

सत्यमेव जयते
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सं. 40] नई दिल्ली, सितम्बर 29—अक्टूबर 5, 2013, शनिवार/आश्विन 7—आश्विन 13, 1935
No. 40] NEW DELHI, SEPTEMBER 29—OCTOBER 5, 2013, SATURDAY/ASVINA 7—ASVINA 13, 1935

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)

संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा अनुभाग)

नई दिल्ली, 23 सितम्बर, 2013

का०आ० 2108.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987, 2007 तथा 2011) के नियम 10(4) के अनुसरण में मुख्य महाप्रबंधक, पंजाब दूरसंचार परिमंडल, चण्डीगढ़ के प्रशासनिक नियंत्रणाधीन प्रधानाचार्य, क्षेत्रीय केन्द्र, राजपुरा कार्यालय, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है।

2. यह अधिसूचना राजपत्र में प्रकाशन की तारीख से लागू होगी।

[सं. ई-11016/01/2009-राजभाषा]

भारत भूषण कौरा, संयुक्त सचिव

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Telecommunications)

(O. L. SECTION)

New Delhi, the 23rd September, 2013

S.O. 2108.—In pursuance of Rule 10(4) of the Official Languages (use for official purpose of the Union) Rules, 1976 the Central Government hereby notifies the **Office of the Principal, Regional Telecommunication Centre, Rajpura** under the administrative control of Chief Manager, Punjab Telecom Circle, Chandigarh, where more than 80% staff have acquired working knowledge of Hindi.

2. This notification shall come into force from the date of its publication in the Official Gazette.

[No. E-11016/01/2009-O.L.]

BHARAT BHUSHAN KAURA, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 16 सितम्बर, 2013

का०आ० 2109.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 10400:2013 सूची नियंत्रण पारिभाषिक शब्दावली (दूसरा पुनरीक्षण)	—	31 अगस्त, 2013

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलुरु, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एमएस डी/जी-8 अधिसूचना]

के० एन० राव, वैज्ञानिक 'एफ' एवं प्रमुख (प्रबन्ध एवं तंत्र विभाग)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 16th September, 2013

S.O. 2109.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the schedule hereto annexed has been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standard Established	No. & Year of Indian Standard, if any, Superseded by the New Indian Standard	Date Established
(1)	(2)	(3)	(4)
1.	IS 10400:2013 Inventory Management— Glossary of terms (Second revision)	—	31 August, 2013

Copy of the above Standard is available for sale with the Bureau of Indian Standards, Manak Bhawan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and its Regional Offices at Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bengaluru, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref. MSD/G-8 Notification]

K. N. RAO, Scientist 'F' & Head (Management & Systems Department)

नई दिल्ली, 18 सितम्बर, 2013

का०आ० 2110.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गये उत्पादों की मुहरांकन शुल्क अधिसूचित करता है :

अनुसूची

भारतीय मानक संख्या	भाग	अनु	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क	इकाई दर स्लैब (रु.)	स्लैब में इकाइयां	शेष	प्रचलन तिथि
						बड़े पैमाने पर	छोटे पैमाने पर			
10701		2012		स्ट्रक्चरल प्लाइवुड	1 वर्ग मीटर	रु. 91000	रु 77000	4.00	सभी	18.09.2013
14856		2000		आंतरिक उपयोग के लिए काँच रेशा प्रबलित प्लास्टिक (जीआरपी) के बख्तेनुमा दरवाजों के शटर	1 वर्ग मीटर	रु.108000	रु 92000	0.15	सभी	18.09.2013

[सं. सीएमडी3/जी-40]
पी० के० गंभीर, वैज्ञानिक 'जी' एवं प्रधान (प्रमाणन)

New Delhi, the 18th September, 2013

S.O. 2110.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the schedule:

SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking fee		Unit	Units in Slab I	Re-main Slab-I	Effective date
						Large scale	Small scale				
IS 10701	-	-	2012	Structural Plywood	1 square meter	Rs. 91000	Rs. 77000	Rs. 4.00/- unit	All	-	18.09.2013
IS 14856	-	-	2000	Glass Fibre Reinforced Plastic(GRP) panel type door shutters for Internal Use	1 square meter	Rs. 108000	Rs. 92000	Rs. 0.15/ unit	All	-	18.09.2013

[No. CMD3/G-40]

P. K. GAMBHIR, Scientist 'G' & Chief (Certification)

नई दिल्ली, 19 सितम्बर, 2013

का०आ० 2111.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे मानक स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 9401(भाग 7) : 2013 नदी घाटी परियोजनाओं में कार्य मापन की पद्धतियों (बांध और सम्बद्ध संरचनाएं) भाग 7 जोड़ (पहला पुनरीक्षण)	आई एस 9401(भाग 7) : 1984	31/08/2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध है। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ डब्ल्यू आर डी 23/टी-9]

जे० सी० अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 19th September, 2013

S.O. 2111.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 9401(Part 7) : 2013 Method of measurement of works in river valley projects (dams and appurtenant structures) Part 7 Joints (First revision)	IS 9401 (Part 7) : 1984	31/08/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram, Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD 23/T-9]

J. C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

नई दिल्ली, 19 सितम्बर, 2013

का०आ० 2112.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे मानक स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 13041:2013 द्रव चालित हाइस्टों के निरीक्षण, परीक्षण और रख-रखाव की सिफारिशें (स्थापन के बाद) (पहला पुनरीक्षण)	आई एस 13041:1991	31/08/2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ डब्ल्यू आर डी 12/टी-22]

जे० सी० अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 19th September, 2013

S.O. 2112.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. & Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 13041:2013 Recommendations for inspection, testing and maintenance of hydraulic hoist (after erection) (First revision)	IS 13041:1991	31/08/2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram, Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD12/T-22]

J. C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

नई दिल्ली, 19 सितम्बर, 2013

का०आ० 2113.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे मानक स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अधिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 14793 : 2013 जल वैज्ञानिक संरचनाओं तथा मशीनों पर भूकंप के अलावा कंपन अध्ययनों के लिए यंत्रों का संस्थापन, अनुसरण और अवलोकन - कार्य संहिता (पहला पुनरीक्षण)	आई एस 14793 : 2000	31.08.2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ डब्ल्यू आर डी 16/टी-21]

जे० सी० अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 19th September, 2013

S.O. 2113.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 14793:2013 Installation, maintenance and observation of the instruments for vibration studies other than earthquakes on hydraulic structures and machines Code of practice (first revision)	IS 14793:2000	31.08.2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad. Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD16/T-21]

J. C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

नई दिल्ली, 19 सितम्बर, 2013

का०आ० 2114.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे मानक स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अधिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 9401(भाग 6): 2013 नदी घाटी परियोजनाओं में कार्य मापन की पद्धतियां (बांध और सम्बद्ध संरचनाएं) भाग 6 वेंटिलेशन के पाइप और अन्य सन्निहित सामग्री (पहला पुनरीक्षण)	आई एस 9401 (भाग 6): 1984	31.08.2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ डब्ल्यू आर डी 23/टी-8]

जे० सी० अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 19th September, 2013

S.O. 2114.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. & Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 9401 (Part 6):2013 Method of measurement of works in river valley projects (dams and appurtenant structures) Part 6 Ventilation pipes and other embedded materials (first revision)	IS 9401(Part 6):1984	31.08.2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad. Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD 23/T-8]

J. C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

नई दिल्ली, 19 सितम्बर, 2013

का०आ० 2115.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे मानक स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 16115:2013 पूर्ण हो चुकी सिंचाई परियोजनाओं (प्रमुख एवं मध्यम) का मूल्यांकन -मार्गदर्शी सिद्धांत	—	31.08.2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ डब्ल्यू आर डी 06/टी-17]

जे० सी० अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 19th September, 2013

S.O. 2115.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No., Title and Year of the Indian Standards Established	No. & Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 16115:2013 Evaluation of completed irrigation projects (major and medium) — Guidelines	-	31.08.2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal <http://www.standardsbis.in>.

[Ref. WRD 06/T-17]

J. C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

नई दिल्ली, 20 सितम्बर, 2013

का०आ० 2116.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन मानकों का विवरण नीचे अनुसूची में दिए गए हैं वे मानक स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नए भारतीय मानक द्वारा अधिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 1641:2013 भवनों (सामान्य) की अग्नि सुरक्षा: अग्नि श्रेणीकरण और वर्गीकरण के सामान्य सिद्धांत – रीति संहिता (दूसरा पुनरीक्षण)	आई एस 1641:1988	31.07.2013
2.	आई एस 1642:2013 भवनों (सामान्य) की अग्नि सुरक्षा: संरचनाओं के विवरण – रीति संहिता (दूसरा पुनरीक्षण)	आई एस 1642:1989	31.07.2013
3.	आई एस 1643:2013 भवनों (सामान्य) की अग्नि सुरक्षा: अग्नि के सम्पर्क में आने के खतरे – रीति संहिता (दूसरा पुनरीक्षण)	आई एस 1643:1988	31.08.2013
4.	आई एस 1644:2013 भवनों (सामान्य) की अग्नि सुरक्षा: निकासी की आवश्यकताएं और निजी जोखिम – रीति संहिता (दूसरा पुनरीक्षण)	आई एस 1644:1988	31.08.2013

इन भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोचि में बिक्री हेतु उपलब्ध हैं।

[संदर्भ सीईडी/राजपत्र]

जे० राय० चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 20th September, 2013

S.O. 2116.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated it:

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 1641:2013 Fire Safety of Buildings (General): General Principles of Fire Grading and Classification — Code of Practice (Second Revision)	IS 1641:1988	31.07.2013
2.	IS 1642:2013 Fire Safety of Buildings (General): Details of Construction — Code of Practice (Second Revision)	IS 1642:1989	31.07.2013
3.	IS 1643:2013 Fire Safety of Buildings (General): Exposure Hazard — Code of Practice (Second Revision)	IS 1643:1988	31.08.2013
4.	IS 1644:2013 Fire Safety of Buildings (General) : Exit Requirements and Personal Hazard — Code of Practice (Second Revision)	IS 1644:1988	31.08.2013

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref. CED/Gazette]

J. ROY CHOWDHURY, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 23 सितम्बर, 2013

का०आ० 2117.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गए मानक(कों) में संशोधन किया गया/किए गए हैं।

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 3025 (भाग 39) : 1991 जल और अपशिष्ट जल के लिए नमूने लेने और परीक्षण (भौतिक एवं रासायनिक) की पद्धतियां भाग 39 तेल एवं ग्रीज (पहला पुनरीक्षण)	संशोधन संख्या नं० 2 सितम्बर 2013	30 सितम्बर, 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सीएचडी 32/आईएस 3025 (भाग 39)]

डा० राजीव के० झा, वैज्ञानिक 'एफ' एवं प्रमुख (रसायन)

New Delhi, the 23rd September, 2013

S.O. 2117.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the Amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 3025 (Part 39):1991 Method of Sampling and Test (Physical and Chemical) for water and wastewater Part 39 Oil and Grease (First Revision)	Amendment No. 2 September 2013	30 September, 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian Standard can be made of <http://www.standardsbis.in>.

[Ref. CHD 32/IS 3025(Part 39)]

Dr. RAJIV K. JHA, Scientist 'F' & Head (CHD)

नई दिल्ली, 31 अगस्त, 2013

का०आ० 2118.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 5466 : 2013 चर्मशोधन वनस्पति सामग्री — परीक्षण पद्धति (पहला पुनरीक्षण)	—	31 अगस्त, 2013
2.	आईएस 6199 : 2013 वैटल निष्कर्ष — विशिष्टि (पहला पुनरीक्षण)	—	31 अगस्त, 2013
3.	आईएस 6301 : 2013 क्षारीय क्रोमियम सल्फेट (चर्म शोधन के लिए) — विशिष्टि (पहला पुनरीक्षण)	—	31 अगस्त, 2013
4.	आईएस 6657 : 2013 खाल की छाल — विशिष्टि (पहला पुनरीक्षण)	—	31 अगस्त, 2013
5.	आईएस 6658 : 2013 काजू के बीजावरण — विशिष्टि (पहला पुनरीक्षण)	—	31 अगस्त, 2013
6.	आईएस 13271 : 2013 फिनोलिक सिन्टैन— परीक्षण पद्धति (पहला पुनरीक्षण)	—	31 अगस्त, 2013
7.	आईएस 13528 : 2013 पूर्व चर्मशोधन सिन्टैन— विशिष्टि (पहला पुनरीक्षण)	—	31 अगस्त, 2013
8.	आईएस 13625 : 2013 एक्रिलिक और सिन्टैन वाले पुनः चर्मशोधन सिन्टैन—विशिष्टि (पहला पुनरीक्षण)	—	31 अगस्त, 2013

इन भारतीय मानकों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली 110002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सीएचडी 17/आईएस 5466, 6199, 6301, 6657, 6658, 13271, 13528, 13625]

डॉ० राजीव के० झा, वैज्ञानिक 'एफ' एवं प्रमुख (रसायन)

New Delhi, the 31st August, 2013

S.O. 2118.— In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standard Established	No. & Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 5466 : 2013 Vegetable Tanning Materials—Method of test (First Revision)	—	31 August, 2013
2.	IS 6199 : 2013 Wattle Extract—Specification (First Revision)	—	31 August, 2013
3.	IS 6301 : 2013 Basic Chromium Sulphate (for tanning)— Specification (First Revision)	—	31 August, 2013
4.	IS 6657 : 2013 Sal Bark—Specification (First Revision)	—	31 August, 2013
5.	IS 6658 : 2013 Cashew Testa—Specification (First Revision)	—	31 August, 2013
6.	IS 13271 : 2013 Phenolic Syntans—Methods of test (First Revision)	—	31 August, 2013
7.	IS 13528 : 2013 Pretanning Syntans—Specification (First Revision)	—	31 August, 2013
8.	IS 13625 : 2013 Retanning Syntans including Acrylic and Related Syntans—Specification (First Revision)	—	31 August, 2013

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian standard can be made at :<http://www.standardsbis.in>.

[Ref. CHD 17/IS 5466, 6199, 6301, 6657, 6658, 13271, 13528, 13625]

Dr. RAJIV K. JHA, Scientist 'F' & Head (CHD)

नई दिल्ली, 24 सितम्बर, 2013

का०आ० 2119.— भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 16016 : 2013 पिन टम्बलर प्रणाली के बेलनाकार ताले - विशिष्ट		तुरन्त

इन भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों: कोलकता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ एमईडी/जी-2 : 1]

तेजबीर सिंह, वैज्ञानिक 'एफ' एवं प्रमुख (यांत्रिक इंजीनियरिंग)

New Delhi, the 24th September, 2013

S.O. 2119.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 16016 : 2013 Cylindrical locks with pin tumbler mechanism—Specification	—	With immediate effect

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian Standard can be made at :<http://www.standardsbis.in>.

[Ref. MED/G-2:1]

T. V. SINGH, Scientist 'F' & Head (Mechanical Engineering)

नई दिल्ली, 25 सितम्बर, 2013

का०आ० 2120.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक(कों) में संशोधन किया गया/किए गए हैं:

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 1786 : 2008	संशोधन संख्या 2, जुलाई 2013	16 सितम्बर, 2013

इस संशोधन की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ सीईडी/राजपत्र]

जे० रॉय चौधरी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 25th September, 2013

S.O. 2120.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standard, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 1786 : 2008	Amendment No. 2, July, 2013	16 September, 2013

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices at New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. CED/Gazette]

J. ROY CHOWDHURY, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 25 सितम्बर, 2013

का०आ० 2121.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, तो संख्या और वर्ष	स्थापित होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 6410 : 2013 चुंबकीय दोष निकालने की स्याही और पाउडर-विशिष्ट (दूसरा पुनरीक्षण)	आईएस 6410 : 1991 चुंबकीय दोष निकालने की स्याही और पाउडर-विशिष्ट (पहला पुनरीक्षण)	31 अगस्त, 2013
2.	आईएस 15987 : 2013 संघट-ईको तकनीकी का प्रयोग करके कंक्रीट संरचनाओं की अविनाशी परीक्षण हेतु-अनुशंसित रीति	—	31 अगस्त, 2013

इन भारतीय मानकों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एमटीडी 21/टी-28 एवं 77]

पी० घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 25th September, 2013

S.O. 2121.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 6410 : 2013 Magnetic flaw detection inks and powders—Specification (<i>second revision</i>)	IS 6410 : 1991 Specification for magnetic flaw detection inks and powders (<i>first revision</i>)	31 August, 2013
2.	IS 15987 : 2013 Non-destructive testing of concrete structures using impact-echo technique—Recommended Practice	—	31 August, 2013

Copy of this Standard are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. MTD 21/T-28 & 77]

P. GHOSH, Scientist 'F' & Head (MTD)

कोयला मंत्रालय

नई दिल्ली, 25 सितम्बर, 2013

का.आ. 2122.—केन्द्रीय सरकार को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है; उक्त अनुसूची में वर्णित भूमि के अन्तर्गत आने वाले क्षेत्र के ब्यौरे रेखांक संख्यांक एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि 438, तारीख, 22 फरवरी, 2013 का निरीक्षण कलेक्टर, जिला अनुपपुर (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अनुसूची में वर्णित भूमि से कोयले का पूर्वोक्त करने के अपने आशय की सूचना देती है।

उपरोक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर भरसाधक अधिकारी या विभागाध्यक्ष (राजस्व) साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) से,—

- उक्त अधिसूचना की धारा 4 की उप-धारा (3) के अधीन की गई किसी कार्रवाई से हुई या सम्भवतः होने वाली किसी क्षति के लिए अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; या
- उक्त अधिनियम की धारा 13 की उप-धारा (1) के अधीन पूर्वोक्त अनुज्ञप्तियों के प्रभावहीन होने के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिए प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिए पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

अनुसूची

सोमना भूमिगत खान, हसदेव क्षेत्र

जिला - अनुपपुर, मध्य प्रदेश

(रेखांक संख्यांक एसईसीएल/बीएसपी/जीएम (पीएलजी)/भूमि/438, तारीख 22 फरवरी, 2013)

क्रम सं.	ग्राम का नाम	बंदोबस्त संख्या	पटवारी हल्का संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	लोहसरा	929	43	कोतमा	अनुपपुर	14.893	भाग
2.	भगता	769	43	कोतमा	अनुपपुर	40.014	भाग

कुल:-54,907 हेक्टर (लगभग) या 135.68 एकड़ (लगभग)

सीमा वर्णन:

- क-ख रेखा ग्राम भगता-लोहसरा के सम्मिलित सीमा में बिन्दु 'क' से आरंभ होती है और ग्राम भगता के दक्षिणी भाग से होकर गुजरती हुई बिन्दु 'ख' पर मिलती है।
- ख-ग रेखा ग्राम भगता के दक्षिणी भाग से होकर गुजरती हुई ग्राम भगता-लोहसरा के सम्मिलित सीमा में बिन्दु 'ग' पर मिलती है।
- ग-घ रेखा ग्राम लोहसरा के उत्तरी भाग से होकर गुजरती हुई बिन्दु 'घ' पर मिलती है।
- घ-क रेखा ग्राम लोहसरा के उत्तरी भाग से होकर गुजरती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[फा० सं० 43015/03/2013-पीआरआईडब्ल्यू-I]

वी० एस० राणा, अवर सचिव

MINISTRY OF COAL

New Delhi, the 25th September, 2013

S.O. 2122.—Whereas it appears to the Central Government that coal is likely to be obtained from the land in the locality mentioned in the Schedule annexed hereto;

And whereas the plan bearing number SECL/BSP/GM (PLG)/LAND/438, dated the 22nd February, 2013 containing details of the area of land described in the said Schedule may be inspected at the office of the Collector, District Anuppur (Madhya Pradesh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006 (Chhattisgarh).

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the aforesaid Schedule.

Any person interested in the land described in the above mentioned Schedule may—

- claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub-section (3) of section 4 thereof; or
- claim compensation under sub-section (1) of section 13 of the said Act in respect of prospecting license ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Officer-in-Charge or Head of the Department (Revenue), South Eastern Coalfields Limited, Seepat Road, Bilaspur-495006 (Chhattisgarh) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

Somna U/g Mine, Hasdeo Area

District: Anuppur, Madhya Pradesh

(Plan bearing number SECL/BSP/GM (PLG)/LAND/438, dated the 22nd February, 2013)

Sl. No.	Name of village	Settlement number	Patwari halka number	Tahsil	District	Area in hectares	Remarks
1.	Lohsara	929	43	Kotma	Anuppur	14.893	Part
2.	Bhagta	769	43	Kotma	Anuppur	40.014	Part

Total: 54.907 hectares (appromixately) or 135.68 acres (approximately)

Boundary description:—

- A-B Line starts from point 'A' on the common boundary of villages Bhagta-Lohsara and passes through southern part of village Bhagta and meets at point 'B'.
- B-C Line passes through southern part of village Bhagta and meets at point 'C' on the common boundary of villages Bhagta-Lohsara.

- C-D Line passes through northern part of village Lohsara and meets at point 'D'.
D-A Line passes through northern part of village Lohsara and meets at starting point 'A'.

[F.No.43015/03/2013-PRIW-I]

V. S. RANA, Under Secy.

आदेश

नई दिल्ली, 27 सितम्बर, 2013

का०आ० 2123.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 20 अक्टूबर, 2012 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का०आ० संख्यांक 3186, तारीख 16 अक्टूबर, 2012 पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में या ऐसी भूमि (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है), पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का अनुपालन करने के लिए रजामंद है, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि और इस प्रकार निहित भूमि में या उस पर के सभी अधिकार तारीख 20 अक्टूबर, 2012 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्—

1. सरकारी कंपनी उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुक्सानियों और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;
2. शर्त (1) के अधीन सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में जोकि अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;
3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;
4. सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और
5. सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा० सं० 43015/36/2009-पीआरआईडब्ल्यू-I]

वी० एस० राणा, अवर सचिव

ORDER

New Delhi, the 27th September, 2013

S.O. 2123.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 3186, dated the 16th October, 2012, in the Gazette of India, Part-II, Section 3, Sub-Section (ii), Dated the 20th October, 2012, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (Hereinafter referred to as the said Act), the land and the rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas the Central Government is satisfied that the Western Coalfields Limited, Nagpur (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby direct that the said land and the rights in or over the said land so vested, shall, with effect from

20th October, 2012, instead of continuing to so vest in the Central Government, vest in the Government company, subject to the following terms and conditions, namely:—

1. the Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
2. a Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government company under conditions (1), and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the said Tribunal shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights in or over the said land, so vested, shall also be borne by the Government company;
3. the Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;
4. the Government company shall have no power to transfer the land and the right in or over the said land so vested, to any other person without the prior approval of the Central Government; and
5. the Government company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/36/2009-PRIW-I]
V. S. RANA, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 30 सितम्बर, 2013

का०आ० 2124.—सक्षम प्राधिकारी, पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 17 के अधीन विरचित पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग का अधिकार का अर्जन) नियम, 1963 के नियम 4 के उपनियम (1) के परंतुक के अनुसरण में, गेल (इण्डिया) लिमिटेड के परामर्श से जिसमें, यथास्थिति, उस क्षेत्र में भूमि में उपयोग का अधिकार निहित किया गया है या उस क्षेत्र में पाइपलाईन का स्वामित्व निहित है, नीचे सारणी के स्तम्भ 8 में यथा उल्लिखित पंजाब राज्य के बवाना-नंगल और स्पर पाइपलाईन परियोजना के माध्यम से पाइपलाईन बिछाये जाने के प्रचालन की समाप्ति की तारीख घोषित करता है।

अनुसूची

धारा 3(1) के अधीन अधिसूचना				धारा 6(1) के अधीन अधिसूचना			
क्रम सं०	गांव का नाम	तालुका/तहसील	राजपत्र में प्रकाशन का दिनांक	का०आ० संख्या और दिनांक	राजपत्र में प्रकाशन का दिनांक	का०आ० संख्या और दिनांक	कार्य की समाप्ति का दिनांक
1	2	3	4	5	6	7	8
1.	धमगढ़-1	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
2.	लोहसीबली	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
3.	समसपुर	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
4.	उत्तर	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12

1	2	3	4	5	6	7	8
5.	जड मगोली	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	दिसम्बर-11
6.	गोविदगढ़	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	दिसम्बर-11
7.	कमी कला	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
8.	पीपल मघोली	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
9.	काबुलपुर	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अक्टूबर-11
10.	फरीदपुर	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अक्टूबर-11
11.	साहल	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
12.	लचवान	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
13.	धमगढ़-2	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
14.	सुहारी	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12
15.	मेहमा	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
16.	खेरपुर जटान	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
17.	खैरी गडियां	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12
18.	गाजीपुर	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12
19.	जखरान	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
20.	बढोली गुजरान	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
21.	गोपालपुर	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12
22.	पबरी	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12
23.	तखतू माजरा	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12

1	2	3	4	5	6	7	8
24.	सेहरा	राजपुरा	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
25.	छलेरी कला	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
26.	हसनपुर छलेरी खुर्द	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
27.	कोटला जटान	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
28.	मूलेपुर	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
29.	पजौला	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
30.	नलिना कला	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
31.	नरेनपुर एलियास चोरवाला	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
32.	रूड़की	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
33.	बढोछी कला	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
34.	पडरली	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
35.	खरा	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	नवंबर-11
36.	मीरपुर	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
37.	सिधुवन	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
38.	सुन्दरपुर	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
39.	जाहला	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
40.	भंवरासी जेर	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
41.	खैरी	फतेहगढ़ साहिब	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	नवंबर-11
42.	बादली	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12

1	2	3	4	5	6	7	8
43.	बरूगा जेर	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
44.	बरूगा बलेन्द	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
45.	सोनती	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
46.	जलालपुर	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
47.	सैलियानी	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
48.	खुमाना	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
49.	शाहपुर	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
50.	सलाना	अमलोह	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
51.	खतरा	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
52.	बाघर	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
53.	माजरी	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
54.	रसूलरा	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
55.	इकोलाहा	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
56.	इकोलाही	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12
57.	भामड़ी	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	मार्च-12
58.	घुघराली	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
59.	असगरीपुर	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	अप्रैल-12
60.	रायपुर	खन्ना	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
61.	माजरी	पायल	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12

1	2	3	4	5	6	7	8
62.	बरमालीपुर	पायल	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
63.	बिशनपुरा	पायल	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	फरवरी-12
64.	कदोन	पायल	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	दिसंबर-11
65.	चनकोइयन खुद	पायल	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12
66.	दीपनगर	पायल	14.07.2009	1740(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	जनवरी-12

[फा० सं० एल-14014/26/12-जी०पी०]
एस० पी० अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 30th September, 2013

S.O. 2124.—In pursuance of the proviso to sub-rule (i) of rule 4 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963, framed under section 17 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Competent Authority, GAIL (India) Limited with whom the right of user in the land in that area has been vested or ownership of the pipeline in that area vests as the case may be, hereby declares the date of termination of operation of laying Bawana-Nangal & spur pipeline project in Punjab as mentioned in column-8 of the Schedule below, namely:—

SCHEDULE

Notification Under section 3(1)				Notification Under section 6(1)			
Sr. No.	Village Name	Tehsil	Date of Publication of Gazette	S.O. No. & Date	Date of Publication of Gazette	S.O. No. Dated	Date of Termination of Operations
1	2	3	4	5	6	7	8
1.	Dharmgarh-1	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
2.	Nasimli	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
3.	Samaspur	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
4.	Untsar	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
5.	Jand Mangoli	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	December-11
6.	Gobindgarh	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	December-11
7.	Kami Kalan	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12

1	2	3	4	5	6	7	8
8.	Pipal Mangholi	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
9.	Kabulpur	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	October-11
10.	Faridpur	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	October-11
11.	Sahal	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
12.	Lochman	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
13.	Dharmgarh-2	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
14.	Suharo	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
15.	Mehma	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
16.	Khairpur Jattan	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
17.	Kheri Gadian	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
18.	Gazipur	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
19.	Jakhran	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
20.	Badholi Gujran	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
21.	Gopalpur	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
22.	Pabri	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
23.	Takhtu Majra	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
24.	Sehra	Rajpura	14.07.2009	1738(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
25.	Chhalar Kalan	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
26.	Husianpur Chhalar Khurd	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
27.	Kotla Jattan	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12

1	2	3	4	5	6	7	8
28.	Mullepur	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
29.	Panjola	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
30.	Nalina Kalan	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
31.	Chuharwala	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
32.	Rurki	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
33.	Bari Badochi	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
34.	Pandrali	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
35.	Khara	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	November-11
36.	Mirpur	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
37.	Sidhuwan	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
38.	Sunderpura	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
39.	Jahla	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
40.	Bhamarasi Zer	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
41.	Kheri	Fatehgarh Sahib	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	November-11
42.	Badali	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
43.	Barunga Zer	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
44.	Barunga Baland	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
45.	Saunti	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
46.	Jalalpur	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
47.	Saliani	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12

1	2	3	4	5	6	7	8
48.	Khumana	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
49.	Shahpur	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
50.	Salana	Amloh	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
51.	Khatra	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
52.	Baghaur	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
53.	Majri	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
54.	Rasulra	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
55.	Ikolaha	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
56.	Ikolahi	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
57.	Bhamadi	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	March-12
58.	Ghungrali	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
59.	Majri	Payal	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	April-12
60.	Asgaripur	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
61.	Raipur	Khanna	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
62.	Barmali Pur	Payal	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
63.	Bishanpura	Payal	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	February-12
64.	Kadon	Payal	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	December-11
65.	Chankoean Khurd	Payal	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12
66.	Deepnagar	Payal	14.07.2009	1739(E) 14.07.2009	3.12.2009	3096(E) 3.12.2009	January-12

[F. No. L-14014/26/ 12-G.P.]

S. P. AGARWAL, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 अगस्त, 2013

का.आ. 2125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, एनटीपीसी दादरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं० 1, नई दिल्ली के पंचाट (संदर्भ संख्या 74/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/08/2013 को प्राप्त हुआ था।

[सं एल-42011/27/2012-आईआर (डीयू)]

सोम नाथ, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th August, 2013

S.O. 2125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 74/2012) of the Central Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the General Manager, NTPC, Dadri and their workman, which was received by the Central Government on 23.08.2013.

[No.L-42011/27/2012-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 74/2012

The General Secretary,
NTPC Employees Union,
Vidut Nagar, B-87,
Gautam Budh Nagar,
U.P.

...Workman

Versus

The General Manager,
NTPS, NTPC,
Vidut Nagar, Dadri,
Gautam Budh Nagar,
U.P.

...Management

AWARD

National Bipartite Committee (NBC) is the Apex Body, consisting of workmen representatives from various projects and stations of National Thermal Power Corporation (in short the Corporation) and representatives of the

Corporation, for consultation and negotiation in respect of issues pertaining to the employees of workmen category working with the Corporation. Employees of workmen category, working with the Corporation, are being paid annual performance linked incentive known as annual additional incentive and special reward, based on agreement entered in NBC. Employees of executive category, working with the Corporation, are also paid annual additional incentive in accordance with the guidelines of Department of Public Enterprises (in short DPE). The Corporation issued circular dated 23.09.2006, applicable for year 2005-06 and 2006-07, for grant of annual productive incentive to the employees of workmen category, based on agreement in NBC. They were paid performance related payment, performance linked bonus, incentive or additional incentive for the year 2008-09 in terms of agreement arrived in NBC while employees of executive category were paid such benefits in terms of guidelines of DPE.

2. Employees of executive categories of the Corporation received higher amount relating to performance related payment, performance linked bonus, incentive or additional incentive in comparison to the employees of workmen category from year 2007 and onwards. NTPC Employees Union (hereinafter referred to as the union) raised a dispute claiming that discrimination meted out to the employees of workmen category in the matter of performance related payment, performance linked bonus, incentive or additional incentive was uncalled for. The union asserted that the employees of workmen categories were entitled to above *ex-gratia* payments equal to the employees of executive categories. This demand was not conceded to by the Corporation. Aggrieved by that Act, the union raised a dispute before the Conciliation Officer. Since Corporation contested the claim, conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No. L-42011/27/2012/IR(DU), New Delhi dated 25.04.2012 with following terms:

"Whether action of management in disbursing productivity linked bonus exceeding statutory limit of 20% of wages/salary earned during relevant year is illegal and unjustified? If so, what relief the workmen are entitled to?"

3. Corrigendum dated 18.06.2012, was issued by the appropriate Government, modifying terms of reference as follows:

"Whether the action of the management in disbursing the performance related payment. (PRP) Performance linked bonus/incentive/additional incentive to the executive employees in higher proportion in comparison to that of non-executive employees from the years 2007 onwards are illegal and unjustified? If so, what relief the workmen are entitled to?"

4. Claim statement was filed by the union pleading therein that it is a recognized representative union for and on behalf of employees of the Corporation. The union works to promote industrial peace and harmony as well as to safeguard and protect interest of the workers from exploitation and anti labour policies of the Corporation. The Corporation used all unfair means concerning its employees of workmen category. Based on performance, the Corporation started paying productivity linked special incentive from the year 1994, which incentive was given to all employees (executive and non-executive) subject to maxima of 20% of their salary/wages to be calculated @ of Rs. 2500 per month for the purpose of the incentive. The Corporation also introduced an annual performance linked incentive scheme for all employees, executive as well as non-executive, *vide* its circular dated 23.09.2006 applicable from the year 2005-06, on the basis of percentage of basic pay. All employees were paid performance linked incentive @ 5% of basic pay, subject to minimum of Rs. 4000.00 for 2005-06. In the year 2007, the Corporation started payment of annual additional incentive in higher proportion to the executive employees than the employees of workmen category. Employees of executive category were paid annual additional incentive while employees of workmen category were paid annual additional incentive plus special reward. In the year 2008, employees of executive category were paid annual additional incentive in much higher proportion than employees of workmen category. Same was the case in the year 2009 also.

5. The union presents that no transparency was maintained by the Corporation, in the matter of payment of additional incentives and performance related payments. All these payments are profit sharing by the employees, though nomenclature of payments have changed from time to time. Discrimination in the matter of aforesaid payments, made by the Corporation, is highly arbitrary, unjustified and uncalled for. Payment of lesser amount to the employees of workmen category than employees of executive cadre is violative of provisions of Article 14, 15 and 16 of the Constitution. The Corporation cannot resort to such discrimination. It has been claimed that employees of workmen category are entitled to performance related payments, performance linked bonus, incentive or additional incentive equal in amount/proportion as being paid to the employees of executive categories of the Corporation. The union prays for an award in its favour in that regard.

6. Claim was demurred by the Corporation pleading that *ex-gratia*/special incentive are being paid to the employees, limited to 20% basic pay (basic pay was limited to ceiling specified in the Bonus Act, 1972) without any legal obligation. Actual payment was based on performance, assessed through productivity linked schemes and agreements in NBC, on year to year basis. It has been denied that the Corporation introduced annual performance

linked incentive scheme for its employees of executive and non-executive category on percentage of basic pay. Annual performance linked incentive scheme, circulated *vide* circular dated 23.09.2006, was applicable for year 2005-06 and 2006-07, in accordance with agreement entered in NBC. Employees of workmen category were paid special reward based on the said agreement. The Corporation agreed to pay suitable amount in addition to special reward, in view of performance of its employees of workmen category. Employees of executive category were given annual additional incentive, based on guidelines of DPE. The Corporation was well within its rights to decide performance related payment to its employees, subject to total out go remaining within 5% of distributable profit. Amount disbursed to the employees of workmen category was much more than maximum amount payable as bonus to the employees covered under the provisions of the Payment of Bonus Act, 1972. Performance related payment cannot be claimed as a matter of right. There is no legal obligation on the part of the Corporation to pay incentives, which are paid as goodwill gesture. The Corporation assesses performance of its employees of executive category, through performance management system, for being eligible for performance related payments. On the other hand, employees of workmen category continue to receive special reward, based on performance of the Corporation, as per agreement in NBC. Besides, that they also receive annual additional incentive as performance related payments.

7. Since performance related payment for employees of executive category is decided in terms of guidelines of DPE and performance related payment in case of workmen is decided as per agreement in NBC, the union cannot agitate that the methodology to calculate and disbursement of those payments to various categories should be based on one uniform standard. It does not lie in the mouth of the union to claim parity of the employees of workmen category with that of employees of executive category in the matter of performance related payments.

8. The Corporation agitates that performance related payments are being made to the employees of workmen category in terms of agreement in NBC, which is the apex body for consultation and negotiation in respect of issues relating to the employees of workmen category. The union, which represents a very small proportion of workmen strength of the Corporation, cannot challenge issues settled/decided through agreements in NBC. The union has no locus standi to challenge terms of agreement entered into in NBC for the year 2007 and onwards. On the other hand the union is bound by the agreements arrived at in NBC for the year 2007 and onwards. When performance related payments to the employee of executive category were decided in terms of guidelines of DPE, the Corporation shared these facts with the union representatives in NBC. The union now raises frivolous issues through the present claim statement. The Corporation asserts that there is no

violation of provisions of Article 14, 15 and 16 of the Constitution. Claim put forward merits dismissal. A prayer has been made that an award may be passed in favour of the Corporation and against the union.

9. Charts of performance related payments, filed by and on behalf of the workmen, were admitted by the Corporation during the course of admission and denial. These charts are Ex.W1 to W6.

10. When the Corporation admitted aforesaid charts, it came to light there was no dispute between the parties on facts. Hence, parties were not called upon to lead their respective evidence in the matter.

11. During the course of arguments, Shri Om Prakash Gupta, authorised representative of the union, made a statement on oath that the union does want to press for the reliefs claimed in the claim petition. He claimed that their claim statement may be discarded, while adjudicating the dispute. According to him, after an award, the union would like to approach the appropriate Government in case exigencies permit it. Thus, out of statement made by Shri Om Prakash Gupta, authorized representative of the union, it is apparent that the union gives up its contest. It decided to eat humble pie and await for an award. Resultantly, it is evident that the union nowhere disputes factual proposition raised by the Corporation in its written statement.

12. Out of facts pleaded by the Corporation, it came to light that performance related incentives are given to employees of workmen category in accordance with the agreement in NBC. On the other hand, performance related incentives are given to the employees of executive categories based on guidelines of DPE. Assessment of performance and grant of performance related payments are based on different standards. Employees of executive category had to undergo standards of assessment of their performance on guidelines of DPE. Performance and payment based there on, in the matter of employees of workmen category, are assessed in terms of agreement in NBC.

13. Whether employees of workmen category are entitled to parity in the matter of performance related payments? For an answer legal provisions are to be taken into consideration. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers,

government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

14. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

15. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

16. Non-executive employees of the Corporation are a separate class in themselves. They are employees of the category, who fall within the ambit of the definition of workmen, as enacted by clause (s) of section 2 of the Industrial Disputes Act, 1947. Workmen employees fall in distinct and different category than employees of executive category of the Corporation. Employees of executive category have to perform mainly managerial or administrative functions or they may have been employed in supervisory capacity to perform functions mainly of managerial in nature. Therefore, it is evident that employees,

who fall in workmen category, are on a different pedestal than the employees of executive category, who perform mainly managerial or administrative functions or supervisory functions. They are recruited through different recruitment rules and their responsibilities cannot be similar. Under these circumstances, I am constrained to conclude that employees of the executive category of the Corporation form a class distinct and different than the employees of workmen category of the Corporation. The Corporation has rightly made classifications in the matter of grant of incentives to its executive and non-executive employees. Unequals cannot claim equal treatment.

17. In view of the reasons detailed above, it is apparent that the employees of the workmen category are not entitled for payment of performance linked incentives in parity with the employees of executive category. An award is passed against the union and in favour of the Corporation. It be sent to the appropriate Government for publication.

Dated : 18-7-2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 30 अगस्त, 2013

का.आ. 2126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डारेक्टर, आल इण्डिया इन्सटीट्यूट आफ मेडिकल साइंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं० 1, नई दिल्ली के पंचाट (संदर्भ संख्या 232/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/08/2013 को प्राप्त हुआ था।

[सं एल-42012/02/2011-आईआर (डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 30th August, 2013

S.O. 2126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 232/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the Director, All India Institute of Medical Science and their workman, which was received by the Central Government on 23.08.2013.

[No.L-42012/02/2011-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D.No.232/2011

Sh.Naresh Kumar,
S/o Sh.Dewan Chand,

H.No.834, VPO Bakner Thana,
Narela, Delhi – 110049.

Applicant.....

Versus

The Director
All India Institute of Medical Sciences,
Ansari Road, New Delhi – 110029.

Respondent.....

AWARD

A Sanitary Attendant, Grade-II, serving All India Institute of Medical Sciences, New Delhi (hereinafter referred to as the Institute) absented himself from his duties in an unauthorized manner with effect from 01.01.2006. Letter dated 27.04.2006 was sent to him, advising him to report for duties immediately. He was also advised to submit medical certificate in case of his illness and inability to report for duties. The Sanitary Attendant opted not to comply with the instructions, so issued, and continued to remain absent from his duties in an unauthorized manner. Show cause notice dated 29.05.2006 was issued, calling upon him to explain as to why domestic action should not be initiated against him, but to no avail. Charge sheet dated 17.07.2006 was served on him. He opted not to submit his written statement of defence to the charge sheet, served on him. The Institute appointed Enquiry Officer, who sent notice to the Sanitary Attendant to join the enquiry proceedings. On 03.10.2006, he appeared before the Enquiry Officer. On subsequent dates, he abstained from taking part in the enquiry proceedings. Considering these circumstances, he was proceeded against *ex-parte* by the Enquiry Officer. The Enquiry Officer submitted his report to the Disciplinary Authority, who concurred with his findings. The Disciplinary Authority forwarded a copy of report of the Enquiry Officer to the Sanitary Attendant and called upon him to make representation, if any, in writing, to that report. He opted not to make any representation. Punishment of removal/termination from service was awarded to him, *vide* order dated 13.03.2007. Appeal preferred by the Sanitary Attendant also came to be dismissed. He raised a demand on the Institute for reinstatement in service, which was not conceded to. Ultimately, he raised an industrial dispute before the Conciliation Officer. Since the Institute contested his claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-42012/2/2011-IR(DU), New Delhi dated 25.05.2011, with following terms:

“Whether action of the management of Director, AIIMS, Delhi in terminating services of Shri Naresh Kumar, Sanitary Assistant Grade II with effect from 13.03.2007 is legal and justified? If not, to what relief the claimant is entitled to?”

2. Claim statement was filed by the Sanitary Attendant, namely, Shri Naresh Kumar pleading therein that he joined services of the Institute on 12.06.1986. He rendered satisfactory service and gave no chance of complaint to his employer. Neither charge sheet was served upon him nor any reasons were assigned when his services were orally terminated by the Institute on 13.03.2007. He had rendered continuous service of 240 days in every calendar year, as contemplated by the provisions of section 25-B of the Industrial Disputes Act, 1947 (in short the Act). Provisions of section 25-F and 25-N of the Act were not complied with. Neither one month's notice nor pay in lieu thereof and retrenchment compensation was paid to him. After termination of his service, fresh recruitment was made. No opportunity was given to him for re-employment, as contemplated by provisions of section 25-H of the Act. He claims reinstatement in service of the Institute with continuity and full back wages.

3. Demurral was made by the Institute pleading that the claimant remained absent from his duties in an unauthorized manner since 01.01.2006. He had not got any leave sanctioned when he absented from his duties. *Vide* memo dated 27.04.2006, he was advised to report for duties immediately, but in vain. Show cause notice dated 29.05.2006 was issued calling upon him to explain as to why domestic action should not be initiated for his unauthorized absence from duties. Charge sheet dated 17.07.2006 was sent to him. Despite service of the charge sheet, he opted not to reply it. Domestic enquiry was conducted against him in accordance with principles of natural justice. He appeared before the enquiry Officer on the first date of hearing, that is on 03.10.2006 and thereafter, opted to abstain from the enquiry proceedings. Enquiry, conducted against him, was in consonance with the principles of natural justice. Report of the enquiry was sent to him for his comments on the same, but he opted to keep silence. Punishment of removal/termination from service was awarded to him, *vide* order dated 13.03.2007. The said order does not amount to retrenchment within the meaning of section 2(o) of the Act. Provisions of section 25-F and 25-N of the Act had not come into operation. Claim put forward by Shri Naresh Kumar is liable to be dismissed, being devoid of merits.

4. On perusal of pleadings, following issues were settled:

- (1) Whether enquiry conducted by the management was just, fair and proper?
- (2) Whether punishment awarded to the claimant is proportionate to his misconduct?
- (3) As in terms of reference.

5. On consideration of facts testified by the claimant and those detailed by Shri A.M. Tewari, submissions made by the parties and on perusal of record, issue relating to virus of enquiry, which was treated as preliminary issue,

was answered in favour of the Institute and against the claimant *vide* order dated 10.10.2012.

6. Arguments were heard at the bar. Shri T.S Rajput, authorized representative, advanced arguments on behalf of the claimant. Shri Karunesh Tandon, authorized representative, made submissions on behalf of the Institute. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

Issue No.2.

7. In order to assess as to whether punishment imposed is proportionate to the misconduct of the claimant, it is expedient to note charges levelled against him. Those charges emerged out of the charge sheet dated 17.06.2005, contents of which are reproduced thus:

“That the said Naresh Kumar, III, while functioning as Sanitary Attendant, Grade I in this Institute has been willfully and unauthorizedly absenting himself from duty with effect from 01.01.2006 without permission or sanction of leave by the competent authority.

Shri Naresh Kumar III, Sanitary Attendant Grade II was advised to report for duty immediately *vide* office memo of even number dated 27.04.2006 but he failed to comply with the orders and continued to remain absent from duty unauthorizedly without citing any valid reason. Shri Naresh Kumar III, Sanitary Attendant Grade II was also advised that in case he is sick, he should submit the medical certificate from the GDMO (EHS) or civil surgeon of the area. But the official failed to comply with these orders and continues to be absent from duty unauthorizedly without any valid reason and in gross violation of orders. A show cause notice dated 29.05.2006 was again issued to the official but in spite of that he failed to report for duty till date.

Shri Naresh Kumar III, Sanitary Attendant Grade II, has thus failed to maintain devotion to duty and is not amenable to discipline and has acted in a manner unbecoming of an Institute employee thereby contravened Rule 3(1)(ii) and Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as applicable to the employees of the Institute.”

8. As projected above, the Enquiry Officer was constrained to proceed with the matter *ex-parte* when claimant opted to abstain from the enquiry proceedings. He examined Shri S.P. Vashist and Smt. Neelam who were produced before him by the Institute. He appreciated evidence adduced before him, in the light of the documents proved by the Institute. He recorded findings against the claimant, relevant portion, of which is extracted thus:

“As discussed in the foregoing paras, management produced documentary evidence Exhibit M-1 to M-4 to prove the charge sheet that CSE was absenting himself from duty with effect from 01.01.2006 without prior permission or sanction of leave by the competent authority (Exhibit M-1 to Exhibit M-3). He was advised to report for duty by (Exhibit M-1 to Exhibit M-3) but he did not report. He was also advised that in case he was sick, he should submit medical certificate but he did not comply (Exhibit M-1 to Exhibit M-3). All the management documents were authenticated by management witnesses MW-1 and MW-2. Management witness also supported the management story fully. Thus, management proved the charge as indicated in charge *Annexure I*. All Reasonable opportunity was given to the CSE but the CSE did not produce any evidence to disprove the charge as indicated in foregoing paras.

Findings

Considering oral, documentary and circumstances evidence as discussed above article of charge as given in *Annexure I* of the charge sheet is considered proved beyond doubt.”

9. Now an exercise would be undertaken to see as to whether punishment is proportionate to the misconduct of the claimant. Before adverting to the exercise, it would be expedient to have a glance on the power of the industrial adjudicator in that regard. Prior to introduction of section 11A of the Act, adjudicatory powers of the Tribunal were articulated in *Buckingham & Carnatak Company* (1951 (2) LLJ 314). Four standards were delineated by the Labour Appellate Tribunal in the above case to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bonafides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in *Indian Iron and Steel Company Limited* (1958 (1) LLJ 260), without any acknowledgement to the precedent in *Buckingham & Carnatic* case (supra), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudicator when a dispute arises to see whether termination of services of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with

the disciplinary action taken by the employer : (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

10. Enunciation (1) and (2), referred above, are addressed to the bona-fides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bona-fide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct should not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that itself may lead to an inference of malafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse.

11. In *Ramswarth Sinha* (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to justify its action in a “no enquiry” case. Following that proposition the Apex Court equated the cases of “defective enquiry” with “no enquiry” cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in *Motipur Sugar Factory Pvt. Ltd.* [1965 (2) LLJ 162] where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In *Ritz Theatre* [1962 (II) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the precedent in *Bharat Sugar Mills Ltd.* [1961 (11) LLJ 644].

12. In Delhi Cloth and General Mills Company [1972 (1) LLJ 180], Apex Court considered the catena of decisions over the subject and laid down the following principles:

“(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the

preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as *prima facie* proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite *suo moto* the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.

13. Keeping in view the proposition laid by the Apex Court in *Delhi Cloth and General Mills Company* (supra), the Parliament inserted section 11-A in the Act, which came into force *w.e.f.* 15th of December, 1971. In the statement of objects and reasons for inserting section 11-A, it was stated:

“In *Indian Iron and Steel Company Limited and Another Vs. Their Workmen* (AIR 1958 S.C. 130 at p.138), the Supreme Court, while considering the Tribunal’s power to interfere with the management’s decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No.119) concerning ‘Termination of employment at the initiative of the employer’ adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal’s power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to 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 reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947.....”.

14. After insertion of section 11-A, the Apex Court summed up the law in the case of *Firestone Tyre and Rubber Company* [1973 (1) LLJ 278] in the following propositions:

“(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask

for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot, be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The workmen*, within the judicial decision of a Labour Court or Tribunal”.

15. Jurisdiction to interfere with the punishment is also not confined to the case where punishment is shockingly disproportionate to the act of the misconduct. The Tribunal has power of substituting its own measure of punishment in place of managerial wisdom. Change in legal position, post introduction of section 11A of the Act has been effectively summarized in the case of *Ambassador Sky Chef* (1996 Lab. I.C. 299) wherein High Court of Bombay observed that the section gives specifically two fold powers to an industrial adjudicator : firstly, it is a virtual power of appeal against the findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and conclusion on facts, and secondly, and far more important, it is the power of re-appraisal of quantum of punishment. Now no restriction lies on an industrial adjudicator to interfere with the enquiry only on four grounds, referred above. However, wide discretionary powers with the adjudicator are to be exercised in judicial and judicious manner before it interferes with the order of misconduct or punishment.

