

भारत का राजपत्र
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No. 51] NEW DELHI, DECEMBER 14—DECEMBER 20, 2014, SATURDAY/AGRAHAYANA 23—AGRAHAYANA 29, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग 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 Ministries of the Government of India
(Other than the Ministries of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 12 दिसम्बर, 2014

विषय :—पेंशन निधि विनियामक और विकास प्राधिकरण में अंशकालिक सदस्य की नियुक्ति।

का.आ. 3194.—पेंशन निधि विनियामक और विकास प्राधिकरण अधिनियम की धारा 5 की उप-धारा (4) के साथ पठित धारा 51 की उप-धारा 2 के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नीचे उल्लिखित व्यक्तियों को, उनकी वर्तमान नियुक्तियों के कार्यकाल की अवधि के लिए अथवा अगले आदेश होने तक, जो भी पहले हो, पेंशन निधि विनियामक और विकास प्राधिकरण में अंशकालिक सदस्य के रूप में नियुक्ति करती है :

1. सुश्री एनी जार्ज मैथ्यू, संयुक्त सचिव (कार्मिक), व्यय विभाग, वित्त मंत्रालय को सुश्री सुधा कृष्णन के स्थान पर।
2. सुश्री वंदना शर्मा, संयुक्त सचिव (पेंशन एवं पेंशनर कल्याण विभाग), कार्मिक, लोक शिकायत एवं पेंशन मंत्रालय।

[फा. सं. 2/1/2014—पीआर]

सुरिन्दर कौर, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 12th December, 2014

Subject : Appointment of Part-time Member in Pension Fund Regulatory and Development Authority

S.O. 3194.—In exercise of powers conferred by clause (b) of sub-section 2 of Section 51, read with sub-section(4) of Section 5 of the Pension Fund Regulatory and Development (PFRDA) Act, the Central Government, hereby appoints the

persons mentioned below as Part-time Member, Pension Fund Regulatory and Development Authority, with immediate effect, for the duration of their tenure in their present appointments or until further orders whichever is earlier :

1. Ms. Annie George Mathew, Joint Secretary (Pers.) Department of Expenditure, Ministry of Finance vice Ms. Sudha Krishnan.
2. Ms. Vandana Sharma, Joint Secretary, Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions.

[F. No. 2/1/2014-PR]

SURINDER KAUR, Under Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 1 मार्च, 2013

का.आ. 3195.—केन्द्रीय सरकार भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् से परामर्श करने के बाद एतद्वारा उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् —

उक्त अनुसूची में, —

(क) “अमृता विश्व विद्यापीठम विश्वविद्यालय, केरल” के सामने शीर्षक ‘मान्यताप्राप्त चिकित्सा अर्हता’ (अब के बाद कॉलम (2) के रूप में संदर्भित) के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक ‘पंजीकरण के लिए संपेक्षण’ (अब के बाद कॉलम (3) के रूप में संदर्भित) के अन्तर्गत निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

“क्षय एवं छाती के रोगों में डिप्लोमा”

डीटीसीडी

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह अमृता स्कूल ऑफ मेडीसिन, कोची, केरल में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में अमृता विश्व विद्यापीठम विश्वविद्यालय, केरल द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

(ख) “डॉ. राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक” के सामने शीर्षक ‘मान्यताप्राप्त चिकित्सा अर्हता’ (अब के बाद कॉलम (2) के रूप में संदर्भित) के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक ‘पंजीकरण के लिए संपेक्षण’ (अब के बाद कॉलम (3) के रूप में संदर्भित) के अन्तर्गत निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

“डॉक्टर ऑफ मेडीसिन (संवेदनाहरण)”

एमडी (संवेदनाहरण)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

“मास्टर ऑफ सर्जरी (अस्थि रोग विज्ञान)”

एमएस (अस्थि रोग विज्ञान)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

डॉक्टर ऑफ मेडीसिन/मास्टर ऑफ सर्जरी

एमएस (स्त्री एवं प्रसूति रोग)

(स्त्री एवं प्रसूति रोग)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

डॉक्टर ऑफ मेडीसिन (औषध विज्ञान)

एमडी (औषध विज्ञान)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

डॉक्टर ऑफ मेडीसिन (बाल चिकित्सा)

एमडी (बाल चिकित्सा)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

डॉक्टर ऑफ मेडीसिन (विकिरण चिकित्सा)

एमडी (विकिरण चिकित्सा)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

डॉक्टर ऑफ मेडीसिन (मनश्चिकित्सा)

एमडी (मनश्चिकित्सा)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

डॉक्टर ऑफ मेडीसिन (जैव रसायन)

एमडी (जैव रसायन)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

डॉक्टर ऑफ मेडीसिन (सूक्ष्म जैविकी)

एमडी (सूक्ष्म जैविकी)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह वेदेही आयुर्विज्ञान संस्थान और अनुसंधान केंद्र बेंगलूर, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

क्लीनिकल पैथोलॉजी में डिप्लोमा

डीसीपी

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह एस.डी.एम. आयुर्विज्ञान कॉलेज और अस्पताल, धरवाड, कर्नाटक में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बेंगलूर, कर्नाटक द्वारा नवंबर, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

(ग) “येनेपोआ विश्वविद्यालय, मंगलूर, कर्नाटक” के सामने के सामने शीर्षक ‘मान्यताप्राप्त चिकित्सा अर्हता’ (अब के बाद कॉलम (2) के रूप में संदर्भित) के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक ‘पंजीकरण के लिए संप्रेक्षण’ (अब के बाद कॉलम (3) के रूप में संदर्भित) के अन्तर्गत निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

“डॉक्टर ऑफ मेडीसिन

एमडी (रेडियोलोजी/रेडियो डायग्नोसिस)

(रेडियोलोजी/रेडियो डायग्नोसिस)”

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह येनेपोआ विश्वविद्यालय मेडीकल कॉलेज, मंगलूर कर्नाटक में प्रशिक्षित किए

जा रहे विद्यार्थियों के संबंध में, येनेपोआ विश्वविद्यालय, मेंगलौर, कर्नाटक द्वारा मई, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

(घ) “जेएसएस विश्वविद्यालय, मैसूर, कर्नाटक” के सामने शीर्षक ‘मान्यताप्राप्त चिकित्सा अर्हता’ (अब के बाद कॉलम (2) के रूप में संदर्भित) के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक ‘पंजीकरण के लिए संपेक्षण’ (अब के बाद कॉलम (3) के रूप में संदर्भित) के अन्तर्गत निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

“डॉक्टर ऑफ मेडीसिन (औषध विज्ञान)”

एमडी (औषध विज्ञान)

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह जेएसएस मेडीकल कॉलेज, मैसूर कर्नाटक में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में, जेएसएस विश्वविद्यालय, मैसूर, कर्नाटक द्वारा अप्रैल, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

(ङ) “दिल्ली विश्वविद्यालय, दिल्ली” के सामने शीर्षक ‘मान्यताप्राप्त चिकित्सा अर्हता’ (अब के बाद कॉलम (2) के रूप में संदर्भित) के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक ‘पंजीकरण के लिए संपेक्षण’ (अब के बाद कॉलम (3) के रूप में संदर्भित) के अन्तर्गत निम्नलिखित अन्तःस्थापित किया जाएगा, अर्थात् :—

“बाल स्वास्थ्य में डिप्लोमा”

डीसीएच

(यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह आयुर्विज्ञान विश्वविद्यालय कॉलेज और जीटीबी अस्पताल, दिल्ली, में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में, दिल्ली विश्वविद्यालय, दिल्ली द्वारा अप्रैल, 2012 में अथवा उसके पश्चात् प्रदान की गई हो।)

सभी के लिए नोट : 1. किसी स्नातकोत्तर पाठ्यक्रम को इस प्रकार प्रदत्त मान्यता अधिकतम 05 वर्ष की अवधि के लिए होगी और उसके बाद उसका नवीकरण कराना होगा।

2. उप-खण्ड-4 में यथापेक्षित समय पर मान्यता का नवीकरण न होने पर संबंधित स्नातकोत्तर पाठ्यक्रम में दाखिला निरपवाद रूप से बंद हो जाएगा।

[सं. यू. 12012/18/2013—एमई (पी. II)]

अनीता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 1st March, 2013

S.O. 3195.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule—

(a) against “Amrita Vishwa vidyapeetham University, Kerala” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
“Diploma in Tuberculosis & Chest Diseases”	DTCD
	(This shall be a recognised medical qualification when granted by Amrita Vishwa Vidyapeetham University, Kerala in respect of the students being trained at Amrita School of Medicine, Kochi, Kerala on or after May, 2012).

(b) against “Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

“Doctor of Medicine (Anaesthesia)”	MD (Anaesthesia) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Master of Surgery (Orthopaedics)”	MS (Orthopaedics) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Doctor of Medicine/ Master of Surgery (Obstetric gynaecology)”	MD/MS (OBG) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Doctor of Medicine (Pharmacology)”	MD (Pharmacology) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Doctor of Medicine (Paediatrics)”	MD (Paediatrics) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Doctor of Medicine (Radio Therapy)”	MD (Radio Therapy) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Doctor of Medicine (Psychiatry)”	MD (Psychiatry) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Doctor of Medicine (Biochemistry)”	MD (Biochemistry) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).
“Doctor of Medicine (Microbiology)”	MD (Microbiology) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at Vydehi Institute of Medical Sciences & Research Centre, Bangalore on or after May, 2012).

“Diploma in Clinical Pathology”

DCP

(This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka in respect of the students being trained at SDM College of Medical Sciences & Hospital, Dharwad, Karnataka on or after November, 2012).

(c) against “Yenepoya University, Mangalore, Karnataka” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

“Doctor of Medicine (Radiology/Radio Diagnosis)”

MD (Radiology/Radio Diagnosis)

(This shall be a recognised medical qualification when granted by Yenepoya University, Mangalore, Karnataka in respect of the students being trained at Yenepoya Medical College, Mangalore, Karnataka on or after May, 2012).

(d) against “JSS University, Mysore, Karnataka” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

“Doctor of Medicine (Pharmacology)”

MD (Pharmacology)

(This shall be a recognised medical qualification when granted by JSS University, Mysore, Karnataka in respect of the students being trained at JSS Medical College, Mysore, Karnataka on or after April, 2012).

(e) against “University of Delhi, Delhi” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

“Diploma in Child Health”

DCH

(This shall be a recognised medical qualification when granted by University of Delhi, Delhi in respect of the students being trained at University College of Medical Sciences & GTB Hospital, Delhi on or after April, 2012).

Note to all : 1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. Failure to seek timely renewal of recognition as required in sub-clause-4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U.12012/18/2013-ME (P.II)]

ANITA TRIPATHI, Under Secy.

कोयला मंत्रालय

आदेश

नई दिल्ली, 16 दिसम्बर, 2014

का.आ. 3196. —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, असाधारण, भाग II, खंड 3, उप-खंड (ii), तारीख 10 जुलाई, 2014 के प्रकाशन में भारत सरकार के कोयला मंत्रालय की अधिसूचना का. आ. संख्यांक 1725(अ), तारीख 26 मार्च, 2014 पर उक्त अधिसूचना के प्रकाशन पर उससे संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) में 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, महाराष्ट्र (जिसे इसमें इसके पश्चात् उक्त कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जिनका केन्द्रीय सरकार इस निम्मित अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है ;

अतः, अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में या उस पर इस प्रकार निहित सभी अधिकार तारीख 10 जुलाई, 2014 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, नुकसानियों और वैसी ही मंदों की बाबत किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी ;
2. उक्त सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और 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 अपीलें आदि जैसी सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा भी 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 पूर्वोक्त 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 को, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/03/2011- पीआरआईडब्ल्यू-1]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 16th December, 2014

S.O. 3196.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S. O. 1725(E), dated the 26th March, 2014, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), dated the 10th July, 2014, 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 lands and all rights in or over such lands as 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, Maharashtra (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 directs that the said lands and rights in or over the said lands so vested shall, with effect from the 10th July, 2014, instead of continuing to so vest in the Central Government, shall 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 said Government Company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the 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 the said lands, 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 aforesaid rights in the said lands so vested ;

4. The Government Company shall have no power to transfer the said lands to any other person without the prior approval of the Central Government ; and
5. The Government Company shall abide by such directions 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. 43015/03/2011 - PRIW-I]

DOMINIC DUNG DUNG, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 16 दिसम्बर, 2014

का.आ. 3197.—राष्ट्रपति, श्री अवतार चन्द डोगरा को 04.12.2014(पूर्वाह्न) से केन्द्रीय सरकार औद्योगिक न्यायाधीकरण—सह—श्रम न्यायालय नं.1, दिल्ली, के पीठासीन अधिकारी के रूप में 10.09.2019 तक अथवा अगले आदेशों तक, जो भी पहले हो, नियुक्त करते हैं।

[सं. ए-11016/04/2013-सीएलएस-II]

एस. के. सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 16th December, 2014

S.O. 3197.—The President is pleased to appoint Shri Avtar Chand Dogra as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court No.1, Delhi w.e.f. 04.12.2014 (F.N.) for a period up to 10.09.2019 or until further orders, whichever is earlier.

[No. A-11016/04/2013-CLS-II]

S. K. SINGH, Under Secy.

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एर्नाकुलम के पंचाट (23/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-35011/5/2012-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 23/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Cochin Port Turst and their workmen, received by the Central Government on 09/12/2014.

[No. L-35011/5/2012- IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM****Present :** Shri D. Sreevallabhan, B.Sc., LL.B. Presiding Officer(Thursday the 14th day of August, 2014/23rd Shravana 1936)**ID 23/2013**

Union : The General Secretary
Cochin Port Trust Staff Association
W/Island
Cochin-9
COCHIN
By M/s. A V Xavier

Management: The Chairman
Cochin Port Trust
W/Island
Cochin
COCHIN
By M/s. Menon & Pai

This case coming up for final hearing on 13.08.2014 and this Tribunal-cum-Labour Court on 14.08.2014 passed the following:

AWARD

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 (14 of 1947), the Government of India/Ministry of Labour vide its Order No. L-35011/5/2012-IR(B-II) dated 05.04.2013 referred the industrial dispute scheduled therein for adjudication to this tribunal.

2. The dispute is:
“Whether the action of the Cochin Port Trust Management in regularizing the services of Shri T M Arabindakshan from 10.12.2007 is justifiable? What relief he is eligible to get?”
3. The workman was appointed as Assistant Marine Foreman in the Marine Department of the management on 01.04.2005 on ad-hoc basis. He was to be regularized on getting formal sanction from the Govt. of India. After receiving the Ministry’s approval vide letter dated 20.08.2007 he was not regularized and the same has resulted in raising this industrial dispute.
4. After appearance of the parties and submission of pleadings the case was posted in the Lok Adalath as agreed to by both parties. There was a full and final settlement of the dispute between the parties. They have jointly filed compromise. There is nothing illegal in accepting the compromise and hence an award can be passed in terms of the compromise.
5. In the result an award is passed in terms of the compromise which will form part of this award.
The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 14th day of August, 2014.

D. SREEVALLABHAN, Presiding Officer

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULAM I.D. No. 23/2013

The General Secretary
Cochin Port Staff Association
Willingdon Island, Cochin

.....Union

Vs.

The Chairman
Cochin Port Trust
Willingdon Island
Cochin-682009

.....Management

The matter was taken up in Lok Adalat and the parties agreed to settle the dispute on the following terms:

1. The Management agrees to regularize the service of Shri T. M. Aravindakshan, Assistant Marine Foreman with effect from 20-08-2007 being the date of receipt of approval from the Ministry.
2. For the purpose of increment and other pensionary benefits the period from the date of appointment i.e. 01.04.2005 to 20.08.2007 shall be counted.
3. The employee undertakes that no further claims in this regard will be raised by him in future.

Dated this the 13th day of August, 2014.

Union : Sd/-

Management : Sd/-

Counsel for Union : Sd/-

Counsel for Management : Sd/-

Sd/-
Mediator

D. SREEVALLABHAN, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3199.—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 लखनऊ के (पंचाट 47/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-12012/4/2005-आई आर (बी.-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.47/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 09/12/2014.

[No. - L-12012/4/2005- IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 47/2005

Ref. No. L-12012/74/2005-IR(B-II) Dated: 07.11.2005

BETWEEN:

The Secretary

Bank of India Staff Association U.P.
Central Office, Mohini Mension, 1st Floor
Naval Kishore Road, Hazaratganj
Lucknow.

