडल में निदेशक नामित करती है।

[ईफा सं. 9/16/2012-आईएफ-1]

सौम्यजित घोष, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 817.—In exercise of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Shri Vipul Bansal, Joint Secretary, Department of Commerce, as Director on the Board of Directors of Export Import Bank of India (Exim Bank) *vice* Shri Amitabh Kumar with immediate effect and until further orders.

[eF. No. 9/16/2012-IF-I]

SOUMYAJIT GHOSH, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 29 नवम्बर, 2021

का.आ. 818.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नं० 1, धनबाद के पंचाट (संदर्भ संख्या 18/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं. L-20012/62/2009-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवसर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 29th November, 2021

S.O. 818.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 18 of 2010**) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s BCCL** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/62/2009-IR(CM-I)]

RAJENDER SINGH, 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. 18/2010**

Employer in relation to the management of Dhansar Colliery of M/s. BCCL .

AND.

Their workman.

Present: **Shri Dinesh Kumar Singh**, Presiding Officer.**Appearances:**

For Employer :- Sri D.K. Verma, Advocate.

For workman :- Sri K. Prasad, Advocate.

State : Jharkhand.

Industry:- Coal

Dated 13/10/2021

AWARD

By Order No.L-20012/62/2009 (IR(CM-I)) dated 18.02.2010, 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

**“Whether the action of the Management of Dhansar Colliery of M/s BCCL in superannuating Shri Kameshwar Sharma, Sr. Chainman w.e.f. 31.12.2004 is legal and justified?
To what relief is the workman concerned entitled?”**

2. After receipt of the reference, both the parties were noticed. The concerned workman Sri Kameshwar Sharma has filed his written statement of claim on 21/09/2011 and the General Manager of Kusunda Area-VI BCCL has filed its written statement cum rejoinder on 11/04/2013.

3. The learned Advocate Sri K. Prasad has filed rejoinder to the written statement of the management on 25/02/2014.

4. The case of the concerned workman namely Kameshwar Sharma as per his written statement is as follows:-

That he was a permanent employee of Dhansar Colliery of Kusunda Area of M/s BCCL and was working in the capacity of Sr. Chainman having Pers. No. 00685065. On 14/07/1991, a computerized list of workmen of Dhansar Colliery printed by the Main Computer to EDP, Koyla Bhawan was communicated to Dhansar Colliery mentioning in details the date of appointment, date of birth with a view to have correct information in the main computer. In the computerized list of Page No. 393, Sl. No. 87 his name was mentioned but his date of birth was blank and the said column was filled and written as 15/12/1944 by the dealing staff of Colliery without any basis and the same was communicated to Head Quarter. Thereafter in the year 1996 the main computer office of BCCL again printed a list of workmen of Dhansar Colliery on 08/04/1996 indicating therein the details of his date of birth as 15/12/1944 and the same was communicated to him. After that he made an objection to his date of birth as mentioned as 15/12/1944 and made request for correction as 01/07/1951 and joining date as 05/02/1973. Thereafter the necessary correction was made and his date of birth and date of joining were mentioned as 01/07/1951 and 05/02/1973 respectively in the respective column and in the remark column it has been mentioned that the correction was based as per PF record & F.B. No. 21. Further, in his service book the date of birth is mentioned as 01/07/1951 as per P.F. record and in the Form B of the Colliery his date of birth is also mentioned as 01/07/1951. In the meantime the Coal Mines Pension Scheme 1998 was implemented which requires filing of PS-3 and PS-4 mentioning full details of the employee including family members. In PS-3 form his date of birth is mentioned as 01/07/1951 and the said document is duly signed by the management officials/authorized signatory. Further in PS-4 the date of his birth is written as 01/07/1951. After that he had received a notice regarding his prematurely retirement and he subsequently represented before the management on 25.08.2004 requesting thereby to take decision after examining all the records of the company but the management had issued a notice No. 947 dated 18/26.08.2004 retiring him w.e.f. 31/12/2004. Thereafter he again represented before the management but the management did not take any action seriously and sincerely as a result he was forcibly retired w.e.f. 31/12/2004. A blunder had been committed by the local management by prematurely retiring him which occurred due to clerical mistake as there was also a night guard namely Kameshwar Sharma being his P.NO. 00684638, PF No. C/4-150 and his date of birth was 15/12/1944 and the same was incorporated in this blank date of birth. The Dy. CPM, Kusunda Area was known about this clerical mistake by the Project Officer, Dhansar Colliery but no action was taken. In all the records his date of birth is mentioned as 01/07/1951, so retiring him w.e.f. 31/12/2004 was most unjustified, so he is entitled for full back wages and other consequential benefits for the date of premature retirement w.e.f. 01/01/2005 till he joins his duty with interest.

5. The case of the management as per written statement by the General Manager Kusunda Area of M/s. BCCL, Dhanbad is as follows:-

That the present case is not maintainable either in law or in fact and the concerned workman had raised an Industrial Dispute for correction of his date of birth in the service record after reaching the age of superannuation. The date of appointment of concerned workman has been mentioned as 05/02/1973 but his date of birth has not been mentioned in the old form-B register and in the NEIS record the date of birth of the concerned workman has been mentioned as 15/12/1944. The provisions of Certified Standing Orders provides that the date of birth once recorded in the service card i.e. Non Executive Information System(NIES) of the establishment shall be the sole evidence of his age in relation to all matters pertaining to his service including the fixation of his date of retirement. The concerned workman after completing his age of superannuation after 60 years on 15/12/2004, retired from the service w.e.f. 31/12/2004. It is well settled principle of law that the request for correction in the date of birth must be made within the prescribed period under the Certified Standing Orders and the concerned workman has to produced the evidence in support of his date of birth which may amount to irrefutable proof relating to his date of birth. The concerned workman had never raised any objection during his service period regarding his date of birth recorded in his service record, nor has produced any document which is conclusive proof of his date of birth, so his superannuation w.e.f. 31/12/2004 is legal and justified.

The management by way of rejoinder has mentioned in his written statement that the statement made in Paragraph 1, 2, 3 and 5 of the written statement of workman are matter of record, the statement made in Paragraph 4,6,8,9,12,13,14,15,16,17,18,19 and 24 of the written statement of the workman are not correct, and the statement made in Paragraph 7, 10 and 11 of the written statement of the workman are not relevant.

6. The concerned workman has filed rejoinder to the written statement of the management and has stated that the statement of the opposite party made in Paragraph-1 and 10 are correct, and the statement made in Paragraph-2, 3, 4, 5, 6, 7, 8, 9 and 11 are denied.

7. In the meantime the concerned workman namely Kameshwar Sharma died and in his place his wife namely Smt. Shanti Devi was substituted as petitioner vide order dated 10/12/2015.

8. The concerned workman has examined only one witness. He is WW-1, Jaishankar Sharma.

The WW-1, Jaishankar Sharma in his evidence before the Tribunal has deposed that his father Late Kameshwar Sharma was working as a chainman in Dhansar Colliery at Kusunda Area No. VI. He has also deposed that his father was superannuated by the Company before he reached the age of superannuation. He has also stated that date of birth of his father in his service book is 01/07/1951. He has proved the photo copy of the service book of his father Late Kameshwar Sharma which is marked as Exhibit W-5. He has further deposed that after superannuation his father had made complaint before ALC, Dhanbad and in the conciliation proceedings the management did not agree on the complaint of his father. He has further deposed that his father was asked by the management to appear before the Medical Board for his age assessment after his retirement and his father had not been asked to appear before the Medical Board for assessment of his age during his service. He has further stated that his father had written to management for making his age assessment while he was served notice for superannuation but the management had superannuated him before completion of age of his superannuation. He has also stated that his father died during the pendency of this case.

In the cross-examination he has deposed that he has no document to substantiate the date of birth of his Late Father and he had been superannuated on the basis of NEIS record maintained by the BCCL. He has also deposed that his father was asked to appear before Medical Board for assessment of his age after retirement and Medical Board had provided all the documents to his father. He has further deposed that his father had not submitted any application before Appellate Medical Board for reconsideration

9. The concerned workman has proved the following documents which are marked as:-

Exhibit W-1- Photo copy of Letter No. BCCL/DHN/09-10/362 dated 24/04/2009 of Project Officer, Dhansar Industry Colliery addressed to the concerned workman regarding report of age assessment by Apex Medical Board, Koyla Bhawan.

Exhibit W-2- Photo Copy of Letter No. BCCL/DHN/09/206 dated 03/03/2009 issued by Manager (P), Dhansar Colliery addressed to the concerned workman regarding age assessment.

Exhibit W-3- Photo Copy of Letter dated 16/17.01.2009 issued by Manager (P), Dhansar Industry Colliery addressed to the concerned workman regarding his presence before Medical Board.

Exhibit W-4- Photo Copy of Letter No. BCCL/DHN/04/947 dated 18/26.08.2004 regarding notice of retirement.

Exhibit W-5- Photo Copy of Service Book of Kameshwar Sharma (total 2 pages).

10. On the other hand the management has examined only one witness. He is MW-1, Bibhu Ranjan Kumar.

The MW-1, Bibhu Ranjan Kumar has deposed that concerned workman Kameshwar Sharma was employed as chainman who superannuated on 31/12/2004 on the basis of NEIS record. He has also deposed that the concerned workman had claimed that his date of birth as mentioned in NEIS record was wrong, so his age be assessed by the Medical Board and subsequently he has sent to Medical Board for assessment of his age. He has also deposed that the age of concerned workman was examined by the Medical Board on 09/03/2009 and submitted its report. He has proved the report of Medical Board which has already been marked as Exhibit W-1.

In the cross-examination he has deposed that the report of NEIS is kept in the Headquarter and other record of the concerned workman was kept in the office of concerned colliery. He has further deposed that the service book of workman was kept in the office of colliery and the service book of concerned workman is not available in the office of colliery as in the year 2011 a fire broke out in the office of Dhansar Colliery. He has denied the suggestion that there is variation in the date of birth as recorded in the service book and in the record of NEIS, so the records are not been produced before the Tribunal. He has also stated that the process of assessment of age of concerned workman started after his claim. He denied the suggestion that wrong data has been entered in NEIS. He has also deposed that form PS-4 has been submitted by the concerned workman and the same had been forwarded to the office of CMPF and the date of birth of concerned workman in form PS-4 is recorded as 01/07/1951. He denied the suggestion that the office has wrongly superannuated the concerned workman.

11. The management has not proved any documents in support of its case.

12. The learned lawyer of concerned workman has submitted before the Tribunal that management of BCCL has committed gross in justice to the concerned workman by superannuating him on 31/12/2004 whereas as per his date of birth he would have retired on 01/07/2011. He has also argued that that the actual date of birth recorded in the service book of the concerned workman is 01/07/1951 but the management had wrongly entered his date birth as 15/12/1944 in the record of NEIS. He has also submitted that the date of birth of the concerned workman has been mentioned in the Form 'B' register of the colliery and form PS-3 and PS-4 as 01/07/1951 but he was forcibly

superannuated w.e.f. 31/12/2004. He has also argued that the concerned workman had made an objection to his early retirement but his prayer was not considered and without verifying his documents he was superannuated. He has made prayer to pass an award in favour of the concerned workman.

13. On the other hand the learned lawyer of the management has submitted that as per record the date of appointment of concerned workman is mentioned as 05/02/1973 but his date of birth has not been mentioned in the form 'B' Register and in NEIS record his date of birth has been mentioned as 15/12/1944. He has also argued that the recorded date of birth in the NEIS shall be the sole evidence of the age of concerned workman and after completion of his age of superannuation on 15/12/2004 he retired from the service w.e.f. 31/12/2004. He has also argued that the concerned workman has not produced any evidence in support of his date of birth, so at this stage his prayer for change of date of birth is not maintainable.

He has made prayer to dismiss the case and pass an Award in favour of management.

14. Now the only point of determination in this case is whether the action of the management of Dhansar Colliery of M/s BCCL in superannuating Shri Kameshwar Sharma, Sr. Chainman w.e.f. 31/12/2004 is legal and justified?

FINDINGS

15. It is an admitted fact that the concerned workman namely Sri Kameshwar Sharma was a permanent employee of Dhansar Colliery of Kusunda Area of M/s. BCCL working in the capacity of Sr. Chainman and he was superannuated on 31/12/2004 considering his date of birth as 15/12/1944.

16. The Tribunal will first of all examine the oral and documentary evidences produced by the both the parties.

(i) Oral Evidence of workman

The WW-1, Jaishankar Sharma in his evidence before the Tribunal has categorically deposed that date of birth of his father in his service book is 01/07/1951 but the management had superannuated him before completion of age of his superannuation. He has also deposed that after filing complaint before ALC, Dhanbad the management asked his father to appear before the Medical Board for his age assessment after his retirement. He has also deposed that his father had requested the management for making his age assessment while in his service but the management superannuated him and he died during the pendency of this case.