16. With this prelude in mind, now I would turn to facts of the present controversy. As record projects, the claimant attended the enquiry proceedings held on 03.10.2006, submitted a letter for engaging a defence assistant and was also provided with copies of documents proved by the Presenting Officer. However, he never turned up again on subsequent dates. The Enquiry Officer, in the light of the evidence put forward by the Institute, ocular as well as documentary, and on consideration of circumstances of the case, concluded that the charges against the claimant stood proved. When preliminary issue was addressed to for adjudication, aspects relating to bona-fides of the Institute in initiating the domestic enquiry were considered. It was taken into account as to whether the charges is specific and clear. Care was taken to see as to whether the

Enquiry Officer followed principles of natural justice and gave reasonable opportunity to the claimant to defend himself. It was also considered as to whether the enquiry report was in consonance with the evidence produced or perverse. At the cost of repetition, it is announced that the Institute acted bona-fide and there had been no violations of principles of natural justice, in conduct of the domestic enquiry.

17. Punishment of removal/termination from service was awarded to the claimant. Question for consideration would be as to whether there are any justifications for punishment of removal/termination from service? Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. The Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963(1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to imposed certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

18. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect

was laid by the Apex Court in *Hind Construction and Engineering Company Labour* [1965 (1) LLJ 462]. Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* [1996 (1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, “when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts”.

19. In *B.M.Patil* [1996 (11) LLJ 536], Justice Mohan Kumar of Karnataka High court observed that in exercise of discretion, the disciplinary authority should not act like a robot and justice should be moulded with humanism and understanding. It was assessed each case on its own merit and each set of facts should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

20. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab. I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment

imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

21. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in *Bhagirath Mal Rainwa* [1995 (1) LLJ 960].

22. As facts of the controversy project, the claimant absented himself from his duties for a considerable long period in an unauthorized manner. An employee is under an obligation not to absent himself from work without good cause. Absence without leave is misconduct in industrial employment, warranting disciplinary punishment. Habitual absence from duty without leave has been made a misconduct under Model Standing Orders, framed under Industrial Employment Standing Orders Act, 1946. Likewise, industrial employers also include “absence from duty”, without leave in the list of misconduct in their standing orders. Sanction of leave can be a significant defence to misconduct of absence without leave. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The fact that the claimant was continuously absent from work without leave, on account of his detention in jail for an offence, will not give an immunity to the claimant and the employer will be justified in discharging him from

services, announces the Apex Court in *Burn & Company*, [1959 (1) L.L.J. 450].

23. In *Indian Iron and Steel Company Ltd.* [1958 (1) L.L.J. 260] the Apex Court was confronted with a proposition as to whether provisions in the standing orders authorizing the employer to terminate services of its employee on account of absence without leave was an inflexible rule. In that matter seven workmen were absent without leave for 14 consecutive days, as they were in police custody. During police custody they applied for leave which were refused by the company and services of the workmen were terminated under relevant standing order for remaining absent without leave. The Industrial Tribunal took a view that the relevant standing order was not an inflexible rule and mere application for leave was sufficient to arrest the operation of the standing order. In appeal, though the Labour Appellate Tribunal did not maintain the award of the Tribunal on that count, yet it held that in view of the circumstances that the workmen were in custody, the company was not justified in refusing leave. When the matter reached the Apex Court, it set aside the order of the Labour Appellate Tribunal, relying its precedent in *Burn & Company Ltd.* (supra) and ruled thus:—

“It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them, but it would be unjust to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by raising of their questionable activities in connection with a labour dispute (as in this case), the work of the company will be paralysed if the company is forced to give leave to all of them for more or less indefinite period. Such a principle will not be just, nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be rightly accepted that if the workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colorable or malafide exercise of power under the relevant standing order, that however, is not the case here.”

24. Defence open to an employee, against charge of absence without leave, is that the absence was on account

of circumstances beyond his control. For instance, where absence of a workman was on account of his sudden or serious illness or serious illness of a relation that would be an extenuating circumstance which the employer will have to take into consideration. However, if a workman feigns sickness in order to avoid duty by producing a false medical certificate, this would itself be a serious act of misconduct. In *Tata Engineering and Locomotive Company Ltd.*, [1990 (1) LLJ 403] the Patna High Court was addressed to a proposition where workman absented himself without leave or permission for a considerable period. After about 20 days of his absence, a memo and charge sheet was issued, notifying that a domestic enquiry would be held in the matter. The workman failed to appear in a domestic enquiry and the Enquiry Officer conducted the proceedings ex-parte. On consideration of the report of the Enquiry Officer, the Disciplinary Authority discharged him from service. Later on workman informed the management that he was arrested by the police in connection with a murder case and requested to allow him to join duty. On refusal, an industrial dispute was raised. A High Court placed reliance on the precedent in *Indian Iron & Steel Company* (supra) and *Burn & Company* (supra) and ruled that the discharge of the workman was valid and justified for continuous absence without permission or leave.

25. Absence without leave constitutes a misconduct justifying disciplinary action against the delinquent workman. Punishment can only be imposed either by complying with the procedure prescribed by the standing orders of the establishment, if any, or the rules of natural justice. Normally punishment should be inflicted after the workman has been found guilty of the misconduct, after holding a domestic enquiry. Reference can be made to *Mufatlal Narain Dass Barot* [1966 (1) LLJ 437] and *Kalika Prasad Srivastava* (1987 Lab.I.C. 307). Quantum of punishment in case of misconduct for absence from duty without leave would depend upon the facts of each case. In order to justify the extreme penalty of discharge or dismissal, it is to be proved that the workman remained absent without leave for an inordinate long period. In *Bokaro Steel Plant, Steel Authority of India Ltd.* (2007 L.L.R. 238) removal of workman from service who remained unauthorisedly absent for a period of three months was held to be justified. In *Sushil Kumar* (2007 L.L.R. 45) it was ruled that absence, which is continuous for a long period, amounts to serious misconduct to justify dismissal from service. In *Borman* (2003 L.L.R. 364) 62 days absence of workman was held to be justified for his dismissal from service.

26. Now, question for consideration would be as to what punishment would be appropriate to the misconduct, committed by the claimant. An employee is under an obligation not to absent himself from work place without good cause. Absence without leave is misconduct in industrial employment warranting disciplinary punishment.

Habitual absence from duty without leave has also been made misconduct under CCS (Conduct) Rules, 1964. When an employee absents himself, he must have applied for and obtained leave from the employer. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. Quantum of punishment for such cases would depend upon facts of each case. In order to justify extreme penalty of discharge or dismissal it is to be proved that the employee remained absent without leave for an inordinate long period or has habituated to absent himself from duty. Here in the case the Institute has been able to project that the claimant remained absent for more than six and half months, without moving any application for leave. When letter dated 27.4.2006 was sent, advising him to join duties, he opted not to respond to it. Show cause notice dated 29.5.2006 was also not replied by him. He opted not to make a written statement of his defence, when charge-sheet was served upon him. He appeared before the Enquiry Officer on first date of hearing and thereafter abstained from the enquiry proceedings. He never explained reasons for his absence from duties. All these facts make it clear that his absence from duties was without any justification. Such an employee has no right to remain in service. Hence punishment, awarded to the claimant is found to be proportionate to his misconduct. Issue is, therefore, answered in favour of the Institute and against the claimant. His removal from service would be justified, on account of his inordinate long absence without leave.

Issue No. 3

27. In view of the foregoing discussion it is evident that removal/termination from service of the claimant, on account of his long unauthorized absence, is found to be in consonance with law and principles of natural justice. The claimant is not entitled to any relief. His claim statement is liable to be discarded, being devoid of merits. Consequently his claim statement is discarded. An award is passed against the claimant and in favour of the Institute. It be sent to the appropriate Government for publication.

Dated : 12-7-2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 30 अगस्त, 2013

कांआ 2127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेक्रेटरी, इन्स्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 57/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.08.2013 को प्राप्त हुआ था।

[सं एल-42011/73/1999-आईआर(डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 30th August, 2013

S.O. 2127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial dispute between The Secretary, Institute of Chartered Accountants of India and their workman, which was received by the Central Government on 23.08.2013.

[No. L-42011/73/1999-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 57/2011

Sh. Pradeep Singh Rawat,
R/o D-1, 83, Gali No.8,
Laxmi Nagar,
New Delhi - 110092, and nine others.

....Applicants

Versus

The Secretary,
Institute of Chartered Accountants of India,
Indraprastha Marg,
New Delhi - 110092.

....Respondent

AWARD

Manpower was outsourced by Institute of Chartered Accountants of India (in short the Institute) for doing jobs of Lower Division Clerks and Peons. Services of Always Placement Agency (in short the contractor) were taken by the Institute for outsourcing manpower. Shri Pradeep Singh Rawat, Ms. Anita Rawat, Shri Pradeep Kumar Gupta, Shri Bhagabata Rout, Shri Suresh Chand, Shri Chander Prakash Mehra, Shri Dilwan Singh, Shri Trilok Chand and Shri Kundan Singh Bhandari were sent by the contractor to the Institute to work as Lower Division Clerks, besides Shri Gautam Kumar, who was sent to work as peon. They worked with the Institute for a considerable period. Their services were dispensed with from 31.07.1997. The contract employees approached High Court of Delhi by way of Writ Petition No.5597 of 1997 seeking reinstatement in service of the Institute. Writ petition was dismissed by High Court with liberty to the contract employees to approach authorities under Industrial Disputes Act, 1947 (in short the Act) for redressal of their grievance. Thereafter, the contract employees approached the Conciliation Officer. Since their claim was contested by the Institute, conciliation proceedings ended into failure. On consideration of failure

report submitted by the Conciliation officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-42011/73/99-IR(DU), New Delhi dated 27.01.2000 with following terms:

"Whether the action of the management of the Secretary, Institute of Chartered Accountants of India, New Delhi, in verbally stopping from services of Shri Pradeep Singh Rawat, LDC with effect from 30.06.1997 and nine other workmen Ms. Anita Rawat, LDC, Shri Pradeep Kumar Gupta, LDC, Shri Bhagabata Rout, LDC, Shri Suresh Chand, LDC, Shri Chander Prakesh Mehra, LDC, Shri Dilwan Singh, LDC, Shri Trilok Chand, LDC, Shri Kundan Singh Bhandari, LDC and Shri Gautam Kumar, Peon with effect from 31.07.1997 instead of regularizing their services is valid, legal and justified? If not, to what relief they are entitled?"

2. Claim statement was filed by Shri Pradeep Singh Rawat, Ms. Anita Rawat, Shri Pradeep Kumar Gupta, Shri Kundan Singh Bhandari, Shri Trilok Chand and Shri Suresh Chand pleading therein that the Institute is a professional body of Chartered Accounts, which has been formed with the objective of regulating the profession of Chartered Accountants. It lays down standards of education for Chartered Accounts and regulates the code of conduct for them. The Institute has been constituted under the statute, enacted by the Parliament. The Central Government has power to direct alteration to be made and overrule regulations made by the Institute from time to time. As such, the Central Government has overall control over the Institute.

3. It has been pleaded that the Institute is their employer, which exploited them by not giving benefits of regular employee. Claimants were treated by the Institute as daily wage labours. Though they have worked for periods ranging from 1-4 years, yet their services were not regularized. It has been claimed that Shri Pradeep Singh Rawat joined services of the Institute on 23.02.1993 as Lower Division Clerk on daily wages. He was selected by the Institute after holding interview. He rendered continuous service with some artificial breaks. He completed 240 days continuous service in every calendar year. He made a request for regularization of his job. However, his services were arbitrarily dispensed with on 30.06.1997, without assigning any reason. His entry inside the Institute was stopped.

4. Ms. Anita Rawat joined services of the Institute in March, 1996 as Lower Division Clerk. She also performed continuous service with some artificial breaks. Her services were dispensed with in July, 1997. No opportunity of being heard was granted to her. Shri Pradeep Kumar Gupta joined services in 1994 as Lower Division Clerk. Except for some artificial breaks, he had also rendered continuous service with the Institute. He performed more than 240 days

continuous service, required for regularization of his job. However, his entry was abruptly stopped inside the premise on 31.07.1997.

5. In February 1995, Shri Kundan Singh Bhandari joined the Institute as an LDC. He had also rendered continuous service with some artificial breaks. Services required for regularization of his job was also rendered by him. He was made to leave the job on 04.03.1997. Shri Trilok Chand joined the Institute in May, 1996. He also completed 240 days continuous service, required for regularization of his job. However, some artificial breaks were given by the Institute. He was also made to leave on 31.07.1997 in an illegal manner. Shri Suresh Chand joined services of the Institute in January, 1995 as a Lower Division Clerk. Continuous service of 240 days was rendered by him. However some artificial breaks in his service were given by the Institute. He was also bade farewell on 31.07.1997 in an illegal manner.

6. Claimants plead that except Shri Pradeep Singh Rawat, they were engaged by the Institute through the contractor. The contractor used to charge his fee for providing employment to the Institute. Claimants used to mark their attendance in a register kept by the Institute. The contractor changed from time to time but they continued to work for the Institute. They used to work under control and supervision of the Institute, who used to pay their wages. Action of termination of their services is unjustified. They claim that an award may be passed in their favour, reinstating them in service with continuity with full back wages, besides regularization of their services with the Institute.

7. Claim was demurred by the Institute pleading that the Tribunal has no jurisdiction to entertain the dispute, since the appropriate Government is the State Government. Since the claimants were engaged by the contractor, hence no relationship of employer and employee ever existed between them and the Institute. Contractor has not been added in arrays of respondents and as such, claim is bad for non-joinder of parties. Though the reference projects that there were ten claimants, yet claim statement has been filed on behalf of six claimants only. The Institute projects that no dispute award may be passed against remaining four claimants.

8. The Institute projects that the claimants were never engaged by it. They were engaged by the contractor(s) and as such they have no claim for reinstatement or regularization in service against the Institute. It has been disputed that Shri Pradeep Singh Rawat joined services of the Institute on 23.02.1993. He was never selected by the Institute for rendering his services, as claimed by him. He was not in continuous service of the Institute with artificial breaks. Since he was engaged by the contractor, payment of his wages and provisions relating to other facilities were areas between him and the contractor. Entire records, relating

to his engagement, is in possession of the contractor. It has been disputed that his services were illegally dispensed with effect from 30.06.1997 or 31.07.1997. The Institute disputes that Shri Rawat rendered continuous service of 240 days, as alleged by him.

9. Claim to this effect that Ms. Anita Rawat joined services with the Institute has been disputed. It has been claimed that she was also an employee of the contractor. There was no occasion for her to render continuous service of 240 days with the Institute from March, 1996 to July, 1997. It has been disputed that her services were illegally dispensed with by the Institute, as alleged in the claim statement. Denial has been made to the effect that Shri Pradeep Kumar Gupta joined services of the Institute in 1994. The Institute disputes that he has been continuously served for 240 days, with some artificial breaks. Being his employer, records relating to number of days for which he worked and salary etc. may be available with the contractor. His services were not dispensed with by the Institute on 31.07.1997, as claimed.

10. Misconceived claim has been presented to the effect that Shri Kundan Singh Bhandari joined services of the Institute in February, 1995. He was never employed by the Institute, hence there cannot be any question of his rendering continuous service of more than 240 days in a calendar year. There was no occasion for the Institute to give artificial breaks in his service. Being employee of the contractor, his service record is not in possession of the Institute. Wrong claim has been made that his services were illegally dispensed with by the Institute. Joining of service in May, 1996 by Shri Trilok Chand is wrong assertion of facts, pleads the institute. He was an employee of the contractor. Hence there was no case for him to render continuous service for 240 days with the Institute. Allegations to the effect that artificial breaks were given in his service, are false. The Institute has no concern with termination of his services, effected by the contractor.

11. Claim to the effect that Suresh Chand joined services of the Institute in January, 1995 is false. There was no occasion for him to render continuous service of 240 days, despite artificial breaks. His services were dispensed with by the contractor, who was his employer. The Institute has no role to play in the matter. It has been projected that the claim put forth by him is also misconceived. Since there was no relationship of employer and employee between the parties to the dispute, the Institute is not aware about any arrangement between the contractor and the claimants. Claimants were never paid any wages by the Institute. It does not lie in their mouth to assert that they are entitled to be regularized in the services of the Institute. Claim presented by them is liable to be dismissed, being devoid of merits.

12. On pleadings of the parties, followings issues were settled by my learned predecessor:

- (1) Whether there exists any relationship of employer and employee between the claimants and the management?
- (2) As in terms of reference.

13. *Vide* order No. Z-22019/6/2007/IR(C-II), New Delhi, dated 11.2.2008 the case was transferred by the appropriate Government to Central Government Industrial Tribunal-II, New Delhi, for adjudication. *Vide* order No. Z-22019/6/2007-IR (C-II), New Delhi, dated 30.3.2011, the case was re-transferred to this Tribunal for adjudication, by the appropriate Government for adjudication.

14. Shri Pradeep Singh Rawat (WW1), Shri Kundan Singh Bhandari (WW2), Shri Ashok Sajhwan (WW3), Shri D.S. Bhisht (WW4) were examined on behalf of the claimants. Shri K. Tulsiani entered the witness box to testify facts on behalf of the Institute.

15. Arguments were heard at the bar. Shri S.S. Lingwal, authorized representative, advanced arguments on behalf of the claimants. Shri Rakesh Aggarwal, authorised representative, raised submissions on behalf of the Institute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

16. At the outset, an incidental question was raised by Shri Aggarwal to the effect that the appropriate Government was the State Government. He presents that since Central Government was not concerned with the dispute hence it has no power to refer it for adjudication. Claim has been made that this Tribunal lacks jurisdiction to articulate the dispute, since the appropriate Government is the State Government. Shri Lingwal dispels submissions made by Shri Aggarwal.

17. For an answer to the above question, the term 'appropriate Government' is to be considered. Appropriate Government has been defined by clause (a) of section 2 of the Act, which definition is extracted thus:

"2(a) "appropriate Government" means —

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance

Act, 1948 (34 of 1948), or the Board of Trustees and the State Board of Trustees section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) or the Banking Service Commission Act 1975 or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, an company in which not less than fifty one per cent of the paid up share capital is held by the Central Government, or any Corporation, not being a Corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

- (ii) in relation to any other industrial dispute, the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government :

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the Stated Government, as the

case may be, which has control over such industrial establishment.

18. In relation to an industrial dispute, appropriate Government can either mean the Central Government or the State Government. The Central Government has been defined under section 3(8) and the State Government under section 3(60) of the General Clauses Act, 1897. In relation to an industrial dispute concerning—

1. an industry carried on or under the authority of the Central Government, or a railway company or
2. an such controlled industry as may be specified in this behalf by the Central Government, or
3. a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or
4. the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or
5. the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or
6. the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or
7. the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or
8. the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or
9. the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or
10. the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or
11. the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or
12. the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or
13. the Food Corporation of India established under section 3 of the Food Corporation Act, 1964 (37 of 1964), or

14. a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or
15. the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or
16. a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or
17. the Export Credit and Guarantee Corporation Limited, or
18. the Industrial Reconstruction Bank of India Limited, or
19. the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or
20. an air transport service, or
21. a banking company, or
22. an insurance company, or
23. a mine, or
24. an oil-field, or
25. a Cantonment Board, or
26. a "major port, or
27. any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or
28. any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or
29. the Central public sector undertaking, or
30. subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the appropriate Government would mean the Central Government".

19. In relation to an industrial dispute appropriate Government can either mean Central Government or State Government. In relation to any industrial dispute, other than those specified in sub-clause (i) of clause (a) of section 2 of the Act, appropriate Government would be State Government. In other words, all industrial disputes which are outside the purview of sub-clause (i) are concern of the State Government under sub-clause (ii) of clause (a) of Section 2 of the Act. Thus, the general rule is that an industrial dispute raised between employer and his employee would be referred for adjudication by the State Government, except in cases falling under section 2(a)(i) of

the Act. Consequently, where industrial dispute which does not fall within the ambit of section 2(a)(i) of the Act, appropriate Government cannot be the Central Government.

20. Now, it would be ascertained as to whether the Institute falls within the ambit of section 2(a)(i) of the Act so that the Central Government may exercise functions of the appropriate Government in the controversy. For an answer to this proposition, it would be taken note of as to whether the Institute is an industry carried on or under the authority of the Central Government or a controlled industry as specified in this behalf by the Central Government. For an industry to be carried on under the authority of the Central Government, it is to be shown that the industry belongs to the Central Government. The expression 'carried on by or under the authority of the Central Government' involves direct nexus with the industry through servants or agents of the Central Government. It is to be brought over the record that industry is being carried on pursuant to the authority of the Central Government. For that purpose, it should be an industry carried on directly by the Central Government.

21. Provisions of Chartered Accountants Act, 1949 are to be looked into to ascertain as to whether activities of the Institute are being carried on directly by the Central Government. As provisions of the aforesaid Act highlights, the Act was enacted by the Parliament to make provisions for regulation of profession of Chartered Accounts and for that purpose to establish the Institute. As section 3 of the said Act speaks, that the Institute is a body corporate which has perpetual succession and common seal. It has powers to acquire, hold and dispose off property, both movable as well as immovable and shall be by its name sue or be sued. Members of the Institute shall be divided into two classes, designated as associates and fellows, who shall be known as Chartered Accountants. Functions of the Institute shall be discharged by a Council composed of not more than 30 members, out of whom six shall be nominated by the Central Government. Members other than the nominated members shall be elected by the members of the Institute from amongst fellows in such a manner and from such regional constituencies as may be specified by the Central Government. The Council, at first meeting, shall elect its President and Vice President. The President shall be the Chief Executive authority of the Council. President or the Vice President shall hold office for a period of one year and shall be eligible for re-election.

22. Section 15 of the aforesaid Act enacts that duty to carry out provisions of the Act shall vest in the Council. Sub-section (1) of the said section stipulates that duty to carry out provisions of the Act shall be vested in the Council. Sub-section (2) enlists duties of the Council, which are detailed as follows:

"(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the

Council shall include —

- (a) the examination of candidates for enrolment and the prescribing of fees therefor;
- (b) the regulation of the engagement and training of articled and audit assistants;
- (c) the prescribing of qualifications for entry in the Register;
- (d) the recognition of foreign qualifications and training for the purposes of enrolment;
- (e) the granting or refusal of certificates of practice under this Act;
- (f) the maintenance and publication of a Register of persons qualified to practice as chartered accountants;
- (g) the levy and collection of fees from members, examinees and other persons;
- (h) the removal of names from the Register and the restoration to the Register of names which have been removed;
- (i) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (j) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner of research in accountancy;
- (k) the maintenance of a library and publication of books and periodicals relating to accountancy;
- (l) the exercise of disciplinary powers conferred by this Act.

23. The Council shall constitute, from amongst its members, standing committees, namely, (1) Executive Committee (ii) Examination Committee, and (iii) Disciplinary Committee. A fund shall be established, under the management and control of the Council. The Council shall keep accounts of all the funds, may invest any money or fund in any Government security or may borrow funds from scheduled banks, as defined by Reserve Bank of India. The Council may remove name of any member from the register of the Institute, as enacted by section 20 of the said Act. On a complaint made to the Council, the Disciplinary Committee may initiate action against a member when he commits professional misconduct. Appeal against order passed under sub-section (4) of section 21 relating to his reprimand or removal of name from the register, may be made to the High Court.

24. The Council may make regulation for the purpose of carrying out objects in the said Act. Thus regulations may provide for all or any of the following matters:

"In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters:—

- (a) the standard and conduct of examinations under this Act;
- (b) the qualifications for the entry of the name of any person in the register as a member of the Institute;
- (c) the conditions under which any examination or training may be treated as equivalent to the examination and training prescribed for members of the Institute;
- (d) the conditions under which any foreign qualification may be recognized;
- (e) the manner in which and the conditions subject to which applications for entry in the Register may be made;
- (f) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates;
- (g) the manner in which elections to the Council and the Regional Councils may be held;
- (h) the particulars to be entered in the Register;
- (i) the functions of Regional Councils;
- (j) the training of articled and audit clerks, the fixation of limits within which premia may be charged from articled clerks and the cancellation of articles and termination of audit service for misconduct or for any other sufficient cause;
- (k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (l) the carrying out of research in accountancy;
- (m) the maintenance of a library and publication of books and periodicals on accountancy;
- (n) the management of the property of the Council and the maintenance and audit of its accounts;
- (o) the summoning and holding of meetings of the Council, the times and places of such meetings, the conduct of business thereat and the number of members necessary to form a quorum;
- (p) the powers, duties and functions of the President and the Vice-President of the Council;
- (q) the functions of the standing and other committees and the conditions subject to which such functions shall be discharged;

- (r) the terms of office, and the powers, duties and functions of the Secretary and other officers and servants of the Council;
- (s) the exercise of disciplinary powers conferred by this Act; and
- (t) any other matter which is required to be or may be prescribed under this Act."

25. Section 30-A of the said Act empowers the Central Government to direct the council to make any regulation or to amend or revoke any regulation already made. When the Council fails to make a regulation or amend or revoke a regulation already made, the Central Government is empowered to amend or revoke such regulations. Regulations made are to be laid before each House of Parliament, as enacted by section 30-B of the said Act.

26. In the light of the above facts, it would be ascertained as to whether the Institute acts under directions or control of the Central Government. At the cost of repetition, it is pointed out that only 6 members are nominated to the Council by the Central Government, while 24 members are to be elected by the members from amongst themselves. The Council elects its President and the Vice President. 6 nominated members themselves cannot take decisive role to elect President or Vice President. Thus, it is evident that constitution of the Council or election of President and the Vice President are not directed or regulated directly by the Central Government.

27. Power of the Central Government to direct the Council to make any regulation or amend or revoke such regulation, already made, would not highlight that the Central Government has complete control over the Council. These reasons persuade me to comment that it has not been brought over the record that activities of the Institute are being carried on directly by the Central Government. It would be wrong to conclude that the Institute is an industry carried on or under the authority of the Central Government.

28. However, there is other facet of the coin. As the aforesaid Act declares, the Institute is a body corporate having perpetual succession and common seal. It has power to acquire, hold and dispose off property, both movable and immovable and shall by its name sue or be sued. A corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the decision of its institutions or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence. *See Halsbury's Law of England* (3rd

Edition, Vol. 9, pp. 4). As detailed above, all these attributes are therein the Institute. The Institute acts as an independent organization, established by the aforesaid Act. Therefore, it is crystal clear that the Institute answers all characteristics of a corporation, which has been established under the aforesaid Act, enacted by the Parliament. This brings it to the light of the day that the Institute is a corporation established by law made by the Parliament and in respect of it, appropriate Government is the Central Government. Resultantly, it is announced that the objection taken by the Institute that the appropriate Government is the State Government is uncalled for.

29. Assuming, though not admitting, that the Central Government is not the appropriate Government for the dispute under reference, in such a situation question would be as to who shall be the appropriate Government for the dispute? Answer has been provided in clause (a)(ii) of section 2 of the Act, which contemplates that in relation to any other industrial dispute the State Government is the appropriate Government. However, this Tribunal is not oblivious of the proposition that Union Territory of Delhi enjoins a special status under the Constitution. Delhi is a Union Territory having some special provisions with respect to its administration. Article 239 of the Constitution speaks that every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. Article 239AA makes special provisions with respect to Delhi, detailing therein that the Union Territory of Delhi shall be called the National Capital Territory of Delhi and the administrator thereof appointed in article 239 shall be designated as the Lieutenant Governor. There shall be Legislative Assembly, and provisions of article 324 to 327 and 329 shall apply in relation the Legislative Assembly of the National Capital Territory of Delhi as they apply in relation to a State. The Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to the matters enumerated in the State List or the Concurrent List except the matters with respect to entries 1, 2 and 18 of the State List and entries 64, 65 and 66 of that list, in so far as they relate to the said entries 1, 2 and 18. The Council of Ministers shall be headed by the Chief Minister to aid and advise the Lt. Governor in exercise of his functions in relation of the matters with respect to which the Legislative Assembly has power to make laws. In case difference of opinion between Lt. Governor and his ministers on any matter, the Lt. Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision the Lt. Governor is competent to take action in urgent matters. The Chief Minister shall be appointed by the President and Ministers shall be appointed by the President on the advice of the Chief Minister. Therefore, it is evident that though a Legislative Assembly is there in National Capital

Territory of Delhi, yet it is a union territory administered by the President through the Administrator appointed by him. In case of difference of opinion between the Administrator and the Ministers, it is the decision of the President that prevails. Consequently the State Government merges with the Centre when Lt. Governor administer the Union Territory or in case of difference of opinion the President decides the issue.

30. High Court of Delhi was confronted with such a proposition in *M.K. Jain* (1981 Lab. I.C.62) wherein it was laid as follows:

"The award was sought to be voided, *inter alia*, on the ground that by virtue of the constitution and composition of the Corporation, Central Government was the only authority competent to make a reference of the dispute to the Industrial Court and that the reference by the Lieutenant Governor of Delhi was, therefore, in excess of powers. Even otherwise no exception could be taken to the order of reference, even if it be assumed that Central Government was the appropriate Government, in as much as the distinction between the Central and the State Government in relation to the Union Territory in our constitutional framework is rendered illusory, Union Territory is administered by the President of India under Article 239 of the Constitution of India, acting to such extent as he thinks fit. Therefore the Administrator, to be appointed by him, in the case of Union Territory, there is an amalgamation of the constitutional classification of legislative and executive powers between the Centre and the States. According to section 3(60) of the General Clauses Act, the "Central Government "in relation to the administration of Union Territory means the Administrator acting within the scope of authority given to him under article 239 of the Constitution of India and in terms of section 3(60) of the General Clauses Act, "State Government" as respects anything done or to be done in the Union Territory means the Central Government. In the case of Union Territory, therefore, the Central and State Governments merge and it is immaterial whether an order of reference is made by one or the other. This contention must, therefore, fail".

31. Again in *Mahavir* [97 (2002) DLT 922] the High Court was confronted with the same proposition. Relying the precedent in *M.K. Jain* (supra) with profit it was ruled that reference made by the Government of NCT of Delhi was not bad despite the fact that appropriate Government was the Central Government. Difference of State Government and Central Government goes to the brink of abolition when State Government has been defined as the Central Government by clause (60) of section 3 of the General Clauses Act and Delhi is being administered by

the President through the Administrator appointed by him. Therefore, the aforesaid precedents make it clear that a status of Union Territory of Delhi can be termed as Central Government in certain matters. In such a situation, reference of the dispute made by the Central Government would not make any difference. Objections raised by the Institute is to be discarded on this count too. Resultantly, it is concluded that the Central Government was the appropriate Government, competent to make a reference of the dispute to this Tribunal. The Tribunal has rightly invoked its jurisdiction under sub-section (4) of section 10 of the Act to adjudicate it.

Issue No.1

32. In his affidavit Ex.WW1/A, tendered as evidence, Shri Pradeep Singh Rawat unfolds that he joined the Institute as Lower Division Clerk on 23.02.1993. He was selected by the Institute after holding an interview. He was in continuous service of the Institute. His attendance was being recorded in an attendance register maintained by the Institute. During the course of cross examination, he concedes that no interview letter was issued in his favour by the Institute. He further admits that there is no documents in his possession to show that his salary was ever paid by the Institute. However, he disputes the proposition that he was engaged by the contractor. Shri Kundan Singh Bhandari concedes in his affidavit Ex.WW2/A that he was employed as Lower Division Clerk by the contractor. He also makes a candid admission that his wages were paid to him by the contractor.

33. Shri Tulsiani details in his affidavit Ex.MW1/A that the claimants were engaged by the contractor. The contractors used to pay their wages. There was no relationship of employer and employee between the claimants and the Institute. Contractor was outsourcing manpower for the Institute since 1993-94.

34. When facts unfolded by Shri Pradeep Singh Rawat, Shri Kundan Singh Bhandari and Shri Tulsiani are appreciated, it came to light that the claimants depose that they were employees of the Institute. However Shri Rawat admits that there was no document in his possession to project that his wages were ever paid to him by the Institute. Shri Bhandari makes an admission to the effect that he was engaged by the contractor. He also does not dispute that his wages were paid to him by the contractor. To substantiate the claim put forth by the Institute, Shri Tulsiani presents that claimants were employees of the contractor, who used to pay their wages.

35. Question for consideration would be as to how relationship of employer and employee is created? For an answer to this proposition, it is to be taken note of as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A

contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

36. Whether claimants could establish above parameters? As detailed above, ocular facts are brought over the record to establish that the claimants were engaged by the Institute. Shri Bhandari admits his engagement by the contractor. However ample evidence came over the record to conclude that the contractor acted as an agent of the Institute in that regard. Shri Rawat claims that he was engaged by the Institute, which testimony remained uncorroborated since no appointment letter or wage slip was produced by this witness. On the other hand Shri Tulsiani asserts that they were employed by the contractor to whom work of supply of manpower was awarded by the Institute.

37. Shri Tulsiani, highlights that there was no written agreement between the contractor and the Institute. According to him, contractor used to provide 25-30 employees to the Institute in pursuance of oral agreement between the parties. In such a situation, the Tribunal had to examine the ocular facts deposed by the parties to ascertain as to whether the parole agreement was genuine one. When facts unfolded by Shri Tulsiani are scanned, it came to my notice that he concedes that attendance register Ex.WW1/1 contains names of regular employees of the Institute, besides the daily wagers. When Ex.WW1/1 is perused, it emerged that names of the claimants are also recorded therein besides regular employees of the Institute. Ex.WW1/1 is an attendance register, which document purports to have been maintained by the Institute. Attendance of the claimants were recorded by the Institute to keep not only record of their presence at place of work but to exercise control over them. When their names were entered in the register, alongwith the regular employees, the Institute attempted to exercise administrative control over them.

38. There is a candid admission by Shri Tulsiani to the effect that the employees sent by the contractor were interviewed by the Institute. He further concedes that educational qualifications of these employees were scrutinized by the Institute and thereafter, they were engaged on job. From these facts, it creeps over the record

that the contractor had sent a few persons to the Institute, whose suitability and eligibility were assessed by the Institute before engaging them on job. It was the Institute who had interviewed them and on being satisfied about their eligibility to perform the job, they were engaged. Their educational qualifications were also scanned. Procedure adopted by the Institute was analogous of recruitment of an employee. Consequently, I am of the considered view that the contractor acted as an agent, when he sent certain persons to the Institute and the Institute examined their eligibility and suitability as an employer. Thus, it is apparent that the claimants were engaged/appointed by the Institute and not by the contractor.

40. Ex.WW1/2 is an office note recorded by the Assistant Secretary. Proposal was made by the Assistant Secretary in the said note to the effect that services of Shri Pradeep Singh Rawat may not be terminated since he was engaged on important work of fee adjustment/fee payment entry/fee filing job, which job was highly technical in nature. Ex.WW1/3 is other note initiated by the Section Officer, wherein he highlights that Shri Pradeep Singh Rawat, Anand Bhardwaj and Shri Bhagat Singh Rawat, were doing work relating to fee receipts, removal of names, fellowship and dispatching of letters. It was suggested therein that suitable breaks be given in services of Shri Pradeep Singh Rawat, Anand Bhardwaj and Shri Bhagat Singh Rawat since they were doing important work as referred above. It was requested that their services may be retained after minimum breaks. Ex.WW1/4 is another office note initiated by the Deputy Secretary wherein he presents that Shri Anand Bhardwaj and Pradeep Singh Rawat are given work in NRO(Member Section) for which no replacement would be possible. Therefore, these documents make it apparent that it was the Institute who was taking a decision for continuity of service of the daily wagers. Their suitability and valuable experience were taken into account and further extensions were given in their service after minimum breaks. It stood established that the Institute exercised functions of an employer when services of the aforesaid persons were extended from time to time. Administrative, managerial, disciplinary and financial powers were exercised by the Institute in respect of service rendered by the daily wagers. Device of making payment of their wages through the contractor was adopted by the Institute with a view to evade beneficial labour legislation. It is absolutely clear the contractor was an agent of the Institute who used to send person for engagement by the latter to work as Lower Divisional Clerks and Peon. In fact they were engaged by the Institute and not by the contractor. Relationship of employer and employee existed between the Institute and daily wagers, so engaged.

Issue No. 2.

41. Now, it would be ascertained as to whether claimants rendered continuous service of more than 240 days in preceding 12 months from termination of their

services. For an answer to this proposition, it is expedient to know what term "continuous service" means. Term "continuous service" has been defined by section 25-B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if 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 for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

42. In *Ramakrishna Ramnath* [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one year's service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

43. When the workman concerned fails to establish that he worked for at least 240 days in the year, he cannot claim protection against termination of his services in order to seek regularization of his services on monthly salary with benefits like pension, gratuity etc. Interruption of

service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workman has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section 2 of section 25 B of the Act. Question for consideration comes as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. Apex Court was comprehended with such a proposition in *American Express Banking Corporation* [1985(2) LLJ 539]. It was ruled therein that the expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Court ruled that Sundays and other holidays, would be comprehended in the words 'actual work' and its countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. The court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in *Lalappa Lingappa* [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in *Standard Motor Products of India Ltd.* [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

44. Except *Pradeep Singh Rawat* and *Kundan Singh Bhandari* other claimants have not come forward to depose facts to establish that they rendered continuous service of 240 days in a calendar year with the Institute. It was incumbent on them to lead evidence to show that they had in fact worked for 240 days in the year preceding their termination of service. Onus lies on a workman to establish that he rendered continuous service of 240 days in the year preceding termination of his service, to avail benefit of the provisions of section 25-F read with section 25-B of the Act. Since no evidence has been adduced, hence it is concluded that the claimants, other than those who entered the witness box, failed to establish that they had rendered continuous service of 240 days in preceding one year from the date of termination of their services. They are not entitled to any benefit under the provisions of section 25-F of the Act.

45. Shri Kundan Singh Bhandari details self serving words in his affidavit Ex.WW2/A to the effect that he rendered continuous service of 240 days to the Institute from February 1995 onwards. He had relied documents Ex.WW2/1 to Ex.WW2/9 in support of his case. These documents do not project that Shri Bhandari rendered service of 240 days with the institute in any calendar year. Certain documents, obtained under Right to Information Act 2005, were put to Shri Tulsiani during the course of his cross-examination. When these documents are scanned, it came to light that Shri Bhandari worked with the Institute for 21 days in March 95, 16 days in April 1995, 21 days in May, 1995 and 22 days in June, 1995, as emerge out of Ex.MW1/6, Ex.MW1/23 and Ex.MW1/26. He worked for 20 days in Feb. 1996, 19 days in March, 1996 and 4 days in April 1996, as peep out of Ex.MW1/W37, Ex.MW1/W28 and Ex.MW1/W29. Except the days, referred above, no other period came to light for which Shri Bhandari worked with the Institute. On the other hand, he admitted that he worked as a contractor for the Institute, who stitched uniform for its employees. These facts make me to comment that Shri Bhandari could not establish by cogent evidence that he rendered continuous service of 240 days in the preceding year from the date of termination of his service by the Institute. He cannot avail benefit of the provisions of section 25-F of the Act.

46. Shri Pradeep Singh Rawat also detailed self serving words in his affidavit Ex.WW1/A. Shri Ashok Sajwan and Shri D.S.Bist could not establish his case, in the matter of his rendering continuous for 240 days in any of the calendar year. Shri Bist tried to speak by his memory in that regard, which facts cannot substantiate his claim. Documents, put to Shri Tulsiani in his cross-examination, when scanned highlight that Shri Rawat worked for 169 days from February, 1993 to December, 1993, worked for 91 days upto 30 June, 1994, 26 days in March and April 1995, 66 days from July to October 1996 and 91 days from April 1997 to June 1997. As projected on his behalf, during the course of arguments, he rendered 222 days continuous service with effect from 23 February, 1993 till December 1993. Thus it is crystal clear that Shri Rawat had failed to discharge onus to prove that he rendered continuous service of 240 days in the preceding year from the date of termination of his service.

47. The word "retrenchment" has been defined in the Act in very wide sense. Termination of service of an employee for whatsoever reasons, other than the exceptions provided in clause (oo) of section 2 of the Act, would amount to retrenchment. When an employee renders continuous of one year, as contemplated by the provisions of section 25-B of the Act, condition pre-requisite to retrenchment of the workman are enacted in section 25-F of the Act. But in the case in hand, none of the claimants could establish that they rendered continuous service of 240 days in the preceding year from the date of their

retrenchment. Hence they are not entitled to benefit/ protection of section 25-F of the Act.

48. No evidence has been adduced by the claimants to the effect that any junior to them was retained by the Institute, when their services were terminated on 31.7.1997. There is absolute vacuum of evidence on the issue as to whether the Institute recruited some other persons, after termination of services of the claimants. Hence provisions of section 25-G and 25-H of the Act do not come into play. In view of the foregoing reasons it is clear that retrenchment of the claimants do not offend the provisions of the Act. No reasons are there to say that the claimants had a case for regularization of their services. Resultantly, the claimants could not show any illegality or unjustifiability in the action of the Institute. Their claim is brushed aside. An award is passed in favour of the Institute and against the claimants. It be sent to the appropriate Government for publication.

Dated : 5-7-2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 30 अगस्त, 2013

कांआ 2128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14), की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ संख्या 2/100/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.07.2013 को प्राप्त हुआ था।

[सं एल-31011/05/2005-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 30th August, 2013

S.O. 2128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/100 of 2005) of the Cent. Govt. Indus. Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mumbai Port Trust, and their workman, which was received by the Central Government on 25.07.2013.

[No. L-31011/05/2005-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

Present : K.B. KATAKE, Presiding Officer

Reference No. CGIT-2/100 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST

The Chairman

Mumbai Port Trust
Port Bhavan
Ballard Estate
Mumbai-400038.

AND

THEIR WORKMEN

The Secretary
Mumbai Port Trust Dock & General Employees Union
Port Trust Kamgar Sadan
Nawab Tank Road Mazgaon
Mumbai 400 010.

Appearances:

FOR THE EMPLOYER: Mr. Umesh Nabar, Advocate.

FOR THE WORKMEN: Mr. J. H. Sawant, Advocate.

Mumbai, dated the 1st July, 2013

AWARD PART-I

1. The Government of India, Ministry of Labour & Employment by its Order No.L-31011/5/2005 -IR (B-II) dated 22.08.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Mumbai Port Trust by imposing the punishment of reducing the pay by five stages in respect of Shri M.K. Raghuvansh, Security Guard is justified? If not, what relief the workman Shri M. K. Raghuvansh is entitled to ?"

2. After receipt of the reference notices were issued to both the parties. In response to the notice the second party workman filed his statement of claim at Ex-7. According to the second party he is working with first party since 1982 as Security Guard. It is contended that on 15th/16th January 2000 the workman was on duty at Red Gate Victoria Dock (inside). During night shift dated 15th/16th January 2000 a theft took place at Orange Gate Princess Dock. A container sped away without showing any documents at the said gate. The security guard and the staff posted on the gate tried to stop the said container, but in vain. However, surprisingly the concerned officer, Mr. Almeida lodged a complaint with Yellow Gate Police Station after 3 days *i.e.* on 19/1/2000. At the relevant time the workman was performing his duty at Red Gate Victoria Dock. At the behest of some security officers of MbPT, and with the help of Yellow Gate Police Station, the workman was falsely implicated in this case. Departmental inquiry was initiated against the workman and others by the management. Workman was dismissed from service by order dt. 14.07.2003. Workman preferred an appeal against the said order before the Ld. Chair Person who *vide* her

order dt. 22.1.2004 set aside the order of dismissal and imposed punishment to reduce the pay of the workman by five stages. Meanwhile the Ld. Metropolitan Magistrate *vide* order dt. 6.10.2003 passed in CR. 3/2000 acquitted the workman. Therefore workman filed industrial dispute before the ALC (C). On the failure report of ALC (C), Ministry sent the reference to this Tribunal.

3. It is further contended that the inquiry proceedings were conducted in violation of principles of natural justice and to the provision of MBPT employees (Classification, Control and Appeal) *i.e.* Complete Regulation, 1976. The IO has not taken into account the entire evidence on record and gave findings without application of mind and ignoring the documents produced by the defence side. IO acquitted another security guard Shri S.G.Singh who was also arrested by the police and acquitted by the Metropolitan Magistrate Court. However gave findings against the workman. Therefore he prays to set aside the order dated 22.1.2004, and to treat the period of suspension preceding the date of dismissal order and the period between date of dismissal order and the date of reinstatement as on duty and all consequential benefits.

4. The first party management resisted the statement of claim of the workman *vide* their written statement at Ex-8. According to it the averments and submissions of the workman in the statement of claim are false. The claim of the second party is misconceived, malafied and not maintainable. The second party workman had intentionally violated rules of discipline repeatedly and had undergone punishment for the same. He took it casually and did not show any improvement. On the other hand he had shown total disregard towards his work and duty. The punishment was imposed on him for serious misconduct.

5. According to the first party the second party workman was appointed as a Security Guard since July 1982. During his tenure he committed misconduct such as threatening superiors, picking up altercations with colleagues, sleeping while on duty, playing cards while on duty and absconding from duty point. For these misconducts four minor penalties were imposed upon the workman and he was warned several times to mend his ways and improve his conduct. The workman and 12 other employees were charge-sheeted for speeding away with trailer loaded with a container and theft of its contents. Complaint was lodged with Yellow Gate Police Station. Police sent the charge sheet to M.M. Court. The disciplinary action was initiated against the employees including the second party. The Inquiry officer was appointed. The copies of the charge sheet were served on him. The IO has given him fair and sufficient opportunity to defend himself. In the departmental inquiry the second party workman was found guilty and he was dismissed from service *w.e.f.* 14/07/2003. In appeal, the Appellate Authority considered the fact that in criminal case the

workman was acquitted thus took lenient view and modified the order of dismissal and reinstated the workman in service and imposed punishment of reducing his pay by five increments with prejudice to his future increments. The inquiry was just and proper and the findings are based on the evidence on record. They are consistent to the facts, circumstances and evidence. The Punishment is reduced by the Appellate Authority and it is not shockingly disproportionate. Therefore they pray that, the reference be rejected.

6. The workman filed rejoinder at Ex-9. He denied the allegations and contents in the written statement and reiterated his averments in the statement of claim.

7. Following are the two preliminary issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Is inquiry fair and proper?	Yes.
2.	If findings perverse?	No.

REASONS

Issue No.1 :

8. In this respect the Id. adv. for the first party at the outset submitted that it is vaguely contended in the statement of claim and affidavit that there was violation of principles of natural justice and fair and proper opportunity was not given to the workman to defend himself before the Inquiry Officer. However there is no specific pleading as to how there was violation of principle of natural justice. On the other hand the Id. adv. pointed out that there is no dispute that the workman and 13 others were served with charge sheet. The workman has admitted in his cross examination at Ex-15 that he was represented by their union leader Mr. Apraj. He also admitted that the IO has taken on record all their objections. He has also admitted that copies of documents produced by management were given to them. He also admitted in his cross that his defence representative cross examined all the witnesses in the inquiry proceeding and he was present on all the dates and had participated in the inquiry proceeding. It shows that inquiry officer has given him full and fair opportunity to defend himself. The workman has not pointed out specifically the fault in the inquiry proceeding. In the circumstances such a vague allegation of violation of principles of natural justice are not sufficient to set aside the inquiry. On the other hand after perusing the cross examination of the workman at Ex-15 it is revealed that the inquiry officer had given fair and proper opportunity to the workman to defend himself through his defence representative, Mr. Apraj. On the point Apex Court ruling can be resorted to in *Sur Enamel and Stamping Works Ltd.*

Vs. Their Workmen 1963 II LLJ 367 wherein the Hon'ble Apex Court laid down the following conditions for fair and proper domestic inquiry. They are:

- (1) The employee proceeded against has been informed clearly of the charges levelled against him;
- (2) The witnesses are examined-ordinarily in the presence of the employee in respect of the charges;
- (3) The employee is given a fair opportunity to cross examine witnesses;
- (4) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter; and
- (5) The inquiry officer records his findings with reasons for the same in his report.

9. As per the aforesaid guidelines of the Apex Court all the points were complied with. The workman was informed clearly the charges levelled against him. The inquiry was conducted in presence and all the witnesses were examined in his presence. Copies of all the documents were given to him. He was given fair and proper opportunity to cross examine all the witnesses. He was given fair opportunity to examine witnesses including himself in his defence and the Inquiry Officer has recorded his findings with reasons for the same in his report. In this backdrop I come to the conclusion that the inquiry was fair and proper. Accordingly I decide this issue no.1 in the affirmative.

Issue No.2:

10. In respect of the findings of the Inquiry Officer it is vaguely contended that they are perverse. However details thereof are not given as to how they are perverse. On the other hand the findings of the IO are based on and are in consonance with the evidence on record. All the witnesses were examined in presence of the workman and they were thoroughly cross examined by the defence representative of the workman. However nothing adverse was revealed. The evidence on record indicates the guilt of the workman. In this respect the Id. adv. for the second party mainly relied upon the fact that the workman was acquitted by the Metropolitan Magistrate in the criminal case in respect of the same incident and on the basis of same evidence which was before Inquiry Officer. Therefore he submitted that the findings of the IO are perverse as they are contrary to the findings recorded by the Criminal Court. In this respect it was rightly pointed out by the Id. adv. of the first party that, the law on the point is well settled that in criminal trial the standard of proof is very high. The charge therein is required to be proved beyond all reasonable doubts. Whereas in the domestic inquiry standard of proof is not that high as like in criminal trials and preponderance of probability suffice the purpose. Therefore though the workman was acquitted in the criminal trial it need not affect the verdict and the findings

of the IO as there is difference in standard of proof as observed above. On the point Apex Court ruling can be resorted to in Suresh Pathrela Vs. Orient Bank of Commerce 2007 2 SCT 715 wherein Apex Court observed that;

"It is well settled principle of law that the yardstick and standard of proof in criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in departmental proceeding is preponderance of probability. "

11. The findings of the Inquiry Officer which are based on the evidence on record and consistent thereto thus the same cannot be called perverse merely as the workman is acquitted in the criminal case. In this respect I would also like to point out that, the Tribunal is not sitting as an appellate court to scrutinize the findings which are *prima facie* based on the evidence on record. On the point Apex Court ruling can be resorted to in US State Road Transport Corporation & Ors Vs. Musais Ram & Ors. 1999 (83) FLR 226 (SC) wherein on the point Hon'ble Court observed that:

"The Court does not sit in appeal over the findings of the Inquiry Officer. If the findings are based on uncontroverted material placed before the IO, it cannot be said that these findings are perverse."