(Espousing cause of S/Shri Hriday Naryan Misra and Virendra Prasad Verma)

AND

The Zonal Manager
Bank of India
Varanasi Zone Plaza Complex, Bhelupura
Varanasi (U.P.) – 221 001

AWARD

1. By order No. L-12012/74/2005-IR(B-II) Dated: 07.11.2005 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 the Secretary, Bank of India Staff Association U.P., Central Office, Mohini Mension, 1st Floor, Naval Kishore Road, Hazaratganj, Lucknow and the Zonal Manager, Bank of India, Varanasi Zone Plaza Complex, Bhelupura, Varanasi (U.P.) to this CGIT-cum-Labour Court, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER IT IS A FACT THAT S/SH. HRIDAY NARAYAN MISRA AND VIRENDRA PRASAD VERMA WERE ENGAGED BY THE MANAGEMENT OF BANK OF INDIA ON DAILY WAGES FROM 08.08.1994 AND 12.05.1995 RESPECTIVELY? IF SO WHETHER THE ACTION OF THE MANAGEMENT OF BANK OF INDIA, BANARAS IN TERMINATING THEIR SERVICES W.E.F. 21.11.2002 IS LEGAL AND JUSTIFIED AND WHAT RELIEF THE CONCERNED WORKMEN ARE ENTITLED TO?”

3. The case of the workman's Union in brief is that the workmen viz. S/Shri Hriday Narain Mishra and Virendra Prasad Verma were engaged by the opposite party bank w.e.f. 08.08.94 and 12.05.1995 respectively as casual daily wage workers whose services have been terminated by the Bank orally on 21.11.2002. It had been alleged that the Bank retained other three casual workers while terminating his services without any rhyme or genuine reason or compensation in violation to the provisions of Section 25 F of the Industrial Disputes Act, 1947, ignoring the fact that they worked continuously since the time of their engagement till the date of termination; accordingly the workman's Union has prayed that the oral

termination order be set aside and the management of the Bank be directed to reinstate the workmen with all consequential benefits including full back wages.

4. Per contra, the management of the Bank of India has disputed the claim of the workman's Union by filing its written statement wherein it has submitted that there is prescribed procedure for appointment in the bank and the claimants had never gone through the selection process, as such, they were never appointed by the bank at any point of time. It is submitted by the bank that whenever required casual labours are hired from open market on daily wage basis and are paid accordingly; hence they are not the employees of the bank. The bank has denied continuous working of the workmen and has also denied their termination or violation of the any of the provisions of the Industrial Disputes Act, 1947. Accordingly, the management of the Bank has prayed that the claim of the workman's Union be rejected without any relief to the workmen concerned.

5. The workman's Union has filed rejoinder whereby it has only reiterated its averments in the statement of claim and has not introduced any new fact.

6. After submission of documentary evidence in support of their respective cases by the parties, the workman's Union adduced evidence of Shri Vrinda Prasad Verma; whereas the management adduced evidence of Shri S.K. Seth & Shri Dudh Lal Ram to corroborate their pleadings. The parties availed opportunity to cross-examine the witnesses of each other. After conclusion of parties' evidence, the case was fixed for arguments of the parties on merits, when the workman's Union moved an application W-37 regarding closure of the case.

7. The workman's Union in the application W-37, mentioned that it has entered into a settlement dated 25.06.2013 with the opposite party before the Regional Labour Commissioner (Central), Mumbai; whereby the opposite party has included the workmen, whose cause is espoused in the present industrial dispute viz. S/Shri Hriday Narayan Misra and Virendra Prasad Verma, in the selection procedure and has declared them successful for appointment in the Bank's services. It was stated by the workman's Union that in view of the settlement, it is not willing to contest the present industrial dispute anymore; and prayed that the case may be disposed of accordingly.

8. Heard General Secretary of the workman's Union who was accompanied with the workmen viz. S/Shri Hriday Narain Mishra and Virendra Prasad Verma and perused the application W-37, accompanied with settlement dated 25.06.2013 & the file.

9. The workman's Union in its application W-37 has stated that a settlement dated 25.06.2013 has been arrived between the Union of the workmen and the bank; and in accordance thereto the workmen have undergone regular selection procedure and are declared successful for appointment in the services of the Bank. The workman's Union has stated that in view of the settlement there is no need to proceed with the present industrial dispute and accordingly, has expressed its willingness not to contest the present dispute with prayer to dispose of the same accordingly.

10. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove illegality of the action of the management and if no evidence is produced the party invoking jurisdiction of the Court must fail. In the instant case the burden was on the workman's Union to prove that the action of the management of Bank of India in terminating the services of the workmen was illegal and unjustified. The stand of the workman's Union was denied by the management of the bank and the parties adduced oral evidence too in support of their rival pleadings; but before submission of their final arguments on merit, the workman's Union has come forward with application, W-37, stating therein that since its grievances have got redressed by the opposite party consequent to settlement dated 25.06.2013, therefore, it does not want to contest the present industrial dispute and wants the closure of the same. Accordingly, there is no need to proceed with the present industrial dispute as grievances of the workmen's Union stand redressed. Thus, the representative of the workman's Union has prayed to pass suitable orders.

11. Although provisions of withdrawal of suits under Order 23 Rule 1 CPC are not applicable in the matter of reference under Section 10 of ID Act but, in view of the submission of the workman's Union for withdrawal of the case, there is no grievance left with the workmen and the concerned Trade Union. Resultantly, no relief is required to be given to the workmen concerned. The reference under adjudication is answered accordingly.

12. Award as above.

Lucknow

8th October, 2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3200.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के (पंचाट 8/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-12012/69/2012-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 8/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 09/12/2014.

[No. L-12012/69/2012- IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

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

Tuesday, the 28th October, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial dispute No.8/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN:

Sri G. Nagasubramanian : 1st Party/Petitioner

AND

The Deputy General Manager : 2nd Party/Respondent
Indian Bank Corporate Office
Compliance Department
254-260 Avvai Shanmugham Salai
Royapettah
Chennai-600014

Appearance:

For the 1st Party/Petitioner : M/s. K.M. Ramesh, Advocates

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

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/69/2012-IR (B.II) dated 04.01.2013 referred the following Industrial dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of Indian Bank, Chennai in imposing the punishment of dismissal from service without notice upon Sri G. Nagasubramanian, an ex-employee is legal and justified? What extent the workman is entitled to relief?

2. On receipt of the Industrial dispute this Tribunal has numbered it as ID 8/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and filed claim and counter statement respectively. The petitioner has filed a rejoinder in answer to the Counter Statement filed by the Respondents

3. The averments in the Claim Statement filed by the petitioner are as below:

The petitioner was appointed as Clerk-cum-Shroff in the service of the Indian Bank on 11.09.1995. He was posted to Kambainallur branch as Single Window Operator on 03.03.2008. The petitioner was discharging his duties diligently and to the satisfaction of his superiors. While working as Single Window Operator he was served with an order of suspension dated 08.07.2009. The petitioner had submitted his explanation on 07.08.2009. The explanation was not accepted and a memo of charges was served on the petitioner. It was alleged in this that he had debited a sum of Rs. 10,000/- from the account of one Nagamani on 05.11.2008 and misappropriated the money. It was also alleged in the Charge Memo that the petitioner had failed to handover the cash vouchers and instruments independently passed by him with the Teller's Cash Register Report to the concerned Officer for verification on 05.11.2008 with the intention to conceal his act of misconduct. The petitioner had submitted a detailed explanation to the Charge Memo He had denied the allegations against him by the Charge Memo. However, without accepting the explanation an enquiry was conducted against the petitioner and he was found guilty of the

charges framed against him. The Disciplinary Authority had imposed the punishment of dismissal without notice on the petitioner on the basis of the enquiry report. The Appeal preferred by the petitioner before the Appellate Authority against the order of the Disciplinary Authority has been dismissed. The order of dismissal is without any justification. An order may be passed holding that the dismissal of the petitioner from service is illegal and also directing the Respondents to reinstate the petitioner in service with effect from 25.09.2010 with back wages, continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

While the petitioner was working as Single Window Operator in Dharmapuri Branch there was a complaint against him from one Madappan, an account holder that withdrawal of Rs. 5,500/- made on 28.10.2006 was unauthorized. There was also a complaint that a voucher for Rs. 2,000/- dated 07.1.2006 was posted by him by debiting Savings Bank Account of Senior Manager. There was another complaint that on 22.12.2006 the Branch had detected a shortage of four pieces in Rs. 500/- section received from the petitioner who was then working as Single Window Operator. A Show Cause Notice was issued to the petitioner and he had owned responsibility regarding withdrawal of Rs. 5,500/- on 28.10.2006 and debiting of Rs. 2,000/- on 07.12.2006. The petitioner was awarded the punishment of censure. He was then transferred to Kambainallur Branch in Dharmapuri circle. While at Dharmapuri Branch the petitioner was issued with Charge Sheet for false claim of LFC/TA bills. After enquiry the punishment of stoppage of increment with cumulative effect was imposed on the petitioner. It would appear that on 05.11.2008 while the petitioner was working in Kambainallur Branch one Nagamani, account holder of the branch had deposited Rs. 20,000/- to his account on 05.11.2008. There was withdrawal of Rs. 10,000/- on the same day. When the account holder came to the branch on 26.11.2008, he disputed the withdrawal of Rs. 10,000/- on 05.11.2008. The petitioner admitted having taken the money and made good the amount by remitting to the account of the account holder. On 18.03.2009 the Vigilance Department received an anonymous letter regarding the incident. On 08.07.2009 a Show Cause Notice was issued to the petitioner regarding the unauthorized withdrawal of Rs. 10,000/- the petitioner had given a reply denying the charges. Since his reply was found unsatisfactory a Charge Sheet was served on him and an enquiry was conducted. A copy of the enquiry report was furnished to the petitioner. After considering his comments the Disciplinary Authority had awarded the punishment of dismissal without notice on the petitioner. The punishment was upheld by the Appellate Authority. The punishment is not harsh or disproportionate to the charges established against him. Though a complaint was made by the account holder at the branch level, it came to the knowledge of the Zonal Office only by the anonymous letter, in March 2009. The processing of papers at various levels had taken some time. A delay of four months in issuing the charge sheet did not cause any prejudice to the petitioner. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the allegations made in the Counter Statement and also reiterating the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documentary evidence consisting of Ext.W1 to Ext.W23 and Ext.M1 to Ext.M28

7. **The points for consideration are :**

- (i) Whether there is any justification in the action of the Respondents in imposing the punishment of dismissal from service on the petitioner?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner had entered the service of the Indian Bank as a Clerk-cum-Shroff in the year 1995. The incident which is the subject matter of the dispute had allegedly occurred on 05.11.2008 while the petitioner was working as Single Window Operator at Kambainallur Branch. It is alleged that on this day he had withdrawn Rs. 10,000/- from the account of one Nagamani without his knowledge and had appropriated the amount. Nagamani who came to the branch on 26.11.2008 is said to have noticed on updating his Pass Book that Rs. 10,000/- was withdrawn from his account on 05.11.2008. he immediately preferred a complaint to the Branch Manager who on enquiry noticed that the petitioner was the Single Window Operator who handled the transactions. 'The petitioner is said to have admitted that he has withdrawn the amount and made good the amount by depositing an equal amount to the account of Nagamani on the next day. However, the branch Manager did not pursue the matter further. The Circle Office is said to have received intimation of the incident based on an anonymous letter on 18.03.2009. On 08.07.2009 a Show Cause Notice was issued to the petitioner, an enquiry was conducted against him, he was found guilty and a punishment of dismissal without notice was imposed on him.

9. In the enquiry proceedings the Management had examined the Assistant Branch Manager and also the Branch Manager to prove the incident. The relevant documents were also produced in the enquiry proceedings. The Asstt. Branch Manager of the Kambainallur Branch at the relevant time was examined as MW1 in the enquiry proceedings. The complaint that was preferred by Nagamani, the account holder was proved through this witness. He has deposed that Nagamani has given the complaint stating that the amount of Rs. 10,000/- was withdrawn from his account on 05.11.2008 without his knowledge. According to MW1 on receiving the complaint he had verified the statement of account of Nagamani and had noticed that the amount was withdrawn on 05.11.2008. He came to know that Rs. 20,000/- was deposited in the same account on the same day. The deposit holder asserted that he had not withdrawn any money on 05.11.2008. So MW1 reported

the matter to the Branch Manager. Both of them verified who had passed the transaction and it was noticed that it was done by the petitioner who was acting as Single Window Operator. According to MW1, on enquiry the petitioner admitted that he had withdrawn Rs. 10,000/- from the account of Nagamani on 05.11.2008. He also requested not to take any action against him. He agreed to pay the amount to the account of Nagamani. He himself filled the credit challan and deposited the amount. MW1 had identified the challan written by the petitioner in his own handwriting for remitting Rs. 10,000/- to the account of Nagamani and this has been marked as MEX-5 in the enquiry proceedings. The complaint given by Nagamani also was proved though this witness and was marked as MEX-2. He had stated that the complaint was given by Nagamani on 26.11.2008. He has further stated that on a date after 05.11.2008 Nagamani had taken a jewel loan of Rs. 25,000/- and when his Pass Book was updated he had noticed the withdrawal of Rs. 10,000/- without his knowledge. As seen from the evidence of MW1, on 26.11.2008 also the petitioner was working as Single Window Operator. On his admitting that he had withdrawn Rs. 10,000/- from Nagamani's account, the capability of the petitioner was reduced from Level-7 to Level-5 and he was asked to sit in the transfer counter. Level-7 was allotted to one Samikannu and he worked in the Single Window Operator seat, after this.

10. There is also the evidence of MW2, the Branch Manager. This witness has deposed that Nagamani had informed that he had not withdrawn Rs. 10,000/- from his account and had requested to rectify the account. Immediately he had verified the account and had found that the account was debited. He searched for the voucher but the same was not available. It was noticed that the petitioner was the one who was working at the Cash Counter on the day. On enquiry with him, he is said to have admitted that he had withdrawn the cash. He asked the petitioner to remit the amount. He remitted the amount on the next day.

11. The counsel for the petitioner had pointed out that the account holder Nagamani whose account was allegedly debited and who had allegedly given complaint regarding wrong debiting of account had not been examined. The counsel for the petitioner has referred to the decision of the Apex Court in *HARDWARI LAL VS. STATE OF UP AND OTHERS* reported in AIR 2000 SC 277 in this respect. In this the Apex Court has held that it was not proper for the Tribunal as well as the High Court in brushing aside the grievance of the concerned workman that the non-examination of the complainant has resulted in prejudice to him.

12. It is true, in the present case, the complainant Nagamani has not been examined though the complaint preferred by him has been proved through MW1 as well as MW2. However, when the facts of the present case are taken into account it could be seen that the fact that Nagamani had preferred a complaint stating that he has not withdrawn the amount of Rs. 10,000/- on 05.11.2008 is established by the very admission made by the petitioner herein. Ext.W2 is the reply given by the petitioner to the Suspension Order issued by the Disciplinary Authority and marked as Ext.W1. Ext.W1 refers to the misconduct allegedly committed by the petitioner and had passed the order of suspension on him based on him. The petitioner was also asked to Show Cause for the misconduct allegedly conducted by him. In Ext.W2 reply the petitioner had denied the allegation that he had withdrawn amount from the account of Nagamani. He had also stated that he had not admitted to the Branch Manager that he had withdrawn amount nor had he remitted the amount to the account of Nagamani. Then he has stated that the dispute was raised by Nagamani over the withdrawal on 25.11.2008. He has further stated that there was no further insistence from Nagamani as he seemed to have been satisfied with the reply given by the Branch Manager. He had denied to have remitted Rs. 10,000/- to the account of Nagamani on the next day and has stated that Nagamani had himself remitted the amount and he happened to extend a helping hand in filling up the challan. It is clear from Ext.W2 reply itself that Nagamani had preferred a complaint on 25.11.2008 stating that he has not withdrawn any amount on 05.11.2008 and the petitioner was very much aware of this immediately after the complaint itself. Thus the evidence given by MWs 1 and 2 regarding the complaint given by Nagamani is very much established through the corroborative evidence given by the petitioner in the form of his reply marked as Ext.W2. So the non-examination of Nagamani, the person who has given the complaint is not of any consequence. There was no reason for Nagamani to be concerned about the affair later since he has received remittance of Rs. 10,000/- to his account on 26.11.2008, the next day of his preferring his complaint itself.