(ii) Documentary Evidences of workman

The documents submitted on behalf of the concerned workman are Exhibit W-1 which is photo copy of letter no. BCCL/DHN/09-10/362 dated 24/04/2009 of Project Officer, Dhansar Colliery regarding report of age assessment by Apex Medical Board, Koyla Bhawan, Exhibit W-2, which is a photo copy of letter no. BCCL/DHN/09/206 dated 03/03/2009 of Manager (P), Dhansar Colliery, Exhibit W-3, which is a photo copy of Letter No. BCCL/DHN/2009/39 dated 16/17-01-2009 of Manager (P), Dhansar Industry Colliery regarding his presence of Medical Board, Exhibit W-4, which is a photo copy of letter No. BCCL/DHN/04/947 dated 18/26-08-2004 regarding notice of retirement and Exhibit W-5 (two pages), which is a photo copy of service book of Kameshwar Sharma in which his date of birth is mentioned as 01/07/1951.

(iii) Oral Evidence of management

The MW-1, Bibhu Ranjan Kumar has deposed that the concerned workman Kameshwar Sharma was superannuated on 31/12/2004 on the basis of NEIS record. He has further stated that the concerned workman had claimed that his date of birth as mentioned in NEIS record was wrong, so his date of birth might be assessed by the Medical Board. He has further deposed that the Medical Board had examined the concerned workman on 09/03/2009 and submitted its report. In the cross-examination he has deposed that the service book of Kameshwar Sharma is not available in the office of Colliery and in the year 2011 fire broke out in the office of Dhansar Colliery. He has further admitted that the date of birth of concerned workman namely Kameshwar Sharma has been mentioned as 01/07/1951 in form PS-4.

(iv) Documentary Evidence of management

The management has not produced any documents.

17. Now after analyzing the oral evidence of both the parties it is quite apparent that there is consistent evidence of WW-1, Jaishankar Sharma that date of birth of his father is mentioned in his service book as 01/07/1951 and he had been superannuated before reaching the age of his superannuation. Further his evidence on this fact has not been impleading in his cross-examination. Moreover the MW-1 in his evidence has admitted that the date of birth of concerned workman namely Kameshwar Sharma has been mentioned as 01/07/1951 in Form PS-4.

18. After analyzing the documentary evidence of both the parties it is quite apparent that in the Exhibit W-5, which is photo copy of service book of Kameshwar Sharma, his date of birth has been mentioned as 01/07/1951 and the

management had failed to produce the original service book before this Tribunal as it was not available. Further in Form PS-3 and Form PS-4 the date of birth of concerned workman has been mentioned as 01/07/1951 which have been certified by the Personnel Manager Dhansar Colliery.

19. It is required to mention here that the concerned workman was superannuated on 31/12/2004 on the basis of his date of birth mentioned as 15/12/1944 in NEIS record and when the concerned workman raised an industrial dispute before ALC his age was assessed by Apex Medical Board which had submitted its report stating therein that the age of concerned workman was in the range of sixty to sixty five years as on 09/03/2009 and midpoint comes to sixty two years (Exhibit W-1), so even after the assuming the age assessed by the Apex Medical Board, the concerned workman would have retired in the month of March 2007 but the management had not taken any action in this regard.

20. It is relevant to mention here that there is convincing and consistent evidence available in the record to show that the date of birth of concerned workman namely Kameshwar Sharma is 01/07/1951 as per his service book and the original of same has not been produced by the management, so the assessment of age of concerned workman namely Kameshwar Sharma by Apex Medical Board has got no value in the eye of law.

21. In view of above discussion the Tribunal comes to the conclusion that the date of birth of concerned workman is 01/07/1951 as mentioned in his service book.

22. After considering all the facts and circumstances the Tribunal renders the following Award:-

“The action of the management of Dhansar Colliery of M/s BCCL in superannuating Shri Kameshwar Sharma, Sr. Chainman from the services of the company from 31/12/2004 is not legal and justified.”

23. Hence, the concerned workman is entitled for relief which is as under:-

The management of Dhansar Colliery of M/s. BCCL is directed to fix the date of birth of concerned workman namely Kameshwar Sharma as 01/07/1951 as per his service book and treat his service on rolls of the company till his retirement w.e.f. 01/07/2011.

24. Further the management of Dhansar Colliery of M/s. BCCL is directed to make payment of full back wages with all consequential benefits to Shanti Devi wife of deceased workman Kameshwar Sharma as per NCWA applicable at that time.

This is the Award of this Tribunal.

DINESH KUMAR SINGH, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2021

का.आ. 819.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स ईसीएल के प्रबंधन के संबद्ध नियोजको और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, न० 1, धनबाद के पंचाट (संदर्भ संख्या 32/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं. L-20012/62/2008-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th November, 2021

S.O. 819.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 32 of 2008**) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s ECL** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/62/2008-IR(CM-I)]

RAJENDER SINGH, 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. 32/2008**

Employer in relation to the management of Mugma Area of M/s. ECL

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.**Appearances:**

For the Employers :- None.

For the workman. :- None.

State : Jharkhand.

Industry:- Coal

Dated 18/10/2021

AWARD

By Order No.L-20012/62/2008 (IR (CM-I)) dated 14/07/2008 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“i)Whether the action of the management of Kudia Colliery under Mugma Area of M/s ECL in not regularizing the services of Shri Bablu Kampu as Store Mazdoor is justified and legal? ii) To what relief is the concerned workman entitled and from what date?”

2. After receipt of the reference, both parties were noticed but neither the workman/union nor the management appeared before the Tribunal. The notice issued to the workman/union returned unserved. Now the Case is pending since 23/07/2008 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, 29 नवम्बर, 2021

का.आ. 820.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, न० 1, धनबाद के पंचाट (संदर्भ संख्या 33/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं. एल -20012/201/2004-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th November, 2021

S.O. 820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 33 of 2005**) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s BCCL** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/201/2004-IR(CM-I)]

RAJENDER SINGH, 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. 33/2005

Employer in relation to the management of Bastacolla Area of M/s. BCCL

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- None.

For the workman. :- None.

State : Jharkhand.

Industry:- Coal

Dated 18/10/2021

AWARD

By Order No.L-20012/201/2004-IR (C-I) dated 31/03/2005 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bastacolla Colliery of M/s BCCL in dismissing Sri Anand Singh, M/Loader from the services of the company vide order dated 21/25.4.2002 is justified? If not, to what relief is the concerned workman entitled?”

2. After receipt of the reference, both parties were noticed but neither the workman/union nor the management appeared before the Tribunal. The notice issued to the workman/union returned unserved. Now the Case is pending since 25/04/2005 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, 29 नवम्बर, 2021

का.आ. 821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, नो 1, धनबाद के पंचाट (संदर्भ संख्या 244/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं. एल -20012/393/2001-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th November, 2021

S.O. 821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 244 of 2001**) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s BCCL** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/393/2001-IR(CM-I)]

RAJENDER SINGH, 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. 244/2001**

Employer in relation to the management of Dahibari Colliery under C.V. Area of M/s. BCCL

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- None.

For the workman. :- None.

State : Jharkhand.

Industry:- Coal

Dated 08/10/2021

AWARD

By Order No.L-20012/393/2001-IR (C-I) dated 07/11/2001 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Dahibari Colliery of M/s BCCL in not regularising Sri Bhatu Mia as Munshi in the loading department is fair and justified? If not, to what relief is the concerned workman entitled and from what date?”

2. The reference received on 27/11/2001 in which the Union had been advised to submit statement of claim along with relevant document within fifteen days but neither the union nor the workman appeared before the Tribunal. However after receipt of the reference, both parties were noticed but neither the workman/union nor the management appeared before the Tribunal. The notice issued to both the parties returned unserved. Now the Case is pending since 27/11/2001 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, 29 नवम्बर, 2021

का.आ. 822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह—श्रम न्यायालय, न० 1, धनबाद के पंचाट (संदर्भ संख्या 233/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं.एल -20012/403/2001-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th November, 2021

S.O. 822.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 233 of 2001) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s BCCL** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/403/2001-IR(CM-I)]

RAJENDER SINGH, 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. 233/2001

Employer in relation to the management of Kusunda Area of M/s. BCCL

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers :- Sri Ganesh Prasad, Advocate.

For the workman. :- None.

State : Jharkhand.

Industry:- Coal

Dated 08/10/2021

AWARD

By Order No.L-20012/403/2001-IR (C-I) dated 23/10/2001 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Kusunda Area of M/s BCCL in not providing employment to Sri Kheman Bhuia, the dependant son of the late Jhalia Kamin under the provisions of NCWA is fair and justified? If not, to what relief is the said dependant of late Jhalia Kamin entitled?”

2. The reference received on 06/11/2001 in which the Union had been advised to submit statement of claim along with relevant document within fifteen days but neither the union nor the workman appeared before the Tribunal. However after receipt of the reference, both parties were noticed but the workman/union didn't appear before the Tribunal. Further the management has appeared in this case. The notice of the workman/union returned unserved. Now the Case is pending since 06/11/2001 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, 29 नवम्बर, 2021

का.आ. 823.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नो 1, धनबाद के पंचाट (संदर्भ संख्या 199/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं. एल -20012/481/1997-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th November, 2021

S.O. 823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 199 of 2001**) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s BCCL** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/481/1997-IR(CM-I)]

RAJENDER SINGH, 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. 199/2001**

Employer in relation to the management of Bhilgora Area of M/s. BCCL

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.**Appearances:**

For the Employers :- None.

For the workman. :- None.

State : Jharkhand.

Industry:- Coal

Dated 08/10/2021

AWARD

By Order No. L-20012/481/1997-IR (C-I) dated 18/09/2001 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“क्या भारत कोकिंग कोल लिमिटेड भालगोरा क्षेत्र के प्रबंधन द्वारा श्री जुगल ठाकुर कर्मकार सिमलाबहल कोलियरी भालगोरा क्षेत्र की आयु 28.8.86 को 52 वर्ष मानते हुए उन्हें 29.8.94 से सेवा निवृत्त किया जाना उचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस लाभ के पात्र हैं?”

2. The reference received on 01/11/2001 in which the Union had been advised to submit statement of claim along with relevant document within fifteen days but neither the union nor the workman appeared before the Tribunal. However after receipt of the reference, both parties were noticed but neither the workman/union nor the management appeared before the Tribunal. The notice issued to both the parties returned unserved. Now the Case is pending since 01/11/2001 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, 29 नवम्बर, 2021

का.आ. 824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण—सह-श्रम न्यायालय, नो 1, धनबाद के पंचाट (संदर्भ संख्या 93/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं. एल -20012/476/2000-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th November, 2021

S.O. 824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 93 of 2001**) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s TISCO** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/476/2000-IR(CM-I)]

RAJENDER SINGH, 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. 93/2001

Employer in relation to the management of Ms. TISCO, Jamadoba, Dhanbad

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:- Coal

Dated 08/10/2021

AWARD

By Order No.L-20012/476/2000 (C-I) dated 29/03/2001 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/s TISCO in dismissing Sri Baleshwar Singh, Security Guard from the services of the company w.e.f. 21.4.99 is justified? If not, to what relief is the concerned workman entitled?”

2. The reference received on 24/04/2001 in which the Union had been advised to submit statement of claim along with relevant document within fifteen days but neither the union nor the workman appeared before the Tribunal. However after receipt of the reference, both parties were noticed but the workman/union didn't appear before the Tribunal. Further the management has appeared on 15/02/2021 & 13/09/2021. The notice issued to the workman/union returned with endorsement of “Addressee Left”. Now the Case is pending since 24/04/2001 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, 29 नवम्बर, 2021

का.आ. 825.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मसर्स ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में **केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नो 1, धनबाद** के पंचाट (**संदर्भ संख्या 23/2018**) को प्रकाशित करती है, जो केन्द्रीय सरकार को दिनांक 22/11/2021 को प्राप्त हुआ था।

[सं. एल -20012/91/2018-आई. आर. (सी.एम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th November, 2021

S.O. 825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 23 of 2018**) of the **Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad** as shown in the Annexure, in the industrial dispute between the Management of **M/s ECL** and their workmen, received by the Central Government on 22/11/2021.

[No. L-20012/91/2018-IR(CM-I)]

RAJENDER SINGH, 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. 23/2018

Employer in relation to the management of Lakhimata Colliery under Mugma Area of M/s. E.C.L.

AND.

Their workman.

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For Employer :- Sri D.K. Verma, Advocate.

For workman :- Sri Pintu Mondal, Representative.

State : Jharkhand.