12. In short, as the findings of the Inquiry Officer are based on evidence before him and are not contrary to the evidence on record thus the same cannot be called perverse. In the circumstances I hold that the findings of the IO are not perverse. Accordingly I decide this issue no.2 in the negative and proceed to pass the following order:

ORDER

- (i) The inquiry is held fair and proper.
- (ii) Findings of the Inquiry Officer are not perverse.
- (iii) The parties are directed to argue/lead evidence on the point of quantum of punishment.

Dated : 1-7-2013

K.B. KATAKE, Presiding officer

नई दिल्ली, 3 सितम्बर, 2013

कांआ 2129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कार्पोरेशन बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोहलापुर के पंचाट (संदर्भ संख्या 37/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2013 को प्राप्त हुआ था।

[सं एल-12012/19/2001-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd September, 2013

S.O. 2129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2001) of the Labour Court, Kolhapur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Corporation Bank and their workman, which was received by the Central Government on 20.06.2013.

[No. L-12012/19/2001-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

PRESIDING OFFICER, LABOUR COURT NO. 1, KOLHAPUR

(Before Shri. B.C. Kamble)

Reference No. 37/2001

Exh. No.

The Chairman & Managing Director,
Corporation Bank, Head Office,
Mangaladevi Temple Road, P.B.No.88,
Mangalore -575 001.

..First Party

Vs.

Kundan Dattatraya Satpute,
61 -B, Subhash Nagar,
Kolhapur -416 002.

..Second Party

APPEARANCES : Adv. Shri. U.B. Jadhav for first party.

Adv. Shri. D.S. Joshi for second party.

AWARD

(Date: 17-05-2013)

This is a reference referred by Central Government of India under Section 10 of Industrial Disputes Act.

2. Brief facts of reference are as under—

It is averred by Second party that he was temporary/ daily wages employee and thereafter he was regularized as peon from 22-12-1982 in the employment of the first party. on 10.04.1995 Royal Stores Kolhapur has made complaint to the first party bank that they have not received amounts of the material purchased by the bank for the period from 11-01-1994 to 17-02-1995. On 14-09-1995 the owner of Royal Stores Kolhapur has informed to the first party bank that they have received due amount from the bank and that they have issued receipt to the bank. In spite of this fact the first party bank issued charge-sheet to the second party and suspended him by an order dated 09-11-1995 alleging

therein that he has misappropriated an amount of Rs. 6082/- They have conducted departmental enquiry against him. They have not followed principles of natural justice in the enquiry. The findings of the Enquiry officer are perverse. They have not considered his past unblemished service record. On 30-12-1996 they have illegally terminated his service. He has filed first & second departmental appeal but both appeals are rejected. Punishment is shockingly disproportionate. He is sole bread earner of his family. Lastly, he has prayed for reinstatement with continuity of service and full back wages.

3. In pursuance of notice first party appeared and filed their W.S. at Exh. C-16. They have resisted and denied contentions by second party in statement of claim. They have stated that second party has committed misappropriation of an amount of Rs. 6082/-. They have given charge-sheet to the second party. Second party workman has taken participation in enquiry. They have followed principles of natural justice. They have given proper opportunity to second party to lead his evidence-Enquiry officer has rightly come to the conclusion that the second party has misappropriated an amount of Rs. 6082/- and committed misconduct. Departmental first and second appeal are dismissed. Punishment is legal and proper. Lastly they have prayed for dismissal of reference with costs.

4. Second party workman has not filed any document in a reference.

5. First party has submitted documents with list at Exh. C-24, C-36, C-40 and C-42.

6. Second party workman Shri. Kundan Dattatraya Satpute examined himself at Exh. U-46 and filed evidence close purshis at Exh. U-48.

7. First party has examined witnesses Shri Prakash Khemchand Shah, Shri. V. Suryanarayan and Ashok Bajirao Patil at Exh. C-35, C-38 and C-41 respectively. In spite of given sufficient opportunity first party has failed to adduce evidence in a reference. Their evidence is closed *vide* order passed below Exh. U-9 on 23-07-2009.

8. Following issues are framed at Exh. O-17 and I have recorded my findings against them for the reasons stated below.

ISSUES	FINDINGS
01) Whether enquiry conducted against second party is fair and proper?	.Redundant
02) Whether finding of Enquiry officer is perverse?	.Redundant
03) Whether termination of service of second party is illegal?	.No.
04) Whether second party is entitled for reinstatement with full back wages as prayed for?	.No.

05) What order? ..As per final order.

REASONS

9. **Issue Nos. 1 & 2 :—** It appears that on 16-02-2009 Court has held that enquiry conducted against second party is illegal and finding of enquiry officer is perverse. Therefore Issue Nos. 1 and 2 would be redundant. Accordingly, I record my finding on issue Nos. 1 and 2.

10. **Issue Nos. 3 & 4:—** As per contention of second party that he was temporary/daily wages employee and thereafter he was regularized as peon from 22-12-1982 in the employment of the first party. On 10-04-1995 Royal Stores Kolhapur has made complaint to the first party bank that they have not received amount of the material purchased by the bank for the from 11-01-1994 to 17-02-1995. On 14-09-1995 the owner of Royal Stores Kolhapur has informed to the first party bank that they have received due amount from the bank and that they have issued receipt to the bank. In spite of this fact the first party bank issued charge-sheet to the second party and suspended him by an order dated 09-11-1995 alleging therein that he has misappropriated an amount of Rs. 6082. They have conducted departmental enquiry against him. They have not followed principles of natural justice in the enquiry. The findings of the Enquiry officer are perverse. They have not considered his past unblemished service record. On 30-12-1996 they have illegally terminated his service. He has filed first & second departmental appeal but both appeals are rejected. Punishment is shockingly disproportionate. While first party have stated that second party has committed misappropriation of an amount of Rs. 6082/-. They have given charge- sheet to the second party. Second party workman has taken participation in enquiry. They have followed principles of natural justice. They have given proper opportunity to second party to lead his evidence. Enquiry officer has rightly come to the conclusion that the second party has misappropriated an amount of Rs. 6082 and committed misconduct. Departmental first and second appeal are dismissed. Punishment is legal and proper. Now it has to be seen to termination of service of second party is illegal.

11. **Ld. Advocate for second party has submitted as under—**

- (1) That, second party was working as peon with first party.
- (2) That, on 14-09-1995 the owner of Royal Stores Kolhapur has informed to first party bank that they have received due amount from bank.
- (3) That, on 10-04-1995 Royal Stores Kolhapur has given inadvertently letter to first party bank.

- (4) That, second party has not misappropriated an amount of Rs. 6082.
- (5) That, first party has not considered his past unblemished service record.
- (6) That, first party have illegally terminated his service.
- (7) That, punishment is shockingly disproportionate.
- (8) That, second party is entitled for relief as prayed for.

12. Ld. Advocate for first party has submitted as under and in support of his contention he has filed citation thereunder—

- (1) That, on 10-04-1995 Royal Stores Kolhapur has given letter contending that sum of Rs. 6287 is due from bank.
- (2) That, second party has misappropriated an amount of Rs. 6082 and the management has lost faith in such employee.

2010 III C.L.R. Pg. No. 526, Beerth Rau Ke Co-op... & Anr. Vs. Presiding Officer & Ors.

- (3) That, charges against second party are not casual in nature and are serious.

2005 I C.L.R. Pg.No. 821, Damoh Panna Sagar Rural Regional Bank & Ors. Vs. Munna Lal Jain

- (4) That, departmental first and second appeals are dismissed.
- (5) That, punishment is legal and proper.
- (6) That, second party is not entitled for relief as prayed for.

13. On perusal proceeding and documents placed on record it appears that second party has stated that he was working as peon with first party bank. He has regularly paid an amount in respect of stationary supplied by Royal Stores Kolhapur. Shri Prakash Khemchand Shah — proprietor Royal Stores, Kolahpur has disposed before Enquiry Officer that he has received money of bills entirely. They have used to receive bill amount regularly as and when stationary was supplied and credit memos were issued to the bank, because they keep on changing clerks, new clerks could not maintain cash received record correctly, hence they wrote above mentioned letters *i.e.* letters dated 10-04-1995 and 19.04.1995 to the bank. Second party has further stated that he has not misappropriated an amount of Rs. 6082. Bank has not considered his past not unblemished service record. They have illegally terminated his service.

14. First party has examined to Shri Prakash Khemchand Shah. He has stated that second party was taking out stationary from their shop. He was paying an amount to them. They were giving receipts to him. On 10-04-1995 they have issued letter to first party bank contending that they have not received amount of Rs. 6287 for materials purchased by bank for period from 11-01-1994 to 17-02-1995. On 19-04-1995 they have received an amount of material supplied to bank.

15. It has come in evidence of management witness Shri. V. Suryanarayan that the bank use to purchase the stationary material from Royal Stores, Kolhapur. The said material was purchased through sub staff Shri. Kundan Satpute *i.e.* second party. The bank received complaint from M/s. Royal Stores dated 10-04-1995. Said complaint is on record at Exh. C-35 Sr.No. 1. As per said complaint M/s. Royal Stores communicated to the bank that the amount of Rs. 6287 were dues to the Royal Stores from the bank. When said, complaint was received by the Bank he immediately asked Mr. Kiran Mane and Shri Ashok Patil to go to the Royal Stores and to find out the details of the complaint. He asked to Royal Stores to submit the details of the due amount. Accordingly, M/s. Royal Stores submitted the details of due amount as per the letter dated 19-04-1995. Along with said letter M/s. Royal Stores has send the zerox copies of the bills to the bank. Said letter and the copies of the bills are at Exh. C-35 Sr.No. 2. As per the said bills the material was supplied to the Bank through second party. There are signature of Shri Kundan Satpute on the said bills as the receiver of the material from Royal Stores. When the complaint was received by him from the Royal Stores, the bank came to know that the amount was not paid to the Royal Stores by second party. When the material was purchased from Royal Stores and the bill was brought by the second party and submitted to hlm, he verified the bill and the material which was purchased from Royal Stores during his period. After verifying the material he had made remark and also signed on the back of the bill and sent the said bills for the preparation of the cash debit vouchers. The amount of the bill was paid to the second party by cash debit vouchers. The said cash debit vouchers are on the record at Exh. C-35 Sr.No. 4. As per the said vouchers the amount was actually paid to second party to make payment to M/s. Royal Stores. It was the duty of second party to pay said amount to Royal Stores immediately. He further stated that there are signatures of second party on the back side of the vouchers. As per said vouchers the payment was made to second party, but he has not paid the same to Royal Stores. He has misappropriated an amount of Rs. 6287.

16. Management witness Ashok Bajirao Patil has stated before Court that second party was working as peon with first party bank. He was purchasing stationary for bank from Royal Stores Kolhapur. He was submitting bills

to bank. He was taking an amount for bills through vouchers. On 10-04-1995 Royal Stores Kolhapur sent letter contending that they have not received Rs. 6082/- from Bank. Second party has misappropriated an amount of Rs. 6082/-. On 19-04-1995 he has paid misappropriate amount to Royal Stores.

17. It appears that management witness Prakash Khemchand Shah has stated before Enquiry Officer that he has received money of bills entirely. They have used to receive bill amount regularly as and when stationary was supplied and credit memos were issued to the bank, because they keep on changing clerks, new clerks could not maintain cash received record correctly, hence they wrote above mentioned letters *i.e.* letters dated 10-04-1995 and 19-04-1995 to the bank. He has merely stated in his cross-examination before Court that letter dated 15-11-1995 filed in enquiry. It's contents are correct. It bears his signature and seal. Letter dated 15.11.1995 is not placed on record before Court. On 19.04.1995 second party has paid Rs. 6257/- to Royal Stores Kolhapur. Payment receipt is placed on record. Hence documentary evidence shall prevail than oral statement given by him in his cross-examination before Enquiry Officer.

18. It further appears that on 09-11-1995 first party has issued charge-sheet to second party. The allegations/charge levelled against him are as follows. That during the period from 11-01-1994 to 17-02-1995 M/s. Royal Stores, Kolhapur had supplied through the second party various stationary items of stock for amounts aggregating Rs. 6082/- to Kolhapur Branch under their various credit bills. That the amounts payable in respect of the said bills were debited at the branch either on the dates of the bills or on subsequent dates and the said amounts had been entrusted to the second party against his acknowledgment on the reverse of the relative cash debit slips, for making payment to the party as detail below:

Sr. No.	Bill No. and date of Royal Stores Kolhapur	Amount Rs.	Date of payment at the branch/date of receipt of amount by the employee
1	2	3	4
1.	16004 dated 11.01.1994	172.50	11.01.1994
2.	16354 dated 12.02.1994	77.00	12.02.1994
3.	16479 dated 23.02.1994	89.00	24.02.1994
4.	16569 dated 05.03.1994	255.00	07.03.1994
5.	16570 dated 07.03.1994	255.00	07.03.1994
6.	17248 dated 04.05.1994	425.00	04.05.1994
7.	17421 dated 21.05.1994	75.00	21.05.1994
8.	17578 dated 17.06.1994	493.00	17.06.1994
9.	17743 dated 16.07.1994	485.00	18.07.1994
10.	18144 dated 24.08.1994	298.00	24.08.1994
11.	18292 dated 12.09.1994	156.00	12.09.1994
12.	18293 dated 12.09.1994	625.00	12.09.1994
13.	18296 dated 12.09.1994	91.00	12.09.1994

1	2	3	4
14.	18710 dated 25.10.1994	325.00	25.10.1994
15.	18814 dated 01.11.1994	123.00	10.11.1994
16.	18908 dated 23.11.1994	399.00	23.11.1994
17.	19039 dated 07.12.1994	372.00	08.12.1994
18.	19195 dated 23.12.1994	236.00	23.12.1994
19.	19500 dated 24.12.1994	291.00	25.01.1995
20.	19560 dated 31.01.1995	625.00	31.01.1995
21.	19561 dated 31.01.1995	83.00	31.01.1995
22.	19697 dated 17.02.1995	131.00	17.02.1995
Total:		6082.00	

19. It appears that the second party failed to pay the aforesaid amount aggregating of Rs. 6082/- to Royal Stores Kolhapur on the respective dates of receipt of amounts by him from the bank. After receiving complaint dated 10-04-1995 he has paid Rs. 6082/- to M/s. Royal stores on 19-04-1995. Thus, it appears that second party has temporarily misappropriated the various amounts dates of debit of the respective amounts at the branch till 19-04-1995. He can not be allowed to continue in service as the management loses faith in such employee. His departmental first and second appeals are dismissed. Punishment is legal and proper. In such circumstances I do not find any substance in contention raised by second party and his advocate.

20. As per aforesaid discussion and considering principles laid down in above citations, it appears that termination of service of second party is legal and due to that he is not entitled for reinstatement with full backwages as prayed for. Hence I record my findings on Issue No.3 & 4 in the negative.

21. **Issue No. 5 :-** In view of negative finding on Issue Nos. 3 and 4 that termination of service of second party is legal and due to that he is not entitled for reinstatement with full back wages as prayed for. In the result I proceed to pass following order.

AWARD

- (1) Reference is answered in the negative.
- (2) Demand of second party is hereby rejected.
- (3) No order as to costs.
- (4) Inform to the Government of India.
- (5) Award be published accordingly.

Place : Kolhapur.

B.C. KAMBLE, Presiding Officer

Date: 17-05-2013

नई दिल्ली, 3 सितम्बर, 2013

का०आ० 2130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पटना के पंचाट (संदर्भ संख्या 03(सी)/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.08.2013 को प्राप्त हुआ था।

[सं एल-12012/19/2009-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd September, 2013

S.O. 2130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03 (C) of 2009) of the Cent. Govt. Indus. Tribunal/Labour Court Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 20.08.2013.

[No. L-12012/19/2009-IR(B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Reference Case No.: 03 (C) of 2009

Between The Zonal Manager, Bank of India, Zonal Office, Punkaj Market, Suraiya Ganj, Muzaffarpur and Shri Vinay Prakash, Village-Belbanwa, Shivpuri, P.O. & Distt. Motihari Distt. East Champaran (Bihar).

For the management : Shree Binay Bihari Sharan,
Advocate.

For the workman : Shree Rakesh Kumar Tiwairy,
Advocate.

Present : Harish Chandra Singh,
Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dated 7th December, 2012

By adjudication order No. L-12012/19/2009-IR(B-II) dated 01.07.2009 the Central Government (Government of India) Ministry of Labour/Shram Mantralaya, New Delhi referred under Clause (d) of sub-section (1) and sub-section 2(A) of section 10 of The Industrial Disputes Act, 1947 (hereinafter to be referred as 'the Act') the following dispute between the Zonal Manager, Bank of India, Zonal Office, Punkaj Market, Suraiya Ganj, Muzaffarpur and their workman Vinay Prakash for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Patna (Bihar).

SCHEDULE

"(A) Whether the action of the management of Bank of India, Zonal Office, Muzaffarpur Zone in terminating of the services of the casual worker, Sri Vinay Prakash without complying section 25 (F) of I.D. Act is legal & justified? (B) Whether the management is justified in not regularising the service of Sh. Vinay Prakash, casual worker? What relief the workman is entitled to?"

2. The case of the workman as stated in statement of claim is that he was taken into employment in Bank of India, Motihari Branch in the year 1988 as daily rated peon, Grade-IV staff. In the year-1988 he was paid wages @ Rs. 15/- per day which was subsequently raised to Rs. 20/-, then to Rs. 45/- then to Rs. 60/- and lastly to Rs 70/- per day. Work assigned to him was perennial in nature. He continuously worked at Motihari Branch till 02.01.2008. The duty assigned to him was to supply water, tea etc. to Bank staff, he carried documents, ledgers, cheques and pay-in-slip, vouchers and other documents from one desk to another and also kept them at proper place. He worked under the full and direct control/supervision of officials of the bank. The case of workman is that if his service are discontinued, the bank shall have to appoint another person for these duties. Upto year 1993 he was paid wages against vouchers duly signed by him. Thereafter, bank officials started a new mode of payment in cash by the Branch Manager but the vouchers were signed and cash withdrawn by the Branch Manager showing "Coolie" payment. The workman has repeatedly stated in his statement of claim that the nature of duty assigned of him were permanent and required through out the year. Services of person like him for such duty were required by the Bank on permanent basis but his legitimate right to be considered to be made permanent was denied by the Bank. The workman has further stated in his pleadings that in his place another person Pawan Hazara was appointed as a peon where as the workman was senior to Pawan Hazara. Further the case of the workman is that at the time of his appointment he was assured by the Branch Manager that his service will be made permanent. Similar assurance was given by the successor also. Recognised union of workmen raised this matter relating to regularisation with management on number of occasions but the management did not even discuss. On 02.01.2008 the service of workman Vinay Prakash were terminated orally without stating any reason and without tendering any retrenchment compensation or pay in lieu of notice as per section-25-F of the I.D. Act. The workman has repeatedly stated in his statement of claim that he rendered continuous service to bank since 1988 to 02.01.2008. He worked for more than 240 days within 12 calendar month's immediately preceding the date of his termination. Action of the management of orally terminating service of workman with effect from 02.01.2008 is illegal, unjustified and arbitrary and the workman is entitled to

reinstatement in the service with full back wages and consequential benefits. After his termination the workman raised an Industrial Dispute through statement of demand dated 18.07.2008 and after failures of conciliation proceeding this reference has been made.

3. The case of the management has been stated in their written statement dated 22.01.2010. The management did not dispute the statement made in 1 to 6 of the statement of claim of the workman stating that these are matters of records. However, the case of the management is that the workman was never appointed in the service of Bank and as such the question of termination of his service did not arise. It has also been denied that the workman continuously worked upto 02.01.2008. The case of the management is that the workman was engaged as casual worker to work in the Branch as per requirement of the Bank from time to time. He never worked 240 days in any calendar year. He used to be engaged for casual work as a casual employee for the particular days and as such termination of his service used to come at the end of the day. It is also denied the workman handled the Bank Register and documents of the Branch. He was engaged as a "coolie" of the Branch for cleaning and sweeping as per requirement availability of the work. He was never paid wages on monthly basis. There are many branches of the bank where no peon is working. There was no need of any peon at Motihari Branch also. His services were not required on the permanent basis and work performed by him were not of permanent nature. There is no provision of regularisation of casual workers in the Bank service. If at all there is any vacancies, the bank being a Govt. undertaking is bound to advertise the vacancies for equal opportunity for all eligible candidates. In such cases the bank is bound to follow certain set of procedure for, recruitment/selection/appointment. The workman never worked continuously for 20 years in the branch and he was never given assurance to be made permanent. Casual worker is not indispensable to the Bank. It has been stated repeatedly that the workman Vinay Prakash never completed 240 days within twelve calendar months immediately preceding the date of his termination. He is not entitled to protection of U/S- 25- F of the I.D. Act.

4. On the basis of pleadings of the parties following question arise for determination in the reference:—

- (i) "Whether Vinay Prakash is a "workman" as defined in the I.D. Act and whether for that purpose he has proved that he worked for 240 days or more within 12 calendar months immediately preceding the date of termination?"
- (ii) "Whether the action of the management terminating his service is legal and justified?"
- (iii) "Whether the management is justified is not regularising the service of Vinay Prakash?"

(iv) "To what relief the workman is entitled to?"

FINDINGS

5. Issue No. (i):— The case of the workman is that he was taken into employment in the year 1988 as a daily rated peon Grade-IV staff in Motihari Branch Bank of India. He worked continuously till 02.01.2008. On that date his services were terminated. In the beginning i.e. in the year 1988 he was paid @ Rs 15/- per day which was increased from time to time to Rs. 20/-, Rs.45/-, Rs. 60/- and lastly to Rs. 70/- per day. Upto 1993 he was paid through Vouchers duly signed by him. After 1993 the management devised a new method of payment to him. In this new method the Branch Manager obtained payment on the basis of vouchers signed by him and paid cash to the workman without obtain his signature on any vouchers. This was called "coolie" payment. The management has denied that the workman Vinay Prakash worked continuously and regularly but this much has been admitted that his services were taken as casual worker as and when required. He never completed continuously 240 days working within 12 calendar months immediately preceding the date of his alleged termination.

It is well settled that the onus to prove that he worked for 240 days within 12 calendar months immediately preceding the date of his termination is on the workman. In this regard it has been held by the Hon'ble Supreme Court in the case of *R.M. Yellatty V. Assistant Executive Engineer* (2006) 1 SCC 106.

"However, applying general principles and on reading the aforesaid judgements, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence both oral and documentary. In cases of termination of services of daily-wages earners, there will be no letter of appointment of termination. There will also be no receipt of proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment of termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case."

Again in the case of *Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda*. AIR 2010 SCC 1236 aforesaid preposition of law was quoted with approval and applied. It was held that:—

"Applying the principles laid down in the above case by this court, the evidence produced by the appellants has not been consistent. The appellants

claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. It is the contention of the appellant that the service of the respondent were terminated in 1988. The witness produced by the appellant stated that the respondent stopped coming to work from February, 1988. The documentary evidence produced by the appellant is contradictory to this fact as it shows that the respondent was working during February, 1989 also. It has also been observed by the High Court that the muster roll for 1986-87 was not completely produced. The appellants have inexplicably failed to produce the complete records and muster roll from 1985 to 1991, in spite of the direction issued by the Labour Court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard. It would be pertinent to mention the observation of three-Judge Bench of this court in the case of Municipal Corporation, Faridabad Vs. Siri Niwas [(2004) 8 SCC 195]: (2004 AIR SCW 5184). Where it is observed.

" A Court of law even in a case where provision of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against this contention. The matter, however, would be different where despite direction by a court the evidence is withheld."

Facts of the present case are very much similar. In this case also the workman has discharged his onus by stepping in witness box and stating that he worked in Motihari Branch, Bank of India from 1988 to 02.01.2008 continuously. Initially he was paid wages at the rate of Rs. 15 per day, then it was raised to Rs. 20, then to Rs. 45 and to Rs. 60. Lastly at the time of termination he was getting Rs. 70 per day. Initially he was paid through vouchers duly signed by him. This system of payment of wages was continuing upto 1993. Thereafter Bank officials started a new system. Branch Manager withdrew cash against vouchers signed by himself and made cash payment to the workman as payment of "coolie". Workman filed photo copy of registers showing payment to him in 1991 and 1992. Pages of this register are Exts.- W/6, W/7, W/8, W/9, W/10, W/11, W/12, W/13, W/14, W/15, W/16 and W/18. He has further stated that within 12 calendar month immediately preceding the termination he worked

continuously more than 240 days. Now onus shifts to the management to prove otherwise particularly when it is admitted in the pleading as well as in the evidence i.e. witness of the management that the workman Vinay Prakash was engaged as casual worker to perform certain work at Motihari Branch, Bank of India. This statement has been qualified only to the extent that he did not work continuously and his services were taken as and when required. M.W-1 Raj Kishore Prasad has stated that he was posted at Motihari Branch, Bank of India from 1984 to 2004. Presently he is working as Branch Manager of another branch. He has admitted in his cross-examination that Vinay Prakash some time worked as casual worker during the period of his posting at Motihari Branch. About the procedure of payment to casual worker he has admitted that branch manager drew money for Misc. charges and the same was paid to the casual labourer. This payment was made through profit and loss vouchers. He has also admitted payment register of Bank of India for the period 1991-92 Ext.- W/6 to W/18 discussed above. Another witness M.W-2 (Ajay Kumar Sinha) has also admitted that he worked with Vinay Prakash on some occasions. He was posted at Motihari Branch in 1989 and saw Vinay Prakash working on daily wages "Collie". The workman examined an independent witness W.W. 2 (Manoj Kumar) who claims to be consumer of Motihari Branch of Bank of India. He has stated that he saw Vinay Prakash working in the Bank continuously since 1996 to January, 2008. Vinay Prakash was removed from service in his presence. Ext.-W/1 is a certificate dt. 26.10.1991 given by Branch Manager of Motihari Branch of Bank of India to the effect that Vinay Prakash had been working purely on casual basis since 1988. Ext.W/2 and W/3 are letters from the bank addressed to the Assistant Labour Commissioner in which it has been stated that Sri Vinay Prakash was daily wages worker/coolie whose service were used by the branch as per their requirement.

In course of proceedings before this tribunal the workman filed a petition on 08.02.2010 making a prayer to call for following documents from the management so that the evidence of his working in the bank and payment to him by the bank may be available.

- (i) P/L analysis book, 1988 to January, 2008.
- (ii) Vouchers from 1988 to January, 2008.
- (iii) Duty register, payment register from 1988 to January, 2008.

Vide order sheet dated 13.04.2010 the management was directed to produce these documents on the next date fixed. Thereafter on 03.05.2010 the order was modified to the extent that management would produce firstly the document relating to the year 1988 and for the period from January, 2007 to January 2008. It was made clear that the management may be required in future to produce the

documents for remaining period, if felt to be necessary by the tribunal. But the management did not produce these documents relating to period 2007-08. Attendance register of permanent employees for 1988 Ext. M/1 was filed. Photo copy of attendance register of permanent employees in the year 2007 was filed which is Ext.-M/2. Photo copy of attendance register of permanent employee for the year 2008 was also filed which is Ext. M/3. Photo copy of salary sheet of permanent employee was filed which is Ext. 4 & 5 series. These documents are not at all related with the workman Vinay Prakash. Admittedly he was, engaged and worked in Motihari branch of the bank on daily wages for which he has been paid. The bank in all their fairness were required to produce vouchers showing the payment to Vinay Prakash either signed by Vinay Prakash himself or signed by Branch Manager and then paid to Vinay Prakash. It is obvious that the bank has deliberately withheld these document. No explanation came forward from the bank as to why these documents were not produced. Therefore in this case having regard to the facts and circumstances of the case there are sufficient reasons to draw adverse inference against the bank. Thus having taken into consideration the evidence of the workman W.W. 1 and witness examined by the workman W.W. 2, evidence of M.W. 1 and M.W. 2 and also having considered the documents Exts. W/6 to W/18, W/1, W/2, W/3 and also documents filed on behalf of the management and also having regard to the adverse inference which may be against the management I am of the view that there are sufficient reasons to believe that the Vinay Prakash worked for more than 240 days continuously within 12 calendar month's immediately preceding the date of termination of his service and therefore he is a workman.

Issue No. (ii):—In the foregoing paragraph my finding is that Vinay Prakash is a workman as defined in the Industrial Dispute Act. Therefore, he is entitled to protection u/s-25-F of the I.D. Act. Admittedly section 25-F of the I.D. Act has not been complied with. No notice, or salary in lieu of notice or compensation has been given to the workman. It may be noted that non-continuation of a daily wager workman is retrenchment and termination. Therefore, compliance of section-25 of the I.D. Act and payment of compensation was necessary therefore, termination of his service without compliance of the I.D. Act is illegally and unjustified.

Issue No. (iii):—The government has referred the dispute regarding regularisation of service of Sri Vinay Prakash to this tribunal for adjudication in these words:— "whether the management is justified in not regularising the service of Sri Vinay Prakash casual worker?" I have already held in to foregoing going paragraphs that Vinay Prakash was a casual worker working in Motihari Branch of Bank of India. The workman in his oral evidence as well as in his pleadings has stated that he was engaged on daily wages basis against a permanent post. Admittedly he

was engaged on daily wages basis. The case of the management is that there is no permanent post of peon in Motihari Branch. Again the case of the workman is that the work done by him was perinial in nature. He made several requests for regularisation of service but he was not regularised. The workman has not produced any document to show that any demand was raised prior to termination for regularisation of his service. No such demand was made either by the workman himself or by any union of workmen. There was no demand of regularisation of service of Vinay Prakash. Therefore, there was no question of regularisation or service of Vinay Prakash and can not be any Industrial Dispute in this regard. Moreover, he was daily wages employee on the daily wages as casual labour and there is nothing on record to show that he was working against any sanctioned post. Therefore, the stand of the bank that his service could not be regularised is correct and the bank is justified in not regularising the service of Vinay Prakash.

Issue No.(iv):—I have already held that the workman Vinay Prakash was removed from service without compliance of provisions of section 25-F of the I.D. Act. The workman has made a prayer for reinstatement with back wages. Admittedly he was daily wager. Recent trend of decisions of the Hon'ble Apex Court is not in favour of re-instatement of daily wagers. In case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and another (2009) 15 SCC 327: (AIR 2009 SCC 3004: 2009 AIR SCW 4824) it was held that:—

"It is true that the earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact-situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of has been held to meet the ends of justice.

* * * * *

"It would be, thus, seen that by a catena of decision in recent time, this court has clearly laid down that an order of retrenchment passed in violation of Section-25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this court and instead compensation has been awarded. This court has

distinguished between a daily wager who does not hold post and a permanent employee."

In this case I am of the view that in spite of my findings that termination of service of Sri Vinay Prakash is illegal and not just because of violation of provisions of section 25-F of the I.D. Act, the relief of reinstatement with back wages will not follow automatically. In my considered opinion monetary compensation will meet the ends of justice. In this case the workman has worked for about 20 years as a daily wager. He worked for the bank from 1988 to January 2008.

Having regard to facts and circumstances of the case I am of the view that the monetary compensation of Rs. 1,25,000 (Rs. One Lakh Twenty Five Thousand) only will be meet of ends of justice. The management of Bank of India is directed to pay of Rs. 1,25,000 (Rs. One Lakh Twenty Five Thousand) only as monetary compensation to Vinay Prakash within one month from the date of publication of this award.

And this is my award accordingly.

Dictated & Corrected by me.

HARISH CHANDRA SINGH, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का.आ. 2131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 281/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/09/2013 को प्राप्त हुआ था।

[सं. एल-22012/224/2003-आई आर (सी एम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 5th September, 2013

S.O. 2131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 281/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 05/09/2013.

[No. L-22012/224/2003-IR (CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER- CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT /NGP /281/2003

Dated: 20.03.2013

Party No.1(a) : The District Manager,
Food Corporation of India,
Ajani, Nagpur,
Nagpur -440015.

Party No.1(b) : The Senior Regional Manager,
Food Corporation of India,
Mistry Bhawan, Dinshaw Wacha
Road, Churchgate, Mumbai -400020.

Versus

Party No. 2 : The Secretary,
Rashtriya Mazdoor Sena,
Hind Nagar, Ward No. 2,
Near Boudha Vihar,
Post: Wardha, Distt. Wardha (M.S.)

AWARD

(Dated: 20th March, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Food Corporation of India and their workman, Shri Shankar Shriram Sarode, for adjudication, as per letter No. L-22012/224/2003-IR (CM-II) dated 08.12.2003, with the following schedule:—

"Whether the action of the management of Food Corporation of India, Nagpur (M.S.) in terminating the services of Shri Shankar Shriram Sarode, Security Guard w.e.f. 14.03.1999 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Shankar Shriram Sarode ('the workman' in short), filed the statement of claim and the management of Food Corporation of India ("Party No, 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of Party No.1 from 01.11.1992 and he was initially engaged through a contractor at Amravati Depot of Party No.1, as a Security Guard and he was in continuous service without any interruption till 14th March, 1999, when his services were terminated orally by Party No.1, without following the due procedure of law and he had completed more than 240 days of work in each year and the termination of his services on 14.03.1999 was not in good faith, but in

colourable exercise of the rights and powers by the Party No.1 and while terminating his services, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to him as required under section 25-F of the Act and after his illegal termination, fresh hands from the department of home guard and police were engaged by Party No.1 to extract the duties of Security guards, in violation of the provision of section 25-H of the Act and the work which he was performing is constantly in existence and the same is of a perennial nature and as his termination is illegal and unlawful, he is entitled for reinstatement in service with continuity and full back wages.

The further case of the workman is that in 1992, he was engaged by the Party No. 1 through the contractor for a period of two years, but the contract was made only on papers and after every two years, the Party No.1 changed the contractor on papers only and the engagement of the so-called contractor did not replace the Security Guards and he was also not disturbed from his services and he was merely shown to be engaged by the contractors, but actually, he was working under the direct control and supervision of the Party No.1 and the contractor had no role to play in the same and the work performed by him was being assigned to him by Party No.1 and he was a regular employee of Party No.1 and Party No.1 was his real employer and not the contractor as alleged and the engagement and change of contractors by Party No.1 from time to time was sham and only a camouflage to deny his legitimate claim and the contract between Party No. 1 and the contractor was bogus and not genuine and therefore, his oral termination from services was against the mandatory provisions of the Act and the Central Government decided to abolish the appointment of contract labour as contemplated under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and issued notification on 01.11.1990 with directions to abolish the contract labour system in the establishment of the Party No.1 and to give employment to contract labours engaged by the management and therefore, it was the mandatory duty of the Party No.1 to abolish the contract labour system in all places and management of FCI implemented the notification only at Nagpur and Manmad and absorbed the Security Guards working at Nagpur and Manmad, but at Akola, Amravati, Wardha and Gondia districts, the contract labour system was continued by the management, with an intention to deprive him from the benefits under the labour laws.

It is further pleaded by the workman that his salary was paid by the Party No.1 and not by the contractor and his daily attendance was also marked by the Asstt. Manager of FCI, Wardha Depot and the Party No.1 was supervising his work through their officers and he had no relation with the so-called contractors engaged by the Party No.1 and Party No.1 also supplied the articles, such as, torch, lathi, whistle and uniform etc. to him and in view of

the long spell of work being carried out by him, he is entitled to be reinstated in service with continuity and full back wages.

3. The Party No.1 in their written statement have pleaded inter alia that the workman was never in their employment and the workman has not impleaded the contractor, who appointed him, as a Party and the workman was engaged by the contractor as a Security Guard at FCI Depot and the said contractor is a necessary party and in absence of the contractor, the proceeding cannot proceed and the workman was not in their service uninterruptedly till 14th March, 1999 and since the contract of the contractor came to an end, the services of the workman were terminated by the contractor and the original period of contract given to the contractor for providing Security services was up to 1998 and the same was extended as per the terms and conditions till March, 1999 and as the workman was not employed by them, there was no question of following the procedure of termination by them and they were not the employer of the workman and the services of the workman were never utilized by them as employer from 18.05.1991 to 14.03.1999, without any break in service and the workman did not complete 240 day of work in a year as alleged and as the workman was engaged by the Security Contractor, there was no relationship master and servant between them and the workman at any point of time and under section 10 of the Contract Labour (Regularisation and Abolition) Act, they were exempted by the Central Government, so the allegations made by the workman against them are not true and there was no question of violations of the provisions of 25 (H) of the Act and the work does not constantly exist and the work of providing security guards was given to other Government Agencies like Police Personnel and Home guards and therefore, the workman has no right to claim any relief from them and the work of security is not perennial in nature and as and when their godowns are filled with foodgrains, then only, services of the security guards are required and in pursuance of the notification issued by the Central Government abolishing contract labour system, they appointed Home guards and Police personnel as security guards.

The further case of Party No. 1 is that for the relief as claimed, by the workman had filed a writ petition before the Hon'ble High Court, Nagpur Bench bearing W.P. No. 1389/99 and the Hon'ble High Court rejected the said WP and denied the relief prayed for and therefore, this Tribunal has no jurisdiction to decide the reference and the decision of the Hon'ble Court operates as res-judicata and they floated tenders for the contract and lowest bidder was awarded the contract and the change of contractor in every two years was not on papers only and they had no say in the appointment of security guards by the security contractor and they had no control over the appointment and service conditions of the workman, who was an employee of the

security agency and he ever their employee and the security contractor was the employer of the workman.

The further case of Party No. 1 is that the appropriate government decided to abolish the employment of the contract labour as contemplated under section 10 of the Contract Labour (Regularisation Abolition) Act, 1970 and the interpretation of the notification issued on 01.11.1990 put by the workman is not correct and they were exempted from the operation of the Act of 1970 in the year 1989 and the said exemption was withdrawn in the year 1999 and therefore, the security contract given to the contractor was terminated and hence, the services of the workman were terminated by the security contractor and they did not pay the salary to the workman and it was the contractor, who was paying the same to the workman and when the contractor failed to pay the salary to the workman, they paid the amount as per the direction given by the ALC from time to time and the said amount was recovered from the contract's bill and they only used to check the attendance of the security guards to find out as to whether the contractor had made arrangement of the requisite number of security guards, as per their requirement and they did not have the power to terminate any employee appointed by the contractor and they did not provide any article, such as torch, Lathi, whistle and uniform etc. to the workman and as such, the workman is not entitled to any relief.

4. Both parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence.

The workman in support of his claim has examined himself as a witness. In his evidence, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. This witness has also proved some documents to show that duties were allotted to him and other Security Guards by Party No. 1 and their attendance was being taken by Party No. 1.

5. In his cross-examination, the workman has admitted that their initial appointment was through contractor and they have not filed the appointment order of the contractor and the contractor appointed them on 01.08.1993 and they have not filed any document showing that the management had any contract with them, in respect of the service and they had not applied to the FCI and there was no advertisement for the post. The workman has further admitted that they have not filed any document showing that they had worked for 240 days in each year and they were paid by FCI and what was their salary. The workman has also admitted that the contractor continued them up to 1999 and he does not know the name of the contractor, who initially appointed them and the document Ext. M-7 bears his signature and Exts M-7 to M-15 are their applications and in 1993, they were appointed by the contractor and the letter, Ext. M-16 bears his signature,

under which they were sent to FCI by Industrial Security and Fire Services, Mumbai on 13.12.1996 and initially, he was appointed by Singh Security Services and the contractors, who appointed them have not been made parties in the proceeding and he has not filed any document to show that FCI was paying salary to them.

6. One Shri Ramdas Shamrao Kale has been examined as a witness on behalf of the Party No. 1. In his examination in chief, which is on affidavit, this witness has reiterated the facts mentioned in the written statement by Party No. 1. In his cross-examination, this witness has admitted the suggestions given to him that prior to 15.06.1993, the FCI had a contract with Bombay Intelligence Security Pvt. Ltd. for supply of Security Personnel and Ext. M-XXIX shows that there was deduction of provident fund by FCI of the Security Guards supplied by Singh Security Services from the bill of the contractor and subsequently release of the same by FCI to the contractor for deposit and Ext. M-XXXI shows that Singh Security Services had requested for payment of Rs. 54,350 due to them towards payment of wages to Security Guards and Ext. M-XXXVII, the license issued to Industrial Security and Fire Services, Bombay was valid up to 18.05.1998 and Ext. M-XXXII shows that the contract entered with Industrial Security and Fire Services, Bombay was due to expire during December, 1998. This witness has further stated that to his knowledge, the Security and Fire Services, Bombay renewed same to the authority of FCI and Bombay Intelligence Security Pvt. Ltd. was given the contract in 1991-92 for supply of Security Guards to FCI and after 1993, Singh Security Services and thereafter, Industrial Security and Fire Services were given the contract for supply of Security Guards to FCI and within, the period from 1991 to 1999, three contractors there were given the contract for supply of Security Guards. This witness has also admitted the suggestions that from January, 1992 to March, 1992, M/s. Chaitanya Industrial Security Investigation Services, Amravati was given the contract by the FCI for supply of Security Guards and according to Ext. M-XXXIX, the Government did not prohibit the appointment of contract labour in sweeping, cleaning, dusting and watching of buildings owned and occupied by establishment of FCI and that the workman and other Security Guards were being deployed to different depots and buildings of FCI to perform guard duties and lists were being prepared of the Security Guards, who were being deployed to the depots and other building to perform the security duties and the authorities of FCI were deciding the names of the Security Guards to be deployed to different places for performing security duties and identity cards were issued to the Security Guards by the FCI, when they were being sent to the different places for performing security duties and when a Security Guard was being found absent from duty, the office of the FCI-cum-In charge or Security Guard was marking him absent from duty and was reporting the matter to the Shed In-charge for taking necessary action.

7. At the time of argument, it was submitted by the union representative for the workman that the workman was engaged by the management of FCI on 18.05.1991 at Amravati depot as a security guard and he worked continuously without any interruption till 14th March, 1999 and his services were terminated orally by the Party No. 1, without following the due procedure of law and the workman had completed more than 240 days of work in each year and before termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman, as required under section 25-F of the Act and after termination of the services of the workman, fresh hands were engaged by Party No. 1 to extract the duties of security guard, in violation of the provision of section 25-H of the Act and the work of security guard is perennial in nature, hence the termination of the workman is void and illegal.

It was further submitted by the union representative for the workman that the Party No. 1 had shown the workman as contract labour, but the so called contract was made only on papers and the workman was actually working under the direct control and supervision of the Party No. 1 and he was never a contract labour and such action of the Party No. 1 was sham and only a camouflage to deny the legitimate claim of the workman and the so called contract between the management and the contractor was bogus and not genuine and the Central Government by notification dated 01.11.1990 abolished the employment of contract labour and directed to give employment to contract labours engaged by the management and therefore, the management of FCI was bound to abolish the contract labour system and to give employment to the workman.

It was further submitted by the union representative that on 15.06.2007, an application was filed by the workman for production of nine documents relating to him, from which, it could have been held without any doubt that the workman was an employee of the Party No. 1 and not a contract labour and after hearing the parties, the Tribunal by order dated 30.05.2008 directed the Party No. 1 to produce the documents, but in spite of the order passed by the Tribunal for production of documents, the Party No. 1 failed to produce the documents and as such, adverse inference is to be drawn against the Party No. 1.

In support of such contentions, reliance was placed by the union representative on the decisions reported in 2005 I-CLR-254 (Statesman Ltd. & Anr. Vs. Eight Industrial Tribunal, West Bengal & Ors.) and 2004 (103) FLR-187 (Municipal) Corporation, Faridabad and Shri Niwas).

It was also submitted by the union representative that neither the Party No. 1 nor the so called contractors engaged by the Party No. 1 were registered with the Regional Labour Commissioner as per rules to engage contract labours and infact the so called contractors were mediators and not contractors and even though there was legal ban

on engagement of contract labourers, the Party No. 1 engaged the workman and some others as security guards and from the pleadings of the parties, the evidence on record and the admission of the witness examined on behalf of the Party No.1 that from the date of his initial engagement the workman worked till 14.03.1999 clearly show that the workman was the employee of the Party No. 1 and the Party No. 1 is the real employer and there was master and servant relationship between the Party No.1 and the workman and the so called contract given to the contractor expired on 31.12.1998 and though Party No. 1 unilaterally extended the contract, the contractor, did not accept the same and without any contractor, the workman continued the work with Party No. 1 till 14.03.1999 and the Party No. 1 paid the wages from 01.01.1999 to 14.03.1999 to the workman and such facts also prove that the workman was the employee of Party No. 1 and it was Party No. 1, who terminated the services of the workman without compliance of the mandatory provisions of section 25- F of the Act. In support of the submissions, the union representative placed reliance on the decisions reported in 1994 II CLR-402 (R.K. Panda Vs. Steel Authority), 2003 (98) FLR-826 (M/s. Bharat Heavy Electricals Ltd. Vs. State of UP) and 2011 (128) FLR-99 (Mahesh Kumar Sharma Vs. D.F.O. General Forest Division, Sheopur).

It was also submitted by the union representative for the workman that Party No. 1 has admitted the claims made by the workman and has not been able to prove their claim that the workman was a contract labour, by producing cogent evidence in support of the same and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman was never appointed by Party No.1 and he has engaged by the contractor as a security guard and as such, the concerned contractor is a necessary party and in spite of raising such objection in the written statement, the workman did not implead the contractor as a party and for that the reference is not maintainable. It was further submitted by the learned advocate for the Party No.1 that the workman was engaged by the contractor and as the contract of the contractor came to an end in March, 1999, the services of the workman were terminated by the contractor and as such, there was no question of Party No.1 complying with the due procedure of termination and there was no relationship of master and servant between the Party No.1 and the workman and the Party No.1 was exempted by the Central Government from the ban imposed for engagement of contract labourers, so contract was given to the security contractor, as per rules, for supply of security guards and due to the notification of the Government for abolition of contract labour system, Home Guards and Police personnel were appointed as security guards and Party No. 1 has no control over the workman and the security contractor was submitting bills

for payment for supply of security guards and the security contractor was paying the wages to the workman. It was further submitted by the learned advocate for the Party No.1 that the workman and some others had approached the Hon'ble High Court, Nagpur Bench in W.P. 1389 of 1999 for the reliefs sought in this reference and the Hon'ble High Court while depositing of the said petition have held that the termination of the workman by the contractor was a Valid one and the action of FCI was legal and as such, the workman cannot agitate the question again and the decision of the Hon'ble High Court operates as res-judicata between the parties and the workman is not entitled to any relief.

In the alternative, it was submitted by the learned advocate for the Party No.1 that the Party No.1 is a "State" as per the provisions of Article 12 of the Constitution of India and it has a set Rules for appointment of its employees and it is clear that the workman was never engaged by Party No.1 as per the Rules of appointment and no evidence has been adduced by the workman to prove that he had worked for 240 days with Party No.1 in the preceding 12 calendar months of the date of the alleged termination and as such, there was no question of compliance of section 25-F or 25-H of the Act and the workman is not entitled to any relief.

In support of such, contentions, the learned advocates for the Party No. 1 placed reliance on the decisions of the Hon Apex Court reported in Appeal (Civil) 7038/2002 (Mis. Essen Deinki Vs.. Rajiv Kmmar)) Appeal (Civil) 6303-6316 of 2003 (Manager, RBI, Bangalore Vs.. S. Mani), Appeal (Civil)-6511 of 2005 (Surendranagar District Panchayat Vs. Dayachai Amar Singh), Appeal, (Civil) 3639/2006 (Krishna Bhagaya Jala Nigam Vs. Md. Raffi) and Appeal (Civil) 2969/2004 (Rajasthan State Gangasagar Mills Ltd. Vs. State of Rajasthan).

9. First of All, I will take up the submission made by the learned advocate for the Party No. 1 that the present reference is hit by the principle of res-judicata, due to the decision of the Hon'ble High Court, Nagpur Bench in W.P. 1389/99.

It is not disputed that the workman alongwith 78 others through the union, "Rashtriya Mazdoor Sena Saptahit Jaibhim" had filed Writ Petition No. 1389/99 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, for their regularisation and the Hon'ble High Court did not grant such relief of the order passed by the Hon'ble High Court on 29.7.2002 in the said writ petition, it is found that and otehrrs claimed regularisation on the ground that they were employed by the contractor for doing regular work of the Food Corporation of India and in view of the same, they have become workmen of Food Corporation of India, since the work on which they were employed is of perennial nature. However, it is found from the judgment that the Hon'ble High Court did not consider the main relief and passed the following order :

In view of the judgment of the Constitution Bench in Steel Authority of India Ltd. and others Vs. National Union Water front workers and others [reported in 2001 (7) SCC 1], the relief sought by the petitioners cannot be granted since the petition involves disputed question of facts as also other facts which are required to be adjudicated by appropriate authority. Accordingly, the main prayer to absorb them cannot be granted.

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In view of the rejection of the main prayer, the question of granting other prayer does not arise. In case, the petitioners approach the appropriate authority, the appropriate authority shall take decision in the matter within a period of one year. The applicants are free to approach the appropriate authority for redressal of their grievances."

So, it is clear from the orders passed by the Hon'ble High Court as mentioned above that the Hon'ble High Court did not consider the claim made by the workman and others on merit and granted them the liberty to approach the appropriate authority for redress. hence, the reference cannot be said to be hit by the principles of res-judicata. So, there is no force in the contention raised by the learned advocate for the Party No. 1.

10. In this reference, it is never the case of the workman that he was directly appointed or engaged by the Party No. 1 as a security guard. In the very beginning of the statement of claim, it has been mentioned by the workman that he was initially engaged at Food Corporation of India Depot, Gondia as a security guard, through a contractor. In paragraph 4 of the statement of claim., the workman has mentioned that, "In the year 1992, he was engaged by the Food Corporation of India through contractor, for a period of 2 years, but the contract was made on paper." The 'case of the workman is that after every two years, the Party No. 1 on papers showed the change of contractors, but he was not disturbed from services and he worked continuously without any break till 14.03.1999 and as he worked as a security guard of perennial nature, he is entitled for reinstatement in service. The workman has also claimed that as the Central Government issued notification on to abolish the contract labour system in FCI and directed to give employment to contract labours engaged by the management and Party No. 1 implemented such direction at Nagpur: and Manmad only and gave employment and regularized and absorbed the services of the Security Guards working at Nagpur and manmad and did not implement the same at Wardha and other places to deprive him from the benefits under the labour Laws.