13. Another argument that has been advanced by the counsel for the petitioner is that though documents were produced in the enquiry proceedings, they were not properly proved. The counsel has referred to the decision of the Apex Court in *ROOP SINGH NEGI VS. PUNJAB NATIONAL BANK AND OTHERS* reported in 2009 2 SCC 570 where the Apex Court has held that the purported evidence collected during investigation by the Investigating Officer by itself could not be treated to be evidence in the disciplinary proceedings. It was further held that mere tendering of documents could not be treated as proving the contents of the documents.

14. On going through the enquiry proceedings it could be seen that there is no basis for the argument advanced by the counsel for the petitioner on the basis of Roop Singh Negi's case. It is not a case of mere tendering of the documents in the enquiry proceedings. Of course, the Enquiry Officer had marked the documents at the outset of the proceedings itself. However, relevant documents including the complaint, the SB account statement of Nagamani, the challan for remittance, all were put to MW1, the Asstt. Branch Manager and proved through him. This witness having been the Asstt Branch Manager of the branch is quite competent to speak about the documents. So it is not a case of mere tendering of the documents. The

petitioner had sufficient opportunity to cross-examine MWs 1 and 2 regarding these documents also. So the argument that the documents are not proved is only to be rejected.

15. It is not in dispute that the petitioner was acting as Single Window Operator on 05.11.2008. It is also not in dispute that Rs. 20,000/- was deposited to the account of Nagamani on 05.11.2008. On the same day Rs. 10,000/- was debited from this account. It is unusual and improbable that a person who has deposited Rs. 20,000/- to his account withdraws Rs. 10,000/- on the same day by a withdrawal slip. He could have retained the amount with him rather than having the fun of depositing it and withdrawing it immediately.

16. The relevant transaction of 05.11.2008 was admittedly carried out by the petitioner who was the Single Window Operator. The counsel for the Respondents has referred to the Single Window System Operational Guidelines which was marked as MEX-IV in the enquiry proceedings (Page-14 of petitioner's set of documents). In the guidelines under the heading "*Verification of Cash Transactions with the Report before EOD*", it is stated that before EOD for each single window operator the printout of the Teller's Cash Register Report should be taken without fail. It should be duly authenticated by the respective Single Window Operator and handed over to the designated Officer for verification on the same day along with the cash vouchers and instruments. It is further stated that for this purpose the cash cheques, instruments, vouchers, etc. independently or authorized by the respective Single Window Operator should be held in his custody only and released along with the Teller's Cash Register Report to the designated Officer after closing of the cash drawer for the day. MW1 has stated during his examination that the Single Window Operators in Kambainallur Branch used to submit Teller's Cash Register Report regularly. He has also deposed that the petitioner also has been submitting the report regularly on all days when he had worked in cash other than on 05.11.2008. He has also stated that the vouchers were verified but they were not able to trace out the relevant cash paid withdrawal slip. Thus what is to be seen from the evidence of MW1 is that the guidelines for Single Window Operators were being followed meticulously by the Single Window Operators of the branch.

17. There is no case for the petitioner that he has submitted the relevant report for the day in question. His case in Ext.W4, the explanation given by him to the Charge Memo is that there was no practice of handing over cash vouchers and instruments along with Teller's Cash Register Report to the Officer, so far as the branch is concerned at any rate he has no quarrel regarding the fact that the voucher is missing. If there was no practice of submitting the voucher to the officer, the same should have been available with him, he being the one who was the Single Window Operator on 05.11.2008, the relevant date. Of course, there is the fact that on the day in question the absence of the report along with the voucher was not noticed by the Verification Officer in which case the fraud could have been noticed on the same day. But that itself is not a reason to exonerate the petitioner from the misconduct committed by him. When the guidelines say that the report along with the relevant instrument should be submitted to the Officer on closure at the end of the day, it should have been complied with by the petitioner. Absence of this itself points to the possibility of misconduct by the petitioner.

18. The complaint was given by the account holder on 25.11.2008. As could be seen from the evidence of MWs 1 and 2 they had immediately verified and found out that the petitioner was the Single Window Operator on the day and had enquired with him and he had admitted his misconduct, according to them. According to the petitioner, he did not tell them that he has debited the amount and appropriated the same. However, the evidence given by MWs 1 and 2 in this respect could not be false. It is to be borne in mind that both these witnesses in spite of detection of misconduct, according to them, had tried to help the petitioner. MW2 has stated that he has asked the petitioner to remit the amount in the account of Nagamani and he had obliged by remitting the money on the next day itself. They had closed the entire thing by the remittance, as could be seen from the subsequent silence. They have not thought it necessary to report the matter to the superiors. It was only on receipt of an anonymous letter the Zonal Office came to know about the incident.

19. More than the admission itself the conduct of the petitioner in remitting the amount on the next day is relevant. Of course, the petitioner did not admit that he had made the remittance. But it is very much clear from the circumstances and also the evidences of MWs 1 and 2 that remittance was made by the petitioner himself. It is very much clear from the explanation marked as Ext.W2 that the petitioner was aware of the complaint preferred by Nagamani on 25.11.2008. It is also clear from the explanation marked as Ext.W4 that the petitioner was removed from the position of Single Window Operator on 25.11.2008 itself immediately after the complaint was preferred by Nagamani and the petitioner was questioned. He has stated in Ext.W4 that on 25.11.2008 though he commenced the day as Single Window Operator by around 1200 Noon MW1 the Asstt. Branch Manager had instructed him to close down the cash and hand over the keys to Samikannu. After this Samikannu was functioning as Single Window Operator. This statement of the petitioner in Ext.W4 corroborates the version of MW1 that the capability level of the petitioner was reduced to Level-5 from Level-7 and this position so far handled by him was allotted to Samikannu and Samikannu continued to operate the Single Window Operator seat on the day. According to the petitioner this happened by 1200 Noon on the day. MW1 has stated that it was around 1100 AM the petitioner had admitted withdrawal of Rs. 10,000/- from the account of Nagamani. However, Even as admitted by the petitioner in Ext.W4 he had extended a helping hand to Nagamani on 26.11.2008 for remitting Rs. 10,000/-. There is the evidence by MW1 and 2 that the challan for remittance was filled in the hand of the petitioner. The petitioner is very well aware of the restriction in the guidelines that a person who is acting as the Single Window Operator should not fill up the challan in his handwriting even in the interest of customer service. Fully aware of this instruction the petitioner herein has stated in Ext.W4 that though

rules prohibit a Single Window Operator in filing up challan, yet in rural branches helping hand is extended by filling up the challans whenever needed. The petitioner was of course not the Single Window Operator on 26.11.2008. What he has stated is that he extended a helping hand to Nagamani only when he was sitting outside on 26.11.2008. During the working hours, he could not be expected to sit outside idle to help the customers by filling up the challans. Again, if actually Nagamani himself was remitting the amount on the day the petitioner would have been very cautious since it was only on the previous day the very same Nagamani had preferred a complaint against him that he had debited amount from his account without his knowledge. There is the evidence given by MW1 that it was the sub-staff and PTE who used to help the customers in filling up the challans. So there was no dearth of persons to help the customers. It was not necessary for the petitioner who must have been engaged in his work on the day to fill up the challan. Before getting a solution to his complaint it is unlikely that Nagamani would have remitted more amount in his account on the next day after he preferred the complaint itself. So the only conclusion that could be drawn is that the petitioner who filled up the challan remitted the amount of Rs. 10,000/- himself to the account of Nagamani after his misappropriation was detected on the complaint by Nagamani. This ready remittance of the amount by the petitioner immediately after the complaint was preferred also shows that the petitioner himself is the one who debited the amount without the knowledge of the account holder. The Enquiry Officer has rightly found that the charges against the petitioner are proved.

20. The Respondents have produced documents pertaining to the past conduct of the petitioner. Certain proceedings were initiated against the petitioner earlier. These are admitted by the petitioner also. He has admitted during his cross-examination that one Madappan who was an account holder of Dharmapuri Branch had given a complaint against him alleging that he had withdrawn Rs. 5,500/- from his account so also Srinivasan, a Sr. Manager had alleged that the petitioner had debited Rs. 2,000/- from his account. Ext.M4 is the copy of the explanation given by the petitioner, the charge that he had withdrawn Rs. 5,500/- from the account of Madappan. Ext.M5 is the letter written by the petitioner stating that as the investigation and report of the forensic expert revealed that the specimen signature of the party differed regarding the payment of Rs. 5,500/-. He has remitted Rs. 9,500/- including the amount incurred by the bank for obtaining forensic report, "taking the moral responsibility for the incident". Ext.M9 is the Show Cause Notice issued to the petitioner regarding the withdrawal of Rs. 5,500/- from the account of Madappan. As seen from Ext.M9 the petitioner was awarded the punishment of censure. There is also the evidence given by MW1 who was working as Vigilance Officer of Dharmapuri Circle. He had stated in his affidavit about the allegation given by Srinivasan, the Manager that Rs. 2,000/- was debited from his account and credited to the account of the petitioner. The petitioner has admitted during his cross-examination that this amount was also remitted by him. Thus it could be seen that the past conduct of the petitioner is not without blemish.

21. The petitioner was awarded the punishment of dismissal without notice. When the present misconduct committed by the petitioner is taken into account along with his past misconducts, the punishment imposed on the petitioner could not be considered as disproportionate so I am not inclined to modify the punishment to the benefit of the petitioner also. I find that the petitioner is not entitled to any relief. The reference is answered against the petitioner.

An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri G. Nagasubramanian
For the 2nd Party/Management : MW1, Sri G. Rajendran

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	08.07.2009	Copy of Show Cause Memo and Suspension Order issued to the Petitioner
Ex.W2	07.08.2009	Copy of Reply submitted by the Petitioner to the Show Cause Memo
Ex.W3	28.10.2009	Copy of charge sheet issued to the petitioner
Ex.W4	11.11.2009	Copy of reply/explanation submitted by the petitioner to the charge sheet
Ex.W5	09.02.2010 to 03.03.2010	Copy of Proceedings of the enquiry
Ex.W6	10.04.2010	Copy of letter from Disciplinary authority enclosing enquiry report and asking the petitioner to give his remarks over the findings
Ex.W7	24.05.2010	Copy of the petitioner's comments over the enquiry findings
Ex.W8	10.05.2010	Copy of letter from Disciplinary Authority enclosing enquiry report and asking the petitioner to give his remarks over the findings

Ex.W9	24.05.2010	Copy of petitioner's comments over the enquiry findings
Ex.W10	19.08.2010	Copy of Second Show Cause Notice issued to the petitioner
Ex.W11	25.08.2010	Copy of reply submitted by the petitioner to the Second Show Cause Notice
Ex.W12	31.08.2010	Copy of proceedings of the personal hearing before the Disciplinary Authority
Ex.W13	25.09.2010	Copy of letter from the Disciplinary Authority enclosing final order
Ex.W14	25.09.2010	Copy of final order imposing punishment of dismissal without notice against the petitioner
Ex.W15	25.10.2010	Copy of appeal preferred by the petitioner before the Appellate Authority
Ex.W16	23.12.2010	Copy of letter from Appellate Authority asking the petitioner to appear for personal hearing
Ex.W17	18.01.2011	Copy of proceedings of personal hearing held before the Appellate Authority
Ex.W18	19.03.2011	Copy of letter from Appellate Authority enclosing appellate order
Ex.W19	19.03.2011	Copy of the order issued by the Appellate Authority dismissing the appeal
Ex.W20	26.11.2008	Copy of report of details of tellers in the branch (marked as DEX-1 in the enquiry)
Ex.W21	26.11.2008	Copy of Key Movement Register (Marked as DEX-2 in the enquiry)
Ex.W22	02.03.2010	Copy of Affidavit of G. Nagamani (Produced in the enquiry)
Ex.W23	21.05.2009	Copy of letter from B.T. Thirulogachander to Vigilance Officer of the Bank (marked as MEX-III in the enquiry)

On the Management's side

Ex.No.	Date	Description
Ex.M1	04.11.2007/ 16.03.2009	Statement of A/c No. 572456835 A. Nagamani (MEX-VI)
Ex.M2	13.03.2010	Letter from PRS – Vasan, Sr. Manager/PO/Indian Bank, Soolagiri to Inquiry Officer, Indian Bank, Uthangarai Branch
Ex.M3	07.08.2012	Conciliation failure report of ALC ©
Ex.M4	27.03.2007	Explanation of petitioner for the memo dated 20.03.2007
Ex.M5	24.03.2008	Letter from Branch Manager, Dharmapuri to AGM/CH/C.O/Dharmapuri enclosing letter dated 28.02.2008 of Nagasubramanian – taking moral Responsibility
Ex.M6	04.08.2009	Letter from Indian Bank, C.O., Vigilance Cell, Dharmapuri to petitioner
Ex.M7	05.08.2009	Letter from Indian Bank to the petitioner
Ex.M8		Letter by the petitioner to Indian Bank
Ex.M9	24.03.2009	Letter from Indian Bank/CO/Vig./Dharmapuri to petitioner - Memo
Ex.M10	19.05.2009	Letter from Indian Bank/Vig./CO/Dharmapuri to petitioner – “Censure” punishment
Ex.M11	15.11.2006	Complaint from A. Madappan SB A/c No. 464777579 to the Manager, Indian Bank, Dharmapuri
Ex.M12	28.10.2006	Withdrawal Slip of Rs. 5,500/- dated 28.10.2006
Ex.M13	16.12.2006	Statement and voucher for Rs. 2,000/- debiting in Senior Manager V. Srinivasan's A/c
Ex.M14	29.12.2006	Letter from V. Srinivasan, Senior Manager denying consent
Ex.M15	22.11.2006	Letter from petitioner to B.M., Indian Bank, Dharmapuri
Ex.M16	Nil received on 01.12.2006	Letter from A. Madappan to Manager, H.O., Indian Bank with pay-in-slip and withdrawal slip
Ex.M17	24.11.2006	Letter from Branch Manager – Indian Bank, Dharmapuri to AGM - Dharmapuri
Ex.M18	22.12.2006	Letter from Indian Bank, Vigilance Cell, Circle Office, Dharmapuri to V. Srinivasan, Senior Manager, C.O., Indian Bank, Dharmapuri
Ex.M19	23.12.2006	Letter from Branch Manager Indian Bank, Dharmapuri to Circle Office, Dharmapuri
Ex.M20	30.12.2006	Letter from G. Rajendran, Senior Manager – C.O., Indian Bank, Dharmapuri to AGM, C.O., Dharmapuri – Complaint on petitioner

Ex.M21	02.01.2007	Letter from Senior Manager–Indian Bank, Dharmapuri to AGM and Circle Head, Dharmapuri
Ex.M22	03.01.2007	Letter from Indian Bank, Vigilance, Circle Office, Dharmapuri to GM-Vigilance, H.O., Chennai
Ex.M23	25.11.2008	Letter from A. Nagamani to Manager, Indian Bank, Kambainallur – enclosing copy of withdrawal slip dated 05.11.2008 for Rs. 10,000/- signed by A. Nagamani
Ex.M24	02.05.2009	Letter from K. Vijayakumar, Branch Manager, Kambainallur to KK Ramamurthy, Vigilance Officer, Indian Bank, Circle Office, Dharmapuri with SB A/c statement of A. Nagamani
Ex.M25	21.05.2009	Letter from BT Thiru Logachander, Indian Bank, Pulikarai Branch to K K Ramamurthy Vigilance Office, C.O. Dharmapuri
Ex.M26	05.11.2008	Pay-in-slip signed by A. Nagamani for Rs. 20,000/- to A/c No. 572456835
Ex.M27	Nil Received on 18.03.2009	Anonymous letter addressed to the Chief Manager, Indian Bank, Vigilance Department, Chennai-1
Ex.M28	01.08.2012	Letter from Indian Bank, ZO, Dharmapuri to ALC (C), Chennai

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3201.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के (पंचात 90/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-12011/59/2013-आईआर (बी.-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 90/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 09/12/2014.

[No. L-12011/59/2013 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

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

Monday, the 13th October, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial dispute No. 90/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN:

The General Secretary
Indian Bank Employees
Union No. 6, Moore Street,
Mannady Corner
Chennai-600001

: 1st Party/Petitioner Union

AND

The Zonal Manager
Indian Bank Zonal Office
359, Dr. Nanjappa Road
Coimbatore-641018

: 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner Union : Sri Thomas Jayaprabhakaran, Authorized Representative
 For the 2nd Party/Respondent : M/s. T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/59/2013-IR (B.II) dated 09.10.2013 referred the following Industrial dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of Indian Bank in respect of not paying half scale wages to Mrs. Ganga, Part-Time Sweeper as per Wage Settlement signed in the year 1980 claimed by Indian Bank Employees Union is justified or not? What relief the workman is entitled to?"