Industry:- Coal

Dated 11/10/2021

AWARD

By Order No.L-20012/91/2018 (IR(CM-I)) dated 18.11.2018, 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 Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“i) Whether the action of the Management of Lakhimata Colliery of M/s ECL in dismissing from service to Sri Anil Rajwar, Ex. UG Loader vide order dated 18/20.06.2012 is legal, proper and justified?

ii) If not, what benefits he is entitled to and from which date?

iii) And what other directions are necessary in this regard?”

2. After receipt of the reference, both the parties were noticed. The Vice President, JJMU Sri Pintu Mandal has filed its written statement of claim on 06/03/2019 and the General Manager, ECL, Mugma Area has filed its written statement cum rejoinder on 06/06/2019.

3. The Vice President, JJMU Sri Pintu Mandal has filed rejoinder to the written statement of the management on 25/09/2019.

4. The claim of Jharkhand Janta Mazdoor Union as per its written statement filed on 06/03/2019 is as follows:-

That Sri Anil Rajwar, the concerned workman was a permanent employee of Lakhimata Colliery under Mugma Area of M/s E.C.L. and he was working as UG Loader having his Man No.-107245 but he had not attended his duty on 05/06/2011 as he was sick which was informed to the management. Thereafter on being recovery from illness, the concerned workman reported to the management with Medical Certificate for allowing him to resume his duty but the management of Lakhimata Colliery did not allow him to resume his duty. Subsequently on 04/07/2011 management had issued charge sheet to him for commission of misconduct to the Certified Standing Order with a view to deal the absence for minor punishment. Later on, an enquiry was conducted without being given proper notice to the concerned workman and he was not given an opportunity to defend himself. In course of enquiry the principle of natural justice was not followed and the defence of workman was not considered by the Enquiry Officer, so the enquiry conducted by the Enquiry Officer was not fair and proper. After enquiry the management of Mugma Area of M/s. E.C.L. illegally dismissed the concerned workman vide order dated 18/20.06.2012 without issuance of any second show cause notice to him. After that the concerned workman preferred a mercy appeal before the Appellate Authority but the same was not disposed of as per provisions of Certified Standing Order. The concerned workman had not committed any misconduct and the same had not been proved in the enquiry, so the punishment of dismissal for unauthorized absence is not proper and legal.

A prayer has been made by the sponsoring union to direct the management of Mugma Area of M/s. E.C.L. to reinstate the concerned workman with full back wages.

5. On the other hand the case of the management as per its written statement filed by General Manager, ECL Mugma Area on 26/06/2019 is as follows:-

That the present reference case is not maintainable either in law or in fact as after lapse of more than five years from the date of dismissal, the sponsoring union has raised present industrial dispute. The concerned workman was absent from his duty from 05/06/2011 without any sanctioned leave or without any valid reason and accordingly a charge sheet bearing no. ECL/LMC/AGT/256 dated 04/07/2011 was issued to him for his unauthorized absence from duty as per relevant provision of Certified Standing Order. Thereafter an enquiry was conducted in his presence in which he had actively participated and he had been given full opportunity to defend himself. The enquiry was fair and proper and the Enquiry Officer had submitted his report holding therein that the charges of unauthorized absence as levelled against the concerned workman was fully established beyond any doubt. After that the second show cause notice was issued by the Manager, Lakhimata Colliery giving him further opportunity to defend himself but his reply was found not satisfactory. Subsequently past records of concerned workman was verified in which it was found that he was habitual absentee, and he was on duty for 32 days, nil, nil and 96 days of physical attendance during the calendar year 2008, 2009, 2010 & 2011 respectively which indicated that concerned workman was not interested in his job, so he was dismissed from the service of the Company vide order dated 16/06/2012.

The management by way of rejoinder has stated that statement made in Paragraph 1 and 2 of the written statement of the workman are matter of record and the statement made in Paragraph 3, 4, 5, 6 to 17 & 18 to 24 of the written statement of workman are not correct.

6. The concerned workman has filed rejoinder to the written statement of management in which he has denied all the averments made by the management.

7. The concerned workman has not adduced any oral evidence in support of its case.

8. The concerned workman has filed some documents which are marked as Exhibit after waving formal proof. The documents marked are as follows:-

Exhibit W-1- Photo Copy of Termination Letter dated 18/20-06-12.

Exhibit W-2- Photo Copy of Letter dated 25/07/2012 of the concerned workman Anil Rajwar, addressed to General Manager, Mugma Area of ECL.

Exhibit W-3- Photo copy of Medical Prescription dated 04/06/2011 and Medical Certificate dated 17/11/2011 of workman namely Anil Rajwar.

Exhibit W-4- Photo copy of charge sheet dated 04/07/2011 of Anil Rajwar.

Exhibit W-5- Photo copy of Identity Card of workman Anil Rajwar.

Exhibit W-6- Photo copy of Pay Slip of Anil Rajwar.

Exhibit W-7- Photo copy of Attendance Sheet.

Exhibit W-8- Photo Copy of Bank Statement of Pass Book of Canara Bank of Anil Rajwar (total four sheets).

9. The management has also not adduced any oral evidence in support of its case.

10. The management has filed some documents which are marked as Exhibit after waving formal proof. The documents are marked as:-

Exhibit M-1- Original Copy of Appointment Letter of Enquiry Officer namely Sri S.S. Singh, MT (P/HR) Lakhimata Colliery.

Exhibit M-2- Original Copy of Charge sheet dated 04/07/2011.

Exhibit M-3- Original Copy of Reply of Charge sheet dated 23/01/2012.

Exhibit M-4- Original Copy of Notice of Enquiry dated 16/05/2012.

Exhibit M-5- Original Copy of Enquiry Proceedings.

Exhibit M-6- Original Copy of Enquiry Report dated 18/05/2012.

Exhibit M-7- Original Copy of Second Show Cause Notice dated 05/06/2012.

Exhibit M-8- Original Copy of Reply of Second Show Cause Notice.

Exhibit M-9- Original Copy of Note sheet for Approval of Punishment dated 13/06/2012.

Exhibit M-10- Carbon Copy of Order of Termination From Service dated 18/20-06-2012.

11. The learned lawyer of the sponsoring union has submitted that the concerned workman was on leave as he was sick and he was under treatment of Dr. S.K. Mandal. He has also argued that Dr. S.K. Mandal had given a medical

certificate that Anil Rajwar of Lakhimata Colliery was under his treatment from 04/06/2011 to 17/11/2011, so he was sick and because of that he couldn't attend his duty. He has further submitted that the management without taking this fact into consideration had issued a charge sheet and subsequently conducted an enquiry which was not fair and proper. He has also argued that the concerned workman had been found guilty and subsequently he was dismissed which was disproportionate to his misconduct as he was absent from duty because of his illness, so he may be reinstated.

He has drawn attention towards the Exhibit W-3 (Two Sheets) which are Prescriptions of Saurav Nursing Home and Medical Certificate of Dr. S.K. Mondal regarding treatment of concerned workman namely Anil Rajwar since 04/06/2011 to 17/11/2011.

12. On the other hand the learned lawyer of the management has submitted that the concerned workman was unauthorizedly absent from his duty since 05/06/2011, so a charge sheet was issued against him and subsequently an enquiry was conducted in which he was found guilty. He has also argued that in the enquiry full opportunity was given to the concerned workman to defend himself and after conclusion of enquiry, the charges of unauthorized absence was proved against the concerned workman and thereafter second show cause notice was issued to him. He has further submitted that the reply of second show cause not found satisfactory and subsequently the concerned workman was dismissed. He has also submitted that the concerned workman was habitual absentee from duty, so keeping his past record the management had passed the order of dismissal.

13. Now, the only point of consideration in this is whether the management of Lakhimata Colliery of M/s. ECL in dismissing the concerned workman namely Anil Rajwar, UG Loader vide order dated 18/20-06-2012 is legal proper and justified?

FINDINGS

14. At the outset of discussion it is required to mention here that it is an admitted fact that the concerned workman namely Sri Anil Rajwar was a permanent employee of Lakhimata Colliery of M/s. ECL and he was working as UG Loader in the said Colliery. It is also an admitted fact that the concerned workman had absented from his duty on 05/06/2011 and thereafter an enquiry was conducted for his absence from duty in which the charges were proved and subsequently he was dismissed from service w.e.f. 18/20-06-2012.

15. At this stage it is relevant to mention here that the learned representative of the union has accepted the enquiry conducted against the concerned workman as fair and proper by filing a petition on 24/12/2020, so the Tribunal will not go into the merit of the enquiry proceeding and the enquiry proceeding has been held fair and proper vide order dated 09/02/2021.

16. At this stage it is required to mention here that section 11 A of I.D. Act reads as follows:-

Section 11A- "Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or 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 lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require."

17. The Hon'ble Supreme Court has been pleased to observe in a case as reported in **1973 AIR 1227 (Workmen of Messrs Firestone Tyre...Vs Management & others)** that:-

"The Act is beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees has to be preferred. The interpretation must be liberal enough to achieve the legislative purpose".

18. However the Hon'ble Supreme Court in a another case as reported in **2005(2) SCALE 302 (Mahindra and Mahindra Ltd. Vs. N.B. Narawade)** has been pleased to hold that:-

"It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the

reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11A of the Act and reduce the punishment.”

19. In the instant case it is relevant to mention here that the Exhibit W-3 is Medical Prescriptions (two sheets) dated 04/06/2011 regarding treatment of Anil Rajwar in which certain medicines were prescribed. It further appears that on the same prescriptions on 10/07/2011 certain medical advice was given to the concerned workman. Further the second sheet shows that Dr. S.K. Mondal has given a certificate that Sri Anil Rajwar of Lakhimata Colliery was suffering from genetic fever since 04/06/2011 to 17/11/2011 and he is fit for duty from 18/11/2011. Further in the Exhibit W-2 which is a letter addressed to General Manager Mugma Area in which it has been stated that after return from duty on 03/06/2011 he all of sudden fell sick and subsequently he got admitted in Saurav Nursing Home where he was treated.

20. In view of above discussion it is quite evident that the concerned workman Anil Rajwar was sick since 04/06/2011 as a result he could not report for his duty.

21. The documents produced by the management are Exhibit M-1, which is with regard to appointment of Enquiry Officer, Exhibit M-2, which is a charge sheet issued to the concerned workman, Exhibit M-3, which is a reply of concerned workman in which it has been mentioned that he was sick, so he could not attend office since 06/06/2011 and he was under treatment in the Clinic of Dr. S.K. Mondal, Exhibit M-4, which is a notice of enquiry, Exhibit M-5, which is an enquiry proceedings, Exhibit M-6, which is an enquiry report of proceeding conducted against concerned workman Anil Rajwar, Exhibit M-7, which is the second show cause notice, Exhibit M-8, which is the reply of concerned workman, Exhibit M-9, which is the absenteeism report of Anil Rajwar and Exhibit M-10, which is the dismissal order of concerned workman.

22. Now after analyzing all the documents it is quite evident that the concerned workman Anil Rajwar was absent from duty since 05/06/2011 as he was suffering from genetic fever and he was under treatment of Dr. S.K. Mondal of Saurav Nursing Home, so he could not report to his duty on 05/06/2011. Moreover in his reply (Exhibit M-3) the concerned workman has stated that he was sick so he could attend his duty since 06/06/2011. Further in the inquiry report (Exhibit M-6) it has been mentioned that the concerned workman in course of enquiry has stated that he had fallen ill seriously time to time.

23. In view of above discussion the Tribunal finds that the concerned workman was dismissed from service for his absence from duty since 05/06/2011 whereas he was suffering from illness and was under treatment during that period, so the punishment of dismissal awarded to him is disproportionate to the gravity of the misconduct and there is existence of mitigating circumstances which requires reduction of punishment.

24. Hence the Tribunal comes to the conclusion that the order of dismissal of concerned workman namely Anil Rajwar is not justified, so the order of dismissal dated 18/20-06-2012 is set aside. However the concerned workman Anil Rajwar was unauthorizedly absent from duty since 05/06/2011, so he is not entitled for back wages for his period of absence.

25. After considering all the facts and circumstances of the case the Tribunal renders the following award:-

“The action of the management of Lakhimata Colliery of M/s. E.C.L. in dismissing from service to Sri Anil Rajwar, UG Loader vide order dated 18/20-06-2012 is not legal, proper and justified.”

26. Hence, the concerned workman is entitled for relief which is as under:-

The management of Lakhimata Colliery of M/s. E.C.L. is directed to reinstate the concerned workman namely Anil Rajwar on the post of U.G. Loader from the date of his dismissal from service with immediate effect after publication of the Award.

However the concerned workman Anil Rajwar is not entitled for any back wages. Further concerned workman is not entitled for any other relief.

This is the Award of this Tribunal.