In his evidence on affidavit also, the workman has mentioned that he was initially engaged in Food Corporation of India as a security guard through a contractor.

From the evidence on record and the own admission of the workman in the cross-examination including the

specific admission that he was engaged by the contractor and the contractor left him to FCI and he was appointed through Singh Securities Services it is workman was engaged by the contractor. The workman has not produced any evidence to show that he was directly engaged by the Party No. 1.

11. At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the decision reported in 1994 II CLR-402 (Supra), on which reliance is placed by the union representative and the two decisions reported in 1985-II LLJ-4 (S.C.) (The workman of the Food Corporation of India Vs M/s. Food Corporation of India) and 2001 Lab IC 3656 (S.C.) (Steel Authority of India Ltd. and Others Vs. National Union Water Front Workers and Others).

In the decision reported in 1994-II CLR-402 (supra) the Hon'ble Apex Court have held that:—

2. With the industrial growth, the relation between employer and the employees also has taken a new turn. At one time the establishment being the employer all persons working therein was the employees of such employer. But slowly the employer including Central and State Governments started entrusting many of the jobs to contractors. Contractors in their turn employed a worker, who has no direct relationship with the establishment in which they were employed. Many contractors exploited the labourers engaged by them in various manners including the payment of low wages. Hence, the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to regulate the employment of contract labour in certain establishment and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The "Contract Labour" has been defined in Section 2 (1) (b) to mean a workman, who has been employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Section 2 (1) (c) defines "Contractor" to mean a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Principal employer" has been defined to mean (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf and (ii) in a factory, the owner or occupier of the factory. In view of section 10, of the appropriate Government may after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of

contract labour "in any process, operation or other work in any establishment," Sub-section (2) of Section 10 requires that before issuing any such notification, in relation to an establishments, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. One of the relevant factors, which is to be taken into consideration is whether the work performed by the contract labourers is of perennial nature. Section 12 enjoins that no contractor to whom this Act is applicable shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing authority. The license so issued may contain conditions in respect of hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with rules. Section 20 provides that if any amenity required to be provided under section 16, section 17, section 18, or section 19 for the benefit of the contract labour employed in an establishment, is not provided by the contractor within the time prescribed therefore, such amenity shall be provided by the principal employer within such time as may be prescribed and all expensed incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor "either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor". Section 21 says that a contractor shall be responsible for the payment of wages to each worker employed by him as contract labour but at the same time in order to protect the interest of such contract labour, it requires every principal employer to nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer. Because of sub-section (4) of section 21, if the contractor fails to make payment of wages within the prescribed period, then the principal employer shall be liable to make payment of wages in full to the contract labour employed by the contractor and recover the amount so paid from the contractor. Any contravention of the provisions aforesaid has been made penal for which punishment can be imposed.

4. From the provisions referred to above, it is apparent that the framers of the Act have allowed and recognized contract labour and they have never purported to abolish it in its entirety. The primary object appears to be that there should not be any exploitation of the contract labourers by the contractor or the establishment. For achieving that object, statutory restrictions and responsibilities have been imposed on the contractor as well as on the principal employer. Of course if any expenses are incurred for providing any amenity to the contract labourers or towards

the payment of wages by the principle employer he is entitled to deduct the same from the bill of the contractor. The Act also conceives that all appropriate government may after consultation with the Central Board or the State Board, as the, case may be, prohibit by notification in official gazette, employment of contract labour in any process, operation or other work in any establishment, taking all facts and circumstances of employment of contract labour in such process, operation or the work into consideration.

5. Of late a trained amongst the contract labourers is discernible that after having work for some years, they make a claim that they should be absorbed by the principal employer and be treated as employees of the principal employer especially when the principal employer is the Central Government or the State Government or an authority which can be held to be state within the meaning of Article 12 of the constitution, although no right flows from the provisions of the act for the contract labourers to be absorbed or to become the employees of the principal employer. This court in the case of *Gammon India Limited Vs. Union of India* (1974) I, SCC 596, pointed out the object and scope of the act as follows:—

"The Act was passed to prevail the exploitation of contract labour and also to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underline policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished to all together, the policy of the Act is that the working conditions of the contract labour should be regulated as to ensure payment of wages and provisions of essential amenities, This is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act"

In the case of *BHEL Workers' Association V. Union of India* 1985 ICLR SC 165 = (1985) 1 SCC 630 it was pointed out that Parliament has not abolished the contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Act. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not that has to be decided by the government after considering the relevant aspects as required by Section 10 of the Act. Again in the case of *Mathura Refinery Mazdoor Sangh V. Indian Oil Corporation Ltd.*, 1991 I CLR 684 this court refused to direct the Indian Oil Corporation Ltd., to absorb the contract labour employment saying that, the contract labourers have not been found to have direct connection with the refinery. In other words, there was no relationship of employer and employee between the Indian Oil Corporation Ltd. and the

contract labourers concerned. Again in *Dena Nath V. National Fertilizers Ltd.* 1992 I CLR 1, this court pointed out that the aforesaid Act has two purposes to serve (i) to regulate the conditions of service of the worker employed by the contractor who is engaged by a principal employer and (ii) to provide for the abolition of contract labour altogether, in certain notified processes, operation or other works in any establishment by the appropriate government, under section 10 of the Act. It was further stated that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provide that upon abolition of contract labour, the labourers would be directly absorbed by the principal employer.

6. It is true that with passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. Infact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularization in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and on whether, the engagement and employment of labourers through a contractor is a mere camouflage and a smoke screen, as has been urged in this case, is a question of fact is to be established by the contract labourers on the basis of the requisite material. It is not possible for High Court or this court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions only on the basis of the affidavits. It need not to be pointed out that in all such cases, the labourers are initially employed and engaged by the contractors. As such at what point of time a direct link is established between the contract labourers and the principal employer, eliminating the contractor from the scene is a matter which has to be established on material produced before the court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the Competent Fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

12. In the decision reported in 1985-II LLOJ-4 (supra) Hon'ble Apex Court have held that :—

"Briefly stated, 'when corporation engaged a contractor for handling food grain at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the

Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It describes a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957-I-LLJ-477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

13. In the decision reported in 2001 LAB IC-3656 (supra) the Hon'ble Apex Court have held that:—

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary in implementation, or substituting remedy or benefits for the provided by the legislature. The intentment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or

the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly permissible.

Thus on issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/-12-8-1999 (Cal); C.O. No. 6545(W) of 1996, D/-9-5-1997(Cal); W.A. Nos. 345-354 of 1997m D/- 17-4-1998 (Kant); W.P. No. 4050 of 1999, D/-2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/-23-12-1999 (Bom)" 1998 Lab-IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner

of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

14. So far the contention raised by the union representative regarding drawing of adverse inference against the Party No. 1 for non-production of documents as ordered by the Tribunal on the application of the workman is concerned, it is to be mentioned that it is admitted by the workman that he was engaged through the contractor in F.C.I. and due his such engagement, it was quite natural for the Party No. 1 to direct him to perform different duties as a security guard and to see that duties entrusted to him were done properly. Moreover, the Party No. 1 has produced number of documents to show that the workman was a contract labour and payment of wages to him was made by the contractors. Hence, for non-production of the documents by Party No. 1, there is no need to draw any adverse inference. As the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions by the Hon'ble Courts, on which reliance has been placed by the union representative, with respect, I am of the view that the said decisions have no clear application of this case.

15. So far the contention raised by the union representative regarding the non-registration of the Party No. 1 or the contractors with the Regional Labour Commissioner as per Rules is concerned, it is to be mentioned that such a plea has neither been taken in the statement of claim nor any thing has been stated in that regard in the evidence of the workman. In absence of such pleading, the contention cannot be entertained. Moreover, it is clear from the pleadings of the parties and the evidence on record and the specific suggestions given to the witness examined on behalf of the Party No. 1 in his cross-

examination that contract for supply of security guards was given by Party No. 1 to different contractors, the workman was a contract labourer and he was engaged by the contractors with Party No.1.

Moreover, for the sake of argument, even if, it is held that the Party No. 1 had engaged the workman and others as contract labourers in violation of the provisions of the Contract Labour (Regulations and Abolition) Act, 1976, then the persons responsible for such violation are liable for criminal prosecution, but such violation of the provisions of the above said Act, does not confer any right on the workman to claim regularisation in service.

16. In this case, the letter No. U-23013/11/89/LW dated 28.05.92, Govt. of India, Ministry of Labour shows that the prohibition of employment of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments of Food Corporation of India and some other departments was lifted by the Central Government. So, the engagement of contract labour by the Party No.1 cannot be said to be illegal. It is also found from the materials on record that the appointment of labour contractor by Party No. 1 for supply of Security Guards was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No.1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid his wages as their employee. It is clear from the evidence that Party No.1 paid wages of the last three months to the workman in presence of the Labour Commissioner, as the contractor did not pay the same. As it is clear from the evidence on record that the workman was engaged as a contract labour with Party No.1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No.1 and the workman. Hence, there was no question of termination of the services by the Party No.1 or compliance of the provisions of Sections 25- F or 25- H of the Act.

In view of the facts and circumstances of the case as mentioned above, which are quite different from the facts and the circumstances of the cases referred in the decisions, on which reliance is placed by the union representative, with respect, I am of the view that the said decisions have no clear application to the present case in hand.

17. It is the own case of the workman that he was engaged by the contractor. So the contractor, who had engaged the workman, is a necessary party in the reference. The said contractor has not been added as a party in this reference. Due to non-joinder of necessary party, the reference is bad in law.

In view of the materials on record and the discussions made above and applying the principles enunciated by the Hon'ble Apex Court in the three decisions mentioned above, the reference cannot be answered in favour of the workman. Hence, it is ordered:—

ORDER

The reference is answered in the negative. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2013

का.आ. 2132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण पूर्व रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 172/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं. एल-41012/40/96-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th September, 2013

S.O. 2132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 172/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Railway and there workmen received by the Central Government on 09.09.2013.

[No. L-41012/40/96-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

No. CGIT/LC/R/172/97

PRESIDING OFFICER: SHRIR.B.PATLE

Shri W.E.Manual,

S/o Shri E.Manual, Ex.Diesel Driver,

Tarbaahar, Kamla Niwas,

Near primary School, Bilaspur

....Workman

Versus

The Divisional Mechanical Engineer,

South Eastern Railway,

Bilaspur (MP)

....Management

AWARD

Passed on this 14th day of June, 2013

1. As per letter dated 23-6-99 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-41012/40/96-IR(B). The dispute under reference relates to:

"Whether the action of the management of S.E.Railway, Bilaspur in removing Shri E.Manual, Ex-Diesel Driver from service *w.e.f.* 28-6-96 vide order No. M/D&A/4260/WEM/DRV/L/BSP dated 28-6-93 is justified? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. However Ist party workman failed to submit Statement of claim. On 22-8-07, the reference is proceeded *exparte* against workman. The management filed *exparte* Written Statement.

3. The case submitted by IInd party management is that on 8-10-92, the workman was functioning as Driver of Train No. 4260 Down Sarnath Express from Katni to Bilaspur. That he was found to have consumed Alcohol. When he was checked at Umaria by Senior L.I. Shri B.N.Singh with electronic breath alcohol analyzer instrument and indicated Visual Flesh simultaneously with audio buzzer which proved that alcohol content in the breath exceeds the safe limit. That the workman was also examined by AME/SDL and Sr. DMO/SDL on arrival of 4260 Dn at Shahdol and found workman breath smelled of alcohol. That the workman contravened the provision of Rule 2(I)(iii) and 22 of RS Conduct Rules 1966 and Rule 2.09 Indian (OL) General Rules 1976 and thereby rendered himself liable for Disciplinary action in terms of RS(D&A) Rule 1968. The charge sheet was issued to workman for major penalty on 9-11-1992. Shri S.K.Paithandy, Senior F.I Bilaspur was appointed as Enquiry officer. He conducted enquiry and collected available records and evidence. The written report was submitted on 9-10-92. The case sheet for examination of drunker WE Manual, Driver at Shahdol was issued by SR.DMO/SDL on 8-10-1992. That as per findings of the Enquiry Officer, misconduct was proved. Punishment of removal was imposed on 28-6-93. The punishment was challenged by filing appeal. The appeal was decided on 21-11-94. The punishment was upheld. IInd party submitted that for proved misconduct, workman is not entitled to relief prayed by him.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|---------------------------------------|
| (i) Whether the action of the management of S.E. Railway, Bilaspur in removing Shri E.Manual, Ex-Diesel Driver from service <i>w.e.f.</i> 28-6-96 is legal? | In Affirmative |
| (ii) If so, to what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

5. Though reference is about legality of removal of workman from service, he has not filed statement of claim neither he has adduced any evidence. Management submitted exparte Written Statement. It is submitted that the workman had consumed alcohol. The departmental enquiry was held and misconduct was proved. The affidavit of evidence of Shri R.Shankaran, S/o V.Ramaseshan is filed. The witness has stated in affidavit that the workman was found drunk while functioning as Driver in Train No. 4260 Dm. Sarnath Express Katni to Bilaspur. Enquiry was held and misconduct was supported by evidence. The record of Enquiry proceeding is produced. The evidence of management's witness remained unchallenged. As 1st Party workman failed to substantiate his claim about illegality of removal from duty, I record my finding on Point No.1 in Negative.

6. In the result, award is passed as under:—

- (i) The action of the management of S.E.Railway, Bilaspur in removing Shri E.Manual, Ex-Diesel Driver from service w.e.f. 28-6-96 is legal.
- (ii) Relief claim by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2013

का०आ० 2133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे इलैक्ट्रीशियन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 97/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं० एल-41012/108/98-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th September, 2013

S.O. 2133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Railway Electrification and there workmen, received by the Central Government on 09.09.2013.

[No. L-41012/108/98-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

No. CGIT/LC/R/97/99

PRESIDING OFFICER: SHRI R.B.PATLE

Shri Amar Singh,
S/o Badaria,
C/o Shri Sudhakar Tiwari, Khalasi,
Under IOW, Rly. Electrification,
Bilaspur

....Workman

Versus

Dy. Chief Project Manager,
Railway Electrification,
Bhopal

....Management

AWARD

Passed on this 21st day of June, 2013

1. As per letter dated 24-2-99 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-41012/108/98-IR (B-I). The dispute under reference relates to:

"Whether the action of the management of Dy.Chief Project Manager, RE, Bhopal in terminating the services of Shri Amar Singh S/o Badaria w.e.f. 24-2-97 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Even after notice, workman did not appeared. Workman is proceeded exparte on 21-12-2006. Management was directed to file exparte Written, Statement. The management failed to file exparte Written Statement. Management was also given opportunity to file evidence. Management failed to adduce evidence.

3. It appears that both parties are not interested for adjudication of the reference, hence No Dispute Award is passed.

R.B.PATLE, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2013

का०आ० 2134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचाट (संदर्भ संख्या 45/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं० एल-12012/271/2003-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th September, 2013

S.O. 2134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 09.09.2013.

[No. L-12012/271/2003-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD****PRESENT**

Shri Kishori Ram

Presiding Officer.

In the matter of an Industrial Dispute under Section 10(I)(d) of the I.D. Act, 1947.

REFERENCE No. 45 OF 2004.**Parties:**

Sri Padmalochan Mahato Agrico, Jamshedpur
Vs. .Br. Manager, S.B.I., Govindpur Branch, Jamshedpur

Appearances:

On behalf of the workman:
Mr. Dinesh Kumar, Ld. Advocate

On behalf of the Management:
Mr. R. N. Chatterjee, Ld. Advocate

State : JHARKHAND

Industry : Banking

Dated, Dhanbad, the 27th July" 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(I)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-12012/271/2003-IR(B-I) dt.22.3.2004.

SCHEDULE

"Whether the non regularization of services of Shri Padmalochan Mahato and termination of his services by the Management of State Bank of India is justified. It not to what remedies available for".

2. The case of the workman Padmalochan Mahato is that he was appointed as a Messenger/Coolie in the service of the State Bank of India, Chhota Govindpur Branch, Jamshedpur *w.e.f.* 23.2.2995. He continuously worked up to 21.2.1997 there sincerely. Though it was initially his temporary service, he had completed 541 days at the Bank Branch, so he should be legally treated as permanent employee of the Bank. But he ws illegally motivatedly and against the principle of natural justice terminated *w.e.f.* 22.02.1991. The termination amounts retrenchment u/s 2(00) of the Industrial Dispute Act, 1947 there sincerely. Though it was initially his temporary service, he had completed 541 days at the Bank Branch, so he should be legally treated as a permanent employee of the Bank. But he was illegally, motivatedly and against the principle of natural justice

terminated *w.e.f.* 22.2.1997. The termination amounts to retrenchment u/s 2(00) of the Industrial Dispute Act, 1947. His termination was without one month's notice or compensation for it under the provision of the Act. It was his victimization and unfair labour practice by the Bank. At his approach to the Bank Authority and the Recognized Union in respect of his termination and retrenchment in the service without back wages or settlement the Bank authorities as well as its officials assured of considering his case.

3. Justifying the maintainability of the Reference u/s 2(a) of the Act, the workman in its rejoinder with specific denials has stated that fundamental right confer on him to claim, as he served more than 240 days, the Branch has power to appoint a person in exigency against permanent vacancies existent in the Branch. His working for 240 days confers on him a right to be absorbed in the post. No retrenchment rules override the enacted law. Thus the plea of the management is lame excuse for its misdeed. The post of the messenger in a Banks is permanent. The mode of payment of wages through vouchers' was under the control of the Bank Manager.

4. Whereas the contra pleaded case of the O.P./ Management with categorical denials is that the reference being vague and beyond the purview of the I.D. Act is legally unmaintainable, as the person concerned is not an employee of the State Bank of India. There is no employer-employee relationship between the management and him. He was never appointed in any capacity anywhere. Any vacancy, if any, in any post in the Bank is filled up as per the recruitment rules/regulations of the Bank, but no Branch of the Bank has power to appoint/employ any person in violation of the Rules against the fundamental right of the others. Since the person was never appointed by the Bank as per recruitment Rules, the question of his regularization, or of termination does not arise. At times, the Branches of the Bank need help of some outsiders to perform certain jobs of highly casual, not of permanent in nature, and they are paid through petty cash vouchers at the end of each job. The performance of such job of casual nature by the person as a coolie of a legal right for his regularization as regular employee of the Bank. The Bank has no post of coolie; so the claim of Sri Mahato is baseless. The instant dispute is mere attempt by an outsider to get into the regular employment of the bank through litigation. It is the settled law that a person entering as a daily wager without following the selection procedure cannot be regularized or an appointment made in contravention of the rules and in ignorance essential, qualification is illegal. The Bank has no such existent rule to regularize such casual or daily person.

5. In its rejoinder, categorically denying the allegations of the workman, the O.P./Management has

stated that merely for occasionally engagement of the person as a coolie by the Bank for casual works in exigencies he is not entitled to any relief. Remuneration of a temporary or regular employee of the Bank is not paid through vouchers. The local Implementation Committee of the Branch also utilized the service of the person concerned as a canteen boy in the canteen run by the Local Implementation Committee, so he is not an employee of the Bank.

FINDING WITH THE REASON

6. In this reference, WW1 Padmalochan Mahato the workman for himself, and MW1 Shree Jaishree, the Branch Manager, the SBI Branch, Chhota Govindpur, Singhbhum for the O.P./Management have been examined respectively.

The oral statement of WW1 Padmalochin Mahato, the workman for himself, reveals his engagement as a messenger in place of Subodh Kumar Bera by the Management *w.e.f.* 23.2.1995 at SBI Chhota Govindpur Branch where he worked up to 21.2.1997 by putting his attendance for more than 240 days in a year and aforesaid Kumar Bera, who was being seriously ill, died subsequently. But the fact of his engagement in place of aforesaid Subodh Kumar Bera, a messenger who died of serious illness is unpleaded, so it is inadmissible excepting the Certificate (Marked X for identification) and Recommendation Letter of the Branch Manager to the Higher Authority (the photocopy- Ext.W.1). The workman has no document to show his working for his 240 days preceding to his stoppage from working. It is indisputable that neither he got any appointment letter to work as a messenger nor his name was called for from the Employment Exchange nor there was any advertisement to fill up the vacancy of messenger. Besides, the alleged Certificate (Marked for X for identification) issued by the Branch Manager concerned in favour of the workman itself though contradictory to his statement yet proves his working intermittently as messenger for three years. Likewise the photocopy of the Recommendation Letter of the Branch Manager (Ext.W.1) discloses his working for 341 days, but none of his both documents specifically affirms the period of his working. Both are his vague documents as his pleaded evidence. The recommendation letter asserts his presently working as Canteen Boy at the Branch.

7. Whereas as per the statement of M.W.I, SBI Branch, Shree Haishree, Chhota Govindpur, Singhbhum for the O.P./management the workman was neither engaged nor paid any wages by the Bank during his tenure (Since 25th Oct., 2010) rather he worked around the year 1997 in the canteen on daily wages, which were paid by the Local Implementation Committee which is an independent body, a separate entity and a private organization of the staff and workmen at the Branch formed for the welfare activities; at times the workman which temporarily working as a canteen

"Boy" in the year 1997 on daily wages under the said independent committee performed the job of Box Lifting etc. for the Bank Branch on daily wages, there was no Employer-employee relationship between the Bank and the workman, so his claim for regularization just as his alleged termination is totally unjustified. According to the Management witness (MWI) since the Bank has not any documents, it has no verification of it related to the period of Feb, 1995 to Feb. 1997, and the B.K. Singh, the Branch Manager, had recommended for absorption of the workman as a messenger/coolie, stating about his intermittently work.

8. As per written argument, it is argued on behalf of the workman that since the workman worked as a messenger in place of Subodh Kr. Bera in the State Bank of India, Chhota Govindpur Branch, Jamshedpur for more than 240 days from 25.2.1995 until he was stopped from working since 21.2.1997 as evident from the recommendation letter of the Branch Manager concerned (Ext.W.1,) so his termination was illegal; hence he is entitled to reinstatement in his service with full back wages. Whereas the contention on behalf of the O.P./Management as per its written argument is that merely because the workman was occasionally engaged for casual work as a coolie on daily wages, he cannot be entitled to any relief against the Bank in this respect.

9. On the perusal and consideration of the materials available on the concerned, I find the facts as under:

- (i) In the face of the admission of the workman that he has not got any appointment letter for the post of a messenger against any permanent vacancy and has no paper except the Certificate dt. 1.10.97 of the Branch Manager, Chhota Govindpur (Ext.W.1) to show his working as a messenger for more than 240 days. His Certificate is not an official letter.
- (ii) His aforesaid Certificate (Ext. W-1) clearly indicates his two facts -firstly working "intermittently", and "for a period of exceeding 3 years "The period of three years both these facts rebut his oral statement of his alleged continuous working from 23.2.95 to 21.2.97 which is lesser than two years. The stand of the workman is contradictory highly. His intermittent working cannot be his regular continuous service even for any single year.
- (iii) In case of admitted intermittent casual work of the workman, no question of his alleged termination/ retrenchment as under Sec, 25 F of the I.D. Act. 1947 arises.

Under these circumstances, it is hereby, in the terms of the Reference:

ORDERED

That the Award be and the same is passed that the non-regularization of service of Shri Padmalochan Mahato by the Management of the State Bank of India is quite legally justified. But in view of the status of the workman as intermittent messenger for his contradictory periods, he was surely a casual worker on daily wages, the question about his alleged termination from alleged service by the said management neither arises nor applicable to the present reference, as there is no continuous service of the Workman. So the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2013

का.आ. 2135.—औद्योगिक विवाद अधिनियम, 1947, 1947 का 14 की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे इन्स्टीट्यूट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट संदर्भ संख्या 3/2011 को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं एल-41012/19/2009-आईआर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th September, 2013

S.O. 2135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the industrial dispute between the Management of Railway Institute and their workmen, received by the Central Government on 09/09/2013.

[No. L-41012/19/2009-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

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

PRESENT

Smt. M. VIJAYALAKSHMI, Presiding Officer

Dated the 18th day of April, 2013

INDUSTRIAL DISPUTE No. 3/2011**Between:**

Sri Ch. Venkateswarlu,
Ex-Gardener-cum-Watchman,
Railway Institute, Vadlapudi:

D. No. 49-10-18, Lalitha Nagar,
Visakhapatnam.

.....Petitioner

AND

The Secretary,
Railway Institute,
Vadlapudi, East Coast Railway,
Visakhapatnam.

.....Respondent

Appearances:

For the Petitioner : None

For the Respondent : Sri Y.V. Sanyasi Rao, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-41012/19/2009-IR(B.I.) dated 6.1.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of East Coast Railway and their workman. The reference is:

SCHEDULE

"Whether the action of the management of Railway Institute, Vadlapudi, East Coast Railway, Vadlapudi, Visakhapatnam in terminating the services of Sh. Ch. Venkateswarlu, ex-Gardner-cum-Watchman is justified? To what relief the workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 3/2011 and notices were issued to the parties concerned.

2. The case stands posted for appearance of Petitioner and for filing of claim statement and documents. Petitioner called absent and there is no representation since long time. In spite of fair opportunity claim statement not filed by the Petitioner. In the circumstances, taking that Petitioner is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 18th day of April, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 सितम्बर, 2013

कांआ 2136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वैश्य बैंक लि० के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलौर के पंचाट संदर्भ संख्या 129/2007 को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/09/2013 को प्राप्त हुआ था।

[सं एल-12012/215/2002-आईआर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th September, 2013

S.O. 2136.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.129/2007) of the Cent. Govt. Indust. Tribunal-cum-Labour Court, BANGALORE as shown in the Annexure, in the industrial dispute between the management of Vysya Bank Limited and their workmen, received by the Central Government on 08/09/2013.

[No. L-12012/215/2002-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT YESWANTHPUR,**

BANGALORE

Dated : 5th June, 2013
Present : Shri S.N. NAVALGUND,
Presiding Officer

C.R. No. 129/2007

I Party	II Party
Sh. R. Nagaraja, 39/3, 5th Main Road, Palace Gutahalli, BANGALORE-560003	The Chairman, INY Vysya Bank Limited, No. 72, St. Marks Road, BANGALORE-560001.

APPEARANCES

I Party : Shri C.N. Krishna Reddy
Advocate
II Party : Shri B.C. Prabhakar
Advocate

AWARD

1. The Central Government which had declined to refer the matter for adjudication by issuing an endorsement on 20.09.2002 observing that the dispute raised by the workman is not maintainable under Section 2A of ID Act, 1947 as it is a case of voluntary resignation and more over it has been raised belatedly after a lapse of 11 years without any valid reasons, later being directed by the Hon'ble High Court of Karnataka in W P No. 6448/2005 made this reference in exercise of the power conferred of by Clause (d) of Sub-section 1 and Sub-section 2A Section 10 of the ID Act, 1947 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Vysya Bank Ltd. in denying family pension benefits to Shri R. Nagaraj S/o Late Sri Parathasarathy, is fair and justified? If not, to what relief he is entitled."

2. On receipt of the reference while registering it in CR 129/2007 when notices were issued to both sides they entered their appearance through their respective advocates and I Party filed his claim statement on 30.11.2007 whereas the II party its counter statement on 07.12.2010.

3. When the II party was called upon to lead evidence justifying its action of denying family pension benefits to the I party its learned advocate while filing the affidavit of Subramanya Gupta, Process Lead Trust Manager of the II party Bank reiterating the counter statement examined him on oath as MW 1 got exhibited the Resignation letter of I Party dated 21.07.1990; copy of the order accepting the resignation dated 23.07.1990; relieving order dated 29.07.1990; office copy of letters dated 28.08.1990 issued by the II party to the trustees Vysya Bank staff Gratuity Fund to settle the gratuity amount and Provident Fund of the I party; the letter of I party seeking payment of pension dated 27.05.1997; office copy of the reply dated 03.06.1997 of the II party; the legal notice dated 18.02.2000 received from the I party; office copy of the reply by the II Party dated 28.04.2000; copy of ING Vysya Bank Employees Pension Regulations 1995 as Ex M-1 to Ex M-10 respectively and closed his side, *Inter alia*, the learned advocate appearing for the party while filing the affidavit of I party reiterating the claim statement examining him on oath as WW 1 did not get any documents exhibited.

4. After close of the evidence of both the sides when the matter was posted for arguments the learned advocate appearing for the I party filed his written arguments and in support of his arguments cited the decisions reported in AIR 1998 Page 1747 SC (Dhan Raj and others v. State of Jammu & Kashmir and others) and AIR 1983 Page 130 SC

(D S Nakara and others v. Union of India) whereas the learned advocate appearing for the II party addressed his oral arguments.

5. On appreciation of the pleadings, oral and documentary evidence brought on record by both the sides in the light of the arguments put forward by the advocates appearing for both sides, I have arrived at conclusion the action of the management of Vysya Bank in denying family pension benefits to Sh. Nagaraj is legal and justified and that he is not entitle for any benefits for the following reasons:

REASONS

6. The I Party in his claim statement alleging that he rendered 29 years of service as a sub-staff in the II party Bank till 21.07.1990 took voluntary retirement but the management took his signatures on many blank papers and registers amongst which some of them were affixed with revenue stamps and misused the said papers to create evidence as if he resigned from the job and was not retired and as inspite of his several requests to include his name for the membership of the family pension scheme it was not responded to he got issued legal notice dated 18.02.2000 and as a reply was given denying his request on the ground that he has resigned and not retired to entitle for inclusion of his name for family pension he constrained to raise this dispute. *Inter alia*, in the counter statement filed by the II Party without disputing I Party having served as its sub-staff for a period of 29 years till 21.09.1990; it is contended that on 21.07.1990 he tendered resignation on personal grounds with a specific request for waiving off the required notice the same being accepted and informed *vide* letter dated 23.07.1990 by waiving of the notice period as a special case and relieving him of duties from 23.07.1990 and thereafter settled his terminal benefits including PF and gratuity and thereafter with a gap of seven years on 27.05.1997 he asked for inclusion of his name for family pension which was aptly replied by letter dated 03.06.1997 and thereafter keeping quite for three years on 18.02.2000 he got issued notice through his advocate calling upon to include him in the family pension scheme and that was also aptly replied on 28.04.2000 clarifying that he is not entitle to be included in the family pension scheme having resigned and not retired, he approached the conciliation officer and as he submitted a failure report the Central Government gave an endorsement to him on 20.09.2002 declining to refer the matter for adjudication with observations that dispute raised by him is not maintainable under Section 2A of the ID act, 1947 as it is a case of voluntary resignation and moreover it is raised after a lapse of 11 years without any valid reasons and subsequently when he approached

the Hon'ble High Court of Karnataka in W P No. 6448/2005 and an order was made to the Central Government for making this reference, the CG is compelled to make this reference for adjudication. It is also contended since it is not a case of termination, dismissal, retrenchment or discharge the I Party cannot invoke the provisions of Section 2A of the ID Act for adjudication of his grievance without the intervention of any Union as such also the reference is not maintainable and is to be rejected.

7. The documentary evidence produced by the II Party at Ex M-1 to Ex M-5 do clearly indicate/suggest the I Party having submitted a letter of resignation dated 21.07.1990 with a request to accept the same with immediate effect by waving required prior notice and to consider his daughter R N Indira for job who is studying in Final Year B Com and same being accepted and Order has been served on him on 23.07.1990 and he has received the PF and Gratuity, he who has admittedly put in a service of 29 years would not have simply put his signatures to blank papers and registers as alleged by him in Para 2 of the claim statement enabling the II Party to create evidence as if he has resigned. In this regard except the allegations in the claim statement and his swearing affidavit evidence absolutely there is nothing on record as a direct of circumstantial evidence to believe his case of putting his signatures on blank papers and registers. Moreover, he who was relieved of his post on 23.07.1990 since kept quite for over a period of seven years *i.e.*, till 27.05.1997 the date on which for first time he sought for payment of family pension this in itself suggest that he who had voluntarily resigned from his post with after thought started claiming payment of family pension claiming that he had retired and not resigned. Since as per regulation No. 3(1) (a) of the Vysya Bank Employees Pension Regulation, 1995 an employee who was in the service of the Bank on or after the first day of January 1986 but had retired before the first day of November 1993 is eligible for applying and receiving benefits, the II Party is fair and justified in its action in denying family pension benefits to the I party.

8. Moreover as contended by the II party to invoke the provisions of Section 2A of the ID Act the impugned action should be discharge, dismissal, retrenchment or otherwise termination from the service and in the absence of such things no workman can individually without the intervention of any union entitle to raise a industrial dispute as such on that ground also the reference is liable to be rejected. In the result, I pass the following Order:

ORDER

The reference is rejected holding the action of the Vysya Bank Limited in denying family pension benefits to

Shri R. Nagaraj S/o late Sri Parathasarathy, is fair and justified and that he is entitle for any relief.

(Dictated to U.D.C. transcribed by him, corrected and signed by me on 5th June 2013)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 10 सितम्बर, 2013

कांआ 2137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्वोत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट संदर्भ संख्या (35/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/09/2013 को प्राप्त हुआ था।

[सं एल-41011/17/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th September, 2013

S.O. 2137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.35/2008) of the Cent. Govt. Indust. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Purvottar Railway and their workmen, received by the Central Government on 10/09/2013.

[No. L-41011/17/2008-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. MANJU NIGAM,
Presiding Officer

I.D. No. 35/2008

BETWEEN

Mandal Sanghatan Mantri,
Purvottar Railway Shramik Sangh
283/63 KH, Garhi Kannora
Premvati Nagar, PO: Manak Nagar
Lucknow

AND

A.E.N.
Purvottar Railway
Bahraich

Sr. D.P.O.

Purvottar Railway Mandal Rail Prabhandak Karyalya
Ashok Marg
Lucknow

ORDER

1. By order No. L- 41011/17/2008-IR(B-I) dated 30.05.2008, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghatan Mantri, Purvottar Railway Shramik Sangh, 283/63 KH, Garhi Kannora, Premvati Nagar, PO: Manak Lucknow (espousing cause of Mohd Yusuf S/o Late Mohd. Yasin) A.E.N. Purvottar Railway, Bahraich and Sr. DPO, Purvottar Railway Mandal Rail Prabhandak Karyalya, Ashok Marg, Lucknow for adjudication.

1. The reference under adjudication is:

"Kiya Purvottar Railway Prabhandtantra Ke Patra 29.06.2004 Ke Anusar Sansodhan Karke Use Dey Dhanrashi Rs. 60,143/ Ka Bhugtan Sevanivrat Modh. Yusuf S/o Mohd Yasin, Carpanter Ko Kiya Gaya, Kintu Es Rashi Par Bayaj Na Diya Jana Niyaochit Evm Vaidh Hai? Karmkar Kis Rahat Ko Panne Ka Adhikari Hai?"

2. The case of the workman Mohd. Yusuf, in brief, is that he was employed as Carpanter, PWI, Purvottar Railway, Bharaich and retired on 30.09.2001. The workman union alleged that management withheld Rs. 60143/- from retrial amount but in the year 2004 the management paid the same amount to the workman. The workman union alleged that Mohd Yusuf pay scale was considered Rs. 6200/- in place of Rs. 6500/- due to *malafide* intention of the management. The workman union prayed that Tribunal to order the management to pay 18% interest on the withheld amount. Case proceed exparte against management on 27.05.2009 next date *i.e.* 25.06.2009 workman filed his evidence on affidavit W-8 Opposite party filed application to recall the order to precede exparte dated 27.05.2009. The exparte order was set aside *vide* order dated 07.04.2010.

3. The opposite party filed written statement stating therein that the workman was paid all the retrial dues at the time of retirement as per rule but Mohd. Yusuf was on deputation in Iraq and his service on deputation was not counted at the time of retirement. The opposite party stated that when approval was received for counting the services of deputation so his scale was upgraded from Rs. 6200/- to Rs. 6500/- and arrear was paid to him. It was further pleaded that as per Railway Services & Pension 1993 Chapter VI

rule 87 (4) no interest on the arrears of gratuity shall be paid. The Rule reproduced below;

"If as a result of Government's decision taken subsequent to the retirement of a railway servant, the amount of gratuity already paid on his retirement is enhanced on account of;

(a) grant of emoluments higher than the emoluments on which gratuity already paid was determined, or

(b) liberalization in the provisions of these rules from a date of retirement of the railway servant concerned, no interest on the arrears of gratuity shall be paid."

4. The workman filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim. The rejoinder was filed by workman on 07.07.2010 thereafter the case was fixed for filing documents and evidence of workman. Authorized representative of workman informed that workman evidence on affidavit has already been filed on 25.06.2009. No fresh evidence is to be filed.

5. The workman was cross examined on 27.09.2011 wherein he stated that letter no. E/TT/PC/Mohd.Yusuf/carpenter/Engg. Dated 29.06.2004 was received by him alongwith 3 cheques but has no knowledge of the rules. Thereafter case was fixed for opposite party evidence *w.e.f.* 11.11.2011 but the evidence was not filed by opposite party. On 10.01.2012, 29.02.2012, 11.04.2012, 10.05.2012 thereafter the case fixed for argument. In this case the workman has demanded 18% interest on the withheld amount of Rs. 60,143/- *w.e.f.* 01.10.2001 to 31.03.2006. It was submitted that non payment of interest on withheld amount is not only against the rules of Railway Board, but also violative to provisions of I.D. Act. It was pleaded by the management that as per Railway Services rule the applicant is not entitled for the interest on the revised scale. Hence it is necessary to quote the Railway Service & Pension Rule 1993 Chapter-VII rule 87 (4) which is as under:

"If as a result of Government's decision taken subsequent to the retirement of a railway servant, the amount of gratuity already paid on his retirement is enhanced on account of;

(a) grant of emoluments higher than the emoluments on which gratuity already paid was determined, or

(b) liberalization in the provisions of these rules from a date of retirement of the railway servant concerned, no interest on the arrears of gratuity shall be paid."

6. Considering the facts and circumstances and the Railway rules. I come to the conclusion that workman is not entitled to interest as claimed by him. As such the

reference is answered in negative. Workman is not entitled to the relief claimed.

7. Award as above.

Lucknow

Dated : 18.3.2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 10 सितम्बर, 2013

का०आ० 2138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पूर्व मध्य रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या (175/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/09/2013 को प्राप्त हुआ था।

[सं० एल-41012/92/2001-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th September, 2013

S.O. 2138.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 175/2001) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Central Railway and their workmen, received by the Central Government on 10/09/2013.

[No. L-41012/92/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/175/2001

PRESIDING OFFICER : SHRI R. B. PATLE

Smt. Sumanbai,
W/o Late Shri Devisingh,
Vill-Shrawada, Post Gadarwada,
Tehsil Piparia,
Distt. Hoshangabad

Workman

Versus

Divisional Railway Manager,
Western Central Railway,
Jabalpur (MP)

Management

AWARD

Passed on this 8th day of August, 2013

1. As per letter dated 15-11-2001 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-41012/92/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Divisional Railway Manager, Western Central Railway, Jabalpur (MP) is not giving family pension to Smt. Suman Bai, widow of deceased workman Devi Singh, MRCL working under PWI, Damoh after death of her husband on 19-9-92 is legal and justified? If not to what relief Smt. Suman Bai is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party widow of deceased workman filed her statement of claim at Page 5/1 to 5/2. The case of Ist party is that she is widow of Late Devi Singh, MRCL under PWI (Damoh). Her husband died on 19-9-92. That she received compensation Rs. 76202/- under Workman Compensation Act. That she was repeatedly approaching Railway authorities for family pension. Her request was not considered. That after failure of conciliation proceedings, the dispute has been referred. She submits that her husband was working as monthly rated casual labour enjoying temporary status as provided under Railway Establishment Manual Para 2501, 2311(3b). That as per Para 801 of Railway Pension Rules, the management of IInd party is bound to pay family pension to her. On such grounds, she prays for grant of family pension and arrears with interest.

3. IInd party filed Written Statement opposing the claim. Preliminary objection is raised that the reference is initiated after lapse of 6 years. The records are preserved for a period of 5 years. The records are destroyed after prescribed period. Therefore the claim of Ist party is not tenable. The IInd party did not dispute that the husband of Ist Party was working as MRCL. However it is denied that Ist party is entitled to family pension. That her claim is not tenable is not covered under Para 801 of Railway Service Pension Rules 1973. The widow of deceased MRCL is not entitled to pension. On such ground, management prays for rejection of claim of Ist party.

4. Ist party filed rejoinder reiterating her contentions in statement of claim. That her claim for pension is tenable under the Rules.

5. Considering pleadings of record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|-------------|
| (i) Whether the widow of deceased workman Devi Singh, MRCL | In Negative |
|--|-------------|

working under PWI, Damoh is entitled to family pension after death of her husband on 19-9-94?

- | | |
|---|---|
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by Ist party is rejected. |
|---|---|

REASONS

6. Is party widow of deceased MRCL is claiming family pension in support of her claim. She has filed evidence on affidavit. That after death of her husband, she received compensation Rs. 76202/-. She has submitted application for family pension. In her cross-examination, she admits that her husband was not regularized in service. Full Compensation amount was paid to her. She claims ignorance whether family pension is paid to the regular employees.

7. Management filed affidavit of witness of Shri Gyanand Shukla denying claim for family pension. In his cross-examination, management's witness says deceased MRCL was not working under him. He is working on present post from July 2011. IInd party denies claim for family pension of the workman. MRCL paid monetary wages. He was not concerned with working in Engineering section. He deposed as per record. Copy of family pension Scheme for Railway employees 1961 is produced. Para 801 of those rules does not include employee working as MRCL.

8. Counsel for Ist party in support of the claim on family pension relies on ratio held in case of.

"Divisional Suptd. Eastern Railway *versus* Presiding Officer reported in 1986-LIC-36. His Lordship dealing with Para 2501 to 2311 of Railway Establishment Manual held construction unit of Railway is permanent unit and not a project. Casual employees working continuously for six months conferred temporary status on him. The management is bound to give family pension."

9. On the point of demand of family pension, counsel for IInd party Mr. Shashi relies on ratio held in case of.

"General Manager North Western Railway *versus* Chanda Devi reported in 2008(2) - SC-108. His Lordship of the Apex Court held Railway rules make distinction between casual labourer having temporary status which protects only casual employee's service. Hence widow of casual labour is not entitled to family pension."

In para 23 of the judgment, their Lordship have elaborately discussed the family pension Scheme 1964. Their Lordship observed in all these cases though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases, they were not even eligible for screening because the posts become available after death. Under these circumstances, the respondent widow are not eligible for family pension."

The ratio held in above cited case relied by IInd party holds the field. The judgment by Supreme Court needs to be followed instead of the judgment in 1986-LIC-36.

10. For above reasons, I hold that the widow of deceased MRCL is not entitled to family pension therefore I record my finding in Point No. 1 in Negative.

11. In the result, award is passed as under:—

(1) The action of the management in refusing pension to widow of deceased MRCL Devi Singh is legal.

(2) Relief prayed by widow is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2013

कांआ 2139.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचात संदर्भ संख्या 81/2003 को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/09/2013 को प्राप्त हुआ था।

[सं एल-12012/297/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th September, 2013

S.O. 2139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 81/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 11/09/2013.

[No. L-12012/297/2002-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

No. CGIT/LC/R/81/2003

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,

Daily wages Bank Employees Association,

9, Sanwer Road,

Ujjain

...Workman/Union

Versus

General Manager (Operations),

State Bank of Indore, Head Office,

5, Yeshwant Niwas Road,

Indore (MP)

...Management

AWARD

Passed on this 16th day of August, 2013

1. As per letter dated 28-3-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/297/2002-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of General Manager(O), State Bank of Indore in terminating the services of Shri Mohan Raikwar *w.e.f.* 6-10-99 and not regularizing him is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Workman through Secretary of Daily Wage Bank Employees Union filed statement of claim to Page 2/ 1 to 2/7. Case of workman is that Branch Manager Shri Hemant Lehane on administrative exigency engaged Ist party workman for cleaning work on wages Rs. 40/- per day from 10-9-96. That he was paid wages after deducting wages for holidays. He was required to perform different works. His wages were paid preparing bills. The vouchers for payment of wages were prepared in names of different persons. That one of the voucher for Rs. 800/- was prepared in the name of Shri Raju, Radhakrishna, Koshore Kumar. That he was continuously working in the bank till 6-10-99. His services were terminated without notice or paying retrenchment compensation. He was continuously working for more than 240 days and as such covered under Section 25-B of I.D. Act. That his services are terminated in violation of Section 25-F, G N of I.D. Act. Principles of last come first go was not followed. The wages were paid in different heads. He was paid bonus for the year 96 to 99. On such grounds, Ist party workman prays for his reinstatement with consequential benefits.

3. Written Statement is filed at page 5/1 to 5/6. The claim for Ist party workman is denied. That workman was never employee of the Bank. Reference is vague. The

reference is not tenable. That for appointment of sub-staff, there is recruitment process. No public notice was issued for appointment, the name of workman was not sponsored through employment Exchange. The recruitment process was not followed. Workman did not complete 240 days continuous service. IInd party Bank never engaged or appointed workman. That utilizing services for few hours in a week for fetching drinking water does not give right of an employee to the workman. That provisions of I.D. Act are not applicable in the matter as there is no employee employer relationship. On such ground, IInd party prays for rejection of relief prayed by workman.

4. Rejoinder is filed by workman at Page 13/1 to 13/3. The workman has reiterated that his services are terminated in violation of Section 25-F of I.D. Act. He was paid bonus for 1996. He had completed 240 days continuous service.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------------------------|
| (i) Whether the action of the management of General Manager(O), State Bank of Indore in terminating the services of Shri Mohan Raikwar w.e.f. 6-10-99 and not regularizing him is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

6. Before dealing with other contentions, I make it clear that the objections filed under Section 36 of I.D. Act about locus of Shri Ram Nagwanshi Secretary of Union and for engaging Advocate were not pressed.

7. The workman is challenging termination of his services. He also prays for regularization of his services contending that he completed 240 days services during each year. His services were terminated in violation of Section 25-G, H of I.D. Act. IInd party denied all contentions. Workman filed affidavit of his evidence covering most of his contentions in statement of claim. That he had completed 240 days continuous service. On his demand for bonus, his services were terminated without paying bonus or retrenchment compensation. Workman has also stated that his wages were paid in name of Maheshwari book. Santosh electrical etc. preparing bonus bills. In his cross-examination, workman says appointment letter was

not given to him. No order of termination of services was issued. There are rules for recruitment in the Bank. The appointments are made after Written Test and interview. He had not appeared in Written test. That the Manager had taken interview but its result was not informed. No exam was conducted having candidates 50 to 100. That zerox copies of documents were supplied to him by Manager but he was unable to tell from which registers those copies were issue to him. Workman has produced documents Exhibit W-1 copy of circular issued by General manager regarding engagement of the casual employees should be avoided. Exhibit W-2, W-3 is document about payment of Rs. 350 for the work of filling water in coolers. Exhibit W-4 is copy of invitation on transfer of Manager Lahane. Exhibit W-5 is copy of invitation of Rang Panchami. Exhibit W-6 is copy of invitation is for sender on transfer of Mr. Ramesh Dubey. W-7 is notice about programme organized on transfer of the officer. Exhibit W-8 is also copy of invitation of programme on transfer. All those documents have not bearing about the work on workman in the Bank. The documents Exhibit W-9, 10 to 14 are difficult to understand what is written in those documents. Exhibit W-15 is copy of settlement dated 13-7-93.

8. Workman has not examined any co-employee, any employee in the Bank about payment of salary to him. The evidence of workman that he received wages under the bogus bills prepared in name of different persons cannot be legalized. Any of those persons are not examined as witness. The evidence adduced by workman is not sufficient to prove that the workman was working for more than 240 days preceding 12 months of his termination of service.

9. The evidence of management's witness Shri Abhay Joshi is filed. Affidavit of said witness is devoted that workman was continuously working from 10-9-96 to October 99. That for cleaning work, the services of workman were engaged, he was to work one hour in the morning and one hour in the evening. As per exigency the wages were paid. In his cross-examination, management witness say that he was not working in the Bank during the relevant period. He had inquired from branch managers on telephone. His suggestion is denied that workman had worked for 300 days in a year.

10. Reliance is placed in ratio held in case of

"Krishna Bhagya Jala Nigam Ltd. *Versus* Mohammed Rafi reported in 2009(11) Supreme Court Cases 522. Their Lordship of the Apex Court held burden of proof as to completion of 240 days of continuous work in a year lies on the aggrieved workman."

In case of State of Haryana *versus* Ramesh Kumar reported in 2008(11) Supreme Court Cases 435. Their Lordship dealing with Section 25-B(2)(a)(ii) and Section 25-F held burden of proof that workman had worked for 240 days as prescribed in Section 25-B(2)(a)(ii) and therefore completed one year's service required under Section 25-F burden is on the workman.

Though the evidence of management's witness is not corroborated from documents or any other witness that workman was working only in morning and evening, the burden lies on the workman to prove that he completed 240 days continuous service. The evidence of workman himself is that he has received wages under the bonus bills prepared in the name of other persons cannot be relied upon that he had actually received payment therefore workman has failed to prove that he was continuously working for more than 240 days preceding his termination. Therefore workman is not entitled to protection of Section 25-F of I.D. Act.

11. The evidence of workman is not clear who is employed after termination of his service, therefore violation of Section 25-G, H of I.D. Act cannot be established. The ratio relied by Shri Ram Nagwanshi in case of Samishta Dube and City Board Etawah and another reported in 1999(81) FLR 746 cannot be applied to the case at hand.

12. For reasons discussed above, action of the management terminating service of workman cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

13. In the result, award is passed as under:—

- (1) Action of the management of General Manager(O), State Bank of Indore in terminating the services of Shri Mohan Raikwar *w.e.f.* 6-10-99 and not regularizing him is legal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2013

का०आ० 2140.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 80/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2013 को प्राप्त हुआ था।

[सं० एल-12012/168/98-आईआर(बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th September, 2013

S.O. 2140.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 11.09.2013.