2. On receipt of the Industrial dispute this Tribunal has numbered it as ID 90/2013 and issued notices to both sides. The petitioner has appeared through the Authorized Representative and the Respondent through its counsel and filed claim and counter statement respectively. The petitioner has filed rejoinder after the Counter Statement was filed.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

Smt. Ganga was engaged by the Respondent as Sweeper to clean the premises of Market Road branch and was regularized in the service of the Bank from 13.10.1992. Based on the sweeping area and time engaged she was fixed with 1/3 scale wages in the Sub-Staff cadre. The Branch acquired additional space in the same floor in the year 2002. Though the carpet area as per the lease agreement entered into by the Branch is 1416 sq.ft. on the first floor, Ganga has been sweeping the balcony, stair case, etc. measuring 438 sq.ft. which has not been included in the carpet area. The total sweeping area being 1977 sq.ft. Ganga is eligible for half scale wages in terms of the guidelines. As per the guidelines the wages payable to part-time sweepers are to be determined on twin parameters i.e. floor space area to be cleaned and total working hours. A person sweeping an area about 1751 sq.ft. and below 4000 sq.ft. and working between 13 to 19 hours is eligible for half scale wages. In view of the guidelines half scale wages should have been fixed for Ganga. She was eligible for proportionate half increment also every year. The action of the Respondent in denying half scale wages to Ganga from 2002 is illegal and unjustified. The Respondent shall be directed to pay half scale wages w.e.f. 2002 alongwith consequential benefits.

4. The Respondent has filed Counter Statement contending as follows:

A part time sweeper is engaged for cleaning the toilet and the carpet area of the premises besides any area available for its use. Wages for Part-Time Sweeper were originally fixed by the industry wise settlement dated 10.04.1989. Under this settlement wages were fixed with reference to number of hours of work each Part-Time Sweeper will be required to do in a week. By circular dated 23.02.1989 the Respondent directed the branches that the wages for Part-Time Sweeper were to be fixed corresponding to the area of the office or branch of the establishment. Regarding premises which are taken on lease, the area shown in the lease deed is to be taken as the area for the purpose of determination of wages for Part-Time Sweeper. Even if any common areas are available for use and the sweeper is sweeping this area also it will not be taken into account for the purpose of determination of wages. Even if the local Branch Manager or any other Officer had erroneously reported about the excess area for payment of wages the same is not binding on bank. In the lease deed in respect of the Market Road Branch the carpet area has been shown only as 1416 sq.ft. Even if there is additional area available for use by the branch and the concerned worker is sweeping this area also it will not entitle her to enhanced rate of wages. She was entitled to only 1/3 wages. From 04.02.2013 the Branch had been shifted from Market Road to Raja Mill Road. The carpet area of this premises is more than 2000 sq.ft. and as such the concerned worker is to be paid half scale of wages as from that date. The claim of the petitioner is to be rejected.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating the case in the Claim Statement.

6. The evidence in the case consists of documents marked as Ext.W1 to Ext.W13 and Ext.M1 and Ext.M2. No oral evidence was adduced by either side.

7. The points for consideration are:

- (i) Whether the concerned worker, Ganga is entitled to half scale wages as claimed by the petitioner?
- (ii) What is the relief, if any, to which the petitioner is entitled?

The Points

8. The Petitioner Union has raised the dispute claiming that one Ganga, Part Time Sweeper of the Market Road Branch who was drawing 1/3 wages in the Sub-Staff cadre was entitled to half scale wages from the year 2002 in view of the

increase in the area put to use by the bank and to be cleaned by her consequently. According to the petitioner, though the carpet area of the premises as per the lease deed entered by the bank and the owner of the building in respect of the market road branch is Rs. 1,416 sq.ft. only the bank had been using additional area of balcony, stair case, etc. measuring 438 sq.ft. thus making the total area to be swept @ 1977 sq.ft. and therefore she is eligible for half scale wages. The petitioner has relied upon circular no. 2/18 of the bank in making the claim. As per this circular, it is provided that a person cleaning an area in between 1751 and 4000 sq. ft. and working for 13-19 hours a week is eligible for half scale wages. According to the petitioner, though the industry level bipartite settlement of 1989 provide that the wages to the Part-Time Sweepers based on the number of hours engaged per week, the circular has given more clarity as it has specified the area to be cleaned also.

9. The contention that is raised on behalf of the Respondent is that in case of execution of lease deed for the premises, the area shown in the lease deed is to be taken as the area for determination of the wages of Part-Time Sweeper and even if the worker is cleaning any additional area, that is not specified in the lease deed, she will not be entitled to any extra amount.

10. Ex.W5 is the first representation by the concerned worker Ganga to the General manager of the Circle claiming half scale of pay since the Sweeping area is about 1977 sq.ft. There is one more representation dated 05.01.2011 from Ganga making such a claim and this is marked as Ext.W4. On the basis of representation of Gang the Zonal Office has written to the Senior Manager of the Market Road Branch asking him to furnish the details such as the carpet area of the branch as per the lease agreement and the details of any additional area added to the sweeping area from 2002. It is further stated in the letter that the details of the sweeping area including area like steps, balcony, etc. are to be provided. To this letter which is marked as Ext.W8, the Branch Manager has given a reply (Ext.W9) stating that the carpet area as per the lease agreement is 1416 sq.ft. in the first floor and that the Part-Time Sweeper is sweeping an additional area including balcony and stair case which comes to about 438 sq.ft. Ex.W10 is the details of flooring measurement done by a Licensed Building Surveyor and attached to Ext.W9. It is clear from Ext.W9 and Ext.W10 that even though the lease agreement in respect of the concerned branch marked as Ext.W7 shows the area as 1416 sq.ft. in the first floor only. The concerned worker It is clear from Ext.W9 and ext.W10 that she has been sweeping a further area of 438 sq.ft. which was also put to use by the bank. Thus the area that the concerned worker had to clean was above 1751 sq.ft and below 4000 sq.ft.

11. Now the question to be considered is whether there is any basis for the contention on behalf of the Respondent that the concerned worker will be eligible for wages only on the basis of the carpet area shown in the lease deed even if she was cleaning a further area put to use by the bank, apart from what is shown in the lease deed. It is seen from Ext.W13 the letter written by the Deputy General Manager to the Zonal Office that even though the floor space area for the purpose of sweeping has been arrived at on the basis of carpet area following which the rent is fixed, until then, modification has been effected regarding this stand because of the persistent request of the Employees Union Ext.W13 directs that the floor space area for the purpose of sweeping is to be determined as carpet area plus area pertaining to toilets, corridors, stair case and other reasonable areas to be decided by the sanctioning authority which require daily sweeping. This order dated 16.02.1995 was to have prospective effect. Thus it is clear from Ext.W13 that apart from the area shown in the lease deed, the area which was put to use by the branch as part of the premises also has been taken into account in determining the sweeping area. By Ext.W11, the Manager of the Market Road Branch, Pollachi has asserted that the Branch has been using the stair case exclusively since there is another separate entrance for the other office in the first floor. He has stated in Ext.W11 that no one can access the second floor through this stair case as the door to the first floor is bolted and closed. So there is sufficient material to show that apart from the area shown in the lease deed the branch was using the balcony and also the stair case and the concerned worker had to clean this area also as part of the work. So it is very much clear that Smt. Ganga has been sweeping an area above 1751 sq.ft making her eligible for elevation to half scale wages. As seen from Ext.M1 the Zonal Office has rejected the claim of the concerned worker for half scale wages on the ground that the total working hours engaged is less than 13 hours per week. As per Ext.W2 the circular dated 28.10.1980 if the area to be cleaned is in between 1751 and 4000 sqft. the worker is eligible for one half scale wages. As per industry wise settlement only the working hours was fixed by specifying the area. Ext.W2 has given more clarity regarding the manner in which wage scale is to be fixed. If the area to be cleaned is above 1750 sq.ft., it is to be assumed that the working hours is in between 13 to 19 hours a week. There was no justification for the Respondent in rejecting the claim of the concerned worker.

12. The prayer in the Claim Statement is for half scale wages w.e.f. 2002 during which period the area to be swept has been increased. However, the request by the concerned worker for fixing wages at half scale was first made by Ext.W5, the representation dated 03.09.2010 only. So she will be eligible for half scale wages from the date three years prior to this date only.

13. On the basis of my discussion above, an award is passed as follows:

The Respondent is directed to fix the pay of the concerned worker Ganga at half scale wages and pay arrears of wages at this rate from 03.09.2007. If the arrear is not paid within one month from the date of award, it will carry interest @ 9% per annum from the date of the award.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked :**On the petitioner's side :**

Ex.No.	Date	Description
Ex.W1	28.03.2012	ID raised by the Petitioner Union
Ex.W2	28.10.1980	Circular No. 2/80 of Indian Bank Head Office
Ex.W3	23.02.1989	Circular to all Zonal Offices by Indian Bank Head Office
Ex.W4	05.01.2011	Representation of Ms. Ganga
Ex.W5	03.09.2010	Representation of Smt. Ganga
Ex.W6	16.08.1992	Appointment Order of Smt. Ganga
Ex.W7	09.01.2003	Copy of the lease agreement between Indian Bank Management and the land lord of Market Road Branch
Ex.W8	04.07.2011	Letter from Zonal Office, Coimbatore to Market Road Branch
Ex.W9	18.07.2011	Letter from Market Road Branch to Zonal Office, Coimbatore
Ex.W10	28.08.2010	Engineer Certificate for the sweeping area
Ex.W11	27.08.2012	Letter from Market Road Branch to Zonal Office, Coimbatore
Ex.W12	11.09.2012	Letter from Zonal Office, Coimbatore to Market Road Branch
Ex.W13	16.02.1995	Circular to All Zonal Offices by Indian Bank Head Office

On the Management's side :

Ex.No.	Date	Description
Ex.M1	25.10.2012	Letter from HRM, ZO, Coimbatore-Ref. No. PTS 91132:2012-13 to Sr. Manager, Market Road Branch
Ex.M2	29.10.2002	Sanction ticket with Annexure I -Ref. No. COC:PREM:142:02-03

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3202.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल 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, नागपुर के पंचाट (223/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-12012/99/2003-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.223/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 10/12/2014.

[No. L-12012/99/2003 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

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

Case No. CGIT/NGP/223/2003

Date: 14.11.2014.

Party No.1 : The Regional Manager,
Central Bank of India,
Regional Office, Victoria Building,
Kamptee Road, Nagpur-440001.

Versus

Party No.2 : Shri Sudhakar Waghujji Chahare
R/o. Waigaon (Nipani) Tahasi and
Distt. Wardha (MS).

AWARD

(Dated: 14th November, 2014)

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 Central Bank of India and their workman, Shri Sudhakar Chahare, for adjudication, as per letter No.L-12012/99/2003-IR (B-II) dated 14.08.2003, with the following schedule:-

"Whether the action of the management of Central Bank of India, Nagpur Region, Nagpur (MS) in terminating the service of Sh. Shudhakar S/o. Sh. Waghujji Chahare, Casual Worker at the Wardha Extn. Counter Branch of the Bank without complying the provisions of Section 25-F if the Industrial Disputes Act, 1947 is justified? If not, to what relief the workman concerned 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 Sudhakar Chahare, ('the workman" in short), filed the statement of claim and the management of Central Bank 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 is a workman and party No. 1 is an industry, as defined in section 2 (s) and 2 (j) of the Act respectively and he was in the employment of party No. 1 from 1996 and he was appointed on clear vacancy and vacant post, on daily wages basis and posted at Loyds Steel Industry Extension, Bhugaon Branch and he was in continuous employment of party No. 1 w.e.f. 16.10.1999, consequent upon the transfer of Shri Sahebrao Bhaduji Shende, the part time Safai Karmachari from Loyds Steel Industry Extension Branch, Bhugaon to Wani and his service record was clean and excellent, but his services came to be terminated orally w.e.f. 26.12.2002, without assigning any reason.

The further case of the workman is that he was working continuously from 16.10.1999 to 26.12.2002 without any break and he had completed more than 240 days of continuous service in each calendar year and had acquired the status of a permanent employee and it was obligatory on the part of party No. 1 to regularize his services, however, on the contrary, the party No. 1 continued to utilize his services on temporary basis for years together, without providing of the facilities of leave, P.F./Gratuity and uniform etc. and he was performing regular nature of work from 8.A.M. to 3.P.M. and the said work is still available and a certificate had been issued in his favour, by the Deputy Manager, Loyds Steel Industry Extension, Bhugaon in regard to the nature of work performed by him and recommendation had also been made by the Deputy Manager for his regularisation in service and vide circular dated 07.09.2001, the Regional Manager, Nagpur of party No. 1 collected the informations regarding the temporary workers, who had completed 240 days of continuous work in a period of 12 months as on 31.07.2001 and inspite of the said circular, his name was not sent to the Regional Office and such action of party No. 1 was unfair and his name ought to have been sent for his regularisation and being aggrieved by such action, he made representation to the party No. 1 for regularisation of his services and he also made a representation claiming bonus from 1999 to 2002, as bonus was not paid to him and because of his constant demand for regularisation and payment of bonus, party No1 became annoyed and terminated his services orally, without complying the mandatory provisions of section 25 (F) and 25 (G) of the Act and therefore, his oral termination from services dated 26.12.2002 is illegal, arbitrary and violative of

the principles of natural justice and juniors to him in service were retained by the party no.1, so, it can be held that party No. 1 indulged in unfair labour practice and as his termination from services is illegal, he is entitled for reinstatement in service with continuity and full back wages.

3. Party No. 1 after denying the adverse allegations made in the statement of claim, in the written statement has pleaded inter-alia that the workman has completely failed to make out any case in his favour and he was never employed by it as its permanent or regular employee and he was engaged on daily wages as a casual worker, as and when required and he being a daily wages worker has no right to claim reinstatement in service as claimed by him and the workman was given to understand by the Officer-in-charge of the Extension counter that he was being engaged on daily wages, subject to the availability of work and that he was liable to be discontinued without notice, in case of non-availability of work and he understood and accepted the condition and accordingly, he worked as a casual worker on daily wages at the Extension Counter for the period from 1997 to 2001 and from the pleadings made in the statement of claim, it is clear that the workman himself is confused as to from which date or year, he had worked as a daily wagger and the workman did not work continuously from 16.10.1999 to 26.12.2002 and as the workman was a daily rated employee, there was no question of any termination order in his name and he being a daily wagger, his services were engaged for each day separately and at the end of the business hours on that particular day, he was deemed to be discontinued from work for that day and he was being paid wages for the day and the workman being a daily wagger was not entitled for the benefits of leave, P.F., gratuity etc and such facilities are available only to its regular and permanent employees and merely issuing of a letter of appreciation or recommendation by any of its officers in favour of the workman has little significance, as to fill up any vacancy and for appointment of regular employee, it is necessary to follow the proper recruitment procedure as provided in the prescribed Rules and Regulation for recruitment and the claim of the workman for regularisation, on the ground of his completing 240 days of continuous service in a year is without any merit, in view of the series of judgments of the Hon'ble Apex Court and High Courts and the workman is not entitled to any relief.

It is to be mentioned here that party No. 1 has furnished the details of the working days of the workman as annexure-1. Annexure 1, which has been made a part of the written statement, discloses that the workman was engaged by party No. 1 for 50 days in 1997, 35 days in 1998, 73 days in 1999, 344 days in 2000 and 273 days in 2001.

4. In the rejoinder, the workman has stated that he worked in the Extension Counter for the period from 1997 to 2001 and due to typographical mistake, in paragraph 1 of the statement of claim, the initial date of his appointment has been mentioned as 1998 in place of 1999.

5. In support of their respective claim, both the parties have led oral evidence, besides placing reliance on documentary evidence.

The workman has examined himself as a witness to prove his case. Party No. 1 has examined two witnesses, namely, Shri Shrirang Shankar Mankar, a Senior Manager (HRD) and Shri Prabhakar Balakrushna Rao Ghatode, a retired employee of the Bank in support of its case.