D.K. SINGH, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2021

का.आ. 826.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच एस बी सी प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं 1 मुंबई के पंचाट संदर्भ संख्या (41/2013) को प्रकाशित करती है।

[सं. एल -12011/83/2013-आई. आर. (बी.-1)]

डी. गुहा, अवर सचिव

New Delhi, the 2nd December, 2021

S.O. 826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 41/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Mumbai* as shown in the Annexure, in the industrial dispute between the management of HSBC and their workmen.

[No. L-12011/83/2013-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1

MUMBAI

PRESENT:

Shri Justice R.N. Kakkar, Presiding Officer

Reference CGIT-41 OF 2013

Parties: 1. HSBC
2. Sodexo Facilities Management Services
V/s.

Their Workmen(Shri Suresh More & 111 ors)

Appearances:

For the Management No.1 : Ms. Jaita Das,(Adv.)
For the Management No.2 : Mr. Umesh Nabar, (Adv.)
For the Second Party/Union : Mr. V.Menon,(Adv.)

Mumbai dated the 14th October 2021.

AWARD

1. The present reference has been made by the Central Government by its order dated 21/10/2013 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:

1. “ Whether there is employer-employee relationship between M/s. Hongkong & Shanghai Banking Corporation Ltd, and Shri Mukesh More and 111 other workmen(Annexure) engaged by M/s. sodexo Facilites Management Services India Pvt. Ltd, for the work of housekeeping, sweeping, peon, office assistant, pantry-men etc, in the establishment of HSBC? If so,
2. Whether, the contract between M/s. Hongkong & Shanghai Banking Corporation Ltd, and M/s. Sodexo Facilities Management Services Pvt. Ltd, is sham and bogus and is a camouflage to deprive and benefits of a permanent workman in the bank? If so, whether the workmen concerned should be declared permanent workmen of HSBC with consequential benefits and from which date?
3. Whether the Charter of demands date 02.04.2012 submitted by the union i.e. Bhartiya Kamgar Sena containing the demands of Wage-scale and classification, Dearness Allowance, leave and other facilities, etc, with retrospective effect from 19.03.2010 is legal, proper, valid and justified? If so to what relief the

concerned employees are entitled to and from which date and what other directions are necessary in the matter?"

2. The second Party Union moved an Application for disposal of the above Reference contending that the dispute between the parties is settled out of Court as the workmen concerned in the Reference have entered into Agreement and that they have no claims and are not seeking any other reliefs against the First Party No.1, the First Party No.2 or the First Party No.3, in the present Reference and the same be disposed off as settled. In view of the Agreement dated 06th October 2021, entered into between concerned parties herein.
3. The Union also placed on record the copies of all the agreements individually entered into by the workmen with First Party No.2, which are annexed with the Application. The Application is duly signed by Shri Santosh Chalke, the General Secretary of the Second Party Union.
4. The First Party No.1 and First Party No.2 through their Advocates recorded their 'No Objection' on the Application.
5. Heard the Advocates on the Application. Mr. Vinay Menon for the Second Party Union confirmed the contents of the Application and prayed that the Reference be disposed off as settled between the parties and Award be passed accordingly.
6. Ms. Jaita Das, Advocate for the First Party No.1 as well as Mr. Umesh Nabar, Advocate for the First Party No.2 confirmed of recording their 'No Objection' for granting the Application as prayed for.

The Application is granted. Award is passed holding that no demand or claim survives in the above Reference as settled between the parties.

JUSTICE R.N. KAKKAR, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2021

का.आ. 827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच एस बी सी प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं 1 मुंबई के पंचाट (संदर्भ संख्या 7/2019) को प्रकाशित करती है।

[सं. एल -12011/50/2018-आई. आर. (बी.-1)]

डी. गुहा, अवर सचिव

New Delhi, the 2nd December, 2021

S.O. 827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. 7/2019**) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Mumbai* as shown in the Annexure, in the industrial dispute between the management of HSBC and their workmen.

[No. L-12011/50/2018-IR(B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1 MUMBAI

Present:

Shri Justice R.N. Kakkar, Presiding Officer

Reference CGIT-7 OF 2019

Parties:

1. HSBC
2. Jones Lang Lasalle
3. Sodexo Facilities Management Services

V/s.

Their Workmen()

Appearances:

For the Management No.1 : Ms. JaitaDas,(Adv.)

For the Management No.2 : Mr. Nand Kishor, (Adv.)

For the Management No.3 :Mr. Satish Hegde,(Adv.)

For the Second Party/Union : Mr. V.Menon,(Adv.)

Mumbai dated the 14th October 2021.

AWARD

1. The present reference has been made by the Central Government by its order dated 18/01/2019 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 demand of the union i.e. Bhartiya Kamgar Sena for regularization of 187 (Listed at Annexure F) in the services of HSBC w.e.f. the date of their engagement through the contractor, namely M/s. Sodexo Facilities Management Service India Private Limited and M/s. Jones Lang Lasalle, is fair, legal and justified? If so, what relief these workmen are entitled?”

2. The second Party Union moved an Application for disposal of the above Reference contending that the dispute between the parties is settled out of Court as the workmen concerned in the Reference have entered into Agreement and that they have no claims and are not seeking any other reliefs against the First Party No.1, the First Party No.2 or the First Party No.3, in the present Reference and the same be disposed off as settled. In view of the Agreement dated 06th October 2021, entered into between concerned parties herein.
3. The Union also placed on record the copies of all the agreements individually entered into by the workmen with First Party No.2&3, which are annexed with the Application. The Application is duly signed by Shri Santosh Chalke, the General Secretary of the Second Party Union.
4. The First Party No.1, First Party No.2 and First Party No.3 through their Advocates recorded their ‘No Objection’ on the Application.
5. Heard the Advocates on the Application. Mr. Vinay Menon for the Second Party Union confirmed the contents of the Application and prayed that the Reference be disposed off as settled between the parties and Award be passed accordingly.
6. Ms. Jaita Das, Advocate for the First Party No.1 as well as Mr. Nand Kishor, Advocate for the First Party No.2 and Mr. Satish Hegde, Advocate for the First Party No.3 confirmed of recording their ‘No Objection’ for granting the Application as prayed for.

The Application is granted. Award is passed holding that no demand or claim survives in the above Reference as settled between the parties.

JUSTICE R.N. KAKKAR, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2021

का.आ. 828.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीजीएम, बीएसएनएल, देहरादून; प्रबंध निदेशक, एलजी इलेक्ट्रॉनिक्स सिस्टम प्रा. लिमिटेड, नोएडा (यूपी); महाप्रबंधक, एलजी इलेक्ट्रॉनिक्स इंडिया प्रा लिमिटेड, नोएडा (यूपी); प्रबंध निदेशक, सिकाडा कंप्यूटर्स, नोएडा (यूपी) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अशोक कुमार उनियाल, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-2 नई दिल्ली पंचाट (संदर्भ संख्या 117/2012) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 03.12.2021 को प्राप्त हुआ था।

[सं. एल -40025/05/2011-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 828.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 117/2012) of the **Central Government Industrial Tribunal cum Labour Court -II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The CGM, BSNL, Dehradun; The Managing Director, LG Electronics System Pvt. Ltd., Noida (U.P); The General Manager, LG Electronics India Pvt. Ltd., Noida (U.P); The Managing Director, Cicada Computers, Noida(U.P) and Shri Ashok Kumar Uniyal, worker** which was received along with soft copy of the award by the Central Government on 03.12.2021.

[No. L-40025/05/2011-IR(DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.****Present:**

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 117/2012**Date of Passing Award- 16.11.2021****Between:**

Shri Ashok Kumar Uniyal,
S/o Shri B.M Uniyal,
R/o 144/5, Akashdeep Colony,
Ballupur Road,
Dehradun-248001.
Versus

....Workman

1. The CGM,
BSNL,
Rajpur Road (Principal Employer)
Dehradun.
2. The Managing Director,
LG Electronics System Pvt. Ltd.,
A-97, Sector-58,
Noida (U.P)-201301.
3. The General Manager,
LG Electronics India Pvt. Ltd.,
Plot No. 51, Udyog Vihar, Surajpur
Kasna Road,
Noida (U.P)
4. The Managing Director,
Cicada Computers,
B-87, Sector-63, Noida.

Managements

Appearances:-

None for the claimant
(A/R)

For the Workman.

None for the management BSNL

For the Management

Shri Dinesh Bhatt

For the Management 2 and 3

ShriAshutosh Mishra

For the Management No. 4

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s Cicada Computers and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-40025/05/2011 (IR(DU)) dated 10.02.2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of M/s Cicada Computers, Noida a contractor of BSNL, Dehradun in terminating the services of Shri Ashok Uniyal S/o Shri B.M Uniyal, Engineer w.e.f 21.04.2010 is legal and justified? What relief the workman is entitled to?

The claimant has stated that he had joined LG Electronic India Pvt. Ltd. as a permanent employee on 1st June 2001 and deputed in the office of the BSNL at Dehradun to work on behalf of the LG. He discharged his duty with utmost satisfaction of employer LG and BSNL for continues 9 year. On 28th august 2006 he was transferred to one

fictitious company having name Cicada Computers and was asked to work for BSNL. Whereas LG Electronics had a contract with BSNL Cicada was not having any contract with BSNL. Not only that the employer LG while transferring him to Cicada though change his service condition no termination compensation was paid nor the provision of section 25F of the ID Act was complied. On 21st April 2010 without assigning any reason Cicada Computers orally terminated his service and at the time of termination no notice of termination notice pay, or termination compensation was paid to him. The relieving order of 21st April 2010 was handed over to him on 08.12.2010. On 08.12.2010 one settlement was shown to have been made between the claimant and the respondent no. 4 Cicada which is wrong. A Cheque of Rs. 75000/- was handed over to him on 14.12.2010 which is much less than his legitimate dues towards settlement. Being aggrieved he raised a dispute before the Labour Commissioner where a conciliation was held. Since the conciliation failed a reference was made to this tribunal for adjudication. In the claim petition the claimant has stated that his service was illegally terminated by management no. 4 Cicada Computers without following the procedure of law laid u/s 25F of the ID Act. He thereby has prayed for reinstatement into service with LG Electronics with effect from the date of illegal termination with all full back wages and other service benefits.

Being noticed the management no.1 BSNL appeared and filed WS denying any kind of relationship between BSNL and Claimant. It has been specifically stated in the WS that M/s LG Electronics was a vendor for maintaining the WLL services of BSNL. A contract was entered between BSNL and LG in this regard. It was the look out of LG to execute the work assigned. Thus, the management BSNL is not in a position to say anything on the claim of the claimant who might be an employee of respondent No. 2,3 or 4.

The management no. 2 and 3 i.e. LG Electronic India filed the WS challenging the maintainability of the claim. While challenging the territorial jurisdiction of this tribunal to decide the Industrial Dispute, it has been stated that the reference made by the appropriate government nowhere speaks about any kind of liability of respondent no. 2 and 3 and relationship between it and the claimant. Thereby respondent no.2 and 3 took a stand that they have been wrongly added as party and the name of the LG Electronics be deleted. It has also been stated that the claimant was working for LG Electronics from 2001 to 2006 and had resigned from service in August 2006. At the time of resignation he had received a Cheque of Rs. 97,297/- towards full and final settlement of his dues. IT has also been pleaded that the claim for reinstatement in the service of LG Electronics as prayed by the claimant is not maintainable and liable to be dismissed.

Management no.4 Cicada Computers filed the WS denying the claim of the claimant. It has been stated that the respondent no.2 and 3 had a contract with BSNL for maintenance of WLL. LG Electronics gave sub contract to Cicada for execution of the work. To this effect an agreement was entered between LG and Cicada at that time most of the employees of LG's, CDMA System Division where absorbed a Cicada Computers afresh. For that purpose the service of the persons was ended on payment of all their dues and they started afresh with Cicada. Thus, the appointment of the claimant with Cicada w.e.f 01.09.2006 vide appointment letter dated 28.08.2006 was fresh. This management has further stated that the claimant has made a false claim about illegal termination. It was a case of termination simpliciter which the claimant duly accepted after receiving his dues towards full and final settlement without any protest. It has also been pleaded that the claimant was discharging supervisory as well as technical advisory nature of job and thus, doesn't fall under the definition of workman provided u/s 2S of the ID Act. This management thereby prayed for dismissal of the claim.

On the rival pleadings the following issues were framed for adjudication.

ISSUES

1. Whether the service of the claimant was terminated by M/s cicada Computers under stipulation contained in the contract of employment? if yes its effect?
2. As in terms of reference.

The claimant filed his affidavit evidence and he was cross examined at length by the management No. 2, 3 and 4. On behalf of management No.1 V.K. Srivastav filed affidavit supporting the stand taken in the WS. He has examined as MW1. But the claimant failed to cross examine him. On behalf of management no.4 one M. Cariappa testified as MW4 and filed certain documents which have been marked as MW 4/1 to MW4/4 these documents include appointment letter and termination letter of the claimant. On behalf of LG Electronics one Ashish Tripathi and O P Sharma testified as witnesses and proved the documents marked as MW2/1 to MW2/10. The witnesses examined by the management were not cross examined by the claimant.