[No. L-12012/168/1998-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

No. CGIT/LC/R/80/99

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Daily Wages Bank Employees Association,
9, Sanwar Road, Ujjain (MP) Workman/Union

Versus

General Manager (Operations)
State Bank of India,
Head Office, Yeshwant Niwas Road,
Indore Management

AWARD

Passed on this 16th day of August 2013

1. As per letter dated 29.1.1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/168/98-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in terminating the services of Shri Suraj Kumar Pawar *w.e.f.* 28.3.1997 is legal and justified? If not, to what relief the said workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman through Daily Wage Bank's Union filed Statement of Claim at Page 3 to 6. Case of Ist party workman is that he was working in Nimadkhedi branch of the Bank as safaiwala. From 1.5.92, he was paid wages Rs. 20 per day. He was working from 10.30 AM to 6 PM every day. He rendered services satisfactorily. His wages were increased to Rs. 40. In January 94, he was required to

work at Rajgarh Branch, he was paid wages Rs. 40 per day. He was doing cleaning, dusting etc. works. He was also required to do work of taking entries in token book, log book, ledger, supply of drinking water to staff and customers. He was required to purchase articles and distribute dak. He was stitching bundles of notes.

3. On April, 1995, Shri Kantilal died. Other guards Shri Ram Singh has retired on August, 1996. Ist party desired his appointment on regular basis. A note was also submitted by Branch Office to the General Manager. That order was also issued on 2.1.1997 for payment of half of the pay scale to him. From January 1997 to March 1997 Ist party was paid wages by cheque. He had completed 240 days continuous service as provided under Section 25-B of I.D. Act. His services were illegally terminated from 28.3.1997. He was not served with notice for retrenchment. He was not paid retrenchment compensation, junior employees were continued. He was not given opportunity of re-employment, termination of his services is in violation of Section 25-F, G, H of I.D. Act. On such grounds, Ist party prayed for reinstatement with back wages.

4. IInd party filed Written Statement at Page 15/1 to 15/8. IInd party totally denied claim of workman. II party submitted that Ist party was not appointed on permanent or temporary post. The Union had no locus to file statement of claim on behalf of the workman as the workman was not its member. The Union was not party to the conciliation proceeding before ALC, therefore it has no locus to represent the workman.

5. IInd party denied contentions of workman that he was working from 8 AM to 8 PM every day from 1.5.1992. It is denied that the workman rendered his services satisfactorily. It is denied that workman was paid wages Rs. 20 were increased to Rs. 40 per day. According to IInd party workman was engaged for cleaning and dusting work when any other regular employee was absent. The workman was not working for whole day. He was paid wages at the rate for the wage workman had worked. All other contentions of the workman are denied. It is submitted that as workman is not appointed by the Bank, there is no employer employee relationship. The workman is not entitled to relief prayed by him. The workman was not appointed following selection procedure. Therefore, he is not entitled to regularization. On such grounds, IInd party prays for rejection of claim of Ist party workman.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Suraj Kumar Pawar *w.e.f.* 38.3.1997 is legal?

In Negative

(ii) If not, what relief the workman is entitled to?" As per final order

REASONS

7. Before dealing with other contentions, I make it clear that the objections filed under Section 36 of I.D. Act about locus of Shri Ram Nagwanshi Secretary of Union and for engaging Advocate were not pressed.

8. Ist party workman is challenging termination of his services. The workman submits that he was continuously working with the Bank from 1.5.1992 to 28.3.1998. From 18.1.1994, the workman was working at Rajgarh branch. After death of Kantilal, peon and retirement of Guard Ram Singh, he has requested for regular appointment, it was refused. His services are terminated without issuing notice or retrenchment compensation, juniors were continued. All such contentions of workman are denied by the management. The documents are admitted by the management. Exhibit W-1 is letter issued by General Manager directing the Managers of all the branches not to engage employees on daily wages for cleaning etc. work. All other documents produced by workman are denied.

9. Workman filed affidavit of his evidence covering all contentions in Statement of Claim that he was working on daily wages in the Bank from 1.5.1992 and his services were terminated without issuing notice of without paying retrenchment compensation. Termination of his service is illegal. That he had completed 240 days continuous service prior to his discontinuation. He was paid half of the pay scale for January 97 to March 97. In his cross-examination, workman says that he was casual labour on daily wages. Wages at the rate of 25, 25 per day are paid to the casual labours. His name was not sponsored through Employment Exchange. He admits that peons, security guard are appointed following rules. He had not appeared for examination for post of peon. He was not given appointment letter. He was unable to tell how much salary was paid to the regular peon. That he was casually paid wages Rs. 20 per day was increased to Rs. 40 per day. In his entire cross-examination, IInd party has not challenged that workman had worked for more than 240 days. Thus, the workman is covered under Section 25(B) of I.D. Act.

10. Management filed affidavit of witness Shri Jitendra Kumar supporting contentions of management in

Written Statement that the workman was working as casual employee on daily wages but he was not continuously working from 10.30 AM to 6 P.M. All other contentions of the workman are denied by said witness. In his affidavit, management's witness has stated that Ist party workman was not employee of the Bank. There was no employer employee relationship, there was no question of his completing 240 days service. Workman was required to work for one hour in morning and one hour in evening. In his cross-examination, witness of the management says that affidavit of evidence is based on the record. Those documents are not produced on record. He had not enquired from the Branch Manager working at the relevant period.

11. If evidence of the workman and management's witness is tested on probability, the evidence of management's witness are based on office record. Those documents are not produced. On the other hand in evidence of workman, management has not challenged that he was working for continuous 240 days during 12 calendar months of his termination. Management's witness was not working at the relevant time when Ist party workman was working in the Bank. The Bank has admitted working of workman. It was disputed that the workman was not working from 10.30 to 6 P.M. He was working for only one hour in morning and one hour in the evening. This fact is not substantiated by any kind of evidence by IInd party. Therefore, evidence of workman deserves to be accepted. The evidence of management's witness is silent about issuing notice or payment of retrenchment compensation. The evidence is clear that the services of Ist party workman are terminated in violation of Section 25-F of I.D. Act as such illegal. Therefore, I record my finding in Point No. 1 in Negative.

12. **Point No. 2**— In view of my finding in Point No. 1, question arises as to what relief the workman is entitled. The pleadings and evidence on record are clear that name of workman was not sponsored through employment Exchange. He was working on daily wages from 1992 to 1997. On this point, reliance is placed in case of

"Hindustan Petroleum Corporation Ltd. Versus Ashok Ranghba Ambre reported in 2008 (2) Supreme Court cases 717. Their Lordship of the Apex Court dealing with setting aside of illegal termination as violative of Section 25-F held does not necessarily follow that workman is entitled to status of permanency and claim of regular pay scales and other benefits based on permanency. The work "regular" and "regularization" do not connote "permanence".

The ratio held in the case does not support the claim of workman for regularization or reinstatement in service.

Next reliance was placed in ratio held in case of Mahboob Deepak Versus Nagar Panchayat Gajraula and another reported in 2008 (1) Supreme Court Cases 575. Their Lordship dealing with termination of daily wage labour having completed 240 days of continuous service in a year held services terminated on grounds of misconduct for financial irregularities without complying with Section 6-N U.P. Industrial Dispute Act. The appellant's claim for regularization held not sustainable."

Case of Ist party workman is not comparable and he is not terminated on ground of any kind of misconduct of financial irregularities. The ratio cannot be applied to said case. However as the workman was not appointed following selection process, he was working on daily wages, his appointment was not against sanctioned post therefore the workman is not entitled for regularization.

13. The workman has prayed for his reinstatement with back wages as the appointment of workman was not made after following selection process, he was working on daily wages, however, his services are terminated in violation of Section 25-F of I.D. Act, reinstatement of workman would not be appropriate. Considering facts and evidence on record, in my considered view compensation of Rs. 25,000 would be proper and meet the ends of justice. Accordingly I hold and record my finding in Point No. 2.

14. In the result, award is passed as under:—

- (1) Action of the management of State Bank of Indore in terminating the services of Shri Suraj Kumar Pawar *w.e.f.* 28.3.1997 is illegal.
- (2) IInd party is directed to pay Compensation Rs. 25,000 to the Ist party workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 सितम्बर, 2013

का०आ० 2141.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 23/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2013 को प्राप्त हुआ था।

[सं० एल-12012/278/2001-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th September, 2013

S.O. 2141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 11.09.2013.

[No. L-12012/278/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

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

No. CGIT/LC/R/23/2002

PRESIDING OFFICER: SHRI R.B. PATLE

Dy. General Secretary,
Dainik Vetan Bhogi Bank Karmchari Sangathan,
9, Sanwar Road, Hardeo Niwas,
Ujjain (MP) Workman/Union

Versus

Managing Director,
State Bank of India,
5, Yeshwant Niwas Road,
Indore Management

AWARD

Passed on this 16th day of August, 2013

1. As per letter dated 8.1.2002 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-12012/278/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore, Indore (M.P.) in terminating the services of Shri Ashok Kumar Dangad after completion of 2 years service and not regularising him is justified? If not, what relief the workman is entitled?"

2. Ist party workman submitted statement of claim through Secretary of Daily Wages Bank Employees Union. The case of Ist party is that he was working as permanent peon in the bank. He was paid wages Rs. 35/- per day. He was doing cleaning etc. work. He was doing service with honesty, devotion. His wages were increased to Rs. 65/- per day. He had completed 240 days continuous service. When he requested for appointment on permanent post and bonus, his services were terminated from 10-9-97. His services were terminated without issuing notice or paying retrenchment compensation. He further submits that he

was paid bonus Rs.100/- for the year 94-95 and 95-96. The termination of his service is in violation of Section 25-F of I.D. Act. That junior employees were continued. Principles of last come first go was not followed. Section 25-G, N of I.D. Act was violated. He has completed 240 continuous service. He was not called employment when other employee were engaged by the bank. On such ground, 1st party prays for reinstatement with consequential benefits.

3. IInd party filed Written Statement at page 11/1 to 11/8. The case of IInd party is that Bank has rules and regulations for appointment of sub-staff. The Branch Manager has no power for appointment. The 1st party workman was not appointed following recruitment process, his name was not sponsored through Employment Exchange. Workman was engaged as daily rated casual labour for 2-3 hours. Objection is also raised by IInd party that there was no employer employee relationship between parties therefore reference of dispute is not proper and legal. That Shri Ram Nagwanshi a dismissed employee claims to be General Secretary of the Union as per ratio held in AIR SC 1865, he cannot represent the workman. The workman is not entitled to regularization as per ratio held in various cases by the Apex Court. On such grounds, IInd party prays for rejection of the relief prayed by workman.

4. 1st party filed rejoinder at Page 15. It is submitted by 1st party that after disengagement of 1st party workman, IInd party has employed Shri Kishore Kumar on wages Rs. 60 per day. The services of workman are terminated without notice or paying retrenchment compensation.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--------------|
| (i) Whether the action of the management of State Bank of Indore, Indore (MP) in terminating the services of Shri Ashok Kumar Dangad after completion of 2 years service and not regularising him is legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per order |

REASONS

6. Before dealing with other contentions, I make it clear that the objections filed under Section 36 of I.D. Act about locus of Shri Ram Nagwanshi Secretary of Union and for engaging Advocate were not pressed.

7. Ist party workman is challenging termination of his services under Section 25-F, G, H of I.D. Act. The management has denied almost all contentions of workman. The affidavit of evidence of workman is filed covering most

of his contentions that he was working in the Bank from 9-3-95. His services were terminated on 10.9.1997. He was initially paid wages Rs. 35 per day. Wages were increased to Rs. 65 per day. He has completed 240 days continuous service. His services were terminated without issuing notice or paying retrenchment compensation. He has received bonus Rs. 100 each in 1995-96. In his cross-examination, workman says no appointment letter was given to him. He had not appeared for exam for post of peon. He had not submitted any application for such examination. That he was working as daily wage employee. He has no certificate about working on daily wages. That he was paid wages Rs. 35, 65 per day as agreed. Nothing is due against the Bank towards his wages. After his termination on 10.9.1997, he did not receive any order in writing that he has not produced certificate about working more than 250 days. However there was no denial in cross-examination of workman that he had not completed 240 days continuous service claimed by him.

8. Management filed affidavit of evidence of his witness Shri Ashutosh Bhargave supporting contention of the management that workman was working for 2-3 days and agreed wages were paid to him. No recruitment process was followed before workman was engaged. The engagement of 1st party was as per exigency. That working for 2-3 hours cannot be said appointment on regular basis. In his cross-examination, management witness says that name of worker was not sponsored through Employment Exchange, no record was available in that regard. Regular appointment are made following the rules. No permission of competent authority was obtained for appointment of workman. The witness said that the Branch Manager himself was competent authority and no permission was required. He claims ignorance about letters dated 9.3.1995 for payment of bonus. The documents Exhibit W-1, W-2 about payment of bonus are admitted in evidence. Merely payment of bonus in exhibit W -1 & 2 cannot establish that workman was continuously working for 240 days preceding his termination. At the same time, it needs to be noted that evidence of workman on this point in his affidavit was not challenged. Therefore, I do not find reason to disbelieve his evidence on record. Though the management's witness has stated in his affidavit of evidence that workman was working for 2-3 hours a day, in his cross-examination, he says that he was not working in Shyamgarh branch during the period 9.3.1995 to Sept., 1997. The witness has no personal knowledge about working in the branch. The cross-examination of management's witness that his evidence is not based on documents, documents are not produced, he was not working at that time. He was not having personal knowledge about the workman. Therefore the unchallenged evidence of workman deserves to be accepted. Workman has completed 240 days continuous service. His services were terminated without notice or without paying retrenchment compensation.

Therefore it amounts to illegal retrenchment. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No. 2—In view of my finding in Point No. 1, question arises to what relief the workman is entitled. Workman was not appointed following selection process, he had not appeared in exam for appointment of peon, his name was not sponsored through Employment Exchange. As appointment was not against sanctioned post, therefore the workman is not entitled for regularization or reinstatement with back wages. Considering the workman was working on daily wages in the Bank from 9-3-95 to 10-9-97 for about 2 1/2 years compensation Rs. 20,000/- would be reasonable. Accordingly I hold and record my finding in Point No. 2.

10. In the result, award is passed as under:—

- (1) Action of the management of State Bank of Indore, Indore (MP) in terminating the services of Shri Ashok Kumar Dangad after completion of 2 years service and not regularising him is illegal.
- (2) 1st party is directed to pay compensation Rs. 20,000 to the 1st party workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 78/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/09/2013 को प्राप्त हुआ था।

[सं० एल-41012/117/99-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 12/09/2013.

[No. L-41012/117/99-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/78/2000****PRESIDING OFFICER: SHRIR.B. PATLE**

Shri Khushilal,
S/o Shri Amar Singh,
Vill Panajara,
Near Bankheri,
Tehsil Sohagpur, .
Distt. Hoshangabad (MP)

... Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur

... Management

AWARD

Passed on this 8th day of August, 2013

1. As per letter dated 4-4-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-41012/117/99-IR(B-I). The dispute under reference relates to:

"Whether the termination of services of Shri Khushilal, Khalasi by the management of Central Railway Jabalpur (MP) is justified? If not, to what relief is the workman entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at Page 3/1 to 3/3. The case of 1st party is that he had worked under PWI construction, Central Railway at Lonawala, thereafter at PWI Harda, PWI, Gadawara, Burhanpur, IOS(W) Bhopal during different period from 29-12-83 to 18-1-89. The different period are given in para-1 of the statement of claim. That he was treated as monthly rated casual labour. He was medically examined on 23-1-89 at Railway Hospital, Jabalpur. He was found fit in B-2 as per Certificate. After medical examination, his services were to be regularized as required employee. However his services were terminated from 24-4-89 illegally. That as per procedure and rules on completion of 3 months service, he was entitled for temporary status. That Discipline appeal Rules are applicable to them. However his services were terminated without notice is illegal. On such grounds, he prays for reinstatement with back wages.

3. Management of IInd party filed Written Statement at Page 9/1 to 9/2. Preliminary objection is raised that workman was declared unfit on medical examination by DMO, Jabalpur. He was found fit as B-2 and not for B-1 therefore the workman was not entitled for posting. The

Railway Administration appointed one Inspector for enquiry regarding the casual work place. The report was submitted by Inspector was adverse. The claim of the workman is based on documents. That he was appointed as monthly rated khalasi, PWI Narsinghpur is false. All other contentions of workman are denied. IInd party prayed for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the termination of services of Shri Khushilal, Khalasi by the management of Central Railway Jabalpur (MP) is legal?	In Affirmative
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(ii) If not, what relief the workman is entitled to?"	Relief prayed by workman is rejected.
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REASONS

5. 1st party is challenging termination of his service by the management of IInd party. He claims that he was working from 1983 to 1989 under different PWIs. In support of his claim, he filed affidavit of his evidence. The workman had stated that he was working under PWI, Harda, Gadawara, Burhanpur during 1984 to 1986. Again he was working under PWI Gadawara from 86 to 88 and PWI Narsinghpur from 89. His services are terminated without notice in violation of law. In his cross-examination, workman says during 83- 84, he was engaged on work, he was unable to tell dates, 83-84 he worked for 8 months regular work was allowed to him. The work was provided on his request. He worked last in 1989 for 4 months. He was unable to tell the months he was working during said period. On his request to provide work he was assured by PWI to provide work when available. That on medical examination, he was found fit in B-2 category and he admits that B-2 category persons is not provided work. In B-1 category, light job is provided.

6. Management filed affidavit witness of Shri Mahendra Kumar Bamnotiya. The witness supported the contentions of management that workman did not work for 120/240 days without break. The reference is initiated after gap of more than 10 years. The document are not preserved for such long period. The claim of workman that he was continuously working for 240 days preceding 12 months of his termination is not supported by the document. Casual Labour Card finds entry of work from 3-6-88 to 18-6-88 and 19-9-88 to 18-10-88. As per document Exhibit M-1 produced by the management, the details of working days were supplied. As per Exhibit M-2 working days of workman in 85-86 are less than 240 days. The evidence on record is not sufficient to hold that workman

was continuously working for more than 240 days preceding 12 months of termination of his services therefore workman is not entitled for protection under Section 25-F of I.D. Act. The notice under Section 25-F was not necessary. For above reasons. I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:—

- (1) The termination of services of Shri Khushilal, Khalasi by the management of Central Railway Jabalpur (MP) is legal.
- (2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

कांआ 2143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट संदर्भ संख्या 25/2010 को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.09.2013 को प्राप्त हुआ था।

[सं एल-12025/01/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2143.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of South Central Railway and their workmen, received by the Central Government on 12.09.2013.

[No. L-12025/01/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

PRESENT

Smt. M. VIJAYALAKSHMI, Presiding Officer

Dated the 19th day of July, 2013

INDUSTRIAL DISPUTE L.C. NO. 25/2010

Between:

Sri N. Laxmaiah,
S/o Narsaiah,
R/o Pochammawada, Alir.
C/o M/s. G. Ravi Mohan,

16-9-749/41, Race Course Road,
Old Malakpet, Hyderabad.

..... Petitioner

AND

1. The Assistant Divisional Engineer,
South Central Railway,
Kurnool Town, Kurnool District.
2. The Divisional Railway Manager (Works),
South Central Railway,
Hyderabad Division,
Secunderabad.

.... Respondents

Appearances:

For the Petitioner : M/s. G. Ravi Mohan, Vikas Sharma
and K. Bhaskar, Advocates

For the Respondent : Sri J.T. Sastry, Advocate

AWARD

Sri N. Laxmaiah, the Petitioner who worked as Gangman in the Respondent's organization has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents South Central Railway seeking for declaring the removal order dated 2.3.2007 issued by the Respondent No. 1 as illegal, arbitrary and to set aside the same consequently directing the Respondent to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deem fit.

2. The Respondents filed counter stating that the prayer of the Petitioner to set aside the termination order of the Respondent has no substance and no relevance to the facts of the case. Moreover, it is submitted that vide letter No. YW/42/WIV/DAR dated 18.9.2007, the reviewing authority had earlier considered the appeal of the Petitioner and reduced the penalty of removal from service and ordered that he be taken back in the initial grade of appointment in scale Rs. 2610-3540 fixing his pay at Rs. 2610 till he is found suitable for higher grade of Rs. 2650-4000 by competent authority and that the intervening period from date of removal to date of rejoining duty is treated as Dies Non, and the employee is now in service and as such, the petition may be dismissed.

3. Case stands posted for evidence of Petitioner. Petitioner called absent and there is no representation for him. In spite of giving fair opportunity Petitioner is not taking interest in the proceedings. Respondent's counsel reported that Petitioner is already reinstated into service as revealed by him in his counter. Therefore, in the given circumstances, taking that Petitioner has got no interest in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 19th day of July, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for
the Petitioner

NIL

Witnesses examined for
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 13/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/09/2013 को प्राप्त हुआ था।

[सं एल-12012/169/2007-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 12/09/2013.

[No. L-12012/169/2007 - IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT

Dr. MANJU NIGAM, Presiding Officer
I. D. No. 13/2008

Ref. No. L-12012/169/2007-IR(B-I)

Dated: 07.02.2008

Between:

Sri Inder Singh S/o Late Sri Mathura Singh
Village & PO : Sehatwar
Distt.-Ballia (UP)

AND

1. The Manager
State Bank of India
Moti Mehal Marg, Hazratganj
Lucknow
2. The Regional Manager
State Bank of India
Anchalik Karyalaya Region-3
Varanasi (UP)

AWARD

1. By order No. L-12012/169/2007-IR(B-I) dated 09.02.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Inder Singh S/o Late Sri Mathura Singh, Village & PO: Sehatwar, Distt. - Ballia (UP) and the Manager, State Bank of India, Moti Mehal Marg, Hazratganj, Lucknow and the Regional Manager, State Bank of India, Anchalik Karyalaya, Region-3, Varanasi for adjudication.

2. The reference under adjudication is:

“Whether the action of the Management of State Bank of India, Lucknow Ballia in terminating the services of Shri Inder Singh S/o Late Shri Mathura Singh w.e.f. 01/05/1997 is legal and justified? If not, what relief he is entitled to?”

3. The case of the workman, Inder Singh, in brief, is that he had been engaged as Badli Guard with the opposite party Bank w.e.f. 15.11.73 and worked as such till 30.04.1997 with notional breaks at different branches of the Bank. It has been submitted by the workman that he worked for 240 days' continues services even then his services have been terminated without complying with the provisions of Section 25F of the I.D. Act. The workman has alleged that after terminating his services the management has engaged new hands. He has further submitted that the Bank vide letter dated 26.08.1977 called him for interview on 31.08.77 for his absorption in service; but did not absorbed him. Accordingly the workman has prayed that his termination w.e.f. 01.05.1997 be set aside and he be reinstated with all consequential benefits, including back wages.

4. The management of the Bank has controverted the claim of the workman by filing its written statement; wherein it has submitted that the workman had never been appointed by the Bank, as the Branch Manager has no

authority to appoint any person in any capacity; moreover he was engaged as temporary Badli Guard at Sahatwar branch, Balia. The management has stated that the workman's name was neither sponsored by the Employment Exchange nor his appointment was as per prescribed procedure for the regular appointees, therefore, he cannot claim for regularization; moreover, he was found not suitable for absorption on interview. As regard non-compliance of section 25 F of the Act, it is stated that the workman had been engaged as per need for some time, therefore, there is no question to give notice or retrenchment compensation etc. Accordingly, the management has prayed that the claim of the workman be rejected as devoid of any merit.

5. The workman has filed his rejoinder to the written statement whereby he has introduced nothing new apart from repeating the averment already made in the statement of claim.

6. The parties filed documentary evidence in support of their claim. The workman examined himself whereas the management examined Shri Narendra Kumar Srivastava, Branch Manager in support of their respective stands. Parties availed the opportunity to cross-examine the witnesses of each other and forwarded oral arguments also.

7. Heard the authorized representative of the parties and perused entire evidence on record.

8. The authorized representative of the workman has argued that the workman had been in the continuous employment of the Bank for more than 240 days, therefore, it was mandatory for the management to comply with the provisions of Section 25 F of the Act before terminating the services of the workman. Since the management has not observed the statutory provisions of the Act, the workman is entitled for reinstatement with consequential benefits.

9. In rebuttal the management's authorized representative has contended that the claim of the workman is liable to be rejected outrightly, being stale one as the same has been raised after more than 10 years. He has also contended that the workman had been engaged as Badli Guard with the Bank, therefore, not entitled for any relief as the Badli Guard are not covered with the Industrial Disputes Act, 1947. It has also been argued that the workman has not filed any evidence in support of his alleged working with the Bank, which weakens his case as the onus to prove the continuous working for 240 days in a calendar year lies on the workman. Furthermore, it is also contended that the workman attained the age of superannuation when he filed the statement of claim before this Tribunal, therefore, his prayer for reinstatement suffers with vice; hence not maintainable.

10. I have given my thoughtful consideration to the rival contentions of the parties and scanned the evidence available on file in light thereof.

11. The case of the workman in his statement of claim has pleaded that he had been engaged as Guard *w.e.f.* 15.11.1973 and worked as such till 30.04.1997 with some notional breaks. It is also the case of the workman that having complied 240 days of continuous services the management was duty bound to comply with the provisions of Section 25 F of the Act before terminating his services.

The schedule of reference is regarding validity of the termination of services of the workman *w.e.f.* 01.05.1997. The workman has pleaded that he had been engaged as Guard with the Bank; but has not filed any appointment letter or any documentary evidence regarding his working with the Bank. He has also pleaded that his services have been terminated *w.e.f.* 01.05.97 and in support thereto he has filed a letter dated 01.05.97, stating that he had been appointed as temporary Badli Guard from 24.06.97 to 01.05.97 on the bank working days only and now his services are being terminated *w.e.f.* 01.05.97.

Per contra the management has filed photocopy of Register of Attendance & Wages, Paper No. 15/4 to 15/7, which goes to show that the workman had worked from 04.06.97 to 18.08.98. Also, the workman himself in his cross-examination has stated that he has worked from 1996 to 1998 as Badli Guard at Sahatwar Branch, making it clear that there was no termination on 01.05.97 and the reference order itself is bad in the eye of law.

12. The authorized representative has contended that the claim of the workman is stale one and has relied on Assistant Engineer, CAD Kota v. Dhan Kunwar 2006 LAB. I. C. 3046; wherein Hon'ble Apex Court observed that relief should not be granted by the Labour Court as there was delay of about eight years in seeking the reference.

The workman has not rebutted this contention of the management either in the pleadings or in the evidence. He has not given any explanation as to what prevented him to adopt legal recourse promptly.

13. The workman has pleaded that he worked for more than 240 days and accordingly, was entitled for compliance of provisions contained in Section 25 F of the Act. In rebuttal the management has argued that the workman failed to prove this by cogent evidence. In *Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai* 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25 -F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of

termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

"The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

In view of the facts and case law cited above, I find substance in the contention of the management that the factum to prove continuous working for 240 days with the management was on the workman and the workman utterly failed to prove that.

14. The workman has pleaded that he was engaged as Guard; but in rebuttal management has contended that the workman was engaged as Badli Guard, therefore, he is not covered with the Industrial Disputes Act. It has relied on *Bangalore Metropolitan Transport Corporation vs. T.V. Anandappa 2009 LAB I.C. 3161*; wherein it has been held by the Hon'ble Supreme Court that a Badli worker, is not entitled to any protection under Act.

15. In view of the discussion made hereinabove and legal position, I am of the considered opinion that the action of the management of State Bank of India, Lucknow, Balia in terminating the services of Shri Inder Singh *w.e.f.* 01.05.1997 is neither illegal nor unjustified; and accordingly, the workman is not entitled for any relief.

18. Award as above.

Lucknow

19th July, 2013 Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2145.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 189/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/09/2013 को प्राप्त हुआ था।

[सं० एल-12012/286/2001-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 189/

2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of State Bank of Indore and their workmen, received by the Central Government on 12/09/2013.

[No. L-12012/286/2001-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

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

No. CGIT/LC/R/189/2001

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Dainik Wetan Bhogi Bank Karmchari Sangathan,
9, Sanwar Road, Hardeo Niwas,
Ujjain (MP)

...Workman/Union

Versus

Dy. General Manager (I),
State Bank of India,
Head Office, Kanchan Bag,
Indore

...Management

AWARD

Passed on this 16th day of August 2013

1. As per letter dated 7-12-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/286/2001-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore, Indore (MP) in terminating the services of Shri Devendra Verma without giving any notice or compensation is justified? If not, what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim through Secretary Dainik Wetan Bhogi Bank Karmchari Sangathan. The case of Ist party workman is that he was working as permanent peon in bank from 20-10-89 for cleaning, dusting etc. work. He was initially paid wages Rs. 20 per day, wages were increased to Rs. 25, 30, 35 per day. He was discharging his duties honestly. His services were transferred to MY Hospital Branch, Indore In October 1995, wages Rs. 35 per day were paid to him. That he was paid wages preparing bogus bills of Rickshaw charge in name of regular employees. The services were terminated from June 1997. In his place, Shri Dharmendra was engaged by the Branch Manager. He was continuously working in service of Bank for 8 years. He had completed 240 days continuous service during each year. His services were

terminated without notice or paying retrenchment compensation. He was paid bonus for the period 1998 to 2000. When he requested for regularization of his service, he was illegally terminated in violation of Section 25-F, G of I.D. Act. On such grounds, workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 10/1 to 10/7. IInd party denies claim of workman that Shri Ram Nagwanshi, Secretary of Union is not employee of Bank. He is dismissed from bank. He cannot represent the workman. IInd party denied that workman was engaged for cleaning, dusting etc. work in 1989 on wages of Rs.25 per day. All other contentions of workman are denied. It is denied that workman is eligible for regular appointment. It is denied that workman is covered under Section 25B of I.D. Act. IInd party further submits that Bank has rules for recruitment of sub staff. Workman has not been appointed following selection process. He has not completed 240 days service. On such grounds, IInd party prays for rejection of claim.

4. Workman filed rejoinder at Page 11/1 to 11/2 reiterating his contentions that he had completed 8 years service. His services were terminated without notice, no retrenchment compensation was paid.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------------------------|
| (i) Whether the action of the management of State Bank of Indore, Indore (MP) in terminating the services of Shri Devendra Verma without giving any notice or compensation is legal? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

6. Before dealing with other contentions, I make it clear that the objections filed under Section 36 of I.D. Act about locus of Shri Ram Nagwanshi Secretary of Union and for engaging Advocate were not pressed.

7. Workman is challenging termination of his service for violation of Section 25-F, G of I.D. Act. IInd party has denied all those contentions of workman.

8. Workman filed affidavit of evidence. He has stated that he was engaged as permanent peon from 20-10-89, he was paid wages initially Rs. 20 per day which were increased to Rs. 25, 30, 35 per day. The wages were paid under voucher, his signatures were obtained. That the Branch Manager was shown payment in name of different persons who were

not in existence. Payments in bogus names were obtained. In case of his denial, he was threatened to be removed from service. That bogus bill in name of MY Hospital Branch, Indore was prepared. When he refused, his services were terminated without notice. In his cross-examination, workman says that he has produced certificate about working of 72 days. He was working under different Managers. That he had appeared for the Bank Exam. He was paid wages Rs. 30 per day in 1997. His evidence about his wages paid under bogus voucher remained unchallenged. He has not examined any of those persons, no other persons of the Bank is examined by the workman.

9. The management filed affidavit of evidence of Smt. Varsha Umat. She has supported contentions of management that workman was working for one hour in the morning and one hour in the evening. He was paid wages for the said period. In her cross-examination, witness says that workman was working one hour in morning and one hour in the evening in MY Hospital branch. She claims ignorance about payment of remuneration to the workman. Appointment letter was not given to him. She had talk with staff members about the workman.

10. Reliance is placed in ratio held in case of—

"Krishna Bhagya Jala Nigam Ltd. Versus Mohammed Raft reported in 2009(11) Supreme Court Cases 522. Their Lordship of the Apex Court held burden of proof as to completion of 240 days of continuous work in a year lies on the aggrieved workman."

In case of State of Haryana versus Ramesh Kumar reported in 2008(11) Supreme Court Cases 435. Their Lordship dealing with Section 25-B(2)(a)(ii) and Section 25-F held burden of proof that workman had worked for 240 days as prescribed in Section 25-B(2)(a)(ii) and therefore completed one year's service required under Section 25-F burden is on the workman.

The burden of proof lies on the workman. The evidence adduced by workman that he continuously worked from 20-10-89 is not cogent. No co-employee is examined. The evidence of workman that he has been paid wages by bogus bill in name of those persons are not examined. Therefore evidence of workman cannot be accepted. The workman has failed to prove that he was continuously worked for 240 days preceding his termination. Therefore he is not entitled to protection under Section 25-F of I.D. Act. Termination of services of workman cannot be said illegal. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:—

- (1) Action of the management of State Bank of Indore, Indore (MP) in terminating the services of

Shri Devendra Verma without giving any notice or compensation is legal.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

कांआ 2146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दि बनारस स्टेट बैंक आफ इंडिया लि० प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 21/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/09/2013 को प्राप्त हुआ था।

[सं एल-12012/195/98-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the Management of Benaras State Bank Limited, and their workmen, received by the Central Government on 12/09/2013.

[No. L-12012/195/98-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

INDUSTRIAL DISPUTE NO. 21/99

Between

Sri Dhruv Kumar son of Sri Khaderan Ram
C/o Sri D S Saxena,
HIG 303, Scheme 1, Kailash Vihar,
Awasth Vikas, Kalyanpur, Kanpur.

And

The General Manager,
The Benaras State Bank of India Limited,
Head Office, S-20/52, AK Varun Wing, Varanasi.

AWARD

1. Central Govt. Mol, New Delhi by notification No. L-12012/195/98-IR(B-I) dated 21.01.99, has referred the following dispute to this tribunal for adjudication—

2. Whether the action of the management of Benaras State Bank Limited in terminating the services of Sri Dhruv

Kumar son of Sri Khaderan Ram with effect, from 17.08.96, is legal and justified? If not, to what relief the said workman is entitled?

3. Brief facts are—

4. It is alleged by the claimant Sri Dhruv Kumar that there was clear vacancy of peon at banks Chunar Branch in District Mirzapur and he was appointed by the branch manager as a temporary peon on 12.12.95. He was required to work for more than the full hours of work at Chunar Branch on all the working days. He was the only peon at Chunar Branch. Initially he was paid Rs. 30 per day which was raised to Rs. 35 per day and these payments were paid periodically.

5. Further these payments are made in benami names, which name the manager of Chunar Branch made the applicant to write on the reverse of the voucher whereas at the time of payment by the cashier he used to obtain the signature of the applicant on the vouchers. He continued to work as temporary peon up till 17.08.96 when his services were abruptly terminated by the bank without assigning any reason, without payment of notice pay and retrenchment compensation. Thus the bank committed breach of section 25F of Industrial Disputes Act, 1947.

6. When the bank did not pay any heed to the representations of the applicant, thereafter the applicant raised an industrial dispute where the conciliation proceeding ended in failure and this reference was made by the Government of India. Thus the applicant worked continuously for more than 240 days.

7. Therefore he has prayed that he be reinstated in service with all consequential benefits. .

8. Management refuted the claim of the applicant on a number ground, *inter alia*, stating that the applicant has worked only 4 days in the month of August 1996 for which he was paid prescribed rate of wage of Rs.35 per day paid to temporary daily wagers at that time. Thus no question of termination of service arises as such they have not committed any breach of section 25F of the Act. The claim statement has also not been verified by the applicant and as such is liable to be rejected. The present reference is also bad in law.

9. Rejoinder statement has also been filed by the claimant but nothing new has been alleged therein.

10. Both the parties have filed documentary as well as oral evidence.

11. Claimant has filed A/D receipt as well as speed post receipt vide list dated 23.07.12.

12. Claimant has also filed 9 documents vide list dated 17.08.01. These papers are paper No.19/2-12.

13. Opposite party has also filed original documents vide list dated 2.06.08. These documents are three vouchers and a letter written by Dhruv Kumar himself.

14. In the oral evidence claimant has produced himself as w.w. 1 and opposite party has produced M.W. 1 Sri Amar Raja, who is the senior branch manager of the bank.

15. I heard the arguments and perused the whole records at length.

16. It is a fact that opposite party was a public institution and they have a prescribed procedure for appointing any person on specific post. This bank was amalgamated with bank of Bank on 19.06.02.

17. M. W.1 has specifically stated that the claimant had worked only for four days and they have filed voucher in original and these voucher are paper No.31/2-4 and last voucher is dated 17.08.96 which mentions on the front of the voucher — Misc expenses — amount paid to Sri Dhruv Kumar of Rs.35 and there is a signature on the back of this voucher in the name of Sri Dhruv Kumar.

18. Opposite party has also filed an application which is paper No. 31/5 which is signed by the claimant himself wherein he has specifically stated that the application which he has given on 04.12.96 is not proper whereas he has worked only for three days.

19. M. W.1 has also stated on oath that there is no record regarding paper No. 19/2-8 which are the photocopies filed by the claimant and there is no signature on paper No.19/3. This witness has been thoroughly cross examined. Not a single word has been asked by the claimant on the application paper No. 31/5 which is in original and moved by the claimant wherein the claimant had admitted that he had worked only for 3 days in the bank. Therefore, there is no evidence, in rebuttal to this application.

20. In the cross W.W.1 stated that he was forced to sign this letter, but this point does not appear to be satisfactory as the claimant did not put any question to M.W.1 that management has forced him to sign this letter.

21. Much stress has been given on paper No.19/2-6. The opposite party has emphasized that these are the photocopies and initial burden was on the claimant to prove these documents. They stated that paper No.19/2—3 which is photocopy does not contain any stamp nor there appears signature of any authority. They stated that the claimant is claiming that the cause of action has arisen on 17.08.96, whereas there is no such date like 17.08.96 or nearby in the letter 19/2-03. The last date in this letter is 10.09.96. It shows that the claimant was also working on 10.09.96 if this document 19/2 is believed, but it itself contradicts the plea of the claimant as he himself stated that he has been

removed on 17.08.96. Moreover the dates are not legible. Moreover, as per letter 19/4 one Sri Jagdish Singh has allegedly written that the payments out of listed 20 payments relating to 12.08.96, 16.08.96 and so on has not been made by him, whereas in the letter 19/2 there is no mention of date 12.08.96 and 16.08.96. Moreover, when Sri Jagdish Singh retired it was the sole responsibility of the claimant to get his attendance procured. Opposite party in such circumstances cannot be blamed.

22. Therefore, there are only three vouchers along with application of the claimant himself which is paper No.31/5. These papers cannot be disbelieved.

23. Hence considering the evidence adduced by both the parties the claimant has failed to establish that he has worked for 240 days continuously or more in a calendar year. The evidence adduced by the opposite party cannot be disbelieved.

24. Therefore, it cannot be held that the services of the claimant were terminated in violation of the provisions of section 25F of Industrial Disputes Act, 1947.

25. Consequently workman is not entitled to any relief.

26. Reference is accordingly answered against the workman and in favor of the management.

27. It is further ordered that two photocopies of this award be sent to the Mol, New Delhi for publication.

RAM PARKASH, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंदौर प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 112/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/09/2013 को प्राप्त हुआ था।

[सं० एल-12012/58/2005-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of State Bank of Indore and their workmen, received by the Central Government on 12/09/2013.

[No. L-12012/58/2005-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****No. CGIT/LC/R/112/2005****PRESIDING OFFICER: SHRIR.B. PATLE**

General Secretary,
Daily wages Bank Employees Association,
9, Sanwar Road,
Ujjain (MP) ... Workman/Union

Versus

General Manager (Operations),
State Bank of India,
Head Office, Yeshwant Niwas Road,
Indore ... Management

AWARD

Passed on this 16th day of August, 2013

1. As per letter dated 4-10-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/58/2005-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of General Manager (O), State Bank of Indore in terminating the services of Shri Mohammed Anwar Khan *w.e.f.* August 99 and not regularizing him is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by 1st party workman through General Secretary of Daily Wage Bank Employees Union. The case of 1st party workman is that he was engaged permanently by Branch Manager, Nateran Distt. Vidisha from January 1994. He was paid wages Rs.20/- per day. That the workman was working satisfactorily, his wages were increased to 30, 40/- per day. His wages were paid every week after deduction of the wages for holidays. That the workman continuously worked from January 1994 to August 1999. That he had completed 240 days continuous service as provided under Section 25 B of I.D. Act. He was in service for more than 5 years. His services were terminated without notice, without paying retrenchment compensation, principles of last come first go was not followed. He was not given opportunity for re-employment as such IInd party violated Section 25-F of I.D. Act. On such ground, workman prays for his reinstatement with back wages.

3. Management filed Written Statement at page 7/1 to 7/8. IInd party denied claim of the workman. It is submitted that the workman had not completed 240 days continuous service preceding termination. He was never employed by

the Bank. There is no employer employee relationship between parties. The reference is not tenable. That so called Secretary Ram Nagwanshi was dismissed employee of the Bank. That Nagwanshi was involved in grave misconduct and dismissed from service from 5-12-2001. In view of ratio held in AIR-1996-SC-1865, Shri Ram Nagwanshi cannot represent employee of the bank as Union Representative.

4. IInd party denies employer employee relationship. That name of worker was not sponsored from Employment Exchange, he was not appointed following selection procedure as per the rules of the Bank. Employee cannot be allowed back door entry. That the services of workman were utilised in Nateran branch for 2-3 hours per day as and when required basis. He was paid "A grade wages for cleaning work. Workman was never appointed in bank service, no appointment letter was given as the part time or regular employee for more than 240 days. That discontinuation of his service cannot be termed as retrenchment. Disengagement is covered under Section 2(00)(bb) of I.D. Act. IInd party relies on ratio in various cases. He submits that workman is not entitled to regularization as he was not appointed following selection process. On such ground, IInd party prays for rejection of claim of workman.

5. Workman filed rejoinder at Page 8/1 to 8/3 reiterating its contentions but his services are terminated in violation of Section 25-F of I.D. Act without any notice or paying retrenchment compensation.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------|
| (i) Whether the action of the management of General Manager (O), State Bank of Indore in terminating the services of Shri Mohammed Anwar Khan <i>w.e.f.</i> August 99 and not regularizing him is legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. Before dealing with other contentions, I make it clear that the objections filed under Section 36 of I.D. Act about locus of Shri Ram Nagwanshi Secretary of Union and for engaging Advocate were not pressed.

8. Workman is challenging termination of his services for violation of Section 25-F, H of I.D. Act. Material contentions of workman that he was continuously working in the Bank from January 1994 to August 1999 are denied. It is denied that workman completed 240 days continuous service, violation of Section 25-F, H is also denied.

9. Workman filed affidavit of his evidence covering most of his contentions in statement of claim that from January 94 to August 99, he was working under Branch Manager Shri B.L. Bamne, Shailendra Sharma and G.P. Upadhyay. He was initially paid wages Rs.20/- per day. Wages were increased to 30/-, 40/-. His services were terminated without notice or paying retrenchment compensation. In his cross-examination, workman says appointment letter was not received by him. His name was not sponsored through Employment Exchange. Advertisement, public notice was not issued for post of peon. He was working on daily wages, he was paid wages Rs.20/-, Rs.25/- per day. In his cross-examination, it was not challenged that workman was continuously working from January 94 to August 99. That he had completed 240 days continuous service. The evidence of workman on above point remained unchallenged.

10. Management filed affidavit of its witness Shri Naresh Meghani. In his affidavit, most of the contentions of management in Written Statement are covered that the workman was not continuously working from January 1994 to August 99. That the workman was working for one hour morning and one hour evening. He was not appointed following selection process. His name was not sponsored through Employment Exchange. Management's witness in his cross-examination says that during January 1994 to August 99, he was not working at that branch. The affidavit of evidence is based on Bank record. That Shri B.L. Bamne, Shailendra Sharma and G.P. Upadhyay were working in the branch. That he had tried to see wage register, appointment orders but the record was not traced. Any record was not found in which name of the workman was appearing. That sub staff Om Prakash Panthi has told him that workman was working one hour morning and one hour evening. Shri Panthi is dead. There may be several employees working during the relevant period but any of those employees are not examined by the bank.

11. Management's witness in his further cross-examination denies payment of bonus hence record was not traced. Management's witness identified signatures on documents Exhibit W-1, W-2 payment of bonus to the workman, no doubt merely on the ground that bonus has been paid as per W-1 Rs.519/- by cheque Exhibit W-2. One cannot jump to conclusion that workman has completed 240 days preceding his disengagement. However evidence of workman on the point is not challenged in his cross-examination and therefore I find no reason to disbelieve evidence of workman that he was continuously working in the Bank. The bank has tried to convince that worker was working one hour morning and one hour evening but any employee working at relevant period are not examined. The evidence adduced by management is here-say evidence. There is no corroboration from any of the employee working during the relevant period. From the evidence on record, it

is established that workman was continuously working for more than 240 days continuous service preceding termination of his services. The workman was not issued notice, was not paid retrenchment compensation, the termination of his services is in violation of Section 25-F of I.D. Act. On the above point, reliance is placed in ratio held in case of

"Samishta Dube and City Board Etawah and another reported in 1999(81) FLR 746 their Lordship of the Apex court dealing with provision of UP Industrial Dispute Act, 1947 Section 6-N held in absence of any agreement between the employer and the workmen, the employer shall ordinarily retrench the workmen who was the last person to be employed in that category, unless for reasons to be recorded, the employer retrenches any other person."

In present case the evidence adduced by workman is not clear about IIInd party employing 88 employees after his termination, therefore ratio held in the case cannot be beneficially applied in the present case.

Next reliance is placed on ratio held in Case of Regional Manager, SBI *versus* Shri Rakesh Kumar Tewari reported in 2006(108)FLR 733. Their Lordship held Section 25-H doesnot require continuous employment of workman within meaning of Section 25-B before he could have been retrenched.

Ratio cannot be applied to the present case at hand as no evidence is adduced on record that after termination of services of 1st party workman any other person was employed in Bank.

In case of Jaipur Development Authority *versus* Ramsahai and another reported in 2007(I) Supreme Court Cases (L&S) 518. Their Lordship held ID Act doesnot envisage application of its provisions where both recruitment and termination are uncertain or when the workmen are not required to be recruited in a categorywise service e.g skilled, semi-skilled or unskilled etc. That Section 25-G is not imperative in nature. For applicability of Section 25-G, H of I.D. Act requirement of continuous work in terms of Section 25-B is not necessary.

The evidence discussed on record clearly shows violation of Section 25-F of I.D. Act, there is no cogent evidence about violation of Section 25-G, H of I.D. Act therefore I record my finding on Point No.1 in Negative.

12. Point No.2- In view of my finding on Point No.1, question arises as to what relief the workman is entitled. Workman was not appointed following selection process. He was working on daily wages from January 94 to August 99 for about 5 years therefore the reinstatement with back wages would not be appropriate. Considering that the workman was working on daily wages Rs.20/- to 40/-

compensation Rs.25,000/- would be reasonable. Accordingly I record my finding in Point No. 2.

13. In the result, award is passed as under:—

- (1) Action of the management of General Manager (O), State Bank of Indore in terminating the services of Shri Mohammed Anwar Khan *w.e.f.* August 99 and not regularizing him is not legal.
- (2) Ind party is directed to pay compensation Rs.25,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2148.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2 धनबाद के पंचाट (संदर्भ संख्या 41/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/262/2002-आई आर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 41/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, 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 09/09/2013.

[No. L-20012/262/2002-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

Present

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act., 1947.

REFERENCE No. 41 OF 2003

Parties :

General secretary,
Janta Karmchari Sangh, Kunsunda, Dhanbad
Vs. Gen. Manager, P.B. Area of M/s BCCL, Dhanbad:

On behalf of the workman:

Mr. B.B. Pandey, Ld. Advocate

On behalf of the Management :

Mr. D.K. Verma, Ld. Advocate

State : JHARKHAND

Industry : Coal

Dated, Dhanbad, the 10th June, 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-20012/262/2002-IR(C-I) dt30.04.2003.

SCHEDULE

"Whether the demand of Janta Karmchri Sangh from the Management of P.B.Area of M/s BCCL that Shri Raghbir Yadav, W.E.Operator should be regularized on the post of Water Supervisor, is proper and justified? If so, to what relief and from what date the workman is entitled?"

2. The case of the Janta Karmchari Sangh, Godhur, Kusunda, Dhanbad for workman Raghvir Yadav as stated in its written statement is that the workman is a permanent employee of Bhagabandh Colliery. He holds the Statutory Certificate of Second class as Winding Engine Operator. As per requirement of the management of the authorization as per the Office Order No. 1005 dt. 31.7.1996, Slip dt. 10.01.1997, the Office Order Nos. 945 dt. 13/15.3.2002 and 2333 dt. 20.02.2002 issued to him time to time has been working as the Water Supervisor for several years. His petition to Sr. P.O. of the Colliery bearing noting dt. 4.7.2001 and 5.7.2001 of the different authorities and the petition dt. 3.1.2002 to the Minister of Coal and other documents are also in support of his claim for his regularization on the post of Water Supervisor, but the management despite assurances verbally refused in April, 2002 to regularize him. At his approach, the Union raised the Industrial Dispute, and after its failure in its conciliation proceeding before the ALC@, Dhanbad due to recalcitrance of the management resulted in the reference for an adjudication. The workman is entitled to regularization on the post of Water Supervisor from appropriate date past as per the Certified Standing Order of the B.C.C.L.

3. The workman, not the Union, in his rejoinder under the signature of his Advocate B.N.Singh has specifically denied, and stated that as per authorization, he was being designated as Water Supervisor.

4. Whereas the contra pleaded case of the O.P./Management with categorical denials is that in fact the workman concerned is a permanent employee of Bhagaband Colliery of P.B. Area, M/s BCCL since 17.10.1990, the date of his appointment. He has been discharging his duties as per his designation till date. But as per the Cadre Scheme, there is no post of Water Supervisor which is highly sensitive, for which the workman is not competent. None can claim for promotion/regularization as a matter of right on the basis of his eligibility. The promotion in a higher post is made according to a Cadre Scheme by giving equal opportunity to all eligible candidates of the promotional zone after recommendation of the Departmental Promotion Committee (DPC) duly constituted by the Cadre Controlling Authority. No appointment/promotion/regularization can be made by any Public Authority ignoring the rules and regulations made for it. Thus, the demand of the Union is neither legal nor justified.

5. The O.P./Management in its rejoinder specifically denying the allegation has stated that nobody is authorized and competent to authorize a Winding Engine Operator to work as Water Supervisor without prior approval of the Cadre Controlling authority. The alleged authorization is forged and manufactured for the purpose of the case which has no evidentiary value. The Union raised the Industrial dispute in utter violation of the provision of NCWA and the Cadre Scheme formulated by the JBCCI. There is no merit in it.

FINDING WITH REASONING

6. In this case Raghubir Yadav, the workman himself for the Union and MWI Rajesh Kumar Kar, Personnel Officer, Bhagabandh Colliery, for the management have been examined.