6. The workman in his examination-in-chief on affidavit has reiterated the facts mentioned in the statement of claim. However, in the cross-examination, the workman has admitted that he worked on daily wages at Llyods Steel Industries Extension Counter and no written appointment order was given to him by the Bank and his name was not entered in the attendance register of the branch as an employee and bank was paying him his wages on vouchers for the days actually he was working with the branch and he has not filed any document to show that he worked for 240 days in the branch during any calendar year. The workman has admitted the suggestions that in 2012, the bank had carries out a special recruitment by giving preference to all the daily wagers, who had worked in the Bank for any length of period and that he had also applied for his appointment, but as he was over aged, he was not called for the interview by the bank. The workman has also admitted that he knows that the Branch Manager of any branch of the Bank is not empowered to appoint anybody permanently in any class-IV post and the bank did not make anybody permanent, who was junior to him, after termination of his service.

7. The evidence of the two witnesses for the party No. 1 on affidavit is more or less in the same line of the stands taken by party No. 1 in the written statement.

The witness No. 1 for the party No. 1 in his cross-examination has stated that he has no personal knowledge about the case of the workman. This witness has admitted that from 19.01.2000 to 31.12.2000, the workman had worked for 344 days and from 01.01.2001 to 30.11.2001, the workman had worked for 273 days and Ext-W II is a true document regarding payment of wages to the workman from 01.04.2000 to 01.03.2001 and the amount of the wages so mentioned in Ext. W-II was for calculation of the bonus to be paid to the workman.

The witness No. 2 for the party No. 1 in his cross-examination has admitted that he has not seen any document regarding the engagement and termination of the workman and he cannot say if the workman was engaged for the first time in the service of the Bank in 1997 and he doesn't remember if the workman was terminated from service in the year 2001. The witness has admitted that Exts. W-II and W-III were written by him as the officer-in-charge and Ext. W-II was written by him for payment of bonus to the workman for the year 2000 and 2001.

8. At the time of argument, it was submitted by the learned advocate for the workman that the workman was in the employment of party No. 1 from 1996 and he was appointed by party No. 1 in a clear and vacant post on daily wages basis and posted at Llyods Steel Industries Extension counter and he was in continuous employment from 16.10.1999 and he worked for 344 days in the year 2000 and 273 days in 2001 and he had acquired the status of a permanent employee and it was obligatory on the part of party No. 1 to regularize his services and the workman insisted for his regularisation and for providing of the other facilities enjoyed by the regular employees of the Bank, so party No. 1 being annoyed, terminated his services orally on 26.12.2002, without compliance of the mandatory provisions of sections 25-F and 25-G of the Act and though, the services of the workman were terminated, juniors to him in service were retained by party no.1.

It was further submitted by the learned advocate for the workman that vide circular dated 07.09.2001, the Regional Manager, Nagpur of the Bank had directed all the branches of the Bank to furnish informations of the temporary workers, who had completed 240 days of continuous service in a period of 12 months as on 31.07.2001, but with malafide intention, the name of the workman was not forwarded to the office of the Regional Manager, even though, he had completed more than 240 days of work as required and from the evidence on record and the own pleadings of party no.1, it is clear that the workman had been working continuously and he had completed 240 days of continuous service with the Bank in each calendar year, more particularly in 2000 and 2001 and party No. 1 adopted unfair labour practice and as the termination on the service of the workman w.e.f. 26.12.2002 was illegal, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

9. Per contra, it was submitted by the learned advocate for the party No. 1 that the workman was never employed by party No. 1 as its regular or permanent employee and he was a casual worker and he was engaged as and when required and he worked on daily wages during the period from 1997 to 2001 and the workman in his evidence has admitted that he was engaged as a casual daily rated worker as and when required and he was paid his remuneration on vouchers and his name was not in the muster roll maintained for the permanent employees of the bank and as the workman was engaged by the bank for each day separately and at the end of the business hours of the bank on that particular day, he was deemed to be discontinued from work and as he was engaged and discontinued on various occasions, there was no question of issuing of any termination order and the workman was not engaged against any clear vacancy and he did not complete 240 days of work in each calendar year and the workman is not entitled to any relief.

The learned advocate for the party No. 1 tried to show that the entries made in annexure-1 which had been filed as a part of the written statement by party no.1, regarding the working days of the workman in 2000 and 2001 to be false and untrue, by submitting that the total working days of the bank is not more than 285 days in a calendar year and that in 2001, the workman was shown to have worked on all the days including Sundays and paid holidays and that the chart cannot be accepted as a gospel truth.

It was further contended by the learned advocate for the party No. 1 that the Branch Manager has absolutely no right or authority to offer employment to any body and his recommendation or letters to the higher official in the Bank do not carry any significance and the workman cannot rely upon those documents and the workman in his evidence has admitted such facts and it is clear from his evidence that due to overage, he was not regularized by the Bank, when in 2012, the bank decided to regularize all the casual employees and not admitting, but for the sake of argument, it is assumed that the workman had completed 240 days of work in those particular years, still then, it cannot be said that he has acquired any legal right to claim employment or reinstatement in service and it is settled position of law that daily rated workers cannot be granted permanency or reinstatement, since that would tenement to granting of backdoor entry and therefore, the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the party No. 1 placed reliance on the decisions reported in 2006 II-LLJ -722 (Secretary, State of Karnataka Vs. Uma Devi)/ AIR 2006 SC-4065 (Rajasthan State Ganga Sagar S. Mills Ltd. Vs. State of Rajasthan), AIR-2010 SC-2140 (Senior Superintendent Vs. Santosh Kumar Seal), 2006 -III-LLJ-152 (H.U.D.A. Vs. Jagmal Singh), 2008 I CLR-784 (General Manager Bharat Sanchar Nigam Ltd & ors. Vs. Mahesh Chand), 2008 II CLR-658 (Dnyandeo Vs. Executive Engineer), 2009-III CLR-426 (Dena Bank Vs. Ashraf Yunus Shaikh), 2008-II-LLJ-977 (pat) (Sanjay Kumar Vs. State of Bihar, AIR 1996 SC-1565 (State of Himachal Pradesh Vs. Suresh Kumar Verma) and 1997 LAB-IC-2075 (Himanshu Kumar Vidyarthi Vs. State of Bihar).

10. Before I proceed to the facts of the present case, I think it proper to refer to section 25-F of the Act. It says that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in line of such notice, wages for the period of notice. Moreover, the workman is also entitled to retrenchment compensation equivalent to 15 days' average pay.

According to the learned advocate for the workman, neither notice was issued nor pay in lieu of notice, nor retrenchment compensation was paid to the workman by party No. 1 and section 25-B of the Act defines continuous service and according to the said section, a workman can be said to be in continuous service under an employer for a period of one year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days and the workman had completed more than 240 days of work in every calendar year and as such, it was necessary for the party No. 1 to comply with the mandatory provisions of section 25-F of the Act and the termination of the workman is illegal.

11. At this juncture, I think it proper to mention that in the judgment reported in 1997 LAB IC-2075 (Supra), the Hon'ble Apex Court have held that, "Industrial Disputes Act (14 of 1947) -S. 25-F, Sch.2, Item 3- Retrenchment - Daily wage employees- Appointment made on basis of need of work-Termination of their services-Cannot be construed to be retrenchment- Same is not arbitrary as they were not entitled to post."

Like wise, in the judgment reported in 2008 -II-LLJ -977 (Supra), the Hon'ble Patna High Court have held that, "A casual worker in daily wages basis is covered by clause (bb) by Section 2 (oo) of the Industrial Disputes Act and termination of employment of such a person does not attract the provisions of section 25-F of the Act.

However, with respect, I am of the view that the said judgments do not have any implication, in view of the subsequent judgments of the Hon'ble Apex Court of coordinate Bench and so also, larger Bench as referred by the Hon'ble Apex Court in the other decisions cited by the learned advocate for the party no.1.

It is clear from the principles enunciated by the Hon'ble Apex Court in the decisions cited by the learned advocate for the party No. 1 that section 25-F of the Act is applicable even to the case of a daily wager, who is engaged as and when required, in case of his completion of 240 days of work in a period of 12 calendar months preceding the date of his termination and it is for the workman to lead evidence and to show that infact he had worked for 240 days in the year preceding his termination.

12. In this case, in the schedule of reference, the alleged date of termination has not been mentioned. In his statement of claim, rejoinder and evidence on affidavit, the workman has claimed that he was orally terminated from service by the party No. 1 on 26.12.2002. However, not a single document has been filed by the workman in support of his claim that he worked with party No. 1 till 26.12.2002. On perusal of the documents filed by the workman, it is found that the last representation made by him was on 12.10.2001.

The party No. 1 in the written statement has pleaded that the workman was engaged as a casual worker on daily wages as and when required and he worked intermittently from 1997 to 2001 and his such engagement was till 26.12.2001 and not till 26.12.2002 as claimed by the workman. In paragraph four of the written statement, the party No. 1 has specifically pleaded that, "the actual period of work of the party No. 2 during the aforesaid period is being furnished by the party No. 1 Bank by way of an annexure to this written statement as Annexure-A and it may be treated as a part and parcel of the written statement." It is also to be mentioned here that though in paragraph 12 of the written statement, the party No. 1 has stated that it will file documents on record, in support of its written statement at the appropriate stage of the proceedings, actually not a single document was filed by it.

On perusal of the "Annexure-1" filed by party no.1, it is found that party No. 1 has admitted that the workman worked for 273 days in 2001 and 344 days in 2000. On perusal of "Annexure-1", it is found that the workman had completed more than 240 days of work in the preceding 12 calendar months of 26.12.2001, the alleged date after which the workman was not engaged, as per the claim of the party no.1. In view of such admission by party no.1, there was no need for the workman to prove the same.

As already mentioned above, the learned advocate for the party No. 1 submitted that "Annexure-1" was prepared casually and the entries made in the same cannot be taken as gospel truth. However, in fairness, such submission is to be mentioned and rejected, because such a plea has not been taken by the party No. 1 in the written statement. Moreover, the witnesses for party No. 1 have not whispered a single word in that respect. On the other hand, the witness No. 1 for party No. 1 has specifically admitted that the workman worked for 344 days in 2000 and 273 days in 2001.

It is the admitted case that party No. 1 did not comply with the provisions of section 25-F of the Act, which are mandatory in nature, before the disengagement of the workman. So, the dispensation of the services of the workman on 26.12.2001 amounted to retrenchment.

13. Now, the only point remains for consideration is as to what relief or reliefs, the workman is entitled. Admittedly, the workman worked as a daily wager from 1997 till 26.12.2001 intermittently. The workman was engaged as daily wager about 17 years back and he worked for about four years. It is also found that he had already been over aged for his employment in service. So keeping into consideration the facts and circumstances of the case and applying the principles enunciated by the Hon'ble Apex Court in the judgment reported in AIR 2010 SC-2140 (Supra) and Hon'ble Bombay High Court in 2009-III CLR-426 (Supra), it is found that relief of reinstatement and back wages to the workman cannot be said to be justified and instead monetary compensation would sub serve the end of justice. In my considered view, the compensation of Rs. 1,00,000/- (Rupees One lakh only) shall meet the ends of justice. Hence, it is ordered:-

ORDER

The action of the management of Central Bank of India, Nagpur Region, Nagpur (MS) in terminating the service of Sh. Shudhakar S/o. Sh. Waghaji Chahare, Casual Worker at the Wardha Extn. Counter Branch of the Bank without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947 is unjustified. The workman is entitled for monetary compensation of Rs. 1,00,000/- (Rupees One lakh only). He is not entitled to any other relief. Such payment should be made by party No. 1 within a month from the date of publication of the award in the official gazette, failing which, the same shall carry interest of the rate of 9% per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3203.—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, नागपुर के पंचाट (01/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-12012/163/2003-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 01/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 10/12/2014.

[No. L-12012/163/2003 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

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

CASE NO. CGIT/NGP/01/2004 Date 25.11.2014.

Party No.1 : The Branch Manager,
Bank of India,
Urjagram Extension Counter,
Brach-Bhadrawati,
Post & Tahsil-Bhadrawati,
Chandrapur (MS)

Versus

Party No.2 : Shri Vilas S/o Madhukar Chiwande,
R/o and Post- Tadali (Railway Station),
Tahsil & Dist. Chandrapur.

AWARD

(Dated: 25th November, 2014)

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 Bank of India and their workman, Shri Vilas Madhukar Chiwande, for adjudication, as per letter No.L-12012/163/2003-IR (B-II) dated 27.11.2003, with the following schedule:-

"Whether the action of the management in relation to Urjagram Extension Counter of Bank of India Branch Bhadrawati in terminating the services of Shri Vilas S/o Madhukar Chiwande on 16.07.2002 by verbal order is legal and justified? If not, what relief the concerned workman is entitled to?"

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 Vilas M. Chiwande, ('the workman' in short), filed the statement of claim and the management of Bank 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 the employee/workman of party No. 1 and he belongs to Schedule Caste category and he was appointed by the party No. 1 on 01.10.1993 as a sweeper cum peon and posted to Urjagram Extension Counter and he worked with the party No. 1 from 01.10.1993 to 16.07.2002 continuously and wages were paid to him for the said period on vouchers and the entries regarding the work done by him were made in the Dak book maintained by the party No. 1 and the documents are with the party No 1 and party No. 1 issued a letter dated 27.02.1997 stating therein that he was working with it (party No.1).

The further case of the workman is that he was appointed on daily wages basis and lastly he was being paid wages of Rs.30/- per day and wages was being paid to him on monthly basis and though he was appointed as a sweeper, he also worked as a peon during the absence of the regular peon, Waghmare, but party No. 1 did not pay any wages to him for the same and he worked for more than 240 days w.e.f. 01.10.1993 to 16.07.2002 and his services were terminated verbally by party No.1,

without service of one month's notice in writing indicating the reason of his termination or payment of one month's wages in lieu of the notice or retrenchment compensation and as such, his termination w.e.f. 16.07.2002 amounts to retrenchment and the same was in violation of the mandatory provisions of section 25-F of the Act and there was also violation of the provisions of section 25-G of the Act and rule 77 of the Industrial Disputes (Central) Rules, 1957, as the party No. 1 did not display any seniority list 7 days prior to his retrenchment and after his retrenchment from service on 16.07.2002, the party No. 1 appointed one Rakesh Chandragade at Urjagram Extension Counter, without giving him preference and such action of party No. 1 amounts to unfair labour practice and the post of sweeper at the said Extension Counter is of permanent nature and party No. 1 was bound to give him preference and to appoint him in the said permanent post as contemplated by section 25-H of the Act and after his termination from service, he is not gainfully employed.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party No. 1 in the written statement has completely denied the allegations made in the statement of claim. Party No. 1 has pleaded that as the workman was never appointed by it and he was never its employee, the question of his joining in its service on 01.10.1993 and working till 16.07.2002 or making payment of wages to him on vouchers or terminating of his services orally on 16.07.2002 does not arise and therefore, there is no question of application of the provisions of the Act. It is also pleaded by the party No. 1 that in terms of the norms and procedure as laid down by the Bank, it had called for the list of the candidates from the Employment Exchange and after following the procedure, the Committee constituted for the said purpose, interviewed the candidates sponsored by the Employment Exchange and out of them, Shri Rakesh Chandragade was selected and appointed by it and at no point of time, the name of the workman was sponsored by the Employment Exchange and therefore, the question of committing unfair labour practice or violation of the provisions of section 25-H of the Act does not arise and the workman is not entitled to any relief.

4. No rejoinder has been filed by the workman.

5. Besides placing reliance on documents, the workman has examined himself as a witness in support of his case.

It is to be mentioned here that though several opportunities were given to the party No. 1 to adduce evidence in support of its claim, it failed to adduce any evidence. Party No. 1 remained absent and did not appear in the case since 22.08.2014. Party No. 1 also failed to advance any argument.

The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has stated that no appointment order was issued by the Bank for his engagement at Urjagram Extension Counter and he was engaged by the Branch Manager and Bank was paying him wages of Rs.30/- per day as sweeper charges and Rakesh was recruited as a sweeper-cum-peon as per the recruitment Rules and was posted to the branch, where he was being working. The workman has denied the suggestions that he was being engaged by the Branch Manager as and when Shri Waghmare, the regular peon was remaining on leave and that he did not work for 240 days in any calendar year.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was employed by party No. 1 at Urjagram Extension Counter as a sweeper cum peon w.e.f. 01.10.1993 on daily wages basis of Rs.30/- per day and wages was being paid to him on monthly basis on vouchers and the workman worked continuously till 16.07.2002 and his services were terminated illegally on 16.07.2002 without compliance of the mandatory provisions of sections 25-F and 25-G of the Act.