The documents filed by management no.4 clearly shows that the claimant was appointed for Cicada Computers w.e.f on 28.08.2006 and it was stipulated in the appointment letter that the contract of service can be terminated by either party by giving 3 months notice or by giving 3 months basic pay in lieu thereof. MW4 examined on behalf of Cicada has stated in clear terms that the service of the claimant was not longer required by the company and a 3 month notice was served on him on 22nd January 2010. A copy of the notice has been marked as WW1/M2 by the claimant. The appointment letter filed by the claimant and marked as WW1/M1 also contains a clause to that

effect. This evidence of the management no.4 has not been controverted by the claimant by way of cross examination and stands undisputed. Similarly the witness examined on behalf of LG Electronics as MW2 and 3 have clearly stated that the claimant has resigned from the service of the company in August 2006 and his resignation was accepted. At that time towards full and final settlement Rs. 97297/- was paid to him alongwith gratuity of Rs. 19904/-. The claimant accepted the same without any objection. The documents to that effect have been exhibited. The statement MW2 and 3 have also not been contradicted by the claimant. Hence, from the evidence adduced by the claimant coupled with the statement of the management witnesses lead to a conclusion that the claimant had voluntarily resigned from the service of Management no.2 and 3 and his service was duly terminated by management no.4 after serving 3 months notice. Hence, the claim filed by the claimant is held without merit and decided against the claimant. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest as without merit. Send a copy of this award to the Appropriate Government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2021

का.आ. 829.—औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अध्यक्ष, आयुध निर्माणी बोर्ड, कोलकाता के प्रबंधन के संबद्ध नियोजकों और महासचिव, अखिल भारतीय केंद्र सरकार कर्मचारी संघ, नई दिल्ली के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 नई दिल्ली पंचाट(संदर्भ संख्या 11/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 03.12.2021 को प्राप्त हुआ था।

[सं. एल -14011/15/2013-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 829.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2014) of the **Central Government Industrial Tribunal cum Labour Court -II New Delhi** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Chairman, Ordinance Factory Board, Kolkata and The General Secretary, All India Central Government Employees Association, New Delhi** which was received along with soft copy of the award by the Central Government on 03.12.2021.

[No. L-14011/15/2013-IR(DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI.

Present:

Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 11/2014

Date of Passing Award-23/11/2021

Between:

The General Secretary,
All India Central Government
Employees Association,

F-48, Lado Sarai,
New Delhi-110030.

...Workman

Versus

The Chairman,
Ordinance Factory Board,
A-10, Auckland Road,
Kolkata
Kolkata-760001.

Management

Appearances:-

None for the Claimant

For the Workman.

(A/R)

Shri Atul Bhardwaj

For the Management

(A/R)

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of A-10, Auckland road and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-14011/15/2013 (IR(DU)) dated 10/02/2014 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Ordnance Factory to Board, Kolkata not giving the benefits to the Industrial Canteen Employees w.e.f 26.03.1999 in the following manner- (a) First ACP in the pay scale of Rs. 3040-4500 w.e.f 09.08.1999 and second ACP in the pay scale of Rs. 4000-6000 w.e.f. 22.10.2004 to the bearer/vendor working in the Industrial Canteen Ordnance Factories. (b) the Cooks in the Industrial Canteen to be given first ACP in the pay scale of Rs. 4000-6000 w.e.f 09.08.1999 and second ACP in the pay scale of Rs. 5000-8000 w.e.f 22.10.2004 is justified? If not to what relief the workmen are entitled to?”

The claimants have stated that they are the employees of the statutory canteens run by the ordinances factory board having the canteens at different places. They are working in the different posts like cook and bearer as mentioned against their names in the list appended to the claim petition. Besides the cooks and bearers some canteen employees belonging to Naval dockyard at Vishakhapatnam have also filed the present claim petition. Their grievance is that all of them are working in the statutory canteen of the management. The Government of India in the department of personnel and training, pursuant to the judgment passed by the Hon'ble supreme court to the effect that both statutory non statutory canteen employees be granted the benefits of the regular employees. To this effect Government has issued a notification in the Gazette of India. The 5th pay commission also recommended that both statutory and non statutory canteen employees are to get all the benefits as are available to other central Government employees of comparable status. The said pay commission also recommended of gradation of the post of Cook and Assistant Halwai and to grant them proper ACP. The claimants as per the said recommendation made demands for up gradation of their pay and grant of ACP. Since the management did not pay any heed some of the employees approached the Hon'ble CAT at Jabalpur by filing OA No.450-2010 & 451-2010 wherein the Hon'ble CAT directed the competent authority of the management to pass speaking order resolving the demand of the claimants. Despite that since the management did not fix the pay of the claimants nor granted them ACP as demanded, the Union of the claimants espoused the cause and gave notice for strike. The authorized officer of the management instead of passing speaking order as directed by the Hon'ble CAT, gave an evasive reply. Finding no other way the claimants raised a dispute before the ALC, where conciliation was taken up. Since the conciliation failed the appropriate government referred the matter to this Tribunal for adjudication. The claimants have thus prayed that the respondent may be directed to grant pay scale of Rs.3050-4590 in the 1st ACP with effect from 09.08.1999 and 2nd ACP in the scale of Rs. 4000-6000 w.e.f. 22.10.2004 to the bearer and to grant the pay scale of Rs.4000-6000 in 1st ACP w.e.f. 09.08.1999 and 2nd ACP in the pay scale of Rs. 5000-8000 w.e.f. 22.10.2004 for the post Cook in the statutory canteen of ordnance factory and naval dockyard as the those are the establishments of Government of India and for the recommended of the 5th Pay commission.

The respondent filed W.S. challenging the maintainability of the proceedings for want of espousal. It has also been pleaded that the management is not an Industry since it performs the sovereign functions of the State. While

pleading resjudicata it has been stated that the claimants and their counterpart had raised the issue before the Hon'ble CAT Jabalpur. The said bench of Jabalpur directed for consideration of the grievance of the claimant. It was duly considered and communicated to the claimants/union. In terms of ordinance factory letter dated 01.09.2004 financial up gradation to industrial canteen employees have already been given. Not only that consequent upon the OSRO-107 dated 21.08.2006, the ACP scales of the above grade employees was revised w.e.f. 21.08.2006. while denying that no order was passed by the management as directed by the Hon'ble CAT. The management took further plea that the claimant have no cause of actions to raise the dispute. The other serious objection of the management is that the appropriate Govt. has referred the matter to adjudicate whether the action of the management ordinance factory to Board, Kolkata in not giving the ACP to the industrial canteen employees, if legal and proper. Since the canteen workers of Naval dockyard have joined as the claimants the tribunals lacks the adjudication of adjudicating the dispute.

The workman filed rejoinder refuting the stand taken by the respondent with regard to the maintainability of the dispute.

On the rival pleadings of the parties the following issues were framed for adjudication.

ISSUES

1. Whether they action of the management of ordinance factories to board, Kolkata not giving the benefits to the industrial canteen employees w.e.f. 26.03.1999 in the following manner A-1st ACP in the pay scale of Rs. 3040-4500 w.e.f. 09.08.1999 and 2nd ACP in the pay scale of Rs. 4000-6000 w.e.f. 22.10.2004 to the bearer working in the industrial canteen ordinance factories. B- The cooks in the industrial canteen to be given 1st ACP in the pay scale of Rs.4000-6000 w.e.f. 09.08.1999 and 2nd ACP in the pay scale of Rs.5000-8000 w.e.f. 22.10.2004 is justified? If so its effect?
2. To what relief the workman are entitled to end from which date.

To prove the claim, four of the claimants testified as witnesses. They were cross- examined at length by the management. On behalf of the workman only 1 document has been proved which is the copy of the Award passed by this tribunal in a similar matter registered has ID No.7/2019. On behalf of the management one of its Additional General Manager testified as MW1 who also filed some documents which has been marked as MW1/1. The document filed by the management is the Indian Ordinance Factory Group C & D requirement rule 2006 which prescribes the pay scale admissible to the cooks and bearers.

During course of argument the Ld. A/R for the management besides challenging the maintainability of the proceeding submitted that the claimants have miserably failed to discharge the burden of proving their claim. Admittedly they were working as the cook and bearer in the statutory canteen. The recruitment Rule filed by the management indicates the terms of appointment and the pay scale attached to the said post. By filing Ordinance Factory Board Letter no. 1046/ACP/A/W dated 01/09/2004 he has stated that the pay scale and ACP applicable to the cook and the bearers are to be governed as per the said letter which has the approval of the Ministry. If the claimants are claiming any higher benefit, it is on them to prove the same. He also submitted that consequent upon publication of SRO-107 dated 21/08/2006 the ACP scales to the grade of employees was revised w.e.f 21/08/2006 which is in Consonance to the factory board letter no. 1046 dated 01/09/2004. That having not been challenged the claim advanced by the claimant in the proceeding is without basis. He also pointed out that on implementation of 6th Central Pay Commission recommendations and due to non availability of the promotion avenues to the post of cook and bearers, the financial up gradation granted under ACP/MACP of the grades of cook and servers/bearers have been reviewed and revised. Thus, the claim is not maintainable. He also submitted that pursuant to the order passed by the Hon'ble CAT Bench at Jabalpur in OA No. 450 of 2010 and OA No. 451/2010, the Senior General Manger/OFK issued speaking order on 10/01/2011 and 17/12/2010 respectively. The claimants being fully aware of the orders passed by the respondent Manager have raised this frivolous litigation.

As stated in the preceding paragraph the claimants though examined as the witnesses and deposed exactly in the line of the claim statement no document have been filed by the claimants as to how they are entitled to the ACP at the rate quoted by them. There being no evidence on record adduced by the claimants to substantiate the claim it is held that the claimants are not entitled to the ACP as claimed by them in the claim petition. The claim petition is held liable to be dismissed. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest against the claimant. The reference is accordingly answered. Consign the record as per Rule. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2021

का.आ. 830.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, वाहन कारखाना, जबलपुर के प्रबंधन के संबद्ध नियोजकों और श्री आर के झा, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/52/2002) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 03/12/2021 को प्राप्त हुआ था।

[सं. एल -140011/28/2001-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 830.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT/LC/R/52/2002**) of the **Central Government Industrial Tribunal cum Labour-Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The General manager, Vehicle Factory, Jabalpur and Shri R.K.Jha,,** Worker which was received along with soft copy of the award by the Central Government on 03/12/2021.

[No. L-140011/28/2001-IR(DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

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

NO. CGIT/LC/R/52/2002

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

Shri R.K.Jha,
S/o late Shri Ram Bharose Jha
R/O 3209, Eastern Dhampur ,
PO Kasturba Nagar(M.P.)

...Workman

Versus

The General manager,
Vehicle Factory,
Jabalpur.

...Management

AWARD

(Passed on this 27th day of October-2021)

As per letter dated 11/3/2002 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-40011/28/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Vehicle Factory, Jabalpur in imposing the punishment of compulsory retirement w.e.f. 29/1/1998 on Shri R.K.Jha is justified?if not to what relief the concerned 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 was appointed as Assistant Store Keeper in the year 1980 and was performing his duties till the date of his compulsory retirement which is impugned in the reference. The father of the workman was also an employee of the management who was retired at the relevant time. His father fell ill seriously in the year 1990, hence the workman had to be on leave with due sanctions due to his illness and due to some other family matters. His father died in the year 1992. A departmental inquiry was instituted against the workman for a charge of irregular and unauthorized absence within the time period 1986 to 1990 and shortage in stock. The Inquiry was conducted not against the rules. The Inquiry Officer submitted its Inquiry Report wherein he wrongly held the charges proved. The Disciplinary Authority passed the impugned order of compulsory retirement of the workman on 29-1-1998 which is excessive to the charge proved. Accordingly the workman has prayed that setting aside his compulsory retirement, he be reinstated with all back wages and benefits.

3. According to the management, the workman was working as a storekeeper since 13-10-1980. He was employed in the store section of the factory. Being storekeeper, he was responsible for looking after stationery godown from 26-5-1986 to 22-10-1990. At the time of inter sectional transfer, handing over and taking over of the stationery godown was carried on by incoming store keeper and shortage of 19 items were found. An inquiry to find out the responsible persons for the shortage amounting to Rs. 145015.67. The Disciplinary Authority therefore, decided to initiate Departmental Proceedings against the workman and a charge sheet under Rule 14 of CCS(CCA) Conduct Rules was issued to the workman on 24-7-1993 charging him of gross misconduct, firstly for irregular attendance from May-1986 to October-1990 and being negligent to maintain proper and up to date record of accounting documents such as receipts, issued vouchers and demand notes of stationery items held under his charge for the period to 22-10-1990 against all 19 stationery items during his custody resulting into loss to Management of Rs.145015.67, a conduct unbecoming of a Government Servant. Gulshan Singh Marwaha was appointed as Inquiry Officer and V.Muthu was appointed as Presenting Officer. The inquiry was conducted according to the Rules. The Inquiry Officer submitted his inquiry report holding the charges proved against the workman which was accepted by the Disciplinary Authority and after issuing a show cause notice on inquiry, the impugned punishment of compulsory retirement was passed by the Disciplinary Authority which is not excessive to the charge. Accordingly, the Management has prayed that the reference be answered against the workman.