WWI Raghubir Yadav, the workman himself though designated as Winding Engine Operator, states to have been working as Water Supervisor as per the Office Order No.1005 dt. 31.7.1996 (Ext.W.1) and the copy Sunday/Holidays work slip issued by Sri R.N. Mishra, the Project Officer of the Colliery (its Xerox copy—marked as Ext. W.2), though the correct designation of Water Supervisor is the Water Treatment Plant supervisor. But his oral evidence at the point that Shri Khayum Khan was given the designation of Water Supervisor one-and-half or two years prior to his is unpleaded, so inadmissible. Admittedly the Workman is Winding Engine Operator drawing his salary as technical Supervisor Gr. C which has its own Cadre Scheme; he was granted SLU in case of his stagnancy, and he was neither interviewed nor recommended by the D.P.C. prior to his authorization for working as Water Supervisor.

7. Whereas statement of MWI Rajesh Kumar Kar, the then Personnel Officer Bhagabandh Colliery, affirms the designation of the workman Raghubir Yadav as Winding Operator which is a statutory post presupposes the holder

of the certificate from the DGMS for it. He (MWI) has also asserted the post of Water Treatment Plant Supervisor exists under the NCWA and the Cadre Scheme. He flatly denies the workman to have performed the same job of the Water Treatment Plant Supervisor since his authorization in the year 1996.

8. Mr. B.B. Pandey, the Learned Counsel the Union/workman, submits that the O.P./management has never objected to the authorization dt. 31.7.1996 of the Project Officer concerned in favour the workman for his working as Water Supervisor which is recognized as Water Treatment Plant Supervisor under NCWA, so he is entitled to his regularization accordingly. In response to it Mr. D.K. Verma, the Ld. Advocate for the O.P./management has contended that nowhere is the case of the workman about his working as Water Treatment Plant Supervisor nor he has the qualification or authorization for the highly technical and sensitive post, nor the NCWA refers to any such post of Water Supervisor; moreover, none has authority to issue any such authorization for working as the Water Supervisor.

9. On appreciation of the evidences of both the parties, I find that it is indisputable fact that the post of Winding Engine Operator, the workman holds, has its own cadre; the post of the Water Treatment Plant Supervisor exists under the NCWA and Cadre Scheme, but neither NCWA nor Cadre Scheme provides for the post of 'Water Supervisor. There is beyond doubt that the workman had not undergone the interview nor the recommendation by the D.P.C. for the alleged post of Water Supervisor. The NCWA VI or VIII at the relevant time nowhere provides for regularization for the aforesaid post on the basis of such authorization by the Project Officer of the Colliery concerned, as it was quite contrary to the statutes of the Labour Law. The argument of Mr. Verma, the Ld. Advocate for the O.P./Management outweighs that of Mr. B.B. Pandey, Learned Counsel for the Union. Under these circumstances, in the terms of the reference, it is hereby:

ORDERED

The Award be and the same is passed that the demand of the Janta Karmchari Sangh from the Management of BCCL, P.B. area for regularization of Shri Raghubir Yadav, the W.E. Operator, on the post of Water Supervisor is neither proper nor legal. So the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

कांआ 2149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2, धनबाद के पंचाट (संदर्भ संख्या 13 का 1997) को

प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं एल-20012/444/1995-आईआर (सी-1)]
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/1997) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, 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 09/09/2013.

[No. L-20012/444/1995-IR(C-I)]
M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD.

PRESENT

SHRI KISHORI RAM, PRESIDING OFFICER.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 13 OF 1997

Parties :

The Secretary, Bihar Colliery Kamgar Union,
Jharnapara, Dhanbad
Vs.

Addl. Chief Engineer (E & M),
Dugda Coal Washery of M/s BCCL, Dugda, Bokaro

Appearances:

On behalf of the workman/Union:

Mr. D. Mukherjee, Ld. Advocate

On behalf of the Management:

Mr. D.K. Verma, Ld. Advocate

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 7th Aug. 2013.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/444/95-IR(C-I) dt. 14.1.1997.

SCHEDULE

"Whether the demand of the Union for regularization of the services of S/Shri Jogesh Prasad, Gyanchand Singh and Sivbachan Singh with the management of Dugda Coal Washery of M/s BCCL is justified? If so, to what relief are the concerned workman entitled?"

2. The case of the sponsoring Bihar Colliery Kamgar Union, Hirapur, Dhanbad, for the workmen S/Shri Jogesh Prasad, Gyanchand Singh and Sivbachan Singh is that they had been performing the maintenance job of permanent/perennial nature since long with the tools supplied by the management and its direct control and supervision, producing goods for the benefit of it. The continuous engagement of the workman also in transporting materials for water supply from the store to the respective places was an integral part to the production of the Coal Washery. At their several times representations to the management for their regularization and wages as per law, but its went without any effect; the Union raised the Industrial Dispute before the A.L.C.(C) on 5.3.1994, then the management stopped them from service from 28.12.94 during the pendency of conciliation proceeding. Thus the action of the management in not regularizing the workmen and stopping them from service during the pendency of the conciliation. Proceeding was vindictive, illegal, arbitrary and unjustified. Finally, it resulted in the reference for an adjudication. So the demand of the Union from the management of the Coal Washery for regularizations of the workmen was legal and justified.

The Union in its rejoinder has categorically denied all the allegations of the O.P./Management as vague, frivolous, and false.

3. Whereas the contra pleaded case of the O.P./Management is that the persons as named in the reference neither ever worked nor appointed nor continuously engaged by the management of Dugda Coal Washery of the M/s BCCL on any job of permanent nature at any time nor any tools supplied to them by the management for any work nor employer-employee relationship existed between the persons concerned and the management. They are factually outsiders. So the question of their regularization in the service of the M/s BCCL does not arise; thus the demand of the Union as mentioned in the reference is nothing but an attempt to provide employment to the outsiders through back door, rather is neither legal nor justified.

The O.P./Management in its rejoinder has specifically denied all the allegations of the Union for the workmen and stated that the job of the maintenance of water supply system at the intake well of Dugda Coal Washery was prenenily under the contractor, and all the persons engaged by the contractor in the aforesaid job were regularized and taken in employment of the Coal Washery from 23.10.93 as per the Award of the Central Government Industrial Tribunal No. 2, Dhanbad, and the said job was departmentalized. No person engaged by the contractor in the said job was left in regularization, as the persons concerned have never worked under the contractor in the said job, rather the persons concerned were actually engaged by M/s S.P.

Construction and M/s S.K. Construction whenever required in the year 1988, 89 and 1993 in the job of Civil Construction, which has not been prohibited by the Government under the Contract Labour (Regulation and Abolition) Act, 1970. As such the demand of the Union is fake, baseless and frivolous.

FINDING WITH REASONS

4. In the reference case, WWI Gyan Chand one of the workmen concerned for self and for all other concerned ones and MWI S.N. Roy, the Dy. Chief Engineer at Sudamdih Eastern Washery Zone for the management have been respectively examined.

The oral statement of WWI Gyan Chand for all the three workmen including himself discloses that they started working at Dugda Coal Washery in the year 1985 as helper as contrasted with their plain pleading dealing with no specific time or working as a helper; they were engaged and supplied the tools by the management for the work of inevitable maintenance *i.e.*, for the supply of water from the intake well to all Coal Washery; their work was continuous in nature and under the supervision of the management, but they were stopped from the working from Dec, 1994. But alleged stoppage of their working from the period is unpleaded just as their putting their duties for more than 240 days in each year.

In support to their alleged case, the witness (WWI) has unpleadedly proved 29 Gate Passes issued by the Management for the entry into the office as Ext. WI series but out of them, only nine are the Materials/Stores Passes dt. 19.6.94, 3.1.95, 10.8.94, 12.7.91, 11.8.94, 2.7.94 ineligible '94, 12.6.94 and 15.6.91 (latter three in photocopies) issued by the BCCL Management, but none of them proves to have issued to the workmen.

5. So far as the rest documents of the workmen concerned, all of them are factually four applications dt. 8.2.89, 22.6.92, 12.8.86 and 25.8.88 and their photocopies of the Raju Construction, all Civil, Structural, Mechanical & General Order Supplier, Project Officer, Dugda (Giridih) to the Dy. Chief Engineer (W), Dugda Coal Washery for the issuance of the temporary Gate Passes to the three workmen and other two Santosh and Santosh Kumar Singh, and accordingly the red I.D. Cards of the workmen concerned (Ext.W.I/10-12) and their Certificate on the Pad of the aforesaid S.R. Construction dt. 23.11.89 (Ext.W.I/28) about their working under it as Mazdoors from 10.11.1984 to 31.10.1987. The aforesaid documents of these three workmen undisputedly clearly in disproof of their case affirm their engagement by the aforesaid Civil Contractors for civil constructional job, an unprohibited job, which was not continuous in process, for which these workmen, might be possibly used to work under the Civil Contractor as positively stated by MWI S.N. Roy, as the then Project Officer of Dugda Coal Washery. According to the

management witness (MWI), the management did not maintain any list of workers engaged by the contractors for their work in the said intake well excepting a list of workers in case of payment of wages to them for its verification by the Principal Employer, *i.e.*, the Personnel Department; and that tools for working in the intake well are not supplied by the management to the contractors' workers. It is also indisputable fact that the management did not issue any appointment letter to the workmen. Besides, the statement of the aforesaid management witness (MWI) clearly ascertains the regularization of contractors' other 31 workmen who used to work in the intake well of Dugda Coal Washery as per the Office Order (dt. 20.4.94—Ext.M.I) in implementation of the Award in Ref. No. 134/91, and it discloses that the present workers never worked directly under the management in any capacity, so the question as to the supply of the tools or supervision of their work does not arise.

6. At the point whether the three workmen were the employees of the alleged management/the Principal employer, Mr.D. Mukherjee, Sr. Counsel-cum-Union Representative for the workmen referring the rulings in photocopies thereof (to be cited hereinafter) has paraphrasedly submitted as held therein as such:

That workmen were engaged through contractor for manufacturing salt and the contractor, used to deduct commission and paying them their wages; the Hon'ble Supreme Court held that they are the workmen of the Principle Employer (1962(i)LLJ SC 131, United Salt Works Ltd., Vs. their workmen);

That where 21 workmen of Sugar Factory were stopped from duty and the plea of the management before the Tribunal that they were contractor's workmen. The Tribunal held the workmen as employees of the management and the Hon'ble Supreme Court also held them the employees of the Principal employer, and accordingly directed reinstatement with full back wages (1963(II)LLJ(SC)442(CB), Basti Sugar Mills Ltd. Vs. Ram Ujagar);

That where Principal employer used to supply Bidi leaves and tobacco to the contractor, who used to supply the same to the workmen. The workmen were preparing Bidi in their respective houses, and were depositing the same to the contractor. The workmen were held by the Apex Court that they are employees of the management. (1964 II LLJ 633, D.C. Dewan Mohideen Saheb & Sons & Another Vs. United Bidi Workers Union).

That in the case of Shankar Mukherjee Vs. Union of India and others, F.L.R. 1990 at 20. Their Lordships held that 'even after forty years of independence engagement through contractors is illegal and baneful nature, and it is exploitation of the workmen as bonded labour, and that in the case of Royal Talkies Vs. ESI, SCW-15-101, their

Lordships held that the employees working in the Cycle Stand of the Cinema Hall which is run by the contractor is actually the employee of the principal employer *i.e.*, Cinema Hall.

Further has been urged by Mr. D. Mukherjee, the Ld. Advocate-cum-Union Representative, that in the famous case of the Hussainbhai Vs. Alath Factory, SSLJ-15 at page 112, it has been held by the Hon'ble Apex Court for the application of the 'Lifting the veil' or looking at the conspectus of factors governing employment as true test to discern the naked truth about the real employer in the case where a worker or a group of workers/labours to produce goods or service and these goods or service are for the business of another, that other is, in fact, the employer/the management, not the immediate contractor, as the employer has economic control over the workers, subsistence, skill and continued employments; even where the presence of immediate contractors with whom the workers have immediate or direct relationship. The Court must be astute to avoid the mischief, and achieve the purpose of the law.... It is also submitted by Mr. Mukherjee that the Hon'ble Apex Court in the case of M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and Ors. 2003(3)LLN 892 held that the constitutional Bench has confirmed the Hussainabhai Case that it is neither dissented nor diluted by the Constitution Bench.

Lastly, Mr. Mukherjee, submits that Award dt. 30.10.96 passed by the CGIT NO. 1, Dhanbad, in Ref.No.58/92 was confirmed by the Constitution Bench of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd., Vs. National Union Water Front Workers, reported in 2001 LLN 135 at page 176 Para 144. But in place of it, the photo-stat of ...a Ruling by same names of the parties reported in 2001 LL.961 having total paras 129 has been filed for consideration but it being vague rendered unable to see it.

Further plea of Mr. Mukherjee, Ld. Counsel for the Union/workmen is that the case of Uma Devi, 2001 (II)LLJ-1087(SC) as mislead by Management factually unrelates to the status of the employer-employee relationship; that in the aforesaid case, the management had pleaded that employees were appointed as casual workmen without following the procedure laid down under Article 309 of the Constitution of India applicable for Government servant, and so disputed their claim for regularization. According to Mr. Mukherjee, in the present case, the status of the employer-employee relationship is in dispute; the Tribunal to decide employer-employee relationship, and the case of Uma Devi not applicable where employer-employee relationship is in dispute which has been considered by the Division Bench of Calcutta High Court in 2007 LLR 1029, Punjab National Bank Vs. National Bank Canteen Workers' Union; and the same view again reiterated in the case of Deeljendr Nath Singh Vs. State of West Bengal.

8. On the other hand, Mr. D.K. Verma, Ld. Counsel for the O.P./Management has contended that in the present case, the alleged three workmen were factually casual workers of the contractors for their civil works, but never engaged or appointed nor paid by the management who has never economic control over the workers; they had no employer-employee relationship; so they are not entitled to regularisation. To him, none of the rulings as cited by Mr. Mukherjee, Ld. Adv. for the Union/workmen applies to the facts of the present reference under adjudication.

9. On perusal and candid consideration of the materials as made available on behalf of the workmen, I find the facts as under:

- (i) These three workmen were not issued any appointment letter, pay slip and any I.D.Card by the O.P./Management any time;
- (ii) They were factually casual workers of the Raju Construction, S.K. Construction and S.R. Construction, all Civil, Structural, Mechanical & General Contractor of the Management for its Civil work, which was not of perennial nature.
- (iii) The workmen have no proof of their continuous working as casual labour for statutory period under Sec. 25 (a)(ii) of the Industrial Dispute Act, 1947; and
- (iv) There was never any relationship of employer-employee relationship between the workmen and the O.P./Management. There is no camouflage in this respect at all, as it is evident from the documents of their only four applications of the Civil contracts for Civil work (Extt. W.I series)

In such circumstances, the ratio decidendi of all the cited rulings being quite distinct from the facts of the present case, none of them holds good with the case under adjudication.

In result, it is, in the terms of the reference, hereby awarded that the demand of the Union for regularization of the services of S/Shri Jogesh Prasad, Gyanchand Singh and Shivbachan Singh with the management of Dugda Coal Washery of M/s BCCL is totally unjustified. So the concerned workmen are not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

कांआ 2150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 80 का 1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/726/1997-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 80/98 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 11/09/2013.

[No. L-20012/726/1997-IR(C-I)]

M.K. SINGH, Section Officer

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

REF. NO. 80 OF 98.

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

AND

Their workmen.

Present: SRI RANJAN KUMAR SARAN,
Presiding Officer.

Appearances :

For the employers: Sri D.K. Verma, Advocate.

For the Workman: None.

State: Jharkhand.

Industry: Coal.

Dated 19/8/2013

AWARD

By order No. L-20012/726/97/IR (C-I) dt. 10/09/1998 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bhagabandh Colliery of M/s. B.C.C.L. in denying to provide employment to the dependant son of Smt. Kauslya Kamin under VRS(F) scheme on the

plea that she has crossed the age of 58 years on the date of filing the application under VRS(F) scheme is legal and justified? If not to what relief is the dependant son of Smt. Kamin entitled?"

2. After receipt of the reference, both parties are noticed. The parties appeared and filed their respective claim statements. But subsequently, though management counsel appears, the workman did not appear. Therefore, it appears that there is no dispute between the parties. Hence no dispute award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 188/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/347/2000-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 188/2000 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, 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 09/09/2013.

[No. L-20012/2000/1997-IR(C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 188 OF 2000.

Parties :

The General Secretary,
Colliery Karmchari Sangh, Bhaga Dhanbad
Vs. General Manager
M/s TISCO, Jamadoba, Dhanbad

Appearances :

On behalf of the workman : None

On behalf of the Management:

Mr. D.K. Verma, Ld. Advocate

State : JHARKHAND**Industry :** Coal

Dated, Dhanbad, the 8th August, 2003.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/347/2000(C-I) dt. 29.11.2000.

SCHEDULE

"Whether the action of the General Manager of M/s TISCO, P.O. Jamadoba, Dist. Dhanbad in not providing employment to the dependant son of Shri Rambali Mahato is justified? If not, to what relief is the said dependant of the workman entitled".

2. The case of workman Rambali Mahato as sponsored by Colliery Karmchari Sangh, Bhaga, Dhanbad that the workman, T.No. 43669 was an employee of the TISCO Ltd at. 6 & 7 Pits Colliery after his appointment w.e.f. 12.5.1969 and he discharged his duty as a Trammer. On sending him to the Medical Board of the Management following his madness during his employment, he was declared medically unfit to continue his service. So he was put off the service of the Company w.e.f. 22.9.1984. The workman rendered his service for very long time of 23 years. The dependant of the workman is entitled to his employment in place of the workman as per the provision of the NCWA. Even at his second time representations the management did not consider his case, though the workman during the tenure of his service had enrolled the name of the dependant son in the Employees Dependant Register as per norms of the Company. Thus the action of the management in not providing employment to the dependant son of the workman is unjustified.

3. Specifically denying the allegation of the O.P./Management, it has been alleged on behalf of the workman in his rejoinder that Rambali Mahato was appointed on 12.5.1961 as Trammer at 6 & 7 Pits Colliery. The management itself admitted that Sri Rambali Mahato nominated one person Shri Ram Ker Yadav to get an employment against his long service according to the employment procedure of the Company.

4. Whereas the contra pleaded case of the O.P./Management with categorical denials is that the present reference is unmaintainable, as it has been raised by the Union concerned on behalf of the Ex-workman, Rambali Mahato, who is already dead. The Union has no *locus standi* to raise the demand on behalf of a workman, who is not a member of the Union. The Union is a stranger one.

The provisions of the NCWA has no application to the Establishment of the M/s TISCO in respect of the employment of dependants, as the NCWA itself stipulates that the Establishment will follow its own employment procedure. The workman during the tenure of his service had nominated one person named Ramker Yadav as his dependant son to be provided employment on the strength of his service against future vacancies. The management considered the employment of temporary workers in the year 1992 and the workman was issued the letter dt. 16th June, 1992 to appear before the Medical Board along with his dependant son for his medical examination so as to nominate him in the pool of temporary workers for providing employment against the temporary vacancies, if found suitable for the job of a Miner. The management recruited some of the dependants as temporary workers in the year 1992 on the basis of the selection made to be engaged against temporary vacancies, but the workman did not turn up along with his dependant son for necessary interview, selection and medical examination, as a result, the name of his dependants could not be kept on the penal of temporary workers.

5. Further alleged on behalf of the O.P./Management that after the year 1992, with the introduction of the modern technology by the Management in the Mining Operation, the output per man shift increased in the process of mechanization and concentration of the operation, but the requirement of man power got reduced. Thus, it resulted that the permanent workmen become surplus to requirement. Hence, the Management introduced several Voluntary Retirement Scheme for reduction of surplus manpower on payment of better compensation and facilities so as to maintain optimum work force for smooth working of the Mines. So the scope of employment of the more workers in the different establishments of the Company got reduced, and the management has not yet been able to regularize the temporary workers already inducted into the employment of the Company prior to 1992. Thus, no vacancy exists at present for consideration of the dependants of any workman at the present juncture of time. It is also alleged that no right exists for the demand on behalf of an Ex-workman or Dead workman for employment of his dependants. The consideration of the cases of dependants for their employment is only against vacancies, but there is no fixed time for providing an employment in seniority under such circumstances, the demand for employment by the workman is meritless, as the basis of the Union concerned is baseless and imaginary, so it is unsustainable. The action of the management in not giving employment to the dependant son of Late Rambali Mahato is legal and justified, and the concerned person is not entitled to any relief.

6. In its rejoinder, the O.P./management has categorically denied the allegations of the Union, and stated that Sri Rambali Mahato was appointed on 12.5.1961, not

on 12.5.1969 as alleged, and he was discharged from his service on medical ground w.e.f. 22.9.1984.

FINDING WITH REASONS

7. In the instant reference, WWI Ram Bali Mahato, the medically discharged workman for the Union and MWI Dinesh Kumar Sharma, the Head Clerk for the O.P./Management have been examined respectively.

The statement of WWI Rambali Mahato reveals that he was appointed in the year 1957 and was declared permanent in the year 1961 but was discharged from the service on medical ground in Sept., 1984; and after completion of his 15 years of service, the management registered the name of his son Ram Ker in the Employment Register of Dependant, but the management did not provide his son any employment in view of the Employment policy without any reason, though he had fulfilled all the conditions required in support of his claim for it. Thereafter, G.M. as per his letter (dt. 14/16.3.1994 -Ext. W.I) assured the son of the workman to consider his temporary employment in the event of requirement in future. His son had also submitted his three representations (dt. 13.4.1994, 27.10.97 and illegible -Extt. 2, 2/1 and 2/2 respectively). The aforesaid letter of the Divisional Manager clearly discloses that the dependant son of the workman as per the letter dt. 16.6.1992 referred therein was advised to appear before the medical Board for his medical fitness for employment, but he did not turn up for it at the relevant time, and the post was filled up by the next incumbent in the seniority list as per turn. The workman (WWI) has asserted that his son had not got any letter from the management for his interview for it.

8. Whereas from the statement of MWI Dinesh Kumar Sharma, the Head Clerk of the Management, it is evident that, as per the service sheet of the workman (Ext.M.1), he was discharged from service w.e.f. 22.9.1984 on the ground of his medical unfitness. The provision of the NCWA is inapplicable to the Tata Steel Company, as the management has its own policy. It is indisputable that the name of the petitioner (son of the workman) was also registered in the Employees Dependant Register, so in the year 1992, the management had offered him for his temporary employment as its letter (dt. 16.6.1992-Ext. M.2), but the workman did not respond to the offer of employment. In the year 1994, the petitioner son of the workman submitted an application for employment, the management gave its reply letters (Ext. M3 services, Extt. M. 4 and 5) responded to his respective representations, so the claim of the workman for employment of his son is not justified, and he is not entitled to relief. But the Management witness has affirmed that the Management has no proof about the receipt of the employment offer by the petitioner in the year 1992, and that the workman Rambali, now deceased, had served the management for more than 23 years, though denying that the claim of the workman for the employment

of his son after enrolment of his name for employment following completion of his 15 years service, was unconsidered in spite of available vacancy.

9. As per written argument, it is to submit on behalf of the workman now Late Ram Bali Mahato/now his dependant son Ramker Yadav that despite the fair case of the workman for the employment of his aforesaid dependant son that as per the employment policy of the Management of the Tata Steel Company, the workman had got his name of his dependant son Ramker Yadav enrolled in the Employment Dependant Register after completion of his 15 years of his service, the workman was discharged on medical ground in Sept., 1984, the management did not provide him employment on the ground of non-appearance of the workman or his dependent son at the relevant time for reporting in spite of the latter's induction in the pool of the temporary workers. Further it is contended on behalf of the workman/the petitioner that in view of the para 9.4.3.(ii) of the NCWAIII, the claim of the workman for his son Ramker Yadav's employment is quite justified, because the management of the TISCO Collieries is the party to the NCWAIII, so it is applicable to the present case.

Whereas vehemently opposing the aforesaid plea of the workman/petitioner, Mr. D.K.Verma, Ld. Counsel for the O.P./Management has contended that the N.C.W.A. is not applicable to the TISCO, as it has its own rules in consonance with Rules of the J.B.C.C.I. Raising the point about the cause of the action for the reference, Mr. Verma, Ld. Counsel for the O.P./Management that in fact the workman, was appointed on 12.5.1961, and he was discharged from his service on medical ground w.e.f. 22.9.1984, and later on the workman died and the date of his death was not disclosed in his case, so the claim of the employment for the dependant as a matter of right is unsustainable.

Lastly, the plea has been taken on behalf of the workman/petitioner that the dependant son of the workman (now dead) in the case has a right to obtain appointment on compassionate ground as per the settlement itself as held in the case of Mohan Mahato Vs. Central Coal Fields Ltds and Ors reported in (2007)2 SSC (L & S) 951 (Paras 10 & 13)

10. After hearing the Learned Counsels for the respective parties, and on perusal of the materials available on the case record, I find the facts emerging during the trial of the case for due consideration are as under:

- (i) The indisputable acts are that workman Rambali Mahato as a Trammer served at 6 & 7 Pits Jamadoba Colliery under the management of the TISCO for more than 23 years until his discharge from his permanent service on 22.9.1984 on medical ground of permanently disablement due to his T.B. and Leprosy;

- (ii) It is an acknowledged fact that the workman after completion of his 15 years' service had already got the name of his dependant son Ramker enrolled in the Employee Dependant Register (EDR) for future employment as per static rule of the Company.
- (iii) Despite fulfillment of the aforesaid terms and conditions by the workman for employment of his son Ramker Yadav as per the policy of the Company, the management in contravention of its own policy at the relevant time in the year 1992 cannot deprive Sri Ramker Yadav, the son of the workman Rambali Mahato of his right to employment on the ground of their non-appearance before the Asstt. Manager(P) within three days of receipt of the letter dt. 16.6.1992(Ext.M.2), or even on that of the changed circumstances about meeting of the requirement from the dependants of the retired employees of more than 30 years based on seniority as per the letter dt.14/16th March, 1994 (Ext.W.1), and
- (iv) The O.P./Management has no proof of the delivery of its letter dt. 16.6.1992 (Ext.M.2) to the workman now his son all along struggling for it. The verdict of the Hon'ble Apex Court in the above cited case of Mohan Mahato holds good with the factum of the case.

11. Under these circumstances, it I held and hereby awarded that the action of the General Manager of M/s TISCO, PO: Jamadoba, Distt. Dhanbad in not providing employment to Ramker Yadav, the dependant son of Rambali Mahato is quite unjustified. So the said dependant son is entitled to his employment in the Company as per its very policy, relaxing his age due to undue delay caused by the O.P./Management itself for its negligence in duty towards him.

KISHORI RAM, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

कांआ 2152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 29/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/383/2001-आई आर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 29/2002 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 CCL, and their workmen, received by the Central Government on 11/09/2013.

[No. L-20012/383/2001-IR (C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the Matter of a Reference U/S 10(1) (D) (2A) of I.D.
Act, 1947.

REF. NO. 29 OF 2002

Employers in relation to the management of Urimari
Project of M/s C.C.L.

AND

Their workmen

Present: Sri Ranjan Kumar Saran,
Presiding Officer

Appearances:

For the Employers :— Sri D.K. Verma, Advocate

For the workman :— Sri P.M. Prasad Advocate

State : Jharkhand

Industry: Coal

Dated 24/5/2013

AWARD

By Order No. L-20012/383/2001 IR (C-I), dt. 26/02/2002, 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 जनता मजदूर संघ की सी०सी०एल, सियाल क्षेत्र यूरीमारी प्रोजेक्ट के प्रबंधन से मांग कि श्री नरेश प्रसाद, वरिष्ठ ड्राफ्टमैन की जन्म तारीख 6.12.1945 के स्थान पर 14.7.1949 दर्ज की जाये उचित एवं न्याय संगत है? यदि हां तो कर्मकार किस राहत के पात्र हैं?”

2. The case is received from the Ministry of Labour on 21.03.2002. After notice both parties appeared, the workman files their written statement on 07.10.2002. The Management files their written statement-cum-rejoinder on 28.03.2003. Thereafter the workman files their rejoinder on 07.07.2003.

3. The short point involved in this case is as to whether the Date of Birth of the workman was 14.07.1949 or 06.12.1945. On the basis of which they was retired in the

year 2005, case of the workman was that he passed matriculation. But his matriculation certificate was stolen by dacoits alongwith other house hold articles. But the workman filed some other certificates where his date of Birth appears to 14.7.49. But the recommendation of NCWA is the persons who have no matriculation certificate to prove the age or date of Birth they have to be presented before the medical board for age determination. Accordingly the workman presented before the medical board where his age has been determined as 23.09.1945.

4. The workman has stated in his cross examination, that he has not filed the original matriculation certificates and that has been stolen and he lodged F.I.R. Had the workman passed the matriculation examination, he could have obtained the duplicate of the same from the Board or University authority. In the absence of the same his age determination by the medical board is accepted to be justified.

5. Since as per the NCWA the workman appeared before the medical board in absence of matriculation certificate, either original or authenticated duplicate the result of the medical board is to be accepted.

6. Considering the facts and circumstances, I hold that the demand of Janta Mazdoor Sangh, C.C.L Sayal Area of Urimari project for recording the age of Sri Naresh Prasad, Sr. Draftsman. 14.07.1949 in place of 06.01.1945 is correct and justified. Accordingly the workman has been rightly retired by the management. Hence the workman is not entitled to get any relief, the reference answered against the workman.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 104/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/446/1999-आई आर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 104/2000 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 11/09/2013.

[No. L-20012/446/1999-IR (C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (2A) OF
I.D. ACT, 1947.

Ref. No. 104 of 2000

Employers in relation to the management of Regional
Hospital, Kustore Area M/s B.C.C.L.

AND

Their workmen

Present: SRI RANJAN KUMAR SARAN,

Presiding Officer

Appearances:

For the Employers :— Sri D.K. Verma, Advocate

For the workman :— Sri K.N. Singh, Rep.

State : Jharkhand

Industry : Coal

Dated 18/6/2013

AWARD

By Order No. L-20012/446/99 (C-I), dated 03/02/2000, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“क्या कुस्तोर खदान भांकोकोणलि, धनबाद के प्रबंधतंत्र द्वारा कर्मचारी श्री प्रेमचन्द, ड्रेसर को सहायक भण्डारपाल के पद पर नियमित नहीं करना एवं उनके द्वारा किए गए सहायक भण्डारपाल का कार्य करने की अवधि के वेतन का भुगतान न करना, संवैधानिक एवं कानूनी तौर पर सही एवं उचित है? अथवा नहीं? यदि नहीं, तो कर्मकार किन लाभों के हकदार हैं?”

2. The case is received from the Ministry of Labour on 23.02.2000. After notice both parties appeared. The Sponsoring Union files their written statement on 03.09.2001. The management files their written statement-cum-rejoinder on 12.12.2001. Thereafter rejoinder and documents received by the workman. Witness have been examined.

3. The case of the workman is, he was working as a dresser in the General hospital Kustore in a sanctioned

post. In the store of the said hospital, this workman was ordered to remain in charge of store and he has been working as such for along time. The post of store keeper is a clerical post carries more pay than dresser for which the workman represented to be observed in the said post which was rejected. The workman raised the dispute which came for decision before this Tribunal.

4. The case of the management is, that there was one sanctioned post of store keeper of the hospital and one man is working there. The present workman was ordered to assist or work as store keeper in his absence and the workman has been working and as such, but he is not be regularised. Since he has not been selected or recruited as clerk.

5. There is no scope for promotion from dresser to store keeper clerk.

6. After hearing the argument, perusing the pleadings and evidence this tribunal finds that the workman has not been recruited as clerk or storekeeper but he was working in the said post.

7. Merely working in a higher post for a long period does not automatically get a right to be regularised in the said post. Therefore the Tribunal does not feel to disturb the cadre rule of the management to take a dresser to the cadre of the store keeper.

8. Considering the facts and circumstances of the case, I hold that the action of the management of Kustore colliery of M/s. BCCL is not regularising Sri Premchand, dresser as store keeper difference of wages is legal and justified. The workman is not entitled to get any extra remuneration. Therefore the reference answered against the workman.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

कांआ 2154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 120/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/42/1999-आई आर (सी-I)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 120/1999 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 11/09/2013.

[No. L-20012/42/1999-IR (C-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) D (2A)
OF I.D. ACT, 1947

REF. NO. 120 OF 1999

Employers in relation to the management of Barora Area
of M/s. B.C.C.L.

AND

Their workmen

Present:

Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers :—None

For the workman :—None

State : Jharkhand

Industry : Coal

Dated 24/5/2013

AWARD

By Order No. L-20012/42/99 IR (C-I), dated 04/06/1999, 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 मजदूर संघ का दावा कि श्री साधु नोनिया वर्ष 1982 से नाइट गार्ड का कार्य कर रहे हैं सही है? यदि हां तो क्या उनकी मांग कि कर्मकार को पूर्व तिथि से उक्त पद पर नियमित किया जाए तथा सभी आर्थिक लाभ दिए जाएं उचित है? यदि हां तो कर्मकार किस रहत के पात्र हैं तथा किस तारीख से?”

2. The case is received from the Ministry of Labour on 15.06.1999. After Notice both parties appeared. The workman files their written statement on 30.11.2000. Thereafter rejoinder and documents received. Evidence of the workman taken. Admittedly the workman was working wagon loader. But subsequently he was entrusted to work as a peon cum security guard. Presently the workman claims to be absorbed as security guard cum peon. It is also the

case of the workman that he has no papers to show that he was appointed as security guard or he was selected for the said post by appearing any interview.

3. On the other hand it is submitted by the management that in wagon loader post one has to labour hard for which the workman requested to work on the surface to work as a peon with understanding of receiving the wagon loader scale.

4. Had the workman produced any promotional or appointment letter to the post of either peon or security guard. There was no difficulty to allow his claim. As that has been not filed, the workman has no right to continue as peon or security Guard.

5. Considering the facts and circumstances, I hold that the claim of Mazdoor's Sangh that Sri Sadhu Nonia is working as night guard from the year 1982 is not correct. Accordingly the workman is not entitled to be regularised in the post of peon-cum-security guard. Hence the reference is answered against the workman.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2155.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2 धनबाद के पंचाट (संदर्भ संख्या 201 का 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/410/1997-आई आर (सी-1)]
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 201/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, 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 09/09/2013.

[No. L-20012/410/1997-IR (C-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

REFERENCE NO. 201 OF 2001.

Parties : Joint General Secretary,
Rashtriya Colliery Mazdoor
Sangh, Rajender Path, Dhanbad
Vs. General Manager,
Lodna Area of
M/s BCCL, Khasjeengora, Dhanbad

Appearances:

On behalf of the : Mr. R.K. Mukherjee,
workman/Union : Ld. Advocate
On behalf of the :
Management : Mr. D.K. Verma, Ld. Advocate
State : Jharkhand Industry : Coal

Dated, Dhanbad, the 27th June, 2013

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10 (1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/410/97-IR(C-I) dt. 23.7.2001.

SCHEDULE

"Whether the demand of Rashtriya Colliery Mazdoor Sangh from the management of Lodna area of M/s. BCCL for regularization of Sri Khagan Rajwar in Group -E w.e.f. 23.9.97 end in Group- D 15.1.93 is justified and legal? If so, what relief is the workman entitled to?"

2. The case of workman Khagan Rajwar as sponsored by the Rashtriya Colliery Mazdoor Sangh (RCMS), Dhanbad, is that typographical mistake in dating 23.9.97 in place of 23.9.87 in the Schedule to the reference be read and corrected as latter date for proper adjudication; that the workman was initially appointed as Greaser Helper in Cat. I, w.e.f. Sept., 1996, was regularized on 23.9.87 accordingly in Cat. II and then as Auto Fitter Helper in Cat. E in place of E.P. Fitter Helper w.e.f. 21.11.990. Bhim Ram, the junior, who was appointed on 7.11.1989, was regularized in Excavation Cat. E only after one year w.e.f. 21.12.1990 and the same time in E/P Fitter Helper, but the workman was given Cat. E after four years of his appointment, so the workman was also entitled to be regularized as E/P Fitter Helper in Cat. E after one year w.e.f. 23.9.1987. Thus action of the management in regularizing the workman as Auto Fitter Helper in Excavations Cat. E w.e.f. 21.11.90 instead of regularizing him as E/P Fitter helper w.e.f. 23.9.1987 is discriminatory. Likewise the promotion/regularization of the other workmen Binod Prasad Rajak, Bhim Ram, Ramashray Ram and Om Prakash junior to the workman in Cat. I to Grade D w.e.f. 15.1.1993 is contrasted with the

workman in Grade E itself is due to his wrong initial designation amounting to supersation.

3. Further it is alleged that while continuously working in the Excavation grade, the workman was wrongly given designation of the Auto Fitter Helper in place of proper designation against the principle of equal pay for equal work. He is entitled at least to be put in the Grade "D" *w.e.f.* 15.1.1993 on which date his juniors were given the same benefits of Grade-D. The action of the management is unfair Labour practice and violation of Cadre Scheme for Excavations Personnel and of the Artt.14,16 and 21 of the Constitution of India. Finding no alternation, the union on his behalf raised the Industrial Dispute before the ALC @, Dhanbad, but its conciliation proceeding failed due to non-cooperative attitude of the management, it resulted in the reference for an adjudication.

4. Secondly denying the allegation of the O.P. Management, the Union in its rejoinder has stated that the reference is legally maintainable and if there is no violation of any cadre scheme, then promoting regularizing the workman as Auto Fitter Helper in Excavation Cat.- E is itself wrongs as well as giving him the Grades E & D *w.e.f.* 21.11.1990 and 20.12.96 in place of the year 1987 and 1990 respectively as given to his junior similarly situated persons Binod Pd.Rajak, Bhim Ram, and others. Since the cadres of Bhim Ram and the workman are same, the workman deserves to be given his due actual cadre/designation at proper time as others were given.

5. Whereas challenging the maintainability of the reference, the contra pleaded case of the O.P./Management is that the Cadre Scheme for non-executive employees governed by the NCWA as formulated by JBCCI *w.e.f.* NCWA (1). The Cadre Scheme for Excavation Personnel was issued by the Implementation Institution (II) No.49/5074 by the JBCCI. The workman was appointed as a Trainee in Cat.I on 4.9.86, was subsequently regularized in Cat. II *w.e.f.* 23.9.87, then regularized as Auto Fitter Helper in Excavation Cat.E *w.e.f.* 21.11.1990, and then promoted from excavation Cadre E to Excavation Gr.D *w.e.f.* 20.12.1996. The sponsoring Union has no locus standi to raise the present Industrial dispute in the year 1995, and to demand for his regularization with retrospective effect quite against violation of the Cadre Scheme. The workman was rightly placed as a Greaser Helper Trainee at the time of his appointment on 4.9.1986, since then his placement in Cat.II and then in Auto Fitter Helper in Excavation Cadre E *w.e.f.* 23.9.87 and 21.11.1990 respectively was quite right. As per the Cadre Scheme Excavation Gr.'D' is a selection post and workman was selected for the said post was accordingly placed in Gr.'D' *w.e.f.* 20.12.1996. There was no anomaly or irregularity in the promotion and regularization of the workman from Cat. I to Gr.D. The demand of the Union is neither legal nor justified, so the workman is not entitled to any relief.

6. Further, the O.P./Management in its rejoinder with categorical denials has stated that the *suo moto* change by the Union in terms of the reference without asking the Ministry for its corrigendum is illegal and justified, as the Tribunal cannot make a correction in lack of any corrigendum of the Ministry in the reference. The Ministry has refused to refer the dispute initially. It is also alleged that the workman and Bhim Ram were appointed in different cadres, so he had no connection with the case of Bhim Ram.

FINDING WITH REASONINGS

7. In the reference case, WW1 Khagan Rajwar, the workman himself and WW2 Seo Shankar Prasad Singh' Sr.Mechanic, South Tisra Colliery, on behalf of the Union have been fully examined, whereas no witness could be examined by the O.P./Management despite ample opportunity.

8. Mr.R.K.Mukherjee, the Ld.Counsel for the Union as per his written argument submits that the workman Khagan Rajwar was initially appointed as Greaser Helper in Cat.I *w.e.f.* 23.9.1986, and regularized as a Greaser Helper Cat. II 23.9.1987, thereafter as the Auto Fitter Helper in Cat.E *w.e.f.* 21.11.1990, whereas his junior Binod Prasad Rajak and other working in the same capacity were regularized in Gr.D *w.e.f.* 15.1.1993, so the workman is entitled to Grade D *w.e.f.* 15.1.1993, whereas statement of the workman Khagan Hagan Rajak (WW1) based on the photocopies of the documents of the aforesaid colleague Binod Prasad Rajak manifests the appointment of said Rajak as Excv. Plant Greaser Helper (T) as per the Office Order (dt.6.12.1986 -Ext.W.1), the regularization of the workman and aforesaid Rajak as Greaser Helper Cat.II *w.e.f.* 23.9.87 and 7.12.1987 respectively as per the Office Order (dt.30.4.1988 -Ext.W.2 with objection), thereafter promotion/regularization aforesaid Rajak as Fitter Helper *w.e.f.* 6.12.1989 as per the Office Order dt.24/25.9.90 (Ext.W.3 with objection), and then his promotion in E.P.Fitter Grade B as per the Office Order dt.24.7.1993 (Ext.W.4 with objection). The workman has stated to have been promoted in Grade E -Fitter in the year 1991, but to have claimed for the Grade B as Mr.Rajak is working in. But factually the aforesaid Office Order (Ext.W.4) refers to the promotion of Mr. Rajak as E.P.Fitter in Grade D, not in Grade B as claimed by the workman. Likewise, the statement of WW2 Sheo Shankar Pd.Singh is corroborated to that of the workman.

9. On the other hand, Mr .D.K. Verma, Ld.advocate for the O.P./Management has to submit that the management in Para 8 of its written statement has already mentioned about the workman to have been promoted Excavation Grade E to Excavation Grade D *w.e.f.* 20.12.96, and that however no case of the workman could be made out in terms of the reference under adjudication.

10. On due perusal and consideration of the materials as adduced by the workman, I find that irrespective human lapse/fallacy in the Reference to Grade B in stead of D, the workman has expressedly or impliedly proved his case / claim for promotion to Grade "D" *w.e.f.* 15.1.1993 as Senior to his Colleagues Binod Pd. Rajak who has been working as E.P. Fitter since aforesaid date, but the claim of the working for regularization in Grade E *w.e.f.* 23.9.97 being vague remained unproved.

Under these circumstances, it is, in the terms of the reference, hereby,

ORDERED

That the award be and the same is that the only claim of the Rashtriya Colliery Mazdoor Sangh from the Management of Lodna Area, B.C.C.L. for regularization / promotion of workman Khagan in Grade D *w.e.f.* 15.1.1993 is justified and legal, but in respect of its demand for the workman's regularization in Grade "E" *w.e.f.* 23.9.1997, it is too vague. Hence, the workman is entitled to promotion to Grade "D" with all its financial benefits/differences whatsoever since 15.1.1993. Let the copies -one Soft and one Hard of the Award be sent to the Ministry of Labour & Employment, New Delhi, for information and needful publication in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2156.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 39/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/09/2013 को प्राप्त हुआ था।

[सं० एल-20012/193/1997-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 12th September, 2013

S.O. 2156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/1998) 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 11/09/2013.

[No. L-20012/193/1997-IR(C-I)]

M. K. SINGH, Section Officer

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

REF. NO. 39 OF 1998

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

AND

Their workmen.

Present :

Sri RANJAN KUMAR SARAN, Presiding Officer

Appearances:

For the employers : Sri D.K. Verma, Advocate.

For the Workman : Sri D. Mukherjee Rep.

State Jharkhand. : Industry—Coal.

Dated 22/07/2013

AWARD

By order No. L-20012/193/1997/IR (C-I) dt. 12/08/1998, the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Sendra Bansjora Colliery of M/s. B.C.C.L. in dismissing the service of Shri Ram Lakhan Chouhan, Ex-Mini-Loader *w.e.f.* 21.2.85 is justified. If not, to what relief Shri Ram Lakhan Chouhan is entitled."

2. After receipt of the reference, parties are noticed, Respective parties submitted their documents. MW-1 has been examined and crossed examined. During continuance of the case, the workman died. None from his behalf filed any substitution petition supported by affidavit. The case adjourned for filing of substitution petition. Four years elapsed in the meantime. Hence the present reference is abated against the workman.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 13 सितम्बर, 2013

का०आ० 2157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन एयरलाइन्स (कलकत्ता) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 03/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.09.2013 को प्राप्त हुआ था।

[सं० एल-11011/10/88-डी.II (बी)/डी.III(बी)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 13th September, 2013

S.O. 2157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the Industrial dispute between the management of Indian Airlines, Calcutta, and their workmen, received by the Central Government on 11.09.2013.

[No. L-11011/10/88-D.II(B)/D.III(B)]

M.K. SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI, ASSAM

Present:

Sri L.C.Dey, M.A., LL.B., Presiding Officer,
CGIT-cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:

The Management of Indian Airlines, Calcutta.

-Vrs-

Their Workmen Sri Basistha Sahani & 3 Others.

Ref. Case No.03 of 2011.

Appearances:

For the Management: Mr. R.N.Mazumder, Advocate.
Mr. M.Mahata, Advocate.
Mr. A.K.Sarkar, Advocate.

For the Workmen: Mr. Abu Sharif, Advocate,

Date of Award: 20.08.2013.

AWARD

1. This Reference was initiated on an Industrial Dispute raised by the workman Sarbasri Jibeswar Mandal, Jagannath Mahato, Sunil Singh, Baisistha Sahani, Security Guards/Loaders against the Management of Indian Airlines, Kolkata which was referred to the Industrial Tribunal, Guwahati by the Ministry of Labour *vide* order No.L-11011/10/88-D.II(B)/D.III(B) dated 4.1.1989, u/s 10(1)(d) of the Industrial Dispute Act for adjudication, as per the following Schedule.

SCHEDULE

"Whether the action of the management of Indian Airlines, Calcutta in terminating the services of

S/Shri Jibeswar Mandal, Jagannath Mahato, Sunil Singh, Baisistha Sahani Security Guards/Loaders from 1987, 1983, May 1986 and 1982 respectively is justified. If not, what relief are the workmen entitled to?"

2. The Industrial Tribunal, Guwahati (State) registered this Reference Case being Reference No.2(C)/1989. Subsequently, the Reference was transferred to this Tribunal by the Industrial Tribunal (State), Guwahati *vide* their order dated 19.2.2011 and accordingly the present Reference has been renumbered (Reference Case No.03/2011).

3. On receipt of the Reference, on transfer, notices were issued upon the parties and both the parties appeared and the case was fixed for argument. Subsequently, the workmen were found absent inspite of issuing notice upon them. Even the learned Advocate for the workmen was found absent inspite of causing service of notice upon him hence, the Management was heard *ex-parte* as per order dt.17.5.2013.

4. The workmen submitted their claim statement jointly stating *inter-alia* that they were appointed by the Management of Indian Airlines, Kolkata I different jobs as shown below:—

- (i) Shri Jagannath Mahato was appointed as Security Guard on day and night shift.
- (ii) Shri Jibeswar Mandal was appointed as Security Guard in the year 1979 for both day and night.
- (iii) Shri Sunil Singh was appointed as loader for day shift.
- (iv) Shri Basistha Sahani was appointed as Loader for day shift.

The workmen stated that they were discharging their service to the best of their ability and sincerity and to the satisfaction of the Management for several years continuously without any blemish as Casual/Daily rated employees. But the workmen were terminated from the service without assigning any reason thereof violating the provision of law. The workman contended that they had been performing the permanent nature of work continuously but the Management due to their unfair labour practice employed them as Casual labourer and even did not issue any appointment letter inspite of their repeated requests to issue formal letter of appointment. Then the workmen raised dispute regarding the illegal termination and having failed to get any relief, got the dispute referred to the Assistant Labour Commissioner (C), Guwahati who after discussing the matter on 13.1.1986 with the Management representative, in presence of the workmen, and the Management *inter alia* agreed to consider the demand of the workmen to be absorbed on regular posts. Thereafter,

the workmen were called to appear in an interview held by the Management on 20.2.1986 and the workmen in view of their position, could not but appeared in the interview for the post of Loaders on the aforesaid date.

It is also stated by the workmen that after the interview the workmen did not receive any letter from the Management, rather on 19.8.1986 the workmen received letter being No.54(10)/86-B/A dated 18.8.1986 from the Assistant Labour Commissioner (Central), Guwahati whereby they came to know that all the workmen as mentioned above have been declared unsuccessful and their prayer has been rejected. Thus the action of the Management is malafide and the interview was a mere eye-wash to deprive the poor workmen who were fighting for justice all along. It is further mentioned by the workmen that there was the need and requirement, under the circumstances the Management can not deprive the workmen; and there was no medical test as the work of Loader is merely a manual work and the workmen were healthy; disciplined persons who were deprived only because of the fact that they were having pursuing their legitimate claim to the Management. Further plea of the workmen is that they were not allowed to do any work whatsoever in the Indian Airlines and this has resulted to great hardship to the workmen. The workmen also mentioned that they served the Management for years together and yet they remain on daily rated workmen without any security of their services without the protection of equal pay for equal work. Even though they were putting continuous service for not less than 4/5 years. The workmen added that the necessary registers showing employment are with the Management and they are to produce these before this Tribunal while the workmen were not supplied with letter of appointment; and that there were several other Loaders employed by the Management who were performing similar nature of work getting much higher remuneration but the workmen were paid a low rate, although they performed similar nature of work like the other loaders. Hence, the workmen are entitled to get the same rate of wages which was denied by the Management. As such, the workmen prayed to hold that the order of termination of the workmen by the Management is illegal and unjustified; and to award their reinstatement with all back wages for the period of their forced unemployment along with costs and further be pleased to direct that the workmen be paid same scale of wages as other loaders employed by the Management.

5. The case of the Management on the other hand, in brief, is that the dispute having been not sponsored by any Union and in absence of any mention in the order of Reference that the said Reference has having been made u/s 2A of the Industrial Dispute Act, 1947; and as the dispute is not in an Industrial Act within the meaning of Section 2(k) of the I.D. Act; the present Reference is not maintainable. The Management mentioned that the

workmen namely Shri Jagannath Mahato and Shri Sunil Singh were engaged as casual workers as shown below:—

I Shri Jagannath Mahato:

May, 1986	8 nights as Security Guard.
June, 1986	15 nights as Security Guard.
July, 1986	15 nights as Security Guard.
August, 1986	8 nights as Security Guard.
November, 1986	12 nights as Security Guard.
March, 1987	14 nights as Security Guard.
April, 1987	1 day as Loader. 8 nights as Security Guard.
May, 1987	12 nights as Security Guard.
Total - 93 days.	