It was further submitted by the learned advocate for the workman that soon after the termination of the services of the workman, in violation of the provisions of section 25-H of the Act, the party No. 1 appointed one Shri Rakesh Chandragade in his place and from the date of termination of the workman from service, he is not in gainful employment and the workman had demanded for production of the vouchers regarding payment of wages to him from 01.10.1993 to 22.07.2002, but party No. 1 did not produce the same in spite of the direction of the Tribunal and for that adverse inference has to be drawn against the party No. 1 and the evidence of the workman has virtually remained unchallenged and as the workman was terminated from services illegally, he is entitled for reinstatement in service with continuity and full back wages.

7. In this case, the workman has claimed that he was appointed by the party No. 1 w.e.f. 01.10.1993 and he worked continuously till 16.07.2002 and he had worked for more than 240 days in each calendar year and on 16.07.2002, his services were terminated orally by party No. 1 illegally, without compliance of the mandatory provisions of Section 25-F of the Act. The claim of the workman has been denied by the party No. 1. It is to be mentioned here that the plea of the party No. 1 is one of complete denial of the engagement of the workman. Party No. 1 even has not pleaded that the workman was engaged as a casual worker on daily wages basis, in absence of the regular peon. However, from the suggestions given to the workman in his cross-examination, it is found that the plea of the party No. 1 is that the workman was engaged by the Branch Manager as and when required on daily wages basis in the absence of the regular peon, Shri Waghmare. From such facts, it is clear that Party No. 1 has not mentioned the real facts in its written statement in regard to the engagement of the workman.

8. Persued the evidence on record including the documents produced by the parties and the oral evidence of the workman and found that the workman was never appointed as a regular or permanent employee by party No.1, but he was engaged by the Branch Manager on daily wages basis. It is also found that party No. 1 has denied the claim of the workman that he had worked for 240 days in each calendar year.

In view of the pleas taken by the parties, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in a string of decisions regarding the application of section 25-F of the Act. The Hon'ble Apex Court have held that for the applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment and the burden of such proof is upon the workman. So, keeping in view the settled principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered.

9. In support of his claim, the workman has produced the Xerox copy of the letter dated 27.02.1997 written by the Branch Manager stating that the workman was working in the branch since 01.10.1993 and Xerox copies of vouchers regarding payment of wages to him by party No.1, besides examining himself as a witness. Party No. 1 has produced cash ledger book of casual Sepoy relating to the period from 20.06.1999 to 28.12.2002. Even though, the documents filed by the parties have not been exhibited, for the interest of justice, the same have been taken into consideration. It is to be mentioned here that as party No. 1 has not come up with clean hands regarding the engagement of the workman at Urjagram Extension Counter and has also not produced the vouchers under which, payment of wages was made to the workman at least for the preceding one year of 16.07.2002, inspite of the demand of the workman and direction given by the Tribunal, adverse inference has to be drawn against the party No.1.

From the materials on record including the unshaken evidence of the workman, it is held that the workman had in fact worked for 240 days in the preceding 12 calendar months of the date of his oral termination i.e. 16.07.2002. It is also clear that before the termination of the workman from service, the mandatory provisions of section 25-F of the Act were not complied with by the party No.1. So, the termination of the workman from services is illegal.

10. Now, the only point remains for consideration is as to what relief or reliefs, the workman is entitled. Admittedly, the workman worked as a daily wager from 01.10.1993 till 16.07.2002 intermittently and such engagement was about 12 years back. So taking into consideration the facts and circumstances of the case and applying the principles enunciated by the Hon'ble Apex Court in regard to reinstatement of workman engaged on daily wages basis, it is found that relief of reinstatement and back wages to the workman cannot be said to be justified and instead monetary compensation would sub serve the end of justice. In my considered view, monetary compensation of Rs. 1,00,000/- (Rupees One lakh only) shall meet the ends of justice. Hence, it is ordered:-

ORDER

The action of the management in relation to Urjagram Extension Counter of Bank of India Branch Bhadrawati in terminating the services of Shri Vilas S/o Madhukar Chiwande on 16.07.2002 by verbal order is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 1,00,000/- (Rupees One lakh only). He is not entitled to any other relief. Such payment should be made by party No. 1 to the workman within a month, from the date of publication of the award in the official gazette, failing which, the same shall carry interest at the rate of 9% per annum.

J.P. CHAND, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3204.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ़ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, नई दिल्ली के पंचाट (129/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-12011/72/2013—आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 09/12/2014.

[No. L-12011/72/2013 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI****Present:-**Shri Harbansh Kumar Saxena**ID No. 129/2013**

Sh. General Secretary,
Trade Union Counsel,
S-55, Naveen Nagar,
Moradabad (U.P.)

Versus

1. Dy. General Manager, Regional Office,
Bank of Baroda, Sanjay Place,
Agra (U.P)
2. Sr. Branch Manager, Bank of Baroda,
Amroha Gate Branch, Briz Complex, Amroha Gate, Moradabad, (U.P)

Ex-Parte Award

The Central Government in the Ministry of Labour vide notification No L-12011/72/2013-IR(B-II) dated 16.11.2013 referred the following industrial dispute to this tribunal for adjudication :-

“Whether the action of the management of Bank of Baroda, Moradabad through its Deputy General Manager, Regional Office, Agra and Senior Branch Manager, , Moradabad or denying the payment of leave encashment of 221 days amounting to Rs. 25,276/- from 30.09.1992 alongwith 18% interest to Smt. Sankari Devi W/o Late Durga Singh is justified or not, if not to what relief the claimant is entitled to?”

On 5.12.2013 reference was received in this tribunal. Which was register as I.D No. 129/2013 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 28.02.2014. Wherein he stated as follows:-

1. That the Govt. of India, Ministry of Labour vide order No.L-12011/72/2013-IR(B-II) dated 16.11.2013 has referred for adjudication as under:-

“Whether the action of the management of Bank of Baroda, Moradabad through its Deputy General Manager, Regional Office, Agra and Senior Branch Manager, , Moradabad or denying the payment of leave encashment of 221 days amounting to Rs. 25,276/- from 30.09.1992 alongwith 18% interest to Smt. Sankari Devi W/o Late Durga Singh is justified or not, if not to what relief the claimant is entitled to?”

2. That the nominee of Late Sh. Durga Singh, Smt. Sankari Devi, the workman as referred by the Ministry of Labour was died on 11.11.2013 and after her death her successor Manoj Yadav will take her place as workman. In this regard the affidavit of Manoj Yadav along with the death certificate of Late Smt. Sankari Devi is enclosed with this claim.

3. That Late Durga Singh was retired on 30.09.1992 by erstwhile Bareilly Corporation Bank Ltd. as subordinate staff after merger presently as Bank of Baroda, before 5 years of the superannuation.

4. That Late Durga Singh successfully challenged his date of retirement and an interim order/injunction was granted by Hon’ble High Court Allahabad to remain in the service as a Sub-Staff at continually for further 5 years.

5. That the management of the Bank neither released the superannuation benefits including leave encashment of 221 days to Late Sh. Durga Singh nor he was allowed to serve the bank as a sub-staff in Honour to the order of the Hon’ble High Court.

6. That being sub-staff, late Durga Singh could not pursue the case effectively before the Hon’ble High Court due to extra ordinary shortage of money and ultimately lost his case in 2003.

7. That the management of the Bank should have been kind enough to release the retiral benefits to Late Durga Singh i.e. EPF amount, Gratuity Amount and of the leave encashment of 221 days but nothing was paid to him even on his repeated demands.

8. That gratuity amount was paid to Late Durga Singh less than the actual amount and ultimately it was paid at the order of Regional Labour commissioner (Central) Dehradun in the appeal.

9. That the partial amount of EPF of Late Durga Singh was paid to him in his life time and again in complete amount of rest part was paid to his nominee after his death but not full and final till date and the matter is still pending before Hon'ble Supreme Court of India.

10. That the management did not pay any heed over the payment of leave encashment of 221 days till date. In this regard illegal notice was also sent to the Management on 12.09.2005 and ultimately the dispute under section 31c(i) of ID Act on Form K-2 was filed before the Assistant Labour Commissioner (central) Dehradun and for years together the matter was remained in pendency on false assurances given by the management. In the last the matter was ended to failure in 2013 after 8 years.

11. That the claim of 221 days of leave encashment vide application dated 14.12.2005 of Rs. 25,276.00 since 30.9.1992 to 30.09.2005 @ 18% on monthly basis interest was of Rs. 84,421.84 by that time which was never upposed by the Bank and on pretext grounds the management gave false assurances to make the payment even in black and white to the Asstt. Labour Commissioner (Central) Dehradun, several times.

12. That since 30.09.1992 on Rs. 25,276.00 the amount of leave encashment @ 18% on monthly basis the total amount becomes due as on 28.2.2014 Rs. 9,15,659.00 and further interest till the date of full and final of the payment further interest @ 18% on monthly basis will be included in that amount.

13. That this Hon'ble Court in the light of the reference made by the Ministry of Labour should give the directions to the management to make the payment to the workman.

14. That the payment of superannuation benefits including leave encashment after the retirement of the workman who has given his golden days to the industry should have been paid by the Management without given the opportunity of making the claim of them by the workman but it was not done by the management while it was the management to have all concerned record at its end.

PRAYER

It is, therefore, prayed respectfully that this Hon'ble court may be pleased to give the answer of the reference in favour of the workman and Rs. 9,15,659/- since 30.09.92 to 18.2.2014 @ 18% on monthly basis as was mentioned in the legal notice dated 12.09.2005 and also in the claim raised before the Assistant Labour Commissioner (Central) Dehradun on 14.12.2005 is also mentioned in para no.12 of the statement of claim herein above be paid and such other relief as deemed fit in the interest of justice, equity and fair play be also given to the workman.

When management has not filed W.S. inspite of several opportunities. Then this tribunal on 17.06.2014 closed the right to filing W.S. by management and passed order to proceed Ex-parte against management. As well as fixed 1.7.2014 for Ex-parte evidence of workman.

Sh. Manoj Yadav, S/o workman in support of his case produce himself as WW1 and tendered his affidavit on 15.9.2014. His statement is as follows:-

I tender my affidavit in evidence in the instant case which has been filed on behalf of my father who was workman in the management. Contents of affidavit are correct and true which are based on my personal knowledge. Affidavit bears my signature at point A and B. Affidavit is marked Ex. WW1/A. Its annexed documents on which I am relying are also marked Ex WW1/D1 to D14.

XXXXXX None on behalf of Management present to cross-examine the witness. Hence cross-examination is marked nil.

Thereafter, Ld. A/R of Sh. Manoj Yadav, S/o workman, closed the evidence of workman on the instruction of Sh. Manoj Yadav, S/o workman. As case was proceeded ex-parte against management so I fixed 30.10.2014 for ex-parte arguments of Sh. Manoj Yadav, S/o workman.

On 30.10.2014 I have heard the arguments of Sh. Nem Singh, Ld. A/R for the workman.

Ld. A/R for the Sh. Manoj Yadav, S/o workman, also filed written arguments which are as follows:-

"Whether the action of management of Bank of Baroda, Moradabad through its Deputy General Manager, Regional Office, Agra and Senior Branch Manager, Moradabad for denying the payment of leave encashment of 221 days amounting to Rs. 25,276/- from 30.09.1992 alongwith 18% interest to Smt. Sankari Devi W/o Late Durga Singh is justified or not, if not to what relief the claimant is entitled?"

At the very outset, before to submit written Arguments following terms are clarified :-

I. Leave encashment : In banking Industry in India these are kinds of leave 1. Privilege Leave 2. Casual Leave 3. Sick Leave 4. Extraordinary Leave 5. Maternity Leave 6. Special Leave 7. Quarantine Leave 8. Leave Preparatory to Retirement.

The Leave Encashment of unavailed privilege leave accumulated during the service period is being paid to the employee at the time of his retirement and is the part of his retiral benefits such as EPF-Contributory Provident Fund "(Governed and controlled under "The Employees' Provident Funds and Miscellaneous Provisions Act, 1952,) popularly known as EPF Scheme, applicable exclusively upon Industrial Employees, Gratuity etc.

II. Rate of Interest @ 18% : The Hon'ble Supreme Court, has awarded Interest @ 18% because of releasing the EPF amount after the date of retirement for extraordinary delay of the payment of provident fund of the employee - a kind of retiral benefits in case of "Regional Provident Fund Commissioner" Vs. Shiv Kumar Joshi-(2000)1Supreme Court Cases 98. In the aforesaid Industrial dispute@ 18% interest has been demanded by the workman in follow up of the order of apex court of the country as mentioned herein above. Copy of the case low. (2001) 1 Supreme Court Cases 98 is enclosed with the written argument. For extraordinary delayed payment of leave encashment of 221 days a part of retiral benefit-Social security measure, the workman demanded the refund of leave encashment @ 18% in the legal notice dated 12.09.2005 on Rs. 25,276/- since 30.09.1992 upto 30.09.2005, i.e. for 13 years, the interest by that time was Rs. 59145.84. The total claim was Rs. 84421.84P. (25,276+59145.84P), The same amount was claim in the form K-2, before Regional Labour Commissioner (C) (R.L.C.) on 14.12.2005 in Legal notice Dt. 24.11.2012, again @ 18% interest was claim on same pattern of monthly basis calculation. In every reminder, Even before the R.L.C. in the proceeding and was never opposed by the employer. Thus the claim of 18% interest on monthly basis calculation is justified legally, principally & Practically.

In short written argument are mentioned as under : -

1. The workman Late Durga Singh was retired by the employer before five years on 30.09.1992. It was challenged successfully by the workman before Hon'ble High Court, Allahabad and got stay order.

2. That as per the stay order dt. 13.08.1993 the workman was allowed to work upto next five years i.e. 13.09.1997.

3. That the employer neither complied with the said order dt. 13.08.1993 of Hon'ble High Court, Allahabad nor the workman was paid his retiral benefits including leave encashment of 221 days. Copy of the stay order dt. 13.08.1993 is Ex-WW-1/D-1 on file of the court.

4. That the employer had adopted most cruel attitude against the workman which is on record as Ex-ww-1/D-2 on file, the letter dt. 19.04.1994.

5. That the workman has submitted his representation for releasing his retiral benefit before the employer which are on record i.e. EX-ww-1/D-3, Ex-WW-1/D-4, Ex- WW -1/D-5.

6. That the full Gratuity could be released before the Appellate Authority with Atmost effort by the workman after the death of Durga Singh. This is on file as EX- WW -1/D-6.

7. That delaying tactics were adopted by the employer in this case and even the letter of Regional Labour Commissioner (Central), Dehradun) were ignored knowingly, willfully and deliberately by the employer. These are on record as Ex- WW -1/D-7, Ex- WW -1/D-8, Ex- WW -1/D-9, Ex- WW -1/D-09/2, Ex- WW -1/D-10. The employer also ignored the letter dt. 02.04.2013, 25.04.2013 written by RLC (Dehradun) which are on record as Ex- WW -1/D-13 & Ex- WW -1/D-14.

8. That in the claim statement every fact has been mentioned. The workman-Manoj Yadav was tendered in person who confirmed his affidavit and all facts of the claim in toto.

In the light of the foregoing written arguments, this Hon'ble Court may be pleased respectfully to award @ 18% interest on the amount of Rs. 25,276/- in the interest of justice as prayed in the statement of claim of the workman /forth class employee.

He placed reliance on principle laid down by their lordship of Hon'ble Supreme Court in case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi (2000) 1 Supreme Court Cases 98.

In the light of contentions Ld. A/R for the workman. I perused the pleading of evidence of Sh. Manoj Yadav, S/o workman, which makes it crystal clear that evidence of workman is un rebutted. So it credible and reliable as well as principle laid down in aforesaid ruling applies with full force.

Hence claim petition is allowed and reference is decided in favour of Sh. Manoj Yadav, S/o workman, and against management. Which is accordingly decided.

Management is directed to pay Rs. 25,276/- alongwith 18% interest p.a. since 30.09.1992 to final payment to Sh. Manoj Yadav S/o Workman after a period of one month since publication of award and expiry of available remedy against award.

Ex-parte is accordingly passed.

Dated:-25/11/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3205.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडो जर्मन टूल रूम, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटी 115/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/12/2014 को प्राप्त हुआ था।

[सं. एल-42011/92/2007-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. Reference CGIT 115/2007) of the Central Government Industrial Tribunal-cum- Labour Court, Ahmedabad now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of the Indo German Tool Room, Ahmedabad and their workman, which was received by the Central Government on 08/12/2014.