4. The following preliminary issue was framed by my learned Predecessor:-

“Whether the departmental inquiry was conducted is as per rules.”

5. Both the parties lead oral and documentary evidence on this preliminary issue, which was decided by my learned Predecessor vide his order dated 7-3-2015, holding the inquiry not proper and illegal. The Management was given opportunity to prove the charges afresh.

6. As it appears from the perusal of the record, the Management preferred W.P.No.12926/2016 before Hon’ble High Court of M.P. against the order of my learned Predecessor on Preliminary Issue No.1 which was decided by a Single Bench of Hon’ble High Court on 2-11-2016. The order of my learned Predecessor on preliminary issue no.1 holding the Inquiry not legal was set aside by Hon’ble High Court and the inquiry was held to be legal and proper. This order is part of this Award.

7. Following Additional Issues were framed thereafter vide order dated 2-12-2006:-

(1) Whether the punishment of compulsory retirement imposed against the workman is legal.?”

(2) If not to what relief the workman is entitled to ?”

8. Both the parties were given opportunity to file and produce evidence on this Additional Issues. The workman filed his affidavit. Since none was present from the side of Management to cross-examine the workman witness the opportunity of workman to cross-examine Management witness was closed, vide order dated 2-2-2021. This order was recalled vide order dated 12-3-2021 and the workman witness was cross-examined by Management. The management has also filed affidavit of its witness as Examination in Chief. He was cross-examined by workman on remaining issues.

9. I have heard argument of, learned counsel for workman Mr. S.C.Tiwari and Mr. Gopi Chaurasia, learned counsel for the management., Both the parties have filed written arguments which are part of record. I have gone through the written arguments.

10. ADDITIONAL ISSUE NO.1 IS AS FOLLOWS:-

I am constrained to observe that before considering whether the punishment is excessive to the charge or not, the point whether the charges are proved from the inquiry proceedings has to be considered. It could well be considered by framing another issues but to avoid complications, this point is being considered while discussing Additional Issue No.1. I have gone through the inquiry papers, including the statement of inquiry witness which is on

record. The charges have been detailed earlier. As it is established from the statement of the workman during inquiry that he did not dispute his absence between the period 1986 to 1990. According to him the absence was due to illness of his father and other family matters which was not in the control of the workman. The leave details produced by PW-3 and PW-4 during the inquiry were incomplete. The workman side has further referred to the decision of Hon'ble the Apex Court *Krushnakant B. Parmar vs Union Of India & Anr*, 2012(3) SCC 178, wherein it has been held that: "the absence has not only to be unauthorized but it also must be willful".

11. In my view the burden to prove that the absence was not willful lies on the workman. From the inquiry papers, it is established that the workman has failed to discharge this burden. Keeping in view the proved absence within the period of 1986 to 1990 i.e. 5 years it can be safely concluded that his absence is quite significant. He has absented for almost 40% of the period during this tenure. The workman could have filed the medical papers of his father to show that his absence was not willful. He failed to do so, hence, there is no point in dis-agreeing with the finding of the Inquiry Officer with the Charge No.1 which is of irregular absence or willful absence is proved.

12. As regards the second charge at least from the statement of two witness Shri P.L.Kathi and Bhim Singh, who are uncross-examined because the workman had absented himself during the inquiry and also in the light of documentary evidence especially the charge of handing over and over taking certificate, showing that the charge was handed over by the workman and taken over by the witness and there was discrepancy there i.e. shortage of items. The second charge of negligence in maintaining stock register and articles kept in store is also proved as the Inquiry Officer has recorded the finding.

13. In the light of the above discussion, both the charges against the workman are held proved and the finding of the Inquiry Officer in this respect is affirmed.

14. The submissions of the workman that the punishment imposed upon him is disproportionate and this Tribunal should interfere into it within the provisions providing under Section 11 A of the Industrial Disputes Act, 1947 is taken into account. In this regard, it is well settled that the Labour Court has ample power under section 11-A of the Industrial Disputes Act, 1947 to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. Moreover, the principle of proportionality calls for interference of this Court into the punishment imposed by the management i.e. of removal in view of law in **Joseph Solomon vs. Presiding Officer, Labour Court, U.P., Dehradun & another** 2012 (134) FLR 424.

15. It is admitted proposition of law that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment; however, the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is harsh.

Hon'ble Apex Court in **B.C. Chayurvedi v. Union of India**, (1995) 6 SCC 749 while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."

In **DG, RPF vs. Sai Babu** (2003) 4 SCC 331, Hon'ble Apex Court has observed that:

"Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department /establishment which the delinquent person concerned works."

In **United Commercial Bank vs. P.C. Kakkar** (2003) 4 SCC 364 Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257 Hon'ble Supreme Court reiterated the legal position as follows:

"..... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

Hon'ble Apex Court in Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101 has observed that :

"The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

16. Now the question arises whether the punishment awarded is so shockingly disproportionate and excessive to warrant interference of this Tribunal. The punishment awarded is of compulsory retirement and not removal or dismissal. In the light of settled preposition of law as mentioned above, there is nothing on record to hold that the punishment of compulsory retirement awarded to the workman is so shockingly disproportionate which requires interference by this Tribunal. **Additional Issue No.1 is answered accordingly.**

17. **ADDITIONAL ISSUE NO.2-**

In the light of findings recorded above, the workman is held entitled to no relief. Additional Issue No.2 is answered.

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

A. The action of the management of Vehicle Factory, Jabalpur in imposing the punishment of compulsory retirement w.e.f. 29/1/1998 on Shri R.K.Jha is held to be justified in law and fact.”

B. The workman is held entitled to no relief.

19. 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

नई दिल्ली, 3 दिसम्बर, 2021

का.आ. 831.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार जिला अभियंता, टीडीई, राजगढ़, बियोरा, राजगढ़, के प्रबंधन के संबद्ध नियोजकों और श्री छोटे लाल, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/16/2002) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 03/12/2021 को प्राप्त हुआ था।

[सं. एल -40012/276/2001-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 831.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/16/2002) of the **Central Government Industrial Tribunal cum Labour-Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Telecom District Engineer, TDE, Rajgarh, Biora, Rajgarh, and Shri Chhote Lal**, Worker which was received along with soft copy of the award by the Central Government on 03/12/2021.

[No. L-40012/276/2001-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

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

No. CGIT/LC/R/16/2002

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

The Chhotelal
S/o Shri Nanakram ,
R/o Village Moya,
Tehsil Biora,
Rajgarh-465674

...Workman

Versus

The Telecom District Engineer,
O/O the TDE, Rajgarh, At Biora
Rajgarh, 465674

...Management

AWARD

(Passed on 25th day of October-2021.)

As per letter dated 2/1/2002 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-40012/276/2001-IR(DU) The dispute under reference relates to:

“Whether the action of the management of Telecom District Engineer, Rajgarh in terminating the services of Shri Chhote Lal S/o Shri Nanakram w.we.f. Jan,97 is 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 with the Management from 1989 to 1991 on muster roll as a mazdoor and thereafter as AC/17. He was dis-engaged by Management without notice or compensation in June-1997. He had continuously worked with the management till his dis-engagement with all sincerity and devotion. According to him his dis-engagement is against Section 25F of the Industrial Disputes Act,1947(herein after referred to as the word Act). He has accordingly prayed that setting aside his dis-engagement, he be reinstated with all back wages and benefits.
3. The case of the Management is mainly that the Management has denied that the workman was ever engaged by it even as a daily wager and has stated that he never worked for 240 days in continuous engagement in any year as claimed by him, hence no question of his dis-engagement without notice. Accordingly, the management has prayed that the reference be answered against the workman.
4. In evidence the workman has examined himself as witness wherein he has mainly corroborated his case taken in his statement of claim. In his examination, he has stated that there was no vacancy or advertisement for recruitment, there was no oral or written examination, his name was not sponsored by Employment Exchange. The management has examined Shri Sahilendra Surjan, Sub-Divisional engineer on oath who has mainly corroborated the case of Management wherein he has denied that the workman was ever engaged by management even on casual basis or otherwise. He further denied that he never worked for 240 days in continuous service in any year. In his cross-examination, he admitted that he was not posed at the place where the workman claims to have been engaged. He further states that no regular attendance register of casual labour was maintained. It is specifically mentioned here that none of the parties have filed any documentary evidence in support of their claim/defense.
5. None was present at the time of arguments. The case was fixed for arguments. The authorities were given liberty to file written arguments. The workman side has filed written argument. I have gone through it and have perused the record. The following issues come up for determination in the case in hand , on perusal of record in the light of arguments.
 - (1)Whether the workman could successfully prove his continuous engagement as defined in Section 25 B of the Act for 240 days in the year preceding the date of his disengagement.
 - (2)Whether the dis-engagement of the workman is violative of Section 25 F of the Act.
 - (3) Relief if any , to which the workman is entitled to ?”

6. ISSUE NO.1 AND NO.2:-

Since these two issues are interrelated , they are being taken together. Before entering into any discussion on merit, Section 25 F and Section 25B of the Industrial Disputes Act,1947 is being produced as under:-

Section 25 B:-

Definition of continuous service.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

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.]

7. There is one affidavit of the workman with respect to the claim and another affidavit of Management denying the claim. In absence of any other corroborative evidence and keeping in view the fact that the burden to prove the claim is on the workman, It may be safely held that the workman has not proved his claim in the case in hand. Accordingly Issue No.1 and 2 are decided against the workman. **Issue No.1 and 2 is answered accordingly.**

8. ISSUE NO.3:-

In the light of findings recorded at Issue No.1 and 2, the workman is held entitled to no relief. Issue No.3 is answered accordingly

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

A. The action of the management of Telecom District Engineer, Rajgarh in terminating the services of Shri Chhotelal S/o Shri Nanakram w.w.e.f. Jan, 97 is held to be justified in law and fact.

B. The workman is held entitled to no relief.

C. No order as to costs.

10. 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

नई दिल्ली, 3 दिसम्बर, 2021

का.आ. 832.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार निदेशक, केन्द्रीय चमड़ा अनुसंधान संस्थान, वटवा, अहमदाबाद (गुजरात); निर्देशक, विश्वंबी सुरक्षा एजेंसी प्राइवेट लिमिटेड, शाहीबाग, अहमदाबाद (गुजरात), के प्रबंधन के संबद्ध नियोजकों और महासचिव, अखिल गुजरात श्रद्धा श्रमिक संघ, कालापी नगर, अहमदाबाद (गुजरात) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-अहमदाबाद पंचाट (संदर्भ संख्या 66/2018) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02/12/2021 को प्राप्त हुआ था।

[सं. एल -42011/105/2017-आईआर (डीयू)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 832.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2018) of the **Central Government Industrial Tribunal cum Labour Court - Ahmedabad** as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Director, Central Leather Research Institute, Vatva, Ahmedabad (Gujarat); The Director, Viswambi Security Agency Pvt. Ltd., Shahibaug, Ahmedabad (Gujarat) and The General Secretary, Akhil Gujarat Shradha Labour Union, Kalapi Nagar, Ahmedabad (Gujarat)** which was received along with soft copy of the award by the Central Government on 02/12/2021.

[No. L-42011/105/2017-IR (DU)]

D.K. HIMANSHU, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present:** Radha Mohan Chaturvedi, Presiding Officer

Dated 20th October, 2021

Reference: **(CGITA) No. - 66/2018**

1. The Director,
Central Leather Research Institute,
Plot No. 5013, Phase – IV, GIDC, Near BSNL Tower, Ramol Cross Road, Vatva, Ahmedabad (Gujarat) – 382445
2. The Director,
Viswambi Security Agency Pvt. Ltd.,
406, M V House, Opp. Hathising Wadi, Swaminarain Chowk, Shahibaug, Ahmedabad (Gujarat) – 380004
...First Parties

V/s

The General Secretary,
Akhil Gujarat Shradha Labour Union,
25, Indira Park Society, Opp. 10 D, Vima Yojana Dawakhana,
Kalapi Nagar, Ahmedabad (Gujarat) – 380016
...Second Party

For the First Parties : None

For the Second Party : None

AWARD

The Ministry of Labour and Employment, Government of India have in exercise of powers conferred by the Clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of Industrial Disputes Act, 1947 referred the below mentioned dispute vide reference adjudication Order No. L-42011/105/2017-IR (DU) dated 30.07.2018 for adjudication to this Tribunal.