(ii) Shri Sunil Singh:

June, 1987.....12 days as Loader.

The remaining workmen Shri Jibeswar Mandal and Shri Basistha Sahani were never engaged by the Management as casual labourer. Thus it is clear that none of the workmen has completed 240 days of continuous service in any given year so as to come within the purview of Section 25(f) of the I.D. Act and to derive benefit thereunder, in the even of their termination. Further case of the Management is that an interview was held by the Management in November, 1986 for filling up the vacancy for the post of Loader for the candidates sponsored by the local Employment Exchange as also for the candidates recommended for interview by the Assistant Labour Commissioner (C), Guwahati who recommended the names of the alleged workmen besides 11 others whose names appeared in the minutes of discussion held in the Office of the Assistant Labour Commissioner (C), Guwahati on 13.1.1986 in respect of the representation made by 15 ex-casuals. The interview for the said candidates sponsored by the Employment Exchange and for those who were recommended for interview by the Assistant Labour Commissioner (C), was held on 20.2.1986 by duly constituted Board and the names of the workmen Shri Sunil Singh and Jibeswar Mandal were empanelled which was valid up to 26.2.1988, while Shri Jagannath Mahato and Basistha Sahani were found not suitable by the Interview Board. The panel has since expired Shri Sunil Singh and Jibeswar Mandal could not be offered appointment because of the embargo on the recruitment. Subsequently fresh names were sponsored by the Employment Exchange, Guwahati on the request of the Management and those who were found eligible have already been interviewed by the Board and a fresh panel was drawn for the post of Loader at Guwahati, and none of the present workmen were sponsored by the Employment Exchange.

The Management categorically the allegations in para— 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the claim statement submitted by the workmen. The management denied that the workman Jibeswar Mandal was appointed as Security Guard in the year 1979 for both day and night, and that the workmen were serving the Management for several years continuously; and that the workmen Jagannath Mahato and Basistha Sahani were employed as casuals. As such, the question of termination of service of the alleged workmen does not and can not arise. The Management also denied in particular that the alleged workmen had performed permanent nature of work continuously and that the Management had been following unfair labour practice. The Management pleaded that the workmen never issued appointment letter to the casual labourer. The further plea of the Management is that the Management's representative agreed to consider the case of 15 casuals including the alleged workmen subject to fulfillment of the requirement suitability/ interview/selection etc. and hence, it is wrong to allege that the Management agreed to absorb the workmen on regular post in the said meeting held on 13.1.86; as such, it is not correct to mention that the workmen were not required to undergo any interview. Under the above circumstances, the Management contended that the workmen are not entitled for any relief and hence prayed for answering the Reference accordingly.

5. The workmen by filing an Addl. claim statement stated that the Tribunal has already decided the point of maintainability raised by the Management as preliminary issue and the Court *vide* its order dated 29.5.89 opined that the present dispute is an Industrial Dispute as defined in law; and that the statements made by the Management in their W.S. are not true, correct and misleading. It is also contended by the workmen that an interview was really an eye wash since holding of the interview after long time to work as a casual workers is meaningless and malafide which amounts to unfair labour practice and hire and fire policy.

6. In order to establish their respective plea the workmen examined themselves while the Management examined their solitary witness Namely K.M.A. Koshic, Dy. Manager, Indian Airlines, Kolkata.

Let me discuss the evidence of both the sides. The workman Shri Jibeswar Mandal(W.W.I) in his evidence stated that he worked as Security Guard under the Management from 1979 to 1984 as casual worker and during this period he sometimes worked as Loader as per the instruction of the Management; and the Station Manager prepared the weekly bill (voucher) and on production of the said bill before the cash counter the payment was made to him. After 3 years of his service when he found the cashier causing trouble in making payment he kept Photostat copy of the bill prepared by the Station Manager and some copies have been filed in this case. He mentioned that during the period 1979-83 many posts for Loader held

vacant and upon filing applications twice for regular appointment as Loader. The interview was held by the Management and on his approach the Station Manager told him that he would be absorbed as Loader on permanent basis whenever any vacancy arises. He has proved the Exhibit-I, the notice issued to him calling for an interview for the post of Loader. The W.W.I also said that he along with 14 other casual labourer made a representation before the Assistant Labour Commissioner (C), Guwahati who held conciliation on 13.1.86 and as per the minutes of the conciliation proceeding the Management arranged for interview for the Post of Loader and the workman appeared in the said interview on 20.2.86 but he was not appointed. Thereafter he along with other co-workmen namely Sunil Singh, Basistha Sahani and Jagannath Mahato made representation for taking necessary action by the Assistant Labour Commissioner (C), whereupon reply was received by them from the Assistant Labour Commissioner (C). Guwahati that they were not selected for the post of Loader. Thereafter the Management did not allow them to work as casual worker. The W.W.I has proved the minutes of the conciliation proceeding held on 13.1.86 as Exhibit- 2. Then the workman made an appeal before the Labour Commissioner (C), Guwahati on 26.8.86 (*Vide* Exhibit-3) against the order dated 19.8.96 issued by the Assistant Labour Commissioner (C). During this period the Management have absorbed 10 to 12 casual labourer permanently and those labourers were not working with the W.W.I as casual labourer since 1979. He also mentioned that his name was registered in the Employment and his name was also sponsored by Employment Exchange before the authority but the Management did neither appoint him till date of his deposition nor allowed him to work as casual worker.

In course of his cross-examination the W.W.I mentioned that his grievance would have met up the Management appointed him on the basis of the interview held on 20.2.86 and the panel was prepared for the successful candidates after the interview on merit. He also said that he was not satisfied that his name in the panel list unless he is appointed, and that it is not his contention that since he appeared in the interview he should be given appointment as the matter of right. The workman witness also stated that his name was registered with the Employment Exchange and he worked under the Travel Agent of Indian Airlines and then he again says sometimes he worked as casual labourer in the Indian Airlines and the nature of work done by the Security Guard and that all the labourers are not same. He again mentioned that he has no document to show that he was serving as casual labourer in the Indian Airlines.

The workmen witness No. 2, Shri Sunil Singh said that he was working under the Management of Indian Airlines as Loader from 1982 to 86 without any break as casual worker and he was paid on monthly basis. The

vouchers were prepared by the Cargo In- Charge and after counter signature of the same by the Station In-charge these were produced before the Cash counter from where he received the payment, The Cargo In- charge verbally informed him that as there is no more work to do, he need not attend their office and he would be informed as and when any Loader work necessary. Then he along with other workmen approached the Assistant Labour Commissioner who held a meeting with the Management and as a result of the conciliation the Management held an interview for the post of Loader and he appeared in the said interview. He has proved the minutes of the conciliation proceeding *vide* Exhibit-2. After interview the Management made a select list of candidates and he was told by the Management that his name was also in the Select List and he would be absorbed as and when any vacancy occurs. But on his enquiry on several occasions he was informed that no vacancy occurred for the post of Loader. He also mentioned that the Indian Airlines has engaged him as Loader after his removal in the year 1986 and he has been working as Loader on contract labourer basis. Even after the interview he was engaged as contract labourer and he is still working. He has submitted 2 vouchers marked as Exhibit-4(k) and 4 (b) issued by the Station In-charge. According to the workman witness No. 2 the vouchers marked as Exhibit-4(a) and 4(b) establishes that he was engaged by the Indian Airlines as labourer on contract basis and was paid his wages. He also said that as contract labourer he was getting about Rs.600/- per month and after he would have been engaged against permanent vacancy as labourer he would receive Rs.2000/- per month, but the Management is not engaging him as labourer on permanent basis though there are vacancies. In course of his cross-examination the workmen witness No.2 said that the read up to Class-V in Bihar and upto Class-VIII in Guwahati but he does not have any certificate to show that he read in a school at Guwahati. He also said that he did not have any allegations against the person who held the interview and apart from him Shri Jagannath Mahato also selected by the Interview Board. He further said that the persons whose name is on the top of the list would get the appointment in case of any vacancy and altogether 15 persons were called for interview including himself and Jagannath Mahato. Out of 9 selected candidates whose names are above him would get preference in the matter of appointment if any vacancy occurs. He again stated that he has submitted documents to show that he was engaged prior to 1986. The witness concerned categorically denied the suggestion tendered by the Management that he has not submitted any document to show that his appointment as Loader was prior to 1986; and that he was not employed by the Airlines, so question of removal does not arise at all. He strongly asserted that he worked as casual worker for such a long period he should be given appointment.

The workman witness No.3, Basistha Sahani and the workmen witness No.4, Jagannath Mahato made similar statements that they were working as casual worker in Indian Airlines in the year 1990 and 1982 respectively but their services have not been regularized. Both the witnesses stated that they appeared in the interview on 20.2.1986 for appointment on permanent basis and altogether 15 persons appeared before the Board out of these 15, 8 persons were appointed as permanent workers as Loader but they were not appointed. The Airlines Authority informed them that another interview would be held after 2 months and on expiry of two months they again approached the Duty Officer who dispensed with their services and removed them without any written order. The workmen witness No.3 also mentioned that after his removal from service the Indian Airlines engaged another 2 new persons as Loader on casual basis although he was told that no work is necessary as Loader on enquiry. Thereafter they approached the Labour Officer for settlement of their dispute but the Labour Commissioner informed him *vide* Exhibit-5 that he was not selected by the Indian Airlines in the interview. He also said that he was again called and was engaged by the Indian Airlines on daily basis to do the work of Loader and the authority used to pay only half wages.

The workmen witness No.4 said that he has been working as Loader on casual basis from the date of his joining in the year 1982 till the date of his deposition without any break and he was assured by the Management that he would be appointed on regular basis within short time but till then he was not appointed on permanent basis. He also said that previously he was paid on monthly basis but after this Reference was instituted he has been paying on weekly basis and as casual labourer he got Rs.1300/- per month but he would have been appointed as permanent he would get Rs.2300/- per month. The said witness also mentioned that he read upto class-IX in Bihar but his name has not been enrolled in any Employment Exchange; and out of 15 candidates along with him 3 persons have no registration card till now but these 3 persons were appointed on regular basis as Loader. He also mentioned that he is entitled to permanent appointment as Loader because he had put 8 years of service as casual labourers without any break. The workmen witness No.3 in course of his cross-examination said that he was residing in Guwahati for last 14 years and before that he had been residing at Patna from where he passed his Matriculation in the year 1974. He also said that he did not enroll his name with the Local Employment Exchange. He also said that when he appeared before the Interview Board he was certain that he would be permanently appointed, but it is not possible to absorb all the persons who appeared before the interview Board against 8 vacancies. He also confirmed that the appointment was made in order of merit. He also said that he could not produce any paper to show as to how many days he worked as casual workers nor could produce any

appointment letter issued by the Indian Airlines to the effect that he was appointed as casual labourer during the period of 1980 to 1986. The workman witnesses No. 4 in course of his cross-examination stated that he hails from a village of Motihari District in the State of Bihar and read upto Class-IX. He also admitted that the order of Reference dated 4.1.89 made by the Central Government so far he is concerned is not correct since he was never terminated from service. He also said that he knew the persons who were selected and appointed on the basis of the interview and he has no grievance against those persons who were selected and appointed on the basis of the interview in which he also appeared but his grievance would have been fulfilled if he be appointed and selected on the basis of the interview. The workmen witness No.4 in reply to the suggestion tendered by the Management denied the fact that he did not work for 90 days only from the period from May, 1986 to May, 1987; that he was not selected because he did not perform well in the interview. The said witness also mentioned that no appointment letter was issued in his name by the Indian Airlines Authority and he has no document to show that he worked continuously since 1982 till the date of his deposition.

7. The Management, on the other hand, examined Mr. K.N.A. Koshic, the then Dy. Manager, Indian Airlines as Management witness No.1. According to him there is provision in the Rule for direct recruitment in the Airlines service and the permanent Loaders are only recruited by the Indian Airlines, however there is no provision for appointment of casual labourers; and there are post of Loader. He mentioned that erstwhile Grade- I & Grade-II are now abolished and now the posts are reckoned by designation. The post of Porter and Loader are same, the post of Porter is filled by direct recruitment. The MW.1 further said that Kolkata is the Headquarter of Indian Airlines where the Head of Personnel Department is located for Eastern Region. Kolkata Head Office which conduct the entire selection process for recruitment in order of workmen category posts (now official category); and the Station Manager of Guwahati Station has no power to recruit any person. The Airlines constituted one Selection Board for direct recruitment in which the names of the representatives of concerned Departments for which selection is made become members of the said selection committee including one member from Personnel Department. He further stated that they are bound by the Employment Exchange compulsory Notification of Vacancy Act, 1959 and accordingly they notified the vacancy to the concerned Employment Exchange for forwarding the names of eligible candidates and as per Clause-9(c) of the Recruitment and Promotion Rules marked as Exhibit-A regarding approaching the Employment Exchange for filling up of vacancy in Grade-I & Grade-II. i.e. posts of Porter or Head Porter. They do not follow the above Rules in incorporated to 9(c), recruitment of casual employees. For

engagement of casual employees, Headquarters of Indian Airlines is not consulted and the Station Manager can engage casual employees depending upon the exigencies, but the Station Manager has no power to absorb casual labourer on permanent basis. He has proved of minutes of discussions held on 13.1.1986 *vide* Exhibit- 2 and a letter written by the Dy.Manager, Personnel service to the Assistant Labour Commissioner (C), Guwahati dated 11.8.87 *vide* Exhibit-B, the letter written by the Dy. Manager, Personnel service to the Assistant Labour Commissioner (C), Guwahati on 16.9.87 *vide* Exhibit-C. He also said that after interview was held and a panel was made in order of merit and there is no provision for appointing one person superseding another person who is higher up in the said panel list. In course of his cross-examination the MW.1 said that on 20.2.86 interview was held for the post of Loader but he could not say without consulting the record whether 15 persons including the present 4 persons (present workmen) appeared in that interview or not. But from the record he found that one panel of successful candidates was prepared. He denied the suggestion tendered by the adverse party that some of the candidates were appointed from the said panel list superseding the present 4 workmen. However, he admitted that from Exhibit-B he found that Jagannath Mahato and Sunil Singh were empanelled in that interview but he could not say whether these two persons were considered to be successful candidates or not; and as per Exhibit-B, Jagannath Mahato and Sunil Singh were engaged by the Station Manager as casual Loaders. It is further mentioned that as per Exhibit-2 the representative of Indian Airlines stated before the Labour Commissioner that none of these 4 employees has ever been employed by the Indian Airlines, and the Station Manager, Guwahati can say whether these 4 persons were engaged as casual labourer or not. He also added that he could not say anything on behalf of the Station Manager, Guwahati as he has been engaged to depose in this Forum pertaining to the question of Recruitment Policy of Indian Airlines. He categorically denied the suggestion put forward by the learned Advocate for the workmen that Indian Airlines has withhold the evidence of Station Manager, Guwahati because of the apprehension that he would depose that these four persons were engaged as casual labour at Guwahati or part.

8. After closing of hearing of both the sides this Reference was fixed for argument and since then, the workmen did not appear, hence, I have heard argument *ex-parte*.

9. It may be mentioned here that the learned Presiding Officer, State Industrial Tribunal, Guwahati *vide* his order dated 25.10.91 allowed the workmen time till 12.12.91 to move the Appropriate Authority for amendment to the issued in question regarding specific mention of the alleged date of removal/termination of service of the workmen respectively. Again *vide* order dated 8. 7.94, the said Tribunal

referred the matter to the Central Government for amendment to the issue but no action taken in this regard. Subsequently, the Reference was transferred to this Tribunal *vide* order dated 19.2.2011, which was received by this Tribunal on 4.3.2011. After transfer of the Reference to this Tribunal the workmen did neither take any step for amendment nor they appear in spite of allowing them sufficient opportunities. Ultimately, my Learned Predecessor, on scrutiny of record, *vide* his order dated 10.2.2012 fixed this Reference for argument.

In course of argument Mr. R.N.Mazumder, learned Senior Advocate assisted by Mr. A.K.Sarkar and Mr. M.Mahanti, Learned Advocates for the Management of Indian Airlines submitted that the undertakings of the erstwhile Indian Airlines was transferred and vested in Indian Airlines Ltd., a Company within the meaning of the Air Corporations Act, 1956 with effect from 29th January, 1994, in terms of Section 3 of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994. Lastly, due to amalgamation made U/s 391-394 of the Company's Act, 1956 the name of the Indian Airlines Ltd. has been changed as Air India Ltd. with effect from 24.11.2010. The Learned Advocate for the Management took the plea that at the very outset some preliminary points were raised by the Management, which had been incorporated in the written statement which are as follows:—

- (i) The alleged industrial dispute having not been sponsored and/or espoused by any union and in absence of any mentioning in the order of reference dated 4.1.1989 that the said reference having been made under Section 2A of the Industrial Dispute Act, 1947 the present reference is not maintainable.
- (ii) The alleged dispute is not an industrial dispute within the meaning of Section 2K of the Industrial Dispute Act, 1947.

Learned Advocate, Mr. Mazumder pointed out that the then Indian Airlines used to operate various flights in different parts of the country as well as abroad and aviation being a sophisticated industry being dependent upon many external factors, of diverse nature, on some occasions, variation in arrival and departure of the aircraft occurs and apart from causing delays and disruption of flights towards the stretching of time of total activities of the works at the airport increases in normal work load due to the reasons as aforesaid as well as absenteeism of regular employees the Indian Airlines compel to engage casuals on need basis in order to ensure smooth operation of flights, on rotation from the persons whose names figured in a panel of casual engagement and from others. He added that out of the 4 present workmen, 2, namely, Jagannath Mahato and Sunil Singh were engaged as casuals as per records of the Management which shows that the workman Jagannath Mahato worked altogether 93 days from May, 1996 to

May, 1997 and Shri Sunil Singh worked 12 days as Loader in the month of June, 1987. He further mentioned that the workman Jagannath Mahato is still in service as casual labourer and the remaining 2 workmen Jogeswar Mandal and Basistha Sahani were never engaged as casual labourer by the Management as such, it is clear that none of the employees have completed 240 days in any given year so as to come within the purview of Section 25F of the I.D. Act and to derive benefit thereunder in the event of termination of service. He also mentioned that the Management held an interview in February, 1986 for which the candidates sponsored by the Employment Exchange as well as recommended by the Assistant Labour Commissioner (C), Guwahati were considered and the workmen Sunil Singh and Jagannath Mahato were found suitable while the workmen Jibeswar Mandal and Basistha Sahani were found not suitable by the interview Board and accordingly a panel was prepared which was prepared including the names of Sunil Singh and Jagannath Mahato, which was valid till February, 1988. But due to the expiry of the above mentioned panel fresh panel being drawn up, the claim of the alleged workmen does not have any basis at all. He also referred the principle of law decided by the various orders of the Apex Court that the casuals do not have any guarantee towards the right of employment. In this connection Mr. Mazumder has cited the decision in U.P. Power Corporation Ltd. and another -*v/s*- Bijli Mazdoor Sangh and others, reported in (2007) 5 SCC 755, wherein it was held that there can not be a case for regularization without there being employee-employer relationship; Respondent having been engaged on daily wage and not possessing the requisite qualification, held was not entitled for regularization from any angle. He also relied on the case of Indian Drugs & Pharmaceuticals Ltd. -*v/s*- Workmen, Indian Drugs & Pharmaceuticals Ltd. reported in (2007) 1 SCC 408 wherein it was held that temporary employees, who include casual, daily rated, ad hoc employees, etc. have no right to the post nor to be continued in service, nor to get absorption, far less of being regularized and getting regular pay, nor can a direction be passed that a temporary employee be continued till the age of superannuation since there is no age of superannuation as such employees have no right to the post at all. He also cited the case of Dhampur Sugar Mills Ltd. -*v/s*- Bhola Singh, reported in (2005) 2 SCC 470, wherein it was held that when a workman is appointed in terms of a scheme of daily wages, he does not derive any legal right to be regularised in service; completion of 240 days of continuous service in a year may not by itself be a ground for directing regularization, particularly in a case when the workman had not been appointed in accordance with the extant rules. Mr. Mazumder also relied upon the case of Secretary, State of Karnataka and Others -*Vs*- Umadevi (3) and others reported in (2006) 4 SCC 1.

Learned Advocate for the Management again pointed out that in pursuance to the direction given by the Prime Minister of India in 1992 to effect 10% cut in the staff strength across the Board, the Ministry of Civil Aviation, has been consistently reviewing the status; and as per the 5th Pay Commission, 30% posts have to be abolished in the next 10 years or 3% annually; resulted in reduction 30% in 10 years. It is also mentioned in his submission that the Indian Airlines Ltd. was suffering losses from 1989-90, for which Government of India constituted a Committee of Experts in February, 1995 which recommended two phased strategy for revitalization of the Management and in the light of the report submitted by the aforesaid Committee the Management has initiated various measures for containment and restructure of the existing manpower, to curb absenteeism among employees, monitor and control of overtime, casual employment, etc. for optimum utilization of the existing manpower and also embark upon re-skilling and redeployment. Accordingly the Management progressively continue implementing various measures, including the restructuring of its existing manpower. Therefore, he submitted that the Management of the Company should not be saddled with additional burden by directing regularization and/or re-instatement of the concerned workmen which may render futile the whole process of revival of the Company.

10. The workmen relied upon the minutes of the discussion held on 13.1.1986 in presence of the workmen, the representatives of the Management and the Assistant Labour Commissioner (C), Guwahati marked as Exhibit-2 wherein the Assistant Labour Commissioner requested the Management to adjudge the suitability of the present workmen along with the candidates sponsored by the Employment Exchange as the workmen have also worked with the Management, may be through a contractor. Besides, the workmen have failed to produce any document regarding their appointment, period of working, the date of appointment and disengagement, in order to prove that they had been working since 1982/1983/1986/1987 respectively. Even they have not been able to say the date of their disengagement specifically. The copy of the vouchers produced by the workmen vide Exhibit-4(A) & 4(B) shows that the workman Sunil Singh was paid the remuneration in the form of a voucher for the period 12 days in the month of October, (year not mentioned) & for 12 days @ 6 hours per day excluding holidays in the month of December (year not mentioned).

11. From above discussion it has become crystal clear that the workmen witnesses have not been able to establish that they have completed 240 days of work in 12 consecutive month and they were also found engaged purely on casual basis. Nor the workmen were engaged against any regular vacancy. The workmen have not been able to establish that they were registered in any Employment Exchange and their names were sponsored by the Employment

Exchange before the interview Authority although the workmen witness No.1, Jibeswar Mandal in his evidence mentioned that his name was registered in the Employment Exchange but none of the workmen have been able to produce any documentary evidence to the effect that they were registered under the Employment Exchange. Further the workman Jibeswar Mandal in course of his cross-examination said that at the relevant time he was working under Travel Agent of Indian Airlines and sometimes he worked as casual labourer in Indian Airlines. But he has no document to show that he is serving as casual labourer in the Indian Airlines. All the workmen have failed to show any document that they were engaged as Loader/Porter by the Management. However it is found admitted by the Management that the workman Jagannath Mahato worked as casual worker as night Security Guard/Loader for 93 days only for the period with effect from May, 1986 to May, 1987 while the workman Sunil Singh worked 12 days only as Loader in the month of June, 1987.

12. The allegation of the workman is that they were illegally disengaged by the Management but it is to be ascertained whether any rights has been accrued in favour of the workmen for their protection against any termination/disengagement by the Management. The workmen could not mention the date of their termination by the Management of Indian Airlines. In this regard in a catena of cases the Hon'ble Supreme Court has decided that the workman has to establish adducing materials to show that he has worked for 240 days in 12 consecutive month in order to clear the right, to claim for regularization as well as to seek the protection of law u/s 25F of Industrial Dispute Act. In this regard I am constrained to rely upon the decision of the Hon'ble Supreme Court in *Range Forest Officer - Vs- S.T. Hadimani*, (2002) 3 SCC 25; In *Rajasthan State Ganganagar Sugar Mill Ltd. -Vs-State of Rajasthan* and another (2004) 8 SCC 161; and in *M.P. Electricity Board-vs-Hariram*, (2004) 8 SCC 246; and *Batala Coop. Sugar Mills Ltd. -vs- Sowaran Singh* (2005) 8 SCC 481. In all these cases the Hon'ble Supreme Court has been pleased to hold that where the workman claimed that he had worked for more than 240 days in the year preceding termination it is for the workman to adduce evidence apart from examining himself or filing Affidavit, to prove the said factum and such evidence may be in the form of salary or wages for 240 days or record of his appointment or engagement for that year to show that he had worked with the employer for 240 days. It is also found that the workmen were given opportunity by the Management to appear before the interview Board on 20.2.1986 for appointment to the post of Loader on permanent basis but only the workmen namely Jagannath Mahato and Sunil Singh were empanelled by the Board but due to lapse of said panel consequent upon the embargo imposed issuing direction to curtail the strength of staff issued by the Government the workmen

Jagannath Mahato and Sunil Singh were not appointed. The plea of the Management found well established by the Management witness No.1 since no rebuttal evidence in this context is found on record. Hence, these two workers were not appointed. From the evidence on record it is also found admitted that the workmen Jagannath Mahato & Sunil Singh are still in service under the management of Airlines/ Air India Ltd. as admitted by them. Thus the workmen have not acquired any right to be protected u/s 25F of the Industrial Dispute Act nor they claimed for regularization.

13. Considering the facts and circumstances of the case, the evidence of both the sides as discussed above and having regard to the submission of learned Advocate for the Management together with the decisions of the Hon'ble Supreme Court as referred to above; it can safely be concluded that the Management of Indian Airlines/Air India Ltd. has not committed any irregularity or illegality in terminating/disengaging the workmen who were purely on casual basis. Accordingly it is held that the action of the Management of Indian Airlines/Air India Ltd. in terminating the services of workmen Sarbasri Jibeswar Mandal, Jagannath Mahato, Sunil Singh and Basistha Sahani, Security Guards/Loaders, from 1987, 1983, May 1986 and 1982 respectively is justified and as such, the workmen are not entitled to any relief as prayed for.

14. In the result, this Reference is disposed of without granting any relief. Send the Award to Government immediately as per procedure.

Given under my hand and seal of this Court on this 20th day of August, 2013.

L.C. DEY, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

कांआ 2158.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बिरला सन लाइफ इन्श्योरेंस कं० लि०, मुम्बई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 46/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/07/2013 को प्राप्त हुआ था।

[सं० एल-17012/19/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2010) of the Central Government Industrial Tribunal/Labour Court Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Birla Sun Life Insurance Co. Ltd.

Mumbai and their workman, which was received by the Central Government on 31.07.2013.

[No. L-17012/19/2009-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

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

Present: Sri A.K. Rastogi, Presiding Officer

Case No. I.D. No. 46/2010

Registered on 13/7/2010

Sh. Satinder Singh, S/o Sh. Jaswant Singh, R/o Mullanpur Garib Dass, Tehsil Kharar, Distt. Mohali.

.....Petitioner

Versus

1. The Chief Executive Officer, M/s. Birla Sun Life Insurance Company Ltd., (Head Office), Vaman House, 6th Floor, Malkwana Road, Off. Andheri Kurla Road, Andheri East Mumbai.
2. The Branch Manager, Birla Sun Life Insurance Co. Ltd., Ropar Punjab.
3. The Zonal Manager (HR Deptt.), Birla Sun Life Insurance Co. Ltd., SCO 149-150, Sector 9, Madhya Marg, Chandigarh.
4. The Regional Manager, Birla Sun Life Insurance Co. Ltd., SCO 149-150, Sector 9, Madhya Marg, Chandigarh.
5. The Territory Manager, Birla Sun Life Insurance Co. Ltd., Near Hotel Majestic, Phase IX, SAS Nagar, (Mohali).

.....Respondents

Appearances

For the Workman Sh. Neelam Singh Adv.

For the Management Sh. Punit M. Bansal Adv.

AWARD

Passed on 17.7.2013

Central Government *vide* Notification [No. L-17012/19/2009-IR(M)], Dated 30.6.2010, by exercising its powers under Section 10 sub section (1) Clause (d) and sub section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether Sh. Satinder Singh, Agency Manager in Birla Sun Life Insurance Company Ltd. Ropar is a workman as defined under ID Act, 1947? If so, whether the action of management of M/s Birla Sun Life Insurance Company Ltd., in terminating the services

of Sh. Satinder Singh w.e.f. 9.7.2009 is justified? What relief the workman concerned is entitled to an from which date?"

As per claim statement the claimant had joined the respondent as Agency Manager *vide* letter dated 10.9.2007. He always worked with dedication, worked hard and contributed handsome business to his employees. The behaviour of respondent No. 2 the Branch Manager was however arrogant and insulting towards the claimant. The said respondent withheld the confirmation letter of the claimant and did not allow him to mark his attendance since 9.7.2009 and noted before his name in attendance register 'service terminated'. According to the claimant his services had been terminated in violation of Section 25F and 25H of the Act. It has also been stated in the claim statement that on the basis of false and fabricated resignation letter of the claimant the management allegedly relived him on 9.2.2010. According to the claim statement the termination of service of the claimant is totally bad in law and against the principle of natural justice as he had completed 240 days from 10.9.2007 to 9.7.2009.

The claim was contested by the respondents on the ground that claimant is not a workman under the provisions of the Act. The duties of the claimant were managerial in nature, which included to promote management products, to recruit advisors, train and guide them so as to obtain maximum number of insurance policies and his role was that of a friend, philosopher, manager and guide vis-a-vis the advisors. The entire activities of the claimant being Agency Manager were geared to promote the management and he never did any work akin, to skilled, unskilled, manual, technical, clerical, operational or supervisory work. He was to do managerial and administrative work. He was required to build his own team of advisors and/or agents. He represented the management internally and externally to the outsiders such as customers etc. and as such he does not fall within the meaning of workman as defined in Section 2(s) of the Act. On several occasions he had been informed by the management to improve his performance but he deliberately failed. He did not improve despite non-performance notices dated 29.4.2009 and 11.5.2009 and since there was a serious dereliction duty hence the management terminated his services *vide* termination letter dated 8.7.2009 and *vide* cheque dated 8.2.2010 cleared all his dues. It has been further stated by the management that the Company does not provide relieving letter in case of termination, however on personal request of the claimant and considering that his future career does not get hampered, the management had issued a relieving letter dated 9.2.2010 in favour of the claimant along his full and final settlement cheque. In the said letter however the term 'resignation' was erroneously mentioned in place of the 'termination' and as a business courtesy he had been given best wishes for his future endeavours. The claim of the claimant being misconceived is liable to be dismissed.

A rejoinder was filed claimant to say that so-called Agency Managers are not managers and are in fact controlled by Managers. The management very tactfully has given, the designation as Agency Manager just to escape from the provision of the Act. All the managerial and supervisory work is done by the Branch Manager and not by the so-called Agency Managers who are exploited, harassed at the maximum level on the pretext of targets and shunted out at the will of the management/Branch Manager as in the present case.

In evidence the claimant examined himself and relied on certain papers. The management after filing the written statement did not appear and produce any witness in evidence despite several opportunities given for the purpose. *Vide* order dated 6.3.2012 the case was ordered to proceed *ex parte* against management and the statement of the claimant was recorded.

Written arguments were filed on behalf of claimant. I went through the written argument of the claimant and the evidence on record.

The written arguments of the claimant are generally the reiteration of the statement of claim. The first and foremost question for consideration in reference is whether the claimant is a workman for the purpose of the Act. As per Section 2(s) of the Act,

Workman "means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for higher or reward,

.....

but it does not include any such person-

(i)
 (ii)

(iii) Who is employed mainly in a managerial or administrative capacity, or

.....
 It may be mentioned that admittedly the claimant's appointment was as an Agency Manager with the respondents and the respondents have filed a copy of appointment letter of the claimant as Annexure M2 of the written statement. In Annexure C of the appointment letter the functions and duties of an Agency Manager have been mentioned. According to it, the Agency Manager shall locate, identify and recruit suitably persons to be enlisted as insurance agents for the company, who shall form a team which shall work under the management and control of the Agency Manager. He will retain and assist insurance agents required by him or assigned to him by the company in practical training to enable the agents to acquire proficiency as per Agents' Regulations. He will manage the agents working under him, help them in improving their

selling skill and ensure that the agents under his control procure business better than the minimum levels prescribed by the company. He is further required to exhibit qualities of leadership, managerial skills and inspire confidence in the insurance agents.

It is also mentioned in the appointment letter Annexure C that an Agency Manager will be attached with one of the Sale Branch/Unit Offices of the company and shall work under the direction and supervision of the Branch Head or Center Head as applicable.

From the appointment letter it is clear that though the Agency Manager is required to work under the directions and supervision of the Branch Head or Center Head as alleged by the claimant in his rejoinder, but it does not change the nature of his duties. From the Annexure C of the appointment letter it is clear that the job of an Area Manager is that of a Manager. He cannot be regarded as a workman under the Act.

There is nothing in the evidence of the claimant to show that in fact the company was taking any manual, unskilled, skilled, technical, operational, clerical or supervisory work, instead of the work mentioned in his appointment letter, from the claimant. I am, therefore, of the view that the claimant was not a workman and since he was not a workman hence the dispute referred is not an industrial dispute. An industrial dispute, as per definition given in Section 2(K) may be a dispute between the employer and employer, employer and workman or between workman and workman only. The reference is therefore answered against the claimant. Hard and soft copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का०आ० 2159.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इन्टरनेशनल एयरपोर्ट लिमिटेड एवम आई सी एस सिस्टम प्रा० लि०, दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली-1 के पंचाट (संदर्भ संख्या 77/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 2.9.2013 को प्राप्त हुआ था।

[सं० एल-11012/3/2013-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/2013) of the Central Government Industrial Tribunal/Labour

Court, Delhi-1 now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd. and M/s. ICS System Pvt. Ltd., Delhi and their workman, which was received by the Central Government on 2.9.2013.

[No. L-11012/3/2013-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 77/2013

Shri Surinder Kumar Solanki S/o Sh. Ram Pal Solanki,
R/o VPO : Shahbad Mohamad Pur,
Near IGI Airport, Terminal II,
New Delhi-110061

...Workman

Versus

1. M/s. Delhi International Airport Ltd.,
New Uddan Bhawan, Terminal-III,
IGI Airport, New Delhi-110037
2. M/s. ICS System Pvt. Ltd.,
B-371, Third Floor, Mera Bagh,
New Delhi-110063

...Management

AWARD

In the year 2008, Airport Authority of India entered into an agreement for operation, management and development of Indira Gandhi International Airport, New Delhi with M/s. Delhi International Airport Ltd. (in short the management). On the strength of the agreement, referred above, job of operation of passenger boarding bridges (in short PBB) at Indira Gandhi International Airport and domestic airport came within the purview of the management. The management engaged M/s. ICS System Ltd. (in short the contractor) for operation and maintenance of PBB at IGI Airport as well as domestic airport at New Delhi. The contractor employed 230 workers consisting of clerks, executives and workmen of various categories. Persons employed by the contractor formed their union with the name of IGIA Aerobridge Workers Union (in short the union). When the contractor came to know about formation of the said union, it withheld photo identity cards of Shri James Massey and Shri Praveen Sharma, President and Vice President respectively of the union, with a view to coerce and restrain the workers not to organize for the purpose of collective bargaining. A complaint was made to

the Conciliation Officer on 02.12.2011 against the said unfair labour practice, who entered into conciliation proceedings.

2. On 12.02.2012, an official of the management misbehaved with the Vice President and two other active workers of the union. It resulted into an altercation. The management initiated action and did not allow the workers to enter the premises of the Airport. The union served strike notice on 14.03.2012. Again conciliation proceedings were initiated, which failed on 30.03.2012. Workers participated in the strike on 12.04.2012 and as such the contractor dismissed 36 workmen from service. The union raised an industrial dispute in that regard. On failure of conciliation proceedings, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11011/7/2012-IR(M), New Delhi dated 30.01.2013, with following terms:

"Whether the action of the management of M/s. ICS Systems Pvt. Ltd., New Delhi in dismissing 36 workmen (list enclosed) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of section 33(1)(b) of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the said workmen are entitled to?"

3. Industrial dispute, referred above, has been registered as ID No. 23/2013 and claimant union filed its claim statement on 13.03.2013. The management as well as the contractor also filed their written statement, which were followed by rejoinder. Thereafter, the matter is listed for 19.08.2013 for evidence of the parties.

4. During pendency of the aforesaid dispute for adjudication, the appropriate Government referred the present dispute, *vide* order No. L-11012/3/2013-IR(M), New Delhi dated 11.04.2013 with following terms:

"Whether the action of the management of ICS System Pvt. Ltd. in dismissing the workman, Shri Surinder Kumar Solanki S/o Shri Ram Pal Solanki with effect from 10.05.2012 is legal and justified? What relief the workman is entitled to?"

5. It would not be out of place to mention that the name of Shri Surinder Kumar Solanki finds place at serial No. 33 of the list annexed by the appropriate Government along with industrial dispute, registered as ID No. 23/2013. Thus, it emerges that during pendency of ID No. 23/2013, present dispute has been referred for adjudication on the same proposition, which would be adjudicated in ID No. 23/2013.

6. I have heard the claimant as well as Shri Amit Sharma, authorised representative of the management, besides perusal of record of the aforesaid industrial dispute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000 (2) LLN 25] and summarized as follows:

"1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short the Act) ruled the Apex Court in D.N. Ganguly [1958 (2) LLJ 634]]. However, the appropriate Government under section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference cannot go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tantamounting to suppression of the previous order of reference, cannot be

allowed to be made because such order would be ultra vires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principle in determination of the question as to whether amendment amounts to correction or clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent powers to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in *Modern Foundry and Machine Systems Ltd.* (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D. No. 23/2013, requires this Tribunal to adjudicate as to whether action of the management of ICS Systems Pvt. Ltd. New Delhi, in dismissing the claimant (whose name is there at serial No. 33 of the list of 36 workmen sent along with the reference order) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of Section 33(1)(b) of the Act is legal and justified. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether dismissal of the claimant by the Contractor without holding an enquiry and in violation of provisions of section 33(1)(b) of the Act is legal and justified. Question, so raised, encompasses the legality and justifiability of the dismissal order, along with question as to whether such action is violative of the provisions of section 33(1)(b) of the Act.

11. In the reference order, under consideration, same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which was not earlier referred for adjudication. During pendency of the dispute, the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultra vires of the powers of the appropriate Government.

12. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial

dispute registered as I.D. No. 23/2013. The reference order is, therefore, discarded, since it cannot grant jurisdiction to this Tribunal to adjudicate it. The Tribunal is seized of I.D. No. 23/2013, which would be adjudicated in due course. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

कांआ 2160.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इन्टरनेशनल एयरपोर्ट लिमिटेड एवम् आई सी एस सिस्टम प्रा लि, दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली-1 के पंचाट (संदर्भ संख्या 75/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 2/9/2013 को प्राप्त हुआ था।

[सं एल-11012/1/2013-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 75/2013) of the Central Government Industrial Tribunal/Labour Court, Delhi-1 now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd. & M/s. ICS System Pvt. Ltd., Delhi and their workman, which was received by the Central Government on 2/9/2013.

[No. L-11012/1/2013-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1,
KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. No. 75/2013

Shri Manish Saini, S/o Sh. Om Prakash Saini
R/o VPO : Shahbad Mohamad Pur,
Near IGI Airport, Terminal II,
New Delhi-110061

....Workman

Versus

1. M/s. Delhi International Airport Ltd.,
New Uddan Bhawan, Terminal-III,
IGI Airport, New Delhi-110037

2. M/s. ICS System Pvt. Ltd.,
B-371, Third Floor, Meera Bagh,
New Delhi-110063

....Management

AWARD

In the year 2008, Airport Authority of India entered into an agreement for operation, management and development of Indira Gandhi International Airport, New Delhi with M/s. Delhi International Airport Ltd. (in short the management). On the strength of the agreement, referred above, job of operation of passenger boarding bridges (in short PBB) at Indira Gandhi International Airport and domestic airport came within the purview of the management. The management engaged M/s. ICS System Ltd. (in short the contractor) for operation and maintenance of PBB at IGI Airport as well as domestic airport at New Delhi. The contractor employed 230 workers consisting of clerks, executives and workmen of various categories. Persons employed by the contractor formed their union with the name of IGIA Aerobridge Workers Union (in short the union). When the contractor came to know about formation of the said union, it withheld photo identity cards of Shri James Massey and Shri Praveen Sharma, President and Vice President respectively of the union, with a view to coerce and restrain the workers not to organize for the purpose of collective bargaining. A complaint was made to the Conciliation Officer on 02.12.2011 against the said unfair labour practice, who entered into conciliation proceedings.

2. On 12.02.2012, an official of the management misbehaved with the Vice President and two other active workers of the union. It resulted into an altercation. The management initiated action and did not allow the workers to enter the premises of the Airport. The union served strike notice on 14.03.2012. Again conciliation proceedings were initiated, which failed on 30.03.2012. Workers participated in the strike on 12.04.2012 and as such the contractor dismissed 36 workmen from service. The union raised an industrial dispute in that regard. On failure of conciliation proceedings, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-11011/7/2012-IR(M), New Delhi dated 30.01.2013, with following terms:

"Whether the action of the management of M/s. ICS Systems Pvt. Ltd., New Delhi in dismissing 36 workmen (list enclosed) from service with effect from 10.05.2012 without holding any disciplinary proceedings and further in violation of section 33(1)(b) of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the said workmen are entitled to?"

3. Industrial dispute, referred above, has been registered as ID No. 23/2013 and claimant union filed its claim statement on 13.03.2013. The management as well as the contractor also filed their written statement, which were

followed by rejoinder. Thereafter, the matter is listed for 19.08.2013 for evidence of the parties.

4. During pendency of the aforesaid dispute for adjudication, the appropriate Government referred the present dispute, *vide* order No. L-11012/1/2013-IR(M), New Delhi dated 03.04.2013 with following terms:

"Whether the action of the management of ICS System Pvt. Ltd. in dismissing the workman, Shri Manish Saini, S/o Shri Om Prakash Saini, with effect from 10.05.2012 is legal and justified? What relief the workman is entitled to?"

5. It would not be out of place to mention that the name of Shri Manish Saini finds place at serial No. 19 of the list annexed by the appropriate Government along with industrial dispute, registered as ID No. 23/2013. Thus, it emerges that during pendency of ID No. 23/2013, present dispute has been referred for adjudication on the same proposition, which would be adjudicated in ID No. 23/2013.

6. I have heard the claimant as well as Shri Amit Sharma, authorised representative of the management, besides perusal of record of the aforesaid industrial dispute. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

7. Powers of the appropriate Government, to make reference of an industrial dispute, were considered by the Apex Court in Secretary, India Tea Association [2000 (2) LLN 25] and summarized as follows:

"1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference;

2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order;

3. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government;

4. If it appears from the reasons given that the appropriate Government took into account any

consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

8. Appropriate Government has no power, either express or implied, to cancel or withdraw a reference after it has made order of reference. Order cancelling or withdrawing or superseding the reference would therefore be incompetent and invalid and would be liable to be struck down being ultra vires the powers of the appropriate Government under Industrial Disputes Act, 1947, (in short the Act) ruled the Apex Court in D.N. Ganguly [1958 (2) LLJ 634]. However, the appropriate Government under section 10 of the Act, has powers to add to or amplify the matter already referred for adjudication. It has no power to supersede the old reference in such a way as to effect withdrawal of the reference validly made. Any amendment, addition or modification which the Government can make subsequent to the order of reference cannot go to the length of superseding or withdrawing the original reference. Though Government has power to rectify or correct previous order of reference, under the guise of amending or correcting the previous order of reference, order of amendment or corrigendum tantamounting to suppression of the previous order of reference, cannot be allowed to be made because such order would be ultra vires the powers of the Government.

9. The appropriate Government can amend the reference by way of addition or modification so long as amendment does not have the effect of withdrawing or superseding the reference already made. Cardinal principle in determination of the question as to whether amendment amounts to correction or clerical error or entertaining of fresh material, is whether the relief claimed by the aggrieved party in the original notification can be granted in the proceedings which are to take place in pursuance of the amended notification. Though the Government has inherent powers to correct apparent errors in its reference order, yet that does not mean that the Government has power to review or articulate its earlier order of reference. Reference can be made to the precedent in *Modern Foundry and Machine Systems Ltd.* (1999 LLJ 1137).

10. In the light of legal principles, referred above, it would be taken note of as to whether the present reference order amounts to withdrawal of the reference order relating to the dispute concerning the present claim. As pointed out above, reference order, which has been registered as I.D. No. 23/2013, requires this Tribunal to adjudicate as to whether action of the management of ICS Systems Pvt. Ltd. New Delhi, in dismissing the claimant (whose name is there at Serial No. 19 of the list of 36 workmen sent along-with the reference order) from service with effect from

10.05.2012 without holding any disciplinary proceedings and further in violation of Section 33(1)(b) of the Act is legal and justified. Thus, it is evident that in the earlier reference order, this Tribunal is supposed to adjudicate as to whether dismissal of the claimant by the Contractor without holding an enquiry and in violation of provisions of section 33(1)(b) of the Act is legal and justified. Question, so raised, encompasses the legality and justifiability of the dismissal order, alongwith question as to whether such action is violative of the provisions of section 33(1)(b) of the Act.

11. In the reference order, under consideration, same question has been projected by the appropriate Government. Thus, it emerges that as far as present claim is concerned, the appropriate Government attempts to withdraw the earlier reference order and to substitute it with the present reference order. It is not an act of amending any clerical omission or adding some other question, which was not earlier referred for adjudication. During pendency of the dispute, the appropriate Government has no power to withdraw it from adjudication and to issue fresh reference order on the very terms which were under consideration with the Tribunal. Thus, it is evident that the subsequent reference is ultra vires of the powers of the appropriate Government.

12. In view of the above discussion, it is concluded that appropriate Government was not competent to make this reference order during pendency of the industrial dispute registered as I.D. No. 23/2013. The reference order is, therefore, discarded, since it cannot grant jurisdiction to this Tribunal to adjudicate it. The Tribunal is seized of I.D. No. 23/2013, which would be adjudicated in due course. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 26-7-2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का०आ० 2161.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड, मुम्बई के प्रबंधन के संबंध में निर्विवाद औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं० 2, मुम्बई के पंचाट (संदर्भ संख्या 33/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/07/2013 को प्राप्त हुआ था।

[सं० एल-30015/11/2003-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2003) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Ltd., Mumbai and their workmen, which was received by the Central Government on 31/07/2013.

[No. L-30015/11/2003 - IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT :

K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/33 of 2003

EMPLOYERS IN RELATION TO THE MANAGEMENT
OF HINDUSTAN PETROLEUM CORPORATION LTD.

The General Manager
Hindustan Petroleum Corporation Ltd.
17, Jamshedji Tata Road
Churchgate
Mumbai-400 020

AND

THEIR WORKMEN.

Petroleum Employees Union
Tel Rasayan Bhavan
Tilak Road
Dadar (E)
Mumbai-400 014

APPEARANCES:

FOR THE EMPLOYER: Mr. S.P. Dhulapkar, Advocate

FOR THE UNION : Mr. R.D. Bhat, Advocate

Mumbai, dated the 27th June, 2013

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-30015/11/2003-IR (M), dated 11.07.2003 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"1. Whether the contract between the Hindustan Petroleum Corporation Ltd., and their contractor is a sham and bogus one and is a camouflage to deprive the workers of benefits available to permanent workmen of HPCL?

2. Whether the workmen whose names are enlisted at Ex-A & Ex-B hereto are the regular employees of the HPCL and if yes, whether they are entitled to receive the

same pay scale and service conditions as to the pay scales and service conditions applicable to the regular employees employed by them?"

Ex-A

1. S/Shri Sakharam Bhiva Kasare
2. Ramesh Antu Kamble
3. Dayanand Chandrakant
4. Anil Sakharam Jadhav
5. Avinash Raghunath Kadam
6. Devidas Benu Thambe
7. Sadanand Vasant Dhotre

Ex-B

1. S/Shri Mahadev Ganu Sodaye
2. Mahendra Kisan Waghmare
3. Shankar G. Waghe
4. Mahadev B. Rawale
5. Ganpat L. Sonawane
6. Maruti Mahadev Jadhav
7. Ramchandra S. Chorge
8. Dattaram Bapardekar
9. Dinkar G. Sodaye
10. Ganpat G. Bharti
11. Appa Y. Londhe
12. Raju Mohite
13. Vasant P. Patankar
14. Gangaram Palsalker
15. Damodar S. Ghadshi
16. Vittal R. Dhuri
17. Yeshwant Bable
18. Tukaram S. Shinde
19. Janu G. Shedekar
20. Vishwas M. Jadhav

2. After receipt of the reference both the parties were served with notice of the reference. The second party union appeared through their legal representative and filed their statement of claim at Ex-8. First party management resisted the statement of claim of the union by filing their written statement at Ex-12. Second party union led its evidence and thereafter the matter was fixed for evidence of management.

3. Today, both the parties jointly filed application (Ex-58) stating that the matter has been amicably settled as per Memorandum of Settlement dated 06.06.2013 and therefore prayed to pass an award in terms of the Memorandum of understanding dated 06/06/2013.

Memorandum of Understanding dated 6/6/2013 arrived between the Management of Hindustan Petroleum Corporation Ltd. and the 19 Contract workmen engaged for house-keeping activities at GMO-West Zone, R & C Building and Marketing Headquarters office at Hindustan Bhavan

Present:

Representing management of Hindustan Petroleum Corporation Ltd.