[No. L-42011/92/2007-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present....

Binay Kumar Sinha, Presiding Officer,
CGIT-cum-Labour Court, Ahmedabad,
Dated 17th November, 2014

Reference: (CGIT) No. 115/2007

Order No. L-42011/92/2007-IR-(DU)

The General Manager,
Indo German Tool Room
Government of India Society,
Under Ministry of Micro, small & Medium Enterprise,
Phase-IV, Plot No. 5003, GIDC, Vatva,
Ahmedabad (Gujarat)

...Management (1st party)

And

Their workman
Sh. Dinesh C. Vasava
Through the General Secretary,
Gujarat Labour Union,
24/3, ellora Park Centre,
Behind Relief Cinema,
Satapase Road,
Ahmedabad (Gujarat)- 380001

...Workman/union (2nd Party)

For the first party: Shri Pradeep F. Javeri

For the second party: Shri Hemal K. Acharya, Advocate
Shri L.M. Patil, Advocate

AWARD

The Government of India/ Ministry of Labour, New Delhi vide Order No. L-42011/92/2007-IR (DU) dated 29.11.2007 referred the dispute for adjudication to this tribunal (C.G.I.T.-cum- Labour Court, Ahmedabad) in respect of the matters specified in the Schedule:-

SCHEDULE

“Whether the action of the management of Indo German Tool Room in terminating the services of their workman Shri Dinesh C. Vasava w.e.f. 07.03.1998 is legal and justified? If not, to what relief the workman is entitled?”

2. The case of the 2nd party as per statement of claim (Ext.6) is that the workman Dineshbhai Chandubhai Vasava was appointed with the 1st party since 17.08.1995 as a Trainee workman and he had served for more than three and half years. He was verbally terminated by the management of the 1st party from 07.03.1998 without following the procedure u/s 25F of the I.D. Act. The 1st party company did not give legal right to Dineshbhai at the time of termination and did not made him permanent helper. Before oral termination he (Dineshbhai) had worked in different departments of the company, he was performing work diligently and efficiently having with no complaint to the 1st party company. He was getting extension letter of service from time to time up to 06.03.1998. The action of the management of the 1st party to terminate his service is illegal and unjust. The duties of Dinesh was of perennial nature under the consent and continuous supervision and control of the officers of the 1st party. The other Trainees who were working with Dineshbhai Vasava were appointed as helper in the service whereas Dinesh was not appointed and was orally terminated. With these submission prayer is made to declare his termination w.e.f. 07.03.1998 illegal and reinstate him with continuity of service with back wages.

3. On the other hand the contention of the 1st party (management) as per written statement (Ext-12) pleading interalia is that the reference is not maintainable, the 2nd party Union has no locusstandi cause of action to raise demand and the claim of Union/Workman is barred by delay and latches. It is admitted that Dineshbhai C. Vasava was working as a Trainee workman, appointed on 17.08.1995 for six months, thereafter his appointment was extended by letter dated 27.02.1996 from 29.02.1996 to 28.08.1996 and again it was extended time to time upto 31.11.1997. On verbal request of Dineshbhai again taken as trainee from 08.12.1997 to 07.03.1998. Since training period 07.03.1998, so the training period of Dinesh was dispensed with. The contention is that Dinesh was appointed as trainee, and the trainee means the person undergoing training and not working and so Dinesh was not workman as defined u/s 2(S) of the I.D. Act, 1947. The 1st party has stated that none of the averment and/or contentions/ allegation made in the statement of claim vide para 1 to 9 are acceptable. The 1st party is an educational institute for technical and production centre for trainees to have on the job training and to supply trained man power to the industries and to assist small and medium scale industries. On these scores, prayer is to dismiss the reference since the 2nd party Dineshbhai is not entitled to any relief.

4. In view of the rival contention of the parties the following issues are taken for determination:

ISSUES

- (i) Is the reference maintainable?
- (ii) Has the 2nd party (Workman/Union) got valid cause of action to raise dispute?
- (iii) Is the reference barred by delay and latches?
- (iv) Has the workman Dinesh C. Vasava continuously worked for about three and half years as trainee workman before his alleged oral termination w.e.f. 07.03.1998 by the management of the 1st party?
- (v) Whether Shri Dineshbhai C. Vasava appointed as trainee workman and from time to time period extended upto 07.03.1998 comes under definition of workman as defined u/s 2(s) of the I.D. Act?
- (vi) Is the organisation Indo German Tool is an industry or is mere educational institute?
- (vii) Whether the action of the management of the 1st party in terminating the services of Shri Dinesh C. Vasava w.e.f. 07.03.1998 is legal and justified? Whether the 1st party has contravened the mandatory provision of section 25F of I.D. Act?
- (viii) Whether the 2nd party workman/Union is entitled to relief for reinstatement with back wages as claimed?

FINDINGS

5. **ISSUE Nos. (v) & (vi):-** The contention of the 1st party at para 16 (a) is that Indo German Tool Room is constituted under bilateral agreement between Govt. of India and Republic of Germany the 1st party is basically an educational institute for technical and production centre to have on the job training and the objective is to supply manpower to the industries and to assist small and medium scale industries..... Vide para 16 (e) such plea has been taken that concerned person (Dinesh) was appointed as trainee and trainee means the person undergoing training and not working. The learned counsel for the 1st party tried to impress upon that the 1st party (Indo German Tool Room) is not industry as defined u/s 2(j) of the I.D. Act and the concerned workman Dinesh was a trainee till his appointment and so never acquired status of workman as defined u/s 2(s) of the I.D. Act. On the other hand it has been emphatically argued that Indo German Tool Room is industry u/s 2 (j) of the I.D. Act and the concerned workman Dineshbhai C. Vasava worked for about three and half year continuously and the 1st party used to issue letter of extension of appointment that expired on 07.03.1998 as per own admission of the 1st party in w.s. para 16 (d) (last line) It has been further argued that Dinesh had acquired the status of apprentice workman and so he comes within the definition of workman Section 2 (j) of the I.D. Act says Industry means any systematic activity carried on by co-operation between an employer and his workman for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes whether or not....

- (i) any capital has been invested for the purpose of carrying on such activity.

- (ii) any activity is carried on with a motive to make any gain or profit.
- (iii) any activity relating to the promotion of scales or business or both carried on by an establishment but does not include.....(3)

Educational, scientific, research or training institution.....

6. Thus giving a look to the definition “industry” it transpires that 1st party company established under joint venture of India and Germany is not educational institute to impart education, is not scientific institute, is not research institute. The 1st party company impart training to technical hands to upgrade the skills of apprentice holding I.T.I. certificate, Diploma, Degree in Engineering etc. for supply of trained manpower to the medium and small scale industries for job training, In that course, the 1st party Indo German Tool Room itself requires in large number helper, skilled persons for working hands in the 1st party company besides duty of supplying trained man power to other industries. On behalf of the 1st party in order to support such stand that the 1st party (Indo German Tool Room) is not industry reliance has been placed upon a case law of physical Research Laboratory vs. K.G. Sharma (1997 SCC 723=1997 (3) scale 479= A.I.R. 1997 S.C. 1855=1997 (0) GLHEL-SC 21032-wherein their lordship held that physical Research Laboratory is purely a research institute and it is not connected with production, supply or distribution of goods of services.....PRL is not an industry. This case law is not applicable in the status of the 1st party Indo German Tools Room, it is not research institute rather impart high skilled job training for supply of technical manpower to different medium and small scale industries and also to absorb them as helper, technician in the 1st party company under advertised vacancies of different categories.

7. The 1st party in order to discard the claim that 2nd party Dinesh was a trainee and not ‘workman’ as defined u/s 2(s) of the I.D. Act has cited case law of Kalyani Sharp India limited Vs. Court No. 1 Gwalior [200/0 GLHEL SC 13772= 2002 (9) SCC 655]. But this case law is not applicable as it relates to termination of trainee service Technician before expiry of probation period where as concerned workman no longer remained Trainee helper rather was discharging duties as workman and his continued work on extension of appointment till 07.03.1998. On the other hand the learned counsel for the 2nd party has cited case laws off M/s. TRAMBAK RUBBER INDUSTRIES vs. Nasik workers Union and others [2003 (98) FLR 741 S.C. BALKHAN DOSKHAN JOYA vs. Gujarat Electricity Board] [2002 (92) FLR 914 (Gujarat H.C.)] that trainee or apprentice covered under definition of workman u/s 2(s) of the I.D. Act. Case laws reported in 2001 1- L.L.J. 225 Gujarat, 1991-1-L.L.J 451 Patna High Court, 2005 (3) L.L.N. 719 Madras H.C. also support the argument on behalf of the 2nd party. In the case law of Devinder Sing vs. Municipal Council, Sanaur (2011) 6 Supreme Court case 584 (B) It has been held that source of employment, method of recruitment terms and condition of employment/contract of service, quantum of wages/pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within meaning of section 2 (s) – definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. Ext. 38 memorandum of appointment order dated 17.08.01995, followed by extension of appointment dated 27.02.1996 (Ext. 39), Ext. 40, Ext. 41, Ext. 42, and Ext. 43 speaks a volume that Dinesh Vasava was appointed as trainee “workman” with stipulation of either side giving one month notice for termination by employer or leaving the services of organization by the employee (workman). Ext.45 the certificate dated 28.04.1998 granted by G.M. Indo German Tool Room further speaks a volume that Mr. Dinesh C. Vasava was doing work of Heat treatment profile cutting, cutting by power Hacksaw & Ban saw, Metal spray operation, welding, sample preparation for metallographic observation & Hardness testing taking keen interest in the job entrusted to him wishing him all the success in his future assignment....clearly speaks that Dinesh C. Vasava was a ‘workman’ u/s 2(s) of the I.D. Act. Besides 2nd party workman in his oral evidence (Ext.13) supported that he was working as workman in the organisation on being appointed and having extension of appointment in continuity till 07.03.1998.

8. Thus Issue No. v is answered in affirmative that the 2nd party Dinesh C. Vasava comes within definition of ‘workman’ u/s 2 (s) of the I.D. Act. Issue No. vi is also answered in affirmative that the organisation of the 1st party (Indo German Tool Room) is an industries u/s 2(j) of the I.D. Act.

9. **ISSUE Nos. (iv) & (vii):-** The workman Dinesh C. Vasava in his oral evidence (Ext. 13) has emphatically supported that he continuously worked for about three and half year as trainee workman. Ext. 38 appointment order dated 17.08.1995 says regarding monthly stipend....appoint may be extended for another six month. Ext. 39, 40, 41, 42, 43 support as to his continuous working as trainee workman thus acquiring status of workman. The stipulation is not reciprocal since Dinesh if desires to leave the organisation he had to give one month’s clear notice whereas the 1st party unwarrantedly take advantage in terminating his service at any time without notice which is not at all justified rather appearing to have curtail the right of a workman by way of unfair labour practice. Ext. 44 series (muster roll) clearly speaks about working on all the working days in month. The documents of the 1st party Ext. 14/8 (pccca Ext. 23) support that Dinesh Vasava had been issued interview letter dated 29.11.1996 for the post of ‘Helper’. Ext. 25 and 26 are copy of application of Dinesh for the post of Helper dated 30.01.01998 and 11.09.2000 respectively. The 1st party’s witness Shri Lal V.G. administrative officer in the organisation Indo German Tool Room in his oral evidence vide para 9 (cross examination) admits that three category of person are working – workers now called technician, officers and staff and vide para 10 there is only one muster Roll for production training division. Thus Dinesh though appointed as Trainee workman used to sign on common muster Roll and that workman of trainee dept. also works in production dept.

10. The 2nd party has relied upon case laws reported in 2002 (92) F.L.R. 1914 Gujarat H.C., 1981 3 Supreme Court cases 225, 1981-1-LLJ 386 S.C., 2004 III L.L.J Suppl 254 S.C. 1996 II L.L.J 820 S.C., 2011 (6) Supreme Court cases 584 and 2007 (1) LLN 922 on point continuous service of workman in a year working for more than 240 days then employer require to give notice as to compliance of section 25F of the I.D. Act. The continuance service for three and half year of Dinesh till 07.03.1998 attract provision of section 25B as to continuous service from 17.08.1995 before his oral termination w.e.f. 07.03.1998 so it is proved that the management of the 1st party (employer of Dinesh C. Vasava) have clearly violated the mandatory provision of section 25F of the Industrial Disputes Act, 1947. So the action of the management of the 1st party in terminating the services of Shri Dinesh C. Vasava w.e.f. 07.03.1998 is not at all legal and justified.

11. Thus issue No. (iv) is answered in affirmative and issue no. vii part I is answered in negative and 2nd part in affirmative that the 1st party has contravened the provision of section 25 F of the I.D Act.

12. **ISSUE NO. (iii) :-** The learned lawyer of the 1st party has cited five case laws on point of delay and laches in raising dispute reported on (1) 2005 (1) LLJ 1153 S.C. (Haryana State Co. Op. Land Development Bank Vs. Neelam), (2) 2000 LLR 1196 (Guj H.C.) Saurashtra Employee's Union vs. Sub divisional officer, (3) A.I.R. 2001 S.C 69 (management of Indian Iron and steel Co. Ltd., Vs. Prahlad Singh), (4) 2002 (10) SCC 167 (Asst. Executive Engineer, Karnataka Vs. Sivalinga) and (5) A.I.R. 2000 S.C. 839 (Nandungadi Bank Limited vs. K.P Madavan Kutty. But on careful consideration of these case law I find that these are not applicable in the instant case since the workman/Union has not raised such the dispute that may be called a stale dispute. As per documents submitted by the 1st party with list Ext. 14 particularly pucca Ext. 26 and 27 it appears that Dinesh had submitted application to the 1st party on 11.09.2000 for his posting as helper and the 1st party vide letter dated 10.10.2005 had made correspondence to national commission for schedule tribes regarding retrenched workman Dinesh C. Vasava that he cannot be straight way absorbed rather has to apply against vacancy and may get absorbed if found suitable..... speaks a volume there is no delay and laches on part of Union/workman in the year 2007. Thus this issue is answered in negative.

13. **ISSUE NO. (i), (ii) & (viii):-** In view of the findings given to issue No. iii, iv, v, vi & vii in the foregoing, I further find and hold that the reference is maintainable and the 2nd party (workman/Union) has go valid cause of action to raise the Industrial dispute and that the workman Shri Dinesh C. Vasava is entitled for reinstatement to work in the organisation of the 1st party with 50% back wages from the date of raising dispute.

Accordingly the reference is allowed. No order of cost.

The 1st party is directed to comply with the award within 60 days of receipt of copy of award, failing which the back wages of 50% will carry interest 9% P.A.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 10 दिसम्बर, 2014

का.आ. 3206.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (के. सं. औ. अ.-23/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2014 को प्राप्त हुआ था।

[सं. एल-31011/3/2006-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 10th December, 2014

S.O. 3206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mumbai Port Turst and their workmen, received by the Central Government on 09/12/2014.

[No. L-31011/3/2006- IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI
PRESENT

K. B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/23 of 2007

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 General 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 17th June, 2013

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-31011/3/2006 -IR (B-II) dated 11/06/2007 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 in retiring the workman Shri P.L. Kumthekar from the services w.e.f. 01.03.2005 after attaining the age of 58 years is just and legal? If not, to what relief the concerned workman is 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-4. According to the second party the workman was employed by Bombay Dock Labour Board as Tally and Sorting Clerk w.e.f. 02/06/1969. He worked continuously upto 28/2/1979. The Bombay Stevedoring Association, administrative body of BDLB promoted the second party to the post of Dock Clerk and allotted him to join the services in M/s. D.C.Cooper & Co. w.e.f. 1/3/1979. It is contended that in pursuance of the Bombay Dock workers (Regulation of Employment) Amendment Scheme, 1981 the second party was registered under the said scheme w.e.f. 23/1/1981. In 1994 Bombay Dock Labour Board transferred the services of the workman to the first party and the first party became employer thereof. The age of retirement of the second party workmen was 60 years as per the Mumbai Port Trust circular dated 4/7/2000. The second party workman is entitled to continue in service till completion of his 60 years of age as they were recruited before 3/8/1972. However the first party retired second party workman from the services w.e.f. 1/3/2005 i.e. on completion of 58 years of his age. They did not consider the period of his service from 2/6/1969 to 28/02/1979 and did not give benefit as per the circular dt. 4/7/2000 as done in the case of other workmen placed in similar circumstances. They ought to have allowed him to work up to 1/7/2007 till the age of 60 years with all consequential benefits. The first party gave discriminatory treatment to Shri Kumthekar and subjected to losses, hardship and inconvenience by forcibly retiring him w.e.f. 1/3/2005.