SCHEDULE

“Whether the demand of General Secretary, Akhil Gujarat Shradha Labour Union, Ahmedabad for reinstatement in services with full back wages of Sh. Dominic Andreas Parmar, employed as Security Guard, in the establishment of Central Leather Research Institute, Ahmedabad (Principal Employer) under M/s Vishwambi Security Agency Pvt. Ltd., Ahmedabad (Contractor) from 01.09.2013 till the date of termination i.e. 20.09.2014 is justified? If yes, to what relief the workman concerned is entitled to?”

1. The reference was received in this Tribunal on 03rd August, 2018. The Ministry had directed the party raising the dispute to file his statement of claim complete with relevant documents with the Tribunal within 15 days of receipt of this order of reference as per provision made under Rule 10 (B) of Industrial Disputes (Central) Rules, 1957. This order of reference had been sent to all the parties as well as this Tribunal through registered post by the Ministry. Therefore, it is inferred that the same had been delivered to all the parties including claimants.
2. Notice Exh. 2 issued by the Tribunal to all parties to appear and file statement of claim and written statement thereof. A period of more than 3 years had been elapsed but none has appeared and filed the statement of claim as directed and expected by the Ministry.
3. In considered opinion of this Tribunal, it is established that either the claimant of this dispute is not interested to prosecute his claim or the said dispute is no more in existence.
4. It is therefore just & proper to pass an award considering “no dispute” between the parties.
5. The award is passed as above. The award be sent for publication U/s 17(1) of Industrial Disputes Act.

RADHA MOHAN CHATURVEDI, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2021

का.आ. 833.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सदस्य सचिव, केंद्रीय रेशम बोर्ड, कपड़ा मंत्रालय, मेदिवाला, बैंगलोर; निदेशक, केंद्रीय रेशम बोर्ड, कपड़ा मंत्रालय, रांची, (झारखंड); सहायक निदेशक, केंद्रीय तसर अनुसंधान प्रशिक्षण संस्थान, (विस्तार केंद्र) केंद्रीय रेशम बोर्ड, कोरबा (छ.ग.) के प्रबंधन के संबंध में नियोजकों और श्री दुहन राम, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या CGIT/LC/R/111/2004) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02/12/2021 को प्राप्त हुआ था।

[सं. एल -42012/271/2003-आईआर (सी एम.II)]

डी.के. हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 833.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/111/2004) of the Central Government Industrial Tribunal cum Labour-Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Member Secretary, Central Silk board, Ministry of Textile, Medivala, Bangalore; The Director, Central Silk board, Ministry of Textile, Ranchi, (Jharkhand); The Assistant Director, Central Tasar Research Training Institute, (Extension Centre) Central Silk Board, Korba (Chhattisgarh) and Shri Duhan Ram, Worker which was received along with soft copy of the award by the Central Government on 02/12/2021.

[No. L-42012/271/2003-IR(CM-II)]

D.K. HIMANSHU, Under Secy.

ANNEXURE

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

No. CGIT/LC/R/111/2004

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

Shri Duhan Ram,
S/o Shri Mukh Ram,
Village Rampur, Via Khatgora,
District Korba-Chhattisgarh

...Workman

Versus

1. The Member Secretary,
Central Silk board,
Ministry of Textile,
Govt. of India, C.S.B. Complex
B.T.M.Lay Out, Medivala, Bangalore
Bangalore-560068

2. The Director
Central Silk board,
Ministry of Textile,
Govt. of India,
Village P.O.-Piska Nagadi,
District Ranchi, Jharkhand
Ranch-825303.

3. The Assistant Director,
Central Tasar Research Training Institute,
(Extension Centre) Central Silk Board,
Village & P.O.-Karghora, District Korba,
Korba-Chhattisgarh)-495449

...Management

AWARD

(Passed on this 8th day of October-2021.)

As per letter dated 8-11-2004 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.42012/271/2003(IR(CM-II)). The dispute under reference relates to:

“Whether the action of the management of Central Tasar Research and Training Institute(under Silk Board) in terminating the services of Sh. Duhan Ram, S/o Sh. Mukh Ram and regularising the services of his juniors overlooking his seniority is legal and justified?if not, to what relief the workman is entitled to? .”

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

1. The case of the workman as stated in his statement of claim is that he was working in Rampur farm under the management Central Silk Board under NA/OP No.3 since 1978, OP No.3 is under direct control of OP NO.1 & 2 and on their instructions, he was engaged by OP No.3 for working for so many years. Every year, the management collected EPF subscriptions from the wages regularly till 2001 but never supplied EPF slips except a few slips that too reluctantly. Being in service of the management since 1983 till 2001, the workman claimed regularization but terminated the services of the applicant workman orally under the oral order. the workman raised a reference before ALC(C) Bilaspur on 16-1-2003. After FOC, reference was made by Appropriate Authority to this court. According to the workman, he worked for a period of more than 240 days in continuous employment of the management even in the year preceding his date of termination. No enquiry was held by management before his disengagement. He was not given any notice or compensation before his disengagement hence his disengagement is against law. Workman is unemployed since then. Accordingly workman has prayed for his reinstatement with all backwages and benefits as well as regularisation setting aside his termination.

2. The case of the management as taken in their joint written statement of defence is that in view of the activities carried out by the management, it is not an industry as defined under Section 2(j) of the Act. hence the reference is not maintainable as such before this Tribunal. Basic Seed Multiplication and Training Centres (BSM & TC), set up by management conduct rearing and seed preparation activities. Such seasonal activities generally run for 45-50 days in one spell and whole of the year it extends upto more than 150 or 180 days in 3 spells in any year. For this seasonal work, the basic seed multiplication and training centres (BSM & TC) engaged seasonal workers on rotation basis on the basis of availability. They are discontinued from work after the season is over. These workers are neither terminated nor retrenched but are kept on panel and are called for work during seasons for limited period according to requirement. The workman was never appointed against the post but only was engaged to do seasonal work as mentioned above. Hence his termination is not bad in law as his case falls under Section 2(oo)(bb) of the Act. also it has been pleaded that in the light of decision of Supreme Court in the State of MP and others versus Lalit Kumar Verma 2007(1)SCC 575 & State of Karnataka Vs Umadevi 2006(4)SCC-1. Accordingly it has been prayed that the reference be answered against the workman.

3. In his rejoinder, the workman has mainly denied the case of management in its Written Statement of defence and has alleged that the management is an industry as defined under Section 2(j) of the Act. the disengagement of workman is violative of Section 25-F of the Act hence illegal and arbitrary.

5. At the stage of evidence, workman Shri Dulhan Ram examined himself as witness. He was cross-examined by management.

6. Management has filed affidavit of its witness but did not produce him for cross examination on various dates granted for this. hence closing the evidence of management, argument from both the sides were heard and records have been perused by me.

7. From perusal of record in the light of rival argument, following points come up for determination in this case:-

- (1) **Whether the OP management is industry as defined in Section 2(j) of the Industrial Dispute Act?**
- (2) **Whether the action of the management in terminating the services of applicant workman and regularizing the services of his juniors overlooking his seniority is justified in law and fact.**
- (3) **Whether the workman is entitled to any relief or not?**

8. Point No.1-

Before entering into merits on this point, Industry is defined under Section 2(j) of the Act is being reproduced as follows:-

“INDUSTRY” MEANS ANY BUSINESS, TRADE, UNDERTAKING, MANUFACTURE OR CALLING OF EMPLOYERS AND INCLUDES ANY CALLING, SERVICE, EMPLOYMENT, HANDICRAFT, OR INDUSTRIAL OCCUPATION OR AVOCATION OF WORKMEN.

9. Though the learned counsel for management has submitted that the management is not an industry as defined in the Act but I am not inclined to accept his argument on the ground that firstly the activities of the institute are integrated and it does not come under the exemptions to Section 2(j). In the light of principle laid down above by the constitution bench of Supreme Court in Bangalore Water Works Vrs A.Rajappa Case- 1978 AIR 548, 1978 SCR (3) 207. OP No.3 is held industry in the Act. **Point No.1 is answered accordingly.**

10. **Point No.2-** Before entering into any discussion on merits on this point, some legal provisions are being reproduced.

Section 2(oo)

“Retrenchment” means the termination by the employer of the service of workman for 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; or

Section 2 (bb)- termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health;

Section 25 B:- Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

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:

(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 re-

employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

Thus as it is evident from the legal provisions referred to above, workman will have to prove that he was engaged by management and was in continuous employment for a period of 240 days or more in the year preceding the date of his termination.

11. Learned counsel for management has submitted that the reference is vague in itself as it does not mention the date of termination of workman. True it is that date of termination of workman is not mentioned in the reference resulting into complications in deciding the factum of continuous employment in the year preceding the date of termination of workman but as the case is pending since 2004 and this point has been raised at this stage, justice requires that help of pleadings be sought on this point because it is not justice to punish the workman for a fault which he has not committed. According to the workman, he was terminated in the year 2001 as is stated in his statement of claim in Para-2. He also does not disclose the date of his termination in his pleadings. The case of management is that workman was simply engaged for short period due to contingency of work on casual basis, hence there was no question of his termination.

12. In his affidavit on oath, workman has stated that he was first engaged on 11.8.78 and remained in continuous employment till 15-7-99. He was terminated on 16-7-99.

13. Learned counsel has referred to case **J.Yashoda Vs. K.Sobharani** 2007(5)SCC-730, **Kamla Devi Vs Vandana** 2016(2)MPLJ-324. On this point wherein it has been held that for adducing secondary evidence, it is necessary for the party to prove existence and execution of original documents and conditions laid down in Section 65 must be fulfilled before secondary evidence can be admitted. Learned counsel for workman has submitted that the workman proved these photocopy documents under order of the Court dated 17-10-2016.

14. The settled principle of law is that strict rules of proof do not apply in cases/ proceedings under Industrial Dispute Act and Industrial Dispute (Central Rules) 1957 apply to the proceedings before Industrial Tribunals and Labour Courts. The cases referred to by learned counsel for management are not concerned with industrial adjudication. In spite of the fact that it is undisputed that the procedure regarding conducting of case and recording evidence as well as proof must conform to basic principles of natural justice and evidence as well as proof accepted universally. It is true that in the case in hand, there is nothing on record to show that the primary evidence was not available and the permission to prove by way of secondary evidence was granted by my learned predecessor only on the ground that strict rules of proof do not apply in such cases. But even if these records are perused keeping in view the fact that the fact in issue is whether the workman had completed 240 days in continuous employment of the management in the year preceding the date of his termination. These documents in all show that the workman had worked upto 1992-93 for which number of days in every year have been mentioned in the. Hence in such a situation, only the self serving statement of the workman which nowhere declares the exact date of his termination from service is not sufficient to hold that the workman had completed 24 days in continuous employment of the management in the year preceding the date of his disengagement. Accordingly it is held that continuous employment of the workman for a period of 24 days or more in the year preceding date of his termination is not proved. Hence his termination cannot be held violative of Section 25-F.

15. One other ground taken by workman in his statement of claim that juniors to him were regularized in service but there is no evidence on this point, hence on this ground also, the termination cannot be held as bad in law.

16. On the basis of above discussion, the termination of the workman is held justified in law and fact. **Point No.2 is answered accordingly.**

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

A.The action of the management of Central Tasar Research and Training Institute(under Silk Board) in terminating the services of Sh. Duhan Ram, S/o Sh. Mukh Ram and regularising the services of his juniors overlooking his seniority is held to be legal and justified.

B. The workman is held entitled to no relief.

18. 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

नई दिल्ली 3 दिसम्बर, 2021

का.आ. 834.— औद्योगिक विवाद अधिनियम (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार **सदस्य सचिव, केंद्रीय रेशम बोर्ड, कपड़ा मंत्रालय, मेदिवाला, बैंगलोर; निदेशक, केंद्रीय रेशम बोर्ड, कपड़ा मंत्रालय, रांची, (झारखंड); सहायक निदेशक, केंद्रीय तसर अनुसंधान प्रशिक्षण संस्थान, (विस्तार केंद्र) केंद्रीय रेशम बोर्ड, कोरबा (छ.ग.) के प्रबंधन के संबद्ध नियोजकों और श्री लाल सिंह, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय] जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/116/2004) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02/12/2021 को प्राप्त हुआ था ।**

[सं.एल- 42012/276/2003 - आईआर-(सी एम-II)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 834.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (**Ref. No. CGIT/LC/R/116/2004**) of the **Central Government Industrial Tribunal cum Labour—Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Member Secretary, Central Silk board, Ministry of Textile, Medivala, Bangalore; The Director, Central Silk board, Ministry of Textile, Ranchi, (Jharkhand); The Assistant Director, Central Tasar Research Training Institute, (Extension Centre) Central Silk Board, Korba (Chhattisgarh) and Shri Lal Singh, Worker** which was received along with soft copy of the award by the Central Government on 02/12/2021.