1. Shri R. Elango, Head-HR (MKTG)
2. Shri V.S. Bhirud DGM, HR, West Zone
3. Shri K.S. Shetty, Chief Manager-HR (ZC & DM) HB
4. Shri B.N. Rao, Sr. Manager-IR & UI Gmo/West Zone
5. Shri C.L. Devdhekar, Manager HR Admin (Mktg.) HB
6. Shri D. Mukherjee, Dy. Manager-IR, Corporate HQO

The Contract Workmen

1. Shri Mahadev Ganu Sodaye
2. Shri Mahendra Kisan Waghmare
3. Shri Maruti Mahadev Jadhav
4. Shri Ramchandra Shripat Chorage
5. Shri Appa Yadu Londhe
6. Shri Dattaram Keshav Bapardekar
7. Shri Dinkar Ganu Sodye
8. Shri Tukaram Shankar Shinde
9. Shri Damodar Sahadev Ghadshi
10. Shri Janu Ganu Shedekar
11. Shri Gangaram Poonaji Palsamkar
12. Shri Vasant Pandurang Patankar
13. Shri Vishwas Mahadev Jadhav
14. Shri Vithal Rama Dure
15. Shri Sakham B. Kasare
16. Shri Dayanand Chandrakant Dhotre
17. Shri Anil Sakham Jadhav
18. Shri Avinash Raghunath Kadam
19. Shri Sadanand V. Dhotre

TERMS AND CONDITIONS OF THE SETTLEMENT

Applicability:

The terms of the settlement would be applicable to the 14 contract workmen at Hindustan Bhavan, under WP 417 of 1997 and 5 contract workmen under the aforesaid Writ Petition 175 of 1997 whose services are being continued at the Corporation's establishment at R & C Bldg., and are the signatories to the present settlement.

TERMS:

1. The Corporation has no employer-employee nexus or relationship with the 19 contract workmen, who are signatories to the present settlement and is thus not liable under any law in any respect to provide work and payment of any compensation to them. However, in order to amicably resolve the present dispute expeditiously in the large interest of all concerned, including the Corporation and the 19 contract workmen represented through the Union, in principle have agreed to continue the services of these 19 workmen through contractor(s) for performing the contractual obligation at the Corporation's establishment at West Zone Office at R & C Building and Marketing Headquarters office, at Hindustan Bhavan till attaining the age of their superannuation, save and except misconduct. Petroleum Employees' Union as well as the 19 contract workmen on whose behalf the union has espoused the case, agree to withdraw their claim of regularization in connection with the pending reference case CGIT-II 33 of 2003.

2. The Corporation after adhering to the purchase procedures of the Corporation would appoint independent contractors and agree to specify in the tender conditions the mutual agreed terms for continuation of these 19 contract workmen under the respective contractors at its establishment at West Zone Office and Marketing Headquarters Office for performing the contractual obligation of house-keeping till attaining the age of superannuation. In the event of indiscipline or misbehaviour or any misconduct committed by these 19 workmen, the respective contractor engaged at the relevant point of time would have the right to take disciplinary action including discontinuation of these workmen after adhering to due process of law.

3. It is agreed that the 19 contract workmen would be paid an additional fixed allowance of Rs. 3,500 p.m. over and above the applicable minimum wages payable in their respective category. The applicable statutory payments viz. EPF, ESIC, leave with wages etc. would be also payable with regard to the aforesaid additional fixed allowance.

4. It is also mutually agreed that irrespective of the contractor having their independent code under PF/ESIC, the contribution in respect of these 19 workmen would be deposited through the Corporation's separate code allotted for the contract labourers engaged across Corporation's locations.

5. It is agreed that upon attaining the age of superannuation (60 years) the applicable gratuity would be disbursed to the respective contract workmen for their services through various contractors in the Corporations' location. For the purpose of calculating gratuity, the date of joining the services would be reckoned effective 1997 onwards (*i.e.* the date of filing of the writ petition before the Mumbai High Court).

6. It is also agreed upon that consequent to the additional fixed allowance of Rs. 3,500 p.m. the 19 contract workmen would be entitled to receive applicable bonus amount @ 8.33% of Rs. 3,500 (bonus ceiling limit for calculation as applicable) irrespective of the fact that the gross wages exceeds Rs. 10,000 per month.

7. The 19 contract workmen agree that in future no dispute/claim/demand of whatsoever nature, monetary or non-monetary shall be raised by them or through any other Union espousing their cause before any court of law under issue of permanency/regularisation in the services of the Corporation.

8. The 19 contract workmen covered under the present case shall not cite this settlement arrived at between the parties under the present facts and circumstances of the case in order to amicably resolve the matter, before any competent court of law/tribunal/authority for seeking wages and benefits at par with regular employees or otherwise for present or in future at any stage.

9. It is agreed and understood by and between the parties that the 19 contract workmen, to whom the benefit of continuity as contract workmen under the respective contractors at the Corporation's locations at West Zonal Office and Marketing Headquarters Office had been extended shall not resort to any agitation, stage demonstration/coercive picketing or indulge in any other act against the first party or its officers affecting the working of the Corporation (first party) in support of their any or alleged demands of permanency/regularisation in the employment of the Corporation/parity of wages along with regular workmen of the Corporation or whatsoever nature and indeed no such demand shall hereinafter be made in future.

10. It is further mutually agreed upon that the benefit accruing out of the present settlement shall be binding and in full and final settlement of all claims/demands of whatsoever nature as may be conceived under any law arising out of their engagement/non-engagement in the establishment of the Corporation through the contractors or otherwise.

This memorandum of understanding signed at Mumbai on 6th day of June, 2013.

For and on behalf of HPCL

Sd/-

1. Shri R. Elango, Head-HR (MKTG)

Sd/-

2. Shri V.S. Bhirud DGM, HR, West Zone

Sd/-

3. Shri K.S. Shetty, Chief Manager-HR (ZC & DM) HB

Sd/-

4. Shri B.N. Rao, Sr. Manager-IR & UI GmO/West Zone

Sd/-

5. Shri C.L. Devdhekar, Manager-HR Admin (Mktg.) HB

Sd/-

6. Shri D. Mukherjee, Dy. Manager-IR, Corporate HQO

The contract workers

Signatures of all the workers mentioned below:

1. Shri Mahadev Ganu Sodaye
2. Shri Mahendra Kisan Waghmare
3. Shri Maruti Mahadev Jadhav
4. Shri Ramchandra Shripat Chorage
5. Shri Appa Yadu Londhe
6. Shri Dattaram Keshav Bapardekar
7. Shri Dinkar Ganu Sodye
8. Shri Tukaram Shankar Shinde
9. Shri Damodar Sahadev Ghadshi
10. Shri Janu Ganu Shedekar
11. Shri Gangaram Poonaji Palsamkar
12. Shri Vasant Pandurang Patankar
13. Shri Vishwas Mahadev Jadhav
14. Shri Vithal Rama Dure
15. Shri Sakham B. Kasare
16. Shri Dayanand Chandrakant Dhotre
17. Shri Anil Sakham Jadhav
18. Shri Avinash Raghunath Kadam
19. Shri Sadanand V. Dhotre

Witnesses

Sd/-

1. Shri D.N. Vidhate,

Vice-President, Petroleum Employees Union

Sd/-

2. Shri N.A. Khanvilkar,

Secretary General, Petroleum Employees Union.

4. Since the dispute is settled, I think it proper to dispose of the reference in terms of the above settlement. Hence the order:

ORDER

The reference is allowed in terms of the settlement.

Date: 27.06.2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का.आ. 2162.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स इंडियन आयल लि. मुम्बई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, मुम्बई के पंचाट (संदर्भ संख्या 8/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 3/8/2013 को प्राप्त हुआ था।

[सं. एल-30011/50/2004-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the common award (Ref. No. 8/2005) of the Cent. Govt. Indus. Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of M/s. Indian Oil Ltd. Mumbai, and their workmen, which was received by the Central Government on 3/8/2013.

[No. L-30011/50/2004-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT -2/8 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIAN OIL CORPORATION LTD.

- (1) The Deputy General Manager (HR)
Indian Oil Corporation Ltd.
254-C, Dr. Annie Besant Road
Prabhadevi
Mumbai-400025.
- (2) The Proprietor
M/s. Rosemary & Thyme
38, BDD Building
Ground floor, No. 12,4
Worli, Mumbai - 400 018.

AND

THEIR WORKMEN
The Vice President
Sarva Shramik Sangh
Nilkant

In front of Dr. Bhadkamkar Hospital
Mahagiri
Thane 400601.

APPEARANCES:

- For the Employer : Mr. R.V. Paranjpe,
Advocate.
- For the Employer No. 2 : Mr. Umesh Nabar,
Advocate.
- For the Workmen : Mr. M.B. Anchan,
Advocate.

Mumbai, dated the 11th June, 2013

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No. L-30011/50/2004 -IR (M) dated 06/10/2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Rosemary & Thyme and IOC Ltd. being principal employer by not paying the wages for the period from May, 2002 to 7/5/2003 to the workers is justified? If not, to what relief these workers are entitled?"

2. After receipt of the reference notices were issued to both the parties. In response to the notice the second party union filed its statement of claim at Ex-7. According to the union the workmen under reference are the employees of Canteen of the Indian Oil Corporation Ltd. They are working in the said canteen since 1990. To avoid the liabilities and to deny the workmen regular employment in the said canteen, the Corporation had engaged the services of several contractors. Lastly M/s. Rosemary and Thyme was the contractor who failed to pay the wages of 23 workmen for the period 01/12/2002 to 19/07/2003. In the order of reference by the Ministry period is wrongly mentioned from May 2002 to 07/05/2003. The union has written to the Labour Ministry to make the necessary correction and to rectify the error in the order of reference. The union has made several representations to the Corporation and the contractors. However they did not pay the wages to the workmen. Therefore they have raised the dispute. As conciliation failed, on the report of ALC (C), the Labour Ministry has sent the reference to this Tribunal. The workers were getting pay about Rs. 4214 p.m. After deductions workman was entitled to get Rs. 3226 p.m. The union therefore prays for declaration that action of the management and M/s. Rosemary & Thyme be declared as not justified and also sought for direction to them to pay the wages from 01/12/2002 to 19/07/2003 with 10% interest thereon from 01/07/2003 and also prays for the cost of the proceeding.

3. The first party no.1 resisted the statement of claim *vide* its written statement at Ex-8. According to them these workers are not the employees of first party no. 1 and they are not liable to pay any such amount. The first party no. 1 had entered into an agreement with first party no. 2. By the said agreement first party no. 2 agreed to run and conduct Cafeteria for the Corporation in their premises with certain equipment. It was also agreed to run the cafeteria for a period of one year from 01/12/2002 to 30/11/2003. As per the directions and status-quo order of Hon'ble High Court, the first party no. 2 took the persons concerned under reference on its roll. As per the terms of the agreement the first party no. 2 has accepted the responsibility of payment of wages to their staff employed for the purpose of running canteen. The first party no. 1, Corporation is in any way not liable or responsible for any payment to the employees employed by the first party no. 2. The first party no. 2 had also agreed to pay the wages as per the provisions of Minimum Wages Act. In the circumstances, first party no.1 Corporation is not liable to pay the amount claimed by the second party. In the notice, first party no. 2 has admitted the liability and shown their willingness to pay the dues to the workmen. It shows that first party no.2 has admitted the liability to pay the wages. In the circumstances, first party no.1 is not liable to pay any dues. It is further contended that present reference is seized with arbitrator therefore this reference is not tenable which is a parallel proceeding. Therefore they pray that the reference be dismissed with cost.

4. The first party no. 2 resisted the statement of claim *vide* its written statement at Ex-15. According to them they are running the canteen for the first party no.1. However from 08/05/2003 they are not running the said canteen at Worli. As per the agreement with the union they have paid the wages to the workmen for the period from 02/12/2002 to 07/05/2003. The Union Sarva Shramik Sangh representing the workmen in the canteen in their letter have clearly mentioned that each workmen have received their dues and there is nothing due and payable by the first party no. 2. They have also obtained receipts from each worker in respect of payment of their wages. Nothing is due and payable by the first party no. 2. Therefore they pray that the reference be dismissed with cost.

5. Following are the issues framed at Ex-12 for my determination. I record my findings thereon for the reasons to follow:

Sl. no.	Issues	Findings
1.	Whether the action of the management of M/s. Rosemary & Thyme and IOC Ltd. in not paying the wages for the period from May 2002 to 7/5/2003 is justified?	Yes.

2. If not, what relief the workers under reference are entitled to?	Does not arise.
3. What order?	As per order below.

REASONS

Issue No. 1:—

6. In this reference at the outset I would like to point out that none of the parties have led any oral evidence. On the other hand the first party no. 1 has raised the point in their written statement at Ex-8 that the reference is pending before Arbitrator for adjudication of the same point. Therefore this reference in respect of the same issue is not tenable. The first party no. 1 has also given an application at Ex-10 and contended that the Arbitrator has passed the award wherein it is held that first party no. 2 is primarily liable to pay canteen workers' wages, therefore held that it is liable to pay to the canteen workers their wages. In view of these observations the first party submitted that the dispute raised by the second party has become infructuous. Therefore it is prayed that the reference be disposed of as infructuous. The first party has given another application at Ex-17 to dismiss the reference. According to them as per the order of reference the wages are shown due from May 2002 to 07/05/2003 whereas in the statement of claim the union has not claimed wages from May 2002. On the other hand they have claimed wages from 01/12/2002. Further more the first party no. 1 has disputed their liability saying that the workmen are not their employees. On the other hand they are employees of first party no. 2. The first party no. 2 has accepted that the workmen under reference are their employees. In the circumstances they pray that the reference be dismissed against them.

7. In this respect I would like to refer the version of the first party no.2 in their written statement at Ex-15 wherein they have contended that, the reference is in respect of wages for the period from 02/12/2002 to 07/05/2003. They further pointed out that the union Sarva Shramik Sangh in its letter dated 02/12/2009 has admitted that, "After protracted negotiations the contractor M/s. Rosemary & Thyme paid the wages of the workmen for the period from 01/12/2001 to 06/05/2003." It almost covers the period under reference. It is contended in the statement of claim that the union has moved to the Government for correction of period. However no such corrigendum was issued by the Government. Furthermore the union has also not led any evidence to show that these workmen did not receive their payment of the period mentioned in the reference. No workman has filed his affidavit to that effect. In the circumstances I hold that the demand of the union is devoid of merit and the reference deserves to be dismissed. Thus the order:

ORDER

Reference stands dismissed with no order as to cost.

Date: 11.06.2013 K.B. KATAKE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

कांआ 2163.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स विभूतिगूडा माइंस प्रा लि० बैलारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय बैंगलोर के पंचाट (संदर्भ संख्या 1/2010 एवं 2/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.07.2013 को प्राप्त हुआ था।

[सं एल-26012/5/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2163.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Common Award (Ref. No. 01/2010 and 02/2010) of the Cent. Govt. Indus. Tribunal/Labour Court Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s Vibhutiguda Mines Pvt. Ltd. Bellary and their workman, which was received by the Central Government on 19.7.2013.

[No. L-26012/5/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

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

Dated: 25th April, 2013

PRESENT:

Shri S.N. Navalgund, Presiding Officer

CR No. 01/2010**I Party**

Sh. A.R.M. Ismail,
General Secretary,
Iron Ore Labour Union,
Saptgiri Complex, KC. Road,
Bellary.

II Party

The Managing Director,
Vibhutiguda Mines (P) Ltd.,
Modi Bhawan, 60/356A,
Hospet Road, Alipur,
Bellary.

CR No. 02/2010**I Party**

Sh. A.R.M. Ismail,
General Secretary,
Iron Ore Labour Union,
Saptgiri Complex, KC. Road,
Bellary.

II Party

The Managing Director,
Vibhutiguda Mines (P) Ltd.,
Modi Bhawan, 60/356A,
Hospet Road, Alipur,
Bellary.

Appearances :

I Party : Sh. Muralidhara, Advocate

II Party : Sh. M.M. Swamy, Advocate

ORDERS ON VALIDITY OF DOMESTIC ENQUIRY

1. In these two references by the Central Government *vide* Order No. L-26012/5/2009-IR(M) dated 04.01.2010 in the first one for adjudication as to

"Whether the action of management of Vibhutiguda Mines (Private) Ltd., Bellary in terminating the workman Shri A K Chowdhary is justified? To what relief the workman is entitled?"

and *vide* Order No. L-26012/6/2009-IR(M) dated 04.01.2010 in the second one for adjudication as to

"Whether the action of management of Vibhutiguda Mines (Pvt.) Ltd., Bellary in retrenching the workman Shri Swamy Naik is justified? To what relief the workman is entitled?"

since, it is contended by the II Party they conducted enquiry in the case of Sh. Swamy Naik in C R 02/2010 and relying on the observation of Enquiry Officer in his enquiry finding in the same while issuing Show cause Notice to Sh. A.K. Choudhary workmen in CR 01/2010 after receiving his reply being not satisfied his services came to be terminated and Sh. Swamy Naik workmen covered in CR 02/2010 was retrenched and common arguments were addressed on the Preliminary Issue touching the fairness of Domestic Enquiry, I have taken up both these matters for disposal through this common order on the Domestic Enquiry issue.

2. In both the cases the II Party counsel while filing the affidavit of H Ramachandray General Manager examining him oath as MW 1 got exhibited Ex M-1 to Ex M-9 in C R 01/2010 and Ex M-1 to Ex M-14 in C R 02/2010 and while filing the affidavit of Mahendranath, Enquiry Officer examined him on oath as MW 2 and in C R 02/2010 got - exhibited Ex M-15 to Ex M-30. *Inter alia*, the I Party workmen in both the cases while filing their affidavit examining them on oath as WW 1 subjected themselves for cross-examination. The detailed description of the documents got exhibited by the II Party are narrated in the Annexure.

3. After closure of evidence of both the sides on Preliminary Issue, the common arguments addressed by learned advocate of both the sides were heard.

4. The learned advocate appearing for the I Party while taking me through the Oral and Documentary Evidence brought on record by the management urged that Ex M-1 produced in C R 02/2010 claims to be a Show Cause Notice and proceeded with the Domestic Enquiry against him by appointing MW 2 as Enquiry Officer and it is claimed as in that enquiry the I Party in CR 01/2010 gave a statement he also having involved along with I Party in

CR 02/2010 in diverting two trucks bearing no. 1983 and 4285 with an intention of cheating the company after issuing a Memo and Show Cause Notice and being not satisfied with his reply he too has been Terminated from service, there being no Charge Sheet issued by the II Party either against Swamy Naik the I Party in C R 02/2010 or against A K Chowdhary, I Party in C R 01/2010, it cannot be said that a proper Domestic Enquiry has been conducted against both of them and as the enquiry is proceeded without serving any Charge Sheet on both of them the very initiation of enquiry is bad and the punishment imposed against both of them do not sustain and even this tribunal cannot proceed to receive evidence in either of these case and that they are entitle for reinstatement with full backwages, continuity of service and all other consequential benefits. The learned advocate in support of his arguments cited the decision reported in 2004 I-LLJ-36 (HC) Aswathanarayana GV vs. Central Bank of India by Chairman, Bombay and other. *Inter alia*, the learned advocate appearing for the II Party urged that in the enquiry conducted by MW 2, Defence Representative having, cross-examined all witnesses examined for the management and Swamy Naik, CSE examined himself and thereafter affording opportunity to submit written submission, enquiry finding being submitted by the Enquiry Officer all fair and proper opportunities were given to Swamy Naik and as in the same enquiry A K Chowdhary gave statement copy of which is produced at Ex M-9 involving himself in aiding Swamy Naik in diverting two truck loads of Iron Ore, after issuing him show cause notice with the copy of the Enquiry Finding since he did not give a proper reply to escape from his liability the Disciplinary Authority having retrenched Swamy Naik and Terminated the Services of A K Chowdhary the I Party covered in CR 02/2010 and 01/2010 respectively, the enquiry be held as fair and proper.

5. On appreciation of the evidence placed on-record by both the sides with the arguments addressed by their learned advocates, my finding on Preliminary Issue in both the references are in the Negative *i.e.*, No Proper Domestic Enquiry is held by the II Party against both of them and as the Enquiry against I Party workman in C R 02/2010 was proceeded without serving any Charge Sheet and the observation of Enquiry Officer in his Enquiry Finding in that Enquiry is based for Termination of the I Party workman covered in C R 01/2010 there is no possibility of even calling upon the II Party to substantiate the Charges against them as urged on behalf of the workman covered in both the references and they are entitle for reinstatement with full backwages, continuity of service and all other benefits that they would have received in the absence of the impugned retrenchment and, termination orders with a liberty to II Party to proceed afresh if they are so advised after serving appropriate charge sheet on both of them for the following reasons:

REASONS

6. It is borne out from the records relied upon by the II Party that under the signature of authorised signatory of VML, Mr. Swamy Naik the workman covered in C P 02/2010 was informed by letter dated 02.05.2008 that

"They have come to know that he has very much involved in Iron Ore theft by two trucks bearing No. 1983 & 4285 as per the written statement of Weigh Bridge Operators who are also equally responsible and pending the enquiry, he has been suspended from duty for three months and that he is permitted to represent the facts and if found guilty, management may dismiss him from the services with immediate effect"

which document is got exhibited as Ex M-1. On his reply dated 09.05.2008 which is produced at Ex M-2 stating that he is surprised to receive the notice dated 02.05.2008 and that the alleged theft has not been done during his working hours and that he is innocent, being not satisfied with the" same the II Party issued him show cause notice dated 20.05.2008 which is produced at Ex M-3 as under: .

"Please refer to our Suspension Notice dt: 2nd inst. We have information that you are involved in diverting two trucks bearing No. 1983 & 4285 with an intention of cheating the company.

Show cause for the same with your written explanation within seven days time in order to enable us to take action in accordance with law. If your reply do not reach us within the time stipulated, the management has no option except to terminate you"

and then by the letter of Vice President (Administration) of VML dated 17.06.2008 ARM Ismail, General Secretary, Iron Ore labour Union was informed that the Show Cause Notice sent to Sh. Swamy Naik involved in diverting of two iron ore trucks for his personal gain being returned as not available they write to inform him to inform Sh. Swamy Naik to visit their office for Departmental Enquiry and that they have appointed Sh. Mahendranath as Enquiry Officer and he may come to their office on any of-the working day from 1100 a.m. to 0200 p.m. On such a intimation to the General Secretary, Iron Ore labour Union it is claimed that MW 2 Enquiry Officer issued notice dated 25.06.2008" (Ex M-6) to Swamy Naik to submit his relevant documents in three sets enabling him to start enquiry and that within three four weeks time he may submit fact finding report and that he claims that he received the statements of Ayub Shaik, Veerana, Gouda and A K Choudhary witnesses for the management and after cross-examination by the Defence Representative A R M Ismail, he submitted the enquiry finding produced at Ex M-7 as Swamy Naik is involved in diversion of two trucks referred in the order containing Iron Ore material in the early morning hours on 28th and 29th of April-2008 from the company premises

without proper documentation and on the basis of the same the II Party while sending the copy of the Enquiry Finding to Swamy Naik and A. K. Chowdhary who as a witness alleged to have stated that he too is involved in assisting Swamy Naik in diverting the trucks to show cause and after receiving their replies passed the impugned order retrenching Swamy Naik and Terminating A. K. Chowdhary from Service. Thus, as urged on behalf of the I Party workman the II Party proceeded with the Disciplinary Enquiry against Swamy Naik appointing Mahendranath as Enquiry Officer even without a Charge Sheet and on a statement allegedly given by A. K. Chowdhary as witness for management produced at Ex M-9 admitting that he assisted Swamy Naik in diverting two trucks without valid documents without holding any enquiry against him only on a notice to show cause and his reply his services have been terminated. Even it is borne out from the proceedings of the enquiry produced at Ex M-19, M-20 and Ex M-21 in C R 02/2010 a strange procedure has been followed by the Enquiry Officer unknown to the principles of natural justice i.e., receiving three written statements for the management and asking the Defence Representative of workmen to cross-examine them on such written statements and giving his finding on such statements as witnesses not supported by any documentary evidence. Therefore, I have arrived at conclusion the management/II Party retrenched Swamy Naik and Terminated A. K. Chowdhary without fair and proper enquiry and as even they are not served with charge sheet it is not possible in these references to receive the evidence of II Party to substantiate the specific charges against them and to proceed to give a finding on merit and that they are entitle for Reinstatement with full backwages, continuity of services and all other consequential benefits that they would have received in the absence of the impugned retrenchment and termination of service with liberty to the II party if they are so advised to serve appropriate charge sheet and to hold fair and proper Domestic Enquiry and to take appropriate action. In the result, I pass the following Order: .

ORDER

The Preliminary issue raised in both the references touching the fairness of the Domestic Enquiry are answered, in the Negative i.e. the II Party without providing fair and proper opportunity even without serving charge sheet passed the impugned orders of Retrenchment and Termination of Service of Swamy Naik and A. K. Chowdhary respectively and that they are entitle for Reinstatement with full backwages, Continuity of Service and all other consequential benefits that they would have received in the absence of their respective Retrenchment and Termination of Service with liberty to the II Party if they are so advised to serve appropriate charge sheet and to initiate Domestic Enquiry and after receiving the enquiry finding to pass appropriate orders following the requisite procedure. The amount paid by the II party to the I Party workman as terminal benefits may be adjusted from arrears

of backwages payable to them. This Order shall be , treated as Award in both the references and shall be sent for notification. The Original Order shall be sent kept in C R 01/2010 and its copy in C R 02/2010 for reference.

S. N. NAVALGUND, Presiding Officer

ANNEXURE—I

Witnesses examined in C R 01/2010:

- M W I - Sh. H. Ramachandra, General Manager
- MW 2 - Sh. D. Mahendranath, Enquiry Officer
- WW 1 - Sh. A. K. Choudhary, CSE/I Party workman

Documents exhibited before this Tribunal on Domestic Enquiry for II Party:

- ExM-1 - Letter dated 19.09.2008 addressed by Vice President -Admn. of II party to I party
- ExM-2 - Reply of the I Party dated 24.09.2008 to Vice President -Admn.
- ExM-3 - Letter dated 25.10.2008 addressed by Vice President - Admn. of II party to I party
- ExM-4 - Letter dated 27.01.2009 addressed by II party to I party regarding payment of terminal benefits
- ExM-5 - Copy of Cheque dated 30.01.2009 amounting Rs 40594.00 in favour of I party .
- ExM-6 - Copy of Acknowledgement
- ExM-7 - Enquiry finding dated 15.09.2008
- ExM-8 - Letter of I party dated 07.02.2009 to Sh K K Bagaria, Agent for II party
- ExM-9 - Letter of I party dated 29.04.2008 to II Party.

Witnesses examined in C R 01/2010:

- MW 1 - Sh. H. Ramachandra, General Manager
- MW 2 - Sh. D. Mahendranath, Enquiry Officer
- WW I - Sh. Swamy Naik, CSE/I Party workman

Documents exhibited before this Tribunal on Domestic Enquiry for II Party:

- ExM-1 - Letter dated 02.05.2008 addressed by II party to I party
- ExM-2 - Reply of the I Party dated 09.05.2008 to II Party
- ExM-3 - Letter dated 20.05.2008 addressed by Vice-Prisident - Admn. of II party to I party.
- ExM-4 - Letter dated 07.06.2008 addressed by II party to I Party.
- ExM-5 - Letter dated 17.06.2008 addressed by Vice President - Admn. of II party to Sh. ARM Ismail, General Secretary, Iron Ore Labour Union intimating refusal of letter addressed to I Party.

- Ex M-6 - Letter of Enquiry Officer dated 25.06.2008 fixing the date of enquiry
- Ex M-7 - Enquiry finding dated 15.09.2008
- Ex M-8 - Letter dated 19.09.2008 addressed to I party forwarding copy of Enquiry Finding
- Ex M-9 - Reply of I party dated 26.09.2008 to the letter dated 19.09.2008
- Ex M-10 - Letter 24.10.2008 addressed to I party to appear on 31.10.2008 for personal hearing
- Ex M-11 - Letter dated 31.10.2008 addressed to I party Terminating his Services.
- Ex M-12 - Letter dated 27.01.2009 intimating the I party about his terminal benefits
- Ex M-13 - Letter dated 27.01.2009 intimating the RLC(C), Bellary about the terminal benefits paid to I Party.
- Ex M-14 - Objection statement filed before RLC (C), Bellary dated 17.01.2009.
- Ex M-15 - Letter dated 17.06.2008 addressed by Vice President -Admn. of II party to Sh. ARM Ismail, General Secretary, Iron Ore Labour Union intimating refusal of letter addressed to I Party
- Ex M-16 - Complaint dated 01.05.2008 addressed from Suraksha Security and Intelligence to II party
- Ex M-17 - Deployment Chart
- Ex M-18 - Enquiry Proceedings date 07.07.2008
- Ex M-19 - Enquiry Proceedings dated 14.07.2008
- Ex M-20 - Enquiry Proceedings dated 22.07.2008
- Ex M-21 - Enquiry Proceedings dated 02.08.2008
- Ex M-22 - Statement of Ayub Shaik, Weigh Bridge Operator
- Ex M-23 - Statement of Veeranna Gouda, Weigh Bridge Operator
- Ex M-24 - Statement of A K Chowdary, Weigh Bridge Operator
- Ex M-25 - Enquiry Proceedings dated 05.08.2008
- Ex M-26 - Cross-examination of CSE
- Ex M-27 - Enquiry Proceedings dated 16.08.2008
- Ex M-28 - Letter of Enquiry Officer dated 12.09.2008 addressed to Defence Representative intimating the pronouncement of Order in respect of Domestic Enquiry held against the CSE/I party
- Ex M-29 - Letter of Enquiry Officer dated 15.09.2008 forwarding the copy of enquiry finding.
- Ex M-30 - Enquiry report dated 15.09.2008

नई दिल्ली, 5 सितम्बर, 2013

कांआ 2164.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स कुद्रेमुख आयरन ओर क० मैंगलोर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय बैंगलोर के पंचाट (संदर्भ संख्या 121/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं एल-26011/1/2007-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2164.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the common award (Ref. No. 121/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Kudremukh Iron Ore Co. Mangalore and their workman, which was received by the Central Government on 19/07/2013.

[No. L-26011/1/2007-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

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

DATED : 24th June, 2013

PRESENT : Shri S.N. Navalgund, Presiding Officer

C R No. 121/2007

I Party	II Party
The General Secretary, Kudremukh Shram Shakti Sanghatan, B-64, Kudremukh Quarters, Kavoor, Mangalore-575 015	The Manager (P), Kudremukh Iron Ore Company Limited, Panambur, Mangalore-575 010.

APPEARANCES

I Party : Nil

II Party : Smt. K Subha Ananthi, Advocate

AWARD

The Central Government vide order No. L-26011/1/2007-IR(M) dated 22.08.2007 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14

of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of Kudremukh Iron Ore Company Ltd., by way of imposing punishment with deduction of one increment of Sh. B M Vasudeva, Staff No. 1145, Reporgraphic Operator Gr. I w.e.f. 20/12/2004 is just and legal? If not, what relief the workmen is entitled to?"

2. Though it was directed in the order of the reference itself the parties raising the dispute shall file the statement of claim complete with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under Rule 10(B) of the Industrial Disputes (Central) Rules, 1957 and no compliance was made as directed therein after receipt of the reference by this tribunal while registering it in C R 121/2007 notices were issued to both the sides with direction to the I Party to file claim statement but inspite of its service the I party raising the dispute did not care to appear and file claim statement. After service of second notice on the I party to appear and file claim statement on 22.12.2010 since I Party did not appear and file claim statement the matter was posted for II Parties statement/Counter Statement. The learned advocate appearing for the II party after availing several adjournments on 19.06.2013 filed a Memo reporting that workman involved in this reference Sh. B M Vasudev, Staff No. 1145 expired on 12.10.2007 along with his Death Certificate and submitted that inspite of service of notice on the I Party it has not responded and filed claim statement the reference do not survive for consideration. Agreeing with the said submission on 19.06.2013 the proceedings was closed.

3. Since the I Party did not care to appear and file claim statement inspite of service of notice twice it appears due to the death of the workman involved in this reference they did not appear and file claim statement and under this circumstance, I am of the opinion that reference is Abated. Accordingly, I pass the following

ORDER

The reference is Rejected as Abated due to the death of the workman covered in this reference on 12.10.2007.

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2013

का०आ० 2165.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ए०सी०सी० लिमिटेड वादी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 19/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं० एल-29011/10/2012-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 5th September, 2013

S.O. 2165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the common award (Ref. No. 19/2012) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s ACC Ltd. Wadi, and their workman, which was received by the Central Government on 19/07/2013.

[No. L-29011/10/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

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

DATED : 24th June, 2013

PRESENT : Shri S. N. NAVALGUND, Presiding Officer

C R No. 19/2012

I Party

The President,
ACC Wadi Cement Works
Contract Labour Union (R),
House No. 12/39, Bheem Nagar,
WADI, Gulbarga.

II Party

M/s. ACC Limited,
Wadi,
Gulbarga District,
Karnataka.

APPEARANCES

I Party : Nil

II Party : Sh. B. C. Prabhakar, Advocate

AWARD

1. The Central Government vide order No. L-29011/10/2012-IR(M) dated 08.06.2012 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the charter of demands raised by the Union vide their letter dated 16/1/2010 (copy enclosed) against the management of M/s. ACC Ltd., Wadi is

legal and justified? What relief the workmen are entitled to?"

2. It was for the I Party to file its statement justifying its demands and in its absence this tribunal cannot give an award in its favour as such the reference is liable to be rejected.

3. Since in the decision relied on by the learned advocate appearing for the II Party it is held in the absence of the party raising the dispute failing to file its statement and lead evidence justifying its claim no award can be passed in favour of such party, while agreeing with the submission made by the learned advocate appearing for the II party on 24.06.2013 the proceedings came to be closed. In view of the above the reference is liable for rejection for failure of the party raising the dispute to appear and justify its demands. In the result, I pass the following:

ORDER

The reference is rejected for failure of the I Party raising the dispute to appear and justify its demand.

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 12 सितम्बर, 2013

का०आ० 2166.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स उड़ीसा माइनिंग कॉर्पोरेशन लि०, उड़ीसा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 408/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/07/2013 को प्राप्त हुआ था।

[सं एल-29011/4/2001-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 12th September, 2013

S.O. 2166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 408/2001) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Orissa Mining Corporation Ltd. Orissa and their workman, which was received by the Central Government on 31/07/2013.

[No. L-29011/4/2001-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
BHUBANESWAR**

PRESENT:

Shri J. Srivastava,

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

INDUSTRIAL DISPUTE CASE NO. 408/2001

Date of Passing Award—4th July, 2013

Between:

The General Manager, Orissa Mining
Corporation Ltd., Po. Barbil, Keonjhar -769035

.....1st Party-Management.

(And)

Their workman represented through the
Keonjhar Mines Mazdoor Union,
Po. Guruda, Keonjhar -758 034.

.....2nd Party-Union.

Appearances:

M/s. B.K. Pattnaik,
Advocate.

For the 1st Party-
Management.

M/s. B.P. Tripathy &
Associates, Advocate.

For the 2nd Party-
Union.

AWARD

This reference has been sent up to this Tribunal for adjudication of an industrial dispute existing between the employers in relation to the management of Orissa Mining Corporation Limited, the General Manager, P.O. Barbil, and their workman by the Ministry of Labour, Government of India vide its letter No. L-29011/4/2001-IR(M) dated 14.6.2001 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 with regard to the following matter:—

"Whether the action of the management of Orissa Mining Corporation Ltd., Barbil by not giving the designation of Work Sarkar, Grade-II in class III post from 14.9.87 though Shri Aparti Behera is being engaged in the job of Work Sarkar from beginning is justified? If not, what relief the workman is entitled to?"

2. The General Secretary of the 2nd Party-Union espousing the cause of the disputant workman has filed statement of claim alleging that Shri Aparti Behera has been working at S.G.B.K. Mines At./Po. Guruda, Dist. Keonjhar under the administrative control of M/s. Orissa Mining Corporation Limited since 18.6.1982 when the 1st Party-Management has started the mining operation after taking over the mines from ex-mine owner Md. Sirajuddin & Company. The disputant workman was engaged to look after the repair and maintenance work attached with civil section though the designation of the workman was

"Chowkidar" in B-Form. The workman has been performing the duty of Work Sarkar which is a job of Class-III employee. On the orders of the Hon'ble High Court of Orissa passed in O.J.C. No. 1923/93 and the Industrial Tribunal, Rourkela in I.D. case No. 7/97(C) [31/1990 (C)] directed the Management to give fitment to 28 workmen as per their nature of job. Accordingly 11 workmen out of 28 have been given designation of Work Sarkar, Grade-II by the Management. All of them are working now with the disputant workman.

3. As per direction of the Mines Management the disputant workman was deputed as canteen supervisor for few days. He was allotted specially to supervise the repair and maintenance of quarters. He has never attended the duty of security guard or chowkidar as per his designation in B-Form. He was in-charge of canteen from 1982 to 1986 and was also deputed as canteen in-charge subsequently *vide* office order dated 1.11.1994. The duty of canteen in-charge is Grade-III job equal to Work Sarkar, Grade-II. At the time of fitment in the cadre post in pursuance of the order of the Hon'ble High Court the 1st Party-Management did not consider the genuine grievance of the disputant workman. He represented to the 1st Party-Management several times to change his designation as Work Sarkar, Grade-II in place of Security Guard and his pay scale as per nature of duty. The Mines Management also recommended the representations of the disputant workman so many times. The disputant workman also possesses educational qualification up to Class-IX. He has obtained technical training from National Survey Training School in Tracer/Amin and Work Sarkar. There is a difference of Rs. 670/- per month in the salary of the disputant workman from the salary of Work Sarkar, Grade-II. He is entitled to get the salary of Work Sarkar, Grade-II by re-designating him as Work Sarkar, Grade-II. Thus the action of the management in not giving the appropriate designation of Work Sarkar with corresponding pay scale as per the nature of job amounts to extreme arbitrariness of the Management and exploitation and harassment of the disputant workman. As such it has been prayed to give him designation of Work Sarkar, Grade-II with corresponding pay scale as per the nature of duty performed by the disputant workman with effect from 14.9.1987.

4. The 1st Party-Management in its written statement has submitted that the reference is not maintainable as no person can claim a post as a matter of right unless he has requisite qualification and successfully passed in the recruitment test. The disputant workman does not possess the requisite qualification and experience for the post of Work Sarkar, Grade-II. He has never discharged the duties of Work Sarkar. Hence the question of designation and fitment in the post of Work Sarkar, Grade-II does not arise. The minimum qualification required for the post of Work Sarkar is matriculate with one year experience as Work Sarkar and in the case of non-matriculate three years

experience as Work Sarkar is required and the post is to be filled up by direct recruitment. The disputant workman at the time of transfer of mines had worked as Chowkidar under M/s. Sirajjudin and Company and continued as such under the 1st Party-Management till his regularization in the post of Security Guard with effect from 14.8.1987. Accordingly the fitment was given to him in the post of security guard. He has never worked in any capacity other than the security guard. He was also not assigned any job other than the job of security guard after regularization. Pursuant to the orders of the Hon'ble High Court passed in O.J.C. No. 1923 of 1993 and award given by the Industrial Tribunal, Rourkela in I.D. Case No. 31/90 (C) the Management on due consideration of the duties performed by the disputant workman and his qualification etc. has regularized him in the post of Security Guard with effect from 14.9.1987. The disputant workman was never engaged to look after the repair and maintenance work attached with civil section. It is not correct to allege that the disputant workman worked with 11 workmen designated and fitted as Work Sarkar. The Management has never deputed the disputant workman to work either as canteen supervisor or supervisor of repair and maintenance of quarters. The representations made by the disputant workman have already been rejected. The present dispute suffers from gross laches and negligence in as much as the same has been raised after more than six years. The workman is not entitled to get any relief.

5. The 2nd party-Union in its rejoinder has reiterated that the disputant workman has been performing the duty of Work Sarkar, Grade-II from 18.6.1982. At the time of fitment he had already gained experience of five long years. Recruitment Rules is applicable to new entrants not to the workman who had already been working. He had never attended the duty of security guard, but his services have been regularized by the Management as security guard.

6. On the pleadings of the parties following issues were framed.

ISSUES

1. Whether the reference is maintainable?
2. Whether the action of the Management of Orissa Mining Corporation Ltd., Barbil by not giving the designation of Work Sarkar, Grade-II in Class-III post from 14.9.1987 though Shri Apari Behera is being engaged in the job of Work Sarkar from beginning is justified?
3. If not, what relief the workman is entitled to?
7. On behalf of the 2nd Party-Union Shri Apari Behera, the disputant workman has been examined as W.W.-I. On the other hand the 1st Party-Management has examined Shri Subash Chandra Panda as M.W.-I and relied upon three documents marked as Ext.-A to C.

FINDINGS**ISSUE NO.1**

8. This issue regarding maintainability of the reference has been framed on the pleadings of the Management that no person can claim a post as a matter of right unless he has requisite qualification and passes the recruitment test. In my view this pleading does not go to the very root of the maintainability of the reference as it only specifies that a person can be appointed to a post only on having requisite qualification for that post and gets through in the recruitment test. This is to be decided from the evidence of the parties and does not uproot the case itself. Taking an uprighteous approach to the facts and pleadings of the parties it would be undoubtedly held that the reference is maintainable. As such this issue is decided in the affirmative.

ISSUE NO.2

9. The 2nd Party-Union on behalf of the disputant workman has claimed the status and fitment of Work Sarkar, Grade-II in Class-III post from 14.9.1987 to the disputant workman because of being engaged in the job of Work Sarkar from the beginning. Hence the burden to prove this issue lies on the 2nd Party-Union. But there is only oral evidence of the disputant workman Shri Aparti Behera in support of this contentious issue in which he has stated that he was working as canteen supervisor under the erstwhile M/s. Sirajuddin and Company before taking over the mines by the Orissa Mining Corporation. After taking over the mines by the Orissa Mining Corporation he was fitted against the post of Canteen Supervisor and worked in the same capacity till 1985. Thereafter, he was posted as Supervisor to look after the civil and maintenance work till 1994. He was again posted as canteen supervisor. Thereafter in the year 1994 he was also asked to supervise civil work which he did till 1998. Because of work pressure in the year 1999 on his request he was posted as a Supervisor to look after the work of workmen engaged in the Mines and till date he is working in the same capacity. But the Management is not paying him the salary of Work Sarkar. The posts of supervisor and Work Sarkar are at par.

10. The 2nd party-Union has also filed certain documents, but those documents have not been proved and exhibited in evidence. On throwing a glance on these documents a letter dated 27.10.1994 has come across in which Shri R.N. Mohanty was directed by the Management to hand-over the charge to Shri Aparti Behera attached to civil section who will also remain in charge of canteen until further order. There are also copies of representations and letters of recommendations in which request for consideration of the case of Shri Aparti Behera for the post of Work Sarkar was made, but these documents cannot be read in evidence as they have not been proved and

exhibited by any witness conversant with the facts of this case. The 2nd Party-Union or the disputant workman has also not filed any documentary evidence to show that the Management has ever posted him as canteen supervisor or supervisor to look after the work of workman engaged in the mines.

11. On the other hand, the Management Witness No.1 Shri Subash Chandra Panda has stated in his evidence that Shri Aparti Behera had worked with M/s. Sirajuddin and Company, the erstwhile management as Chowkidar. On 18.6.1982 the Orissa Mining Corporation Limited had taken over the Management of M/s. Sirajuddin and Company. The disputant workman was regularized in the post of Security Guard in the year 1987 as he did not possess necessary qualification for the post of Work Sarkar. In the erstwhile Management the disputant workman was working as Chowkidar. He has denied the fact that the disputant workman was ever given the duty of Work Sarkar, Grade-II. He has also denied the fact that sometimes the disputant workman was given the duty of canteen in-charge which is equivalent to the post of Work Sarkar. It may be a fact that the designation of the disputant workman has been shown in B-Form as Chowkidar/Security Guard, but it has not been shown what work was being taken from him by the Orissa Mining Corporation? However, this fact has to be proved by the 2nd Party-Union that he was doing the job of Supervisor of canteen or civil work or supervisor of works done by the workmen in the mines. But except his oral evidence no documentary evidence has been filed to prove upto the hilt that he had worked in the capacity of a Supervisor or Work Sarkar continuously for three years or to certain period with gaps making it for a total period of three years. As per Ext.-A, the relevant extract of Recruitment Rules necessary qualification and experience for Work Sarkar, Grade-II has been prescribed as matriculate with one year experience as Work Sarkar and in case of non-matriculate three years experience is necessary. It is not disputed that the disputant workman is a non-matriculate and in his case three years experience as work Sarkar is required which he failed to establish in the case. There is no reliable evidence to hold that Shri Aparti Behera, the disputant workman is being engaged in the job of Work Sarkar from the beginning. Hence the action of the management of Orissa Mining Corporation Limited, Barbil in not giving him the designation of Work Sarkar, Grade-II, Class-III post from 14.9.1987 is justified. This issue is decided against the 2nd Party-Union.

ISSUE NO.3

12. For the aforesaid conclusions the disputant workman is not entitled to any relief claimed for.

13. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer.

नई दिल्ली, 12 सितम्बर, 2013

कांआ 2167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (कम्प्लेंट संख्या 1/2012, 2/2012, 1/2013, 2/2013, 3/2013, 4/2013, 5/2013 और 7/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/09/2013 को प्राप्त हुआ था।

[सं एल-22013/1/2013-आईआर (सी-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 12th September, 2013

S.O. 2167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Cent. Govt. Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Complaint No. 1/2012, 2/2012, 1/2013, 2/2013, 3/2013, 4/2013, 5/2013 and 7/2013) as shown in the industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 12/09/2013.

[No. L-22013/1/2013-IR(C-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A COMPLAINT U/S 33 (A) OF
I.D. ACT, 1947.

COMPLAINT NO. 1/2012

Arising out of Ref. 138/97

Kumar Madan Mohan Asstt. Grade-I (Depot)

Distt Office, Firdaus Building, Exhibition Road, Patna

.....Complainant

Vs.

Executive Director, Food Corporation of India, East Zone,
10A Middleton Row, Kolkata-71

.....Opp. Party

COMPLAINT NO. 2/2012

Arising out of Ref. 138/97

Kamal Singh Asstt. Grade I (Depot) F.C.I

.....Complainant

Vs.

General Manager, Food Corporation of India
Arunachal Building 3 and 4th Floor, Exhibition Road,
Patna-1

.....Opp. Party

COMPLAINT NO. 1/2013

Arising out of Ref. 138/97

1. Agendra Nath Dubey, Ex-AG-I(D) Food Corporation of India

2. Asif Ali, Ex-AG-I(D) Food Corporation of India

.....Complaint

Vs.

General Manager, Food Corporation of India, Arunachal Building, Exhibition Road, Patna

.....Opp. Party

COMPLAINT NO. 2/2013

Arising out of Ref. 138/97

1. Garib Das, Ex AG-I (D) Food Corporation of India

2. Ram Saran Mandal, Ex AG-I (D) FCI, FSD Saharsa

.....Complainant

Vs.

The General Manager, Food Corporation of India,
Arunachal Building, Exhibition Road, Patna

.....Opp. Party.

COMPLAINT NO. 3/2013

Arising out of Ref. 138/97

Upendra Prasad, Ex-AG-I(D) Food Corporation of India

.....Complainant

Vs.

The Executive Director, Food Corporation of India
Zonal Office, 10 A Middleton Row, Kolkata-71

.....Opp. Party

COMPLAINT NO. 4/2013

Arising out of Ref. 138/97

Jai Hind Prasad Ex-AG-1 (D) Food Corporation of India

.....Complainant

Vs.

The Executive Director, Food Corporation of India
Zonal Office, 10 A Middleton Row, Kolkata-71

.....Opp. Party

COMPLAINT NO. 5/2013

Arising out of Ref. 138/97

Mishri Hembrum Ex-Manager,
(Depot) FSD Phulwarisarif, Patna

.....Complainant

Vs.

The Executive Director, Food Corporation of India
East Zonal, 10 A Middleton Row, Kolkata-71

.....Opp. Party

COMPLAINT NO. 7/2013

Arising out of Ref. 138/97

Uma Kant Jha, Ex Manager (D) Food Corporation of India,

.....Complainant

Vs.

The Executive Director, Food Corporation of India
Zonal Office, 10 A Middleton Row, Kolkata-71

.....Opp. Party

Present: Sri Ranjan Kumar Saran, Presiding officer**Appearances:**

For Complainant :

Sri Vijayendra Kumar, Zonal President FCIESU

For Opp. Party (Zonal Office Kolkata):

Sri Avinash Kumar ,Dy. G.M. Legal

For Opp. Party (Distt. Office, Patna):

Sri Anshu Sharma, AGM (Vig) FCI (R.O.)

State : Jharkhand

Industry : Food

Dated 12/8/2013

AWARD

1. These all complaints under section 33 A of the Industrial Disputes Act, 1947, submitted by Sri Vijayendra Kumar, Zonal President, FCIESU, under the authority of the complainants, on behalf of the aforesaid complainant (workmen).

2. All Complaint cases are similar in nature and all are arising out of Ref. case no. 138 of 1997, hence all are heard jointly. A common award passed as hereunder.

3. The dismissed employees hereinafter called as complaint filed application U/S 33(2) praying to declare the action of the management illegal.

4. The case of the workmen is that a dispute of the present group of workmen along with others is pending before this Tribunal for disposal. But during the pendency of the dispute the management on flimsy allegations, dismissed the workmen without proper enquiry in violation of Sec. 33 (2) of the I.D. Act.

5. On the other hand, the case of the management is the present workmen were not the workmen concerned of that dispute and as such as management they are at liberty to initiate disciplinary action against the workman for lapses and can take any action as per their by laws.

6. The learned workmen representative submitted that dispute relating payment of overtime of all the employees pending before this Tribunal bearing Ref. No. 138/97. But the management representative submitted that for serious lapses, management have to take stringent action. That is true but as per U/S 33(2), the management ought to have obtained approval from Tribunal to justify their action and must pay one month salary after dismissal. It is not clear from the pleadings of the Opp. Party. Whether one month salary has been paid to the dismissed workman or not. But whatever it may be a dispute concerning all the workman of F.C.I, is pending before this Tribunal for disposal.

7. Asking for approval of the Tribunal, relating to action of management would not belittle the dignity of the management. The Hon'ble Apex Court in clear tone has observed, while a dispute whatever sort that may be pending before the Tribunal approval must be obtained from the Tribunal to justify its action and a decision to that effect reported in A.I.R 2002 SC 643(i) for deciding the present case, this Tribunal do not want to comment on the Reference case no. 138/97 proceeding against the workman which is yet to be decided.

8. Considering the facts and circumstances of all the cases, I hold that the action of the management is illegal and not justified. Hence the workman be treated as workman in continuous service from the date of their dismissal by the Opp. Party. Accordingly in the result the complaint is allowed and action of the management held to be illegal.

This is my Award.

R.K. SARAN, Presiding Officer