[No. L- 42012/276/2003- IR (CM-II)]

D.K.HIMANSHU, Under Secy.

ANNEXURE

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

No. CGIT/LC/R/116/2004

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

Shri Lal Singh,
S/o Shri Firtu Ram,
Village-Rampur, Via Katghora,
District Korba-Chhattisgarh.

...Workman

Versus

The Member Secretary,
Central Silk Board,
Ministry of Textile ,
Govt. of India, C.S.B. Complex
B.T.M.Layout, Medivala,
Bangalore-560068.

2.The Director,
Central Silk board,
Ministry of Textile,
Govt. of India,
Village, P.O.-Piska Nagadi,
District Ranchi,
Jharkhan-Ranchi-825303.

3.The Assistant Director,
Central Tasar Research Training Institute,
(Extension Centre), Central Silk Board,
Village & PO-Latghora, District Korba
Korba(Chhattisgarh)-495449

...Management

AWARD

(Passed on this 8th day of October-2021.)

As per letter dated 8/11/2004 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-42012/276/2003-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Central Tasar Research and Training Institute(under Silk Board) in terminating the services of Shri Lal Singh, S/o Shri Firtu Ram and regularising the services of his juniors overlooking his seniority 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 was working in Rampur farm under the management Central Silk Board under NA/OP No.3 since 1978, OP No.3 is under direct control of OP NO.1 & 2 and on their instructions, he was engaged by OP No.3 for working for so many years. Every year, the management collected EPF subscriptions from the wages regularly till 2001 but never supplied EPF slips except a few slips that too reluctantly. Being in service of the management since 1983 till 2001, the workman claimed regularization but terminated the services of the applicant workman orally under the oral order. the workman raised a reference before ALC(C) Bilaspur on 16-1-2003. After FOC, reference was made by Appropriate Authority to this court. According to the workman, he worked for a period of more than 240 days in continuous employment of the management even in the year preceding his date of termination. No enquiry was held by management before his disengagement. He was not given any notice or compensation before his disengagement hence his disengagement is against law. Workman is unemployed since then. Accordingly workman has prayed for his reinstatement with all backwages and benefits as well as regularisation setting aside his termination.
3. The case of the management as taken in their joint written statement of defence is that in view of the activities carried out by the management, it is not an industry as defined under Section 2(j) of the Act. hence the reference is not maintainable as such before this Tribunal. Basic Seed Multiplication and Training Centres (BSM & TC), set up by management conduct rearing and seed preparation activities. Such seasonal activities generally run for 45-50 days in one spell and whole of the year it extends upto more than 150 or 180 days in 3 spells in any year. For this seasonal work, the basic seed multiplication and training centres (BSM & TC) engaged seasonal workers on rotation basis on the basis of availability. They are discontinued from work after the season is over. These workers are neither terminated nor retrenched but are kept on panel and are called for work during seasons for limited period according to requirement. The workman was never appointed against the post but only was engaged to do seasonal work as mentioned above. Hence his termination is not bad in law as his case falls under Section 2(oo)(bb) of the Act. also it has been pleaded that in the light of decision of Supreme Court in the State of MP and others versus Lalit Kumar Verma 2007(1)SCC 575 & State of Karnataka Vs Umadevi 2006(4)SCC-1. Accordingly it has been prayed that the reference be answered against the workman.
4. In his rejoinder, the workman has mainly denied the case of management in its Written Statement of defence and has alleged that the management is an industry as defined under Section 2(j) of the Act. the disengagement of workman is violative of Section 25-F of the Act hence illegal and arbitrary.
5. At the stage of evidence, workman Shri Lalsingh examined himself as witness. He was cross-examined by management.
6. Management has filed affidavit of its witness but did not produce him for cross examination on various dates granted for this. hence closing the evidence of management, argument from both the sides were heard and records have been perused by me.
7. From perusal of record in the light of rival argument, following points come up for determination in this case:-
 - (1) **Whether the OP management is industry as defined in Section 2(j) of the Industrial Dispute Act?**
 - (2) **Whether the action of the management in terminating the services of applicant workman and regularizing the services of his juniors overlooking his seniority is justified in law and fact.**
 - (3) **Whether the workman is entitled to any relief or not?**

8. Point No.1-

Before entering into merits on this point, Industry is defined under Section 2(j) of the Act is being reproduced as follows:-

“INDUSTRY” MEANS ANY BUSINESS, TRADE, UNDERTAKING, MANUFACTURE OR CALLING OF EMPLOYERS AND INCLUDES ANY CALLING, SERVICE, EMPLOYMENT, HANDICRAFT, OR INDUSTRIAL OCCUPATION OR AVOCATION OF WORKMEN.

9. Though the learned counsel for management has submitted that the management is not an industry as defined in the Act but I am not inclined to accept his argument on the ground that firstly the activities of the institute are integrated and it does not come under the exemptions to Section 2(j). In the light of principle laid down above by the constitution bench of Supreme Court in **Bangalore Water Works Vrs A.Rajappa** Case- 1978 AIR 548, 1978 SCR (3) 207. OP No.3 is held industry in the Act. **Point No.1 is answered accordingly.**

10. **Point No.2-** Before entering into any discussion on merits on this point, some legal provisions are being reproduced.

Section 2(oo)

“Retrenchment” means the termination by the employer of the service of workman for 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; or

Section 2 (bb)-

termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health;

Section 25 B:-

Definition of continuous service.- For the purposes of this Chapter,-- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

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:

(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 re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons

Thus as it is evident from the legal provisions referred to above, workman will have to prove that he was engaged by management and was in continuous employment for a period of 240 days or more in the year preceding the date of his termination.

11. Learned counsel for management has submitted that the reference is vague in itself as it does not mention the date of termination of workman. True it is that date of termination of workman is not mentioned in the reference resulting into complications in deciding the factum of continuous employment in the year preceding the date of termination of workman but as the case is pending since 2004 and this point has been raised at this stage, justice requires that help of pleadings be sought on this point because it is not justice to punish the workman for a fault which he has not committed. According to the workman, he was terminated in the year 2001 as is stated in his statement of claim in Para-2. He also doesnot disclosed the date of his termination in his pleadings. The case of management is that workman was simply engaged for short period due to contingency of work on casual basis, hence there was no question of his termination.
12. In his affidavit on oath, workman has stated that he was first engaged on 11.8.78 and remained in continuous employment till 15-7-99. He was terminated on 16-7-99
13. Learned counsel has referred to case J.Yashoda Vs. K.Sobharani 2007(5)SCC-730, Kamla Devi Vs Vandana 2016(2)MPLJ-324. On this point wherein it has been held that for adducing secondary evidence, it is necessary for the party to prove existence and execution of original documents and conditions laid down in Section 65 must be fulfilled before secondary evidence can be admitted. Learned counsel for workman has submitted that the workman proved these photocopy documents under order of the Court dated 17-10-2016.
14. The settled principle of law is that strict rules of proof do not apply in cases/ proceedings under Industrial Dispute Act and Industrial Dispute (Central Rules) 1957 apply to the proceedings before Industrial Tribunals and Labour Courts. The cases referred to by learned counsel for management are not concerned with industrial adjudication. In spite of the fact that it is undisputed that the procedure regarding conducting of case and recording evidence as well as proof must conform to basic principles of natural justice and evidence as well as proof accepted universally. It is true that in the case in hand, there is nothing on record to show that the primary evidence was not available and the permission to prove by way of secondary evidence was granted by my learned predecessor only on the ground that strict rules of proof donot apply in such cases. But even if these records are perused keeping in view the fact that the fact in issue is whether the workman had completed 240 days in continuous employment of the management in the year preceding the date of his termination. These documents in all show that the workman had worked upto 1992-93 for which number of days in every year have been mentioned in the. Hence in such a situation, only the self serving statement of the workman which no where declares the exact date of his termination from service is not sufficient to hold that the workman had completed 24 days in continuous employment of the management in the year preceding the date of his disengagement. Accordingly it is held that continuous employment of the workman for a period of 24 days or more in the year preceding date of his termination is not proved. Hence his termination cannot be held violative of Section 25-F.
15. One other ground taken by workman in his statement of claim that juniors to him were regularized in service but there is no evidence on this point, hence on this ground also, the termination cannot be held as bad in law.
16. On the basis of above discussion, the termination of the workman is held justified in law and fact. **Point No.2 is answered accordingly.**
17. *On the basis of the above discussion, following award is passed:-*
A.The action of the management of Central Tasar Research and Training Institute(under Silk Board) in terminating the services of Shri Lal Singh, S/o Shri Firtu Ram and regularising the services of his juniors overlooking his seniority is held to be legal and justified.
B.The workman is held entitled to no relief.
18. *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

नई दिल्ली 3 दिसम्बर, 2021

का.आ. 835.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षण पुरातत्वविद्, भारतीय पुरातत्व सर्वेक्षण, भोपाल (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राजेंद्र चौबे, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय] जबलपुर पंचाट(संदर्भ संख्या CGIT/LC/R/57-2006) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 02/12/2021 को प्राप्त हुआ था ।।

[सं.एल- 42012/200/2005- आईआर-(सी एम-II)]

डी.के.हिमांशु, अवर सचिव

New Delhi, the 3rd December, 2021

S.O. 835.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/57-2006) of the **Central Government Industrial Tribunal cum Labour-Jabalpur**, as shown in the Annexure, in the Industrial dispute between the employers in relation to **The Superintending Archaeologist, Archaeological Survey of India, Bhopal (M.P.) and Shri Rajendra Choubey**, Worker which was received along with soft copy of the award by the Central Government on 02/12/2021.

[No. L- 42012/200/2005- IR (CM-II)]

D.K.HIMANSHU, Under Secy.

ANNEXURE

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

No. CGIT/LC/R/57-2006

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

Shri Rajendra Choubey,
C/o Shri A.K.Jaiswal,
H.No.396,Jaiswal Bhawan
Cantt Road, Namnaire,
Agra(UP)-282001

...Workman

Versus

The Superintending Archaeologist,
Archaeological Survey of India,
GTB Complex,
B-Block, 2nd floor
Bhopal (M.P.)

...Management

AWARD

(Passed on this 6th day of October-2021.)

As per letter dated 7/9/2006 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-42012/200/2005-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Archaeological Survey of India, Bhopal in terminating the services of Shri Rajendra Choubey w.e.f. 18-4-2003 is legal and justified?If not, to what relief is the workman entitled.? ”

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defence.

2. The case of the workman as stated in his statement of claim is that he was initially appointed by the management as Casual employee on 26/9/2001 against clear sanctioned and vacant post as notified on the notice Board of Chanderi Circle Office in the Class-IV Category and remained in services till 18/4/2003, when his services were terminated under an oral order by the Conservation Assistant Chanderi Circle without any notice or compensation. He had completed more than 240 days of continuous service immediately preceding the year of his dis-engagement. Hence his dis-engagement is violative of Section 25F of the Industrial Disputes Act, 1947. Further the workman Indra Bhan Yadav, Sukhla and several other who were appointed as casual labour subsequent in point of time has been retained in service and also that one Ram Kumar Yadav was engaged as casual labour after the termination of the workman which is violative of Section 25G and 25H of the Industrial Disputes Act 1947. The workman has accordingly prayed that setting aside his termination, he be considered for reinstatement with all back wages and consequential benefits.

3. The case of management is that the workman was a simple casual labour engaged on daily basis subject to availability of work. He never completed 240 days in regular service. He was dis-engaged as work was not available with the Management.

4. In evidence the workman has filed his own affidavit. In spite of opportunity given he was not cross-examined by the Management.

5. The management has not filed any affidavit of any witness nor has filed any document. None was present at the time of arguments and neither any of the parties have filed any written argument, in spite of opportunity given. I have gone through the record.

6. **Reference is the issue in the case in hand.**

7. There is on record uncontroverted affidavit of the workman. There is no evidence by Management against this evidence. Hence, I am constrained to hold that the case of the workman, that he worked for 240 days in continuous service prior to his dis-engagement is proved. Admittedly no notice or compensation was given to the workman before his disengagement, hence his dis-engagement is violative of Section 25F of the Industrial Disputes Act, 1947.

8. As regards the consequential relief, since the workman was not appointed against sanctioned vacancy, following the Rules and Procedures, he cannot be reinstated. Keeping all the facts and circumstances in view, a lump sum compensation of Rs.50,000/- will meet the ends of justice in the case in hand.

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

A. The action of the management of Archaeological Survey of India, Bhopal in terminating the services of Shri Rajendra Choubey w.e.f. 18-4-2003 is held to be unjustified.

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

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