3. The action of the first party in not considering the period of service of the second party workman from 2/6/1969 is illegal. Retiring Shri P.L.Kumthekar at the age of 58 as on 01/03/2005 is arbitrary and illegal and unjustified. Therefore the second party prays that the first party be directed to give all benefits to Workman Shri P.L.Kumthekar till the age of his superannuation of 60 years treating as if he is not retired w.e.f. 1/3/2005.

4. The first party management resisted the statement of claim of the Union vide their written statement at Ex-6. According to the first party the contents in the statement of claim are false, contrary and inconsistent. According to them the contents in the statement of claim are misconceived, malafied and not maintainable in law and facts. They denied that second party union is deprived of any such right of the workman. The second party workman is demanding change of date of appointment and age of retirement which is contrary to the rules of the establishment. It would amount to injustice to similarly placed employees and showing favour to one set of employees in violation of principles of natural justice. According to the first party in the year 1979 post of Dock Clerk a higher grade than the grade in which the workmen were employed became available in stevedoring company. The said grade category of Docks Clerk was not on the schedule of erstwhile BDLB. Considering the better prospects the workman on his own volition choose to resign from the services of erstwhile BDLB and take up the employment of Docks Clerk in the higher pay scale with the stevedoring company w.e.f. 25/01/1979 respectively. After resigning from the erstwhile BDLB the workman had collected all his terminal dues thereby settling all their claims against erstwhile BDLB in respect of his employment from 02/06/1969. Absorption of erstwhile BDLB employees is not covered either by Government notification or by the subsequent settlements. Both the majority unions including the second party union were parties to the settlement. As the workman has resigned from the services of BDLB and joined the services of the first party their period of service with BDLB cannot be considered. On the other hand he was recruited on 01/03/1994. Therefore he cannot claim any benefit in respect of his previous service.

5. According to the first party the criteria was adopted by erstwhile BDLB in its meeting dated 11/07/1986 to fix the age of retirement in respect of Class-III and Class-IV employees recruited on or before 1972 is 60 years and for all future entrants the retirement age is 58 years. Birth date of workman is 01/03/1947 and as he joined the service on 25/01/1979 he was due for retirement at the age of superannuation of 58 years and was accordingly retired on 28/02/2005. They denied that workman was subjected to discriminatory treatment, losses and hardship and inconvenience. Workman was accordingly retired lawfully at the age of 58. He also received all the retirement benefits. Therefore the first party submitted that the workman is not entitled to any relief as prayed for. Therefore they pray that the reference be rejected with cost.

6. The second party filed their rejoinder at Ex-9. They denied the contents in the written statement and reiterated their version in the statement of claim.

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

Sr. No.	Issues	Findings
1.	Whether second party is entitled to continues in the service upto 28.02.2007 i.e. till he completes his 60 years ?	No.
2.	What order?	As per order below.

REASONS

Issue No.1:-

9. A short question for my determination is whether the employee under reference is entitled to claim retirement at 60 years of age as fixed by the circular dated 04/02/2000 issued by Central Government on the subject of Bombay Dock Workers (Regulation of Employment) Amendment Scheme 1981. As per this circular the employees recruited on or before 03/08/1972 are entitled to continue their service up to completion of their 60 years of age. According to the workman he was recruited by the erstwhile BDLB on 02/06/1969. According to them afterwards in 1979 the workman was taken over by the first party. As against this it is the specific case of the first party that, the workman has resigned his services with BDLB and thereafter joined the services afresh with the first party since January 1979. According to the first party the workman has also received their GPF amount and other dues from BDLB and joined the services of first party since January 1979. Therefore he is not entitled to get the benefit of the circular which prescribe age of 60 years for the workers who were recruited on or before 3/8/1972.

10. According to the first party his services were not continuous service since 1969 as has been alleged. In this respect the Ld. Adv. for the first party pointed out that, though in the affidavit, the workman has denied that he has resigned from BDLB in the year 1979, he has admitted in his cross at Ex-13 that, BDBL has paid him his legal dues on 7/6/1979. He admitted that legal dues include PF, Gratuity and ex-gratia payments. He has admitted that those legal dues were in respect of his employment from 2/6/1969 to 22/1/1979. It indicates that the workman retired or resigned from BDLB in the year 1979. He received all the dues from BDLB and thereafter workman and others have joined the services of the first party. It shows that the workmen of BDLB resigned from BDLB in the year 1979. They received all their dues such as GPF, Gratuity, ex-gratia payments etc. and thereafter they joined the services of the first party since January 1979. In the circumstances the Ld. Adv. for the first party submitted that, his services cannot be said to have been continued since 1969 as has been claimed. In short, according to him, as he was not recruited as on 3/8/1972 or before that and he is not entitled to get the benefit of retirement age of 60 years as he joined the services of first party in the year 1979.

11. In this respect I would like to point out that though workman has joined the services of the first party in 1979, he was not recruited afresh after following the recruitment procedure prescribed therefor. On the other hand fact is not disputed that the workers of the erstwhile BDLB were taken over by the first party in 1979 and they were given new and upgraded designation. In this backdrop though the service prior to 1979 cannot be considered for any monetary benefit from the first party however as the workmen of erstwhile BDLB were taken over by the first party, their earlier service is required to be taken into account to get them the benefit of age of retirement as the workman was already in service of BDLB since prior to 1972. He should not have been shown as a new recruit of the year 1979. In this backdrop I hold that, the workman Mr. Kumthekar is entitled to get the benefit of circular dated 4/2/2000 by which workmen of the first party recruited on or before 3/8/1972 are given benefit of retirement age upto 60 years and he ought not have been retired at the age of 58 years. In the light of this discussion I hold that, retiring the workman at the age of 58 years was unjust discrimination as workman was already in service since prior to 3/8/1972. He was not recruited but was taken over by the first party in 1979. Therefore he was required to be treated as recruited prior to 3/8/1972. I therefore hold that making the workman retire at the age of 58 instead of 60 years of age was unjust and improper.

12. Though I hold that retirement of workman at the age of 58 was unjust and improper, he cannot be reinstated at this stage as by the time he has also crossed the age of superannuation of 60 years. In this backdrop the Ld. Adv for the second party has claimed full back-wages for the period of remaining 2 years. In this respect the Ld. Adv for the first party submitted that 'no work no wages' is the well settled principle of law. Therefore he submitted that the question of awarding any back wages does not arise. After giving conscious thought to the arguments of both the parties, I am of the opinion that though the workman has not worked after the age of 58 years, he was entitled to work for two more years. He was wrongfully retired by the first party and it was not his fault. At the same time I would also like to consider the fact that the workman has not worked with the first party for the said period of two years. In the circumstances granting full back-wages would thus put unnecessary heavy burden on the State Exchequer for the fault of some officers. In the circumstances to meet the end of justice I think it proper to grant compensation to the workman @ 20% p.m. of his last pay (total emoluments) for the rest of the two years. Accordingly I decide this issue No. 1 in the affirmative and proceed to pass the following order:

ORDER

The reference is partly allowed as follows:

- (i) The action of management in retiring workman Shri P.L. Kumthekar at the age of 58 is declared unjust and improper.
- (ii) The management is directed to pay the workman Shri P.L. Kumthekar compensation @ 20% p.m. of his last pay (total emoluments) for the period of two years (24 months).
- (iii) No order as to cost.

Date: 17.06.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3207.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 191/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.12.2014 को प्राप्त हुआ था।

[सं. एल-12012/332/2000-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 191/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10/12/2014.

[No. L-12012/332/2000- IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR
NO. CGIT/LC/R/191/2000**

Shri Kamleshwar Prasad Dubey,
S/o Mahadev Prasad Dubey,
Dubey Atta Chaki Post Raja Imlai,
Via Kumdam,
Distt. Jabalpur.

...Workman

Versus

Branch Manager,
State Bank of India,
City Branch,
Satna (MP)

...Management

AWARD

Passed on this 10th day of November, 2014

1. As per letter dated 10-11-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/332/2000-IR(B-I). The dispute under reference relates to:

“ Whether the action of the management of State Bank of India, City Branch, Satna (MP) in terminating the services of Shri Kamleshwar Prasad Dubey w.e.f. 22-9-97 is justified? If not, what relief he is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that on 19-2-88, he was engaged as messenger in IInd party Bank. His submissions were utilized for arranging old record, inward and supervision of said work. He was paid wages Rs.40/- per day. That from 1988 to 1995, he was appointed for different periods. He worked as messenger for about 8 years. The work of record keeper was extracted from him. He was appointed even on Sundays and daily wages Rs. 40/- were paid to him.

3. That from 1-1-1996 to 22-9-97, his services were terminated without notice, retrenchment compensation was not paid to him. Instead of regularizing him in services, management terminated him without notice. Work performed by him was of permanent nature. His termination is illegal. On such grounds, workman prays for quashing order of his termination.

4. IInd party filed Written Statement at page 9/1 to 9/6. Claim of workman is totally denied. According to IInd party, workman was engaged as temporary messenger as daily wages for 88 days during 19-2-88 to 16-5-88. Thereafter workman was engaged on contractual basis on daily wages. Workman was not appointed against any post. He was engaged as per exigency of work on daily wages. His services ended on end of every day. His discontinuation is covered under Section 2(o)(bb) of I.D.Act and not retrenchment. It is denied that workman had completed 240 days continuous services at any time. Workman was not appointed as messenger record keeper against vacant post, notice under Section 25-F of I.D.Act was not required. Bank has rules for appointment of staff. It is necessary that the candidate must be sponsored through Employment Exchange. Workman was not sponsored through Employment Exchange. All adverse contentions of workman are denied. It is reiterated that non-engagement of workman does not amount to retrenchment as workman had not completed 240 days continuous service. Workman was engaged as per exigencies. IInd party prays for rejection of claim.

5. Workman filed rejoinder at page 10/1 to 10/2 reiterating his contentions in statement of claim.

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 India, City Branch, Satna (MP) in terminating the services of Shri Kamleshwar Prasad Dubey w.e.f. 22-9-97 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order

REASONS

7. Workman is challenging termination of his service for violation of Section 25-F of I.D.Act. Workman submits that he was appointed as messenger. Work of record keeper, record clerk was extracted from him. He worked more than 240 days. His services were terminated without notice. All above contentions of workman are denied by IInd party management.

8. Workman filed application for production of documents. As per order dated 13-12-12, IInd party was directed to produce documents requested by workman. Any of the documents i.e. Attendance register, payment register, miscellaneous expenses register are not produced by IInd party.

9. Workman filed affidavit of his evidence stating that he was continuously working as messenger/ record keeper from 1988 to 1997. He had completed 240 days continuous service. Instead of regularizing his services, he was terminated without notice. No retrenchment compensation was paid to him. In his cross-examination, workman says he worked as messenger on daily wages in 1988. He was engaged for 88 days during 19-2-88 to 16-5-88. He was engaged as per exigencies. He denies that after work was completed, he was not engaged by the Bank. That he was not appointed against vacant post. From calendar year, he means the period January to December, end. That from 12-8-96 to 27-9-97, he was continuously engaged by Bank.

10. Management filed affidavit of witness Shri Arvind Kumar Khare. The witness of management says that workman was engaged purely on contractual daily wages basis during 1988 to 1997. Workman was intermittently engaged as per exigencies of work. Ist party workman was working on daily wages and not as permanent employee of the Bank. Workman did not continuously work for period of 240 days in any of the calendar year. Witness of management denies that Ist party workman worked as Record Keeper, clerk during 3-1-96 to 22-9-97. Witness of management in his cross-examination says workman was engaged on daily wages intermittently. He denied that workman was continuously working. The details of working of Ist party workman are available in Bank. The statement of working days is not produced. Witness explained that after going through document, he can produce the statement of working days but no such statement is produced on record by IInd party. It is denied that workman was doing work of record keeping from 1-1-96 to 22-9-97. The wages were paid weekly. Register was maintained of such payments. Any of the documents about working days about payment made to workman are not produced. Suggestion is denied that orally workman was told not to come for work. Management's witness was posted at Satna from 23-2-09 he has no personal knowledge about working of workman. The documents on which his affidavit is based are not produced on record. IInd party has failed to produce documents as per order dated 13-12-12. IInd party has withheld documents about working days of workman. The evidence of workman is direct, he has personally working in the Bank therefore evidence of Ist party workman deserves to be accepted. From evidence in record, it is proved that workman completed 240 days continuous service preceding his termination. He was not served with notice, no retrenchment compensation was paid. His termination is in violation of Section 25-F of I.D.Act. For above reasons, I record my finding in Point No. 1 in Negative.

11. Point No.2- as per my finding in Point No.1, termination of services of workman is not legal, question arises whether workman is entitled for reinstatement with back wages. The evidence of workman in cross-examination is clear that he was engaged intermittently on daily wages. No evidence is produced on record. His name is sponsored through Employment Exchange. The workman was engaged without following selection procedure. The legal position is clear that the employees engaged on daily wages normally are not entitled for reinstatement. The evidence of workman is clear that he worked for 88 days in the year 1988, thereafter he was intermittently engaged as per exigencies. Considering above aspects, reinstatement of workman is not justified. considering period of working, compensation Rs. 1,50,000/- would be appropriate. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

(1) The action of the management of State Bank of India, City Branch, Satna (MP) in terminating the services of Shri Kamleshwar Prasad Dubey w.e.f. 22-9-97 is not legal.

(2) IInd party is directed to pay compensation Rs. 1,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. 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 दिसम्बर, 2014

का.आ. 3208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. 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, नागपुर के पंचाट (संदर्भ संख्या 08/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.12.2014 को प्राप्त हुआ था।

[सं. एल-22012/05/2011-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Chandrapur Area of WCL and their workmen, received by the Central Government on 11/12/2014.

[No. L-22012/5/2011- IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR
CASE NO. CGIT/NGP/08/2011

Date : 13.11.2014

Party No. 1: The Chief General Manager,
Chandrapur Area, WCL,
Post & Dist. Chandrapur,
Chandrapur (MS).

Versus

Party No. : The Secretary,
Koyala Shramik Sabha (HMS),
WCL Colony
Qrt. No. NB-139,
Post, Urja,
Distt. Chandrapur (MS)

AWARD

(Dated: 13th November, 2014)

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 Chandrapur Area, WCL and their workman, Shri Prakash D. Shende, for adjudication, as per letter No. L-22012/05/2011-IR (CM-II) dated 09.05.2011, with the following schedule:-

"Whether the action of the management of M/S. WCL in awarding punishment to suffer heavy financial loss to Shri Prakash D. Shende, clerk is right and justified? To what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Prakash D. Shende, ("the workman" in short) filed the statement of claim and the management of WCL ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he has been working as a senior clerk since last 25 years with unblemished service record, at Chandrapur Area Headquarters of party No. 1 and charge sheet dated 20.10.2008 was submitted against him by party No.1, on the allegation that while he was on leave for availing LTC from 01.02.2007 to 08.02.2007 (wrongly mentioned as 08.12.2007 in the statement of claim), he received TA bills amounting to Rs. 463/- and Rs.565/- and he submitted his explanation to the charge sheet, stating that the dates of his availing LTC leave were changed and granted by the concerned controlling officer and he was deputed on tour for auction purpose in the company's interest and a departmental enquiry was constituted and during the course of the enquiry, it was revealed that charges were levelled against him without any complaint against him and he had discharged his duty in the interest of the company, as per the order of his controlling officer i.e. Timber officer and submitted his TA/DA bills for official tour and such fact was communicated by his controlling officer, vide office letter no. 7873 dated 27.10.2008 to the Chief Vigilance Officer and in the said letter, the Controlling Officer had requested to drop the charges levelled against him (workman) and the Enquiry Officer ignored the above mentioned letter of his Controlling Officer and submitted a perverse enquiry report and basing on such report, punishment of stoppage of two annual increments with cumulative effect was imposed against him, vide order no. 308 dated 23.09.2009 and though, he had preferred an appeal against the order of punishment before the Appellate Authority, his appeal was not considered within the stipulated period, as provided in the certified standing order and the amounts of Rs. 557/- and Rs. 463/- received by him towards T.A. were deposited by him with party no.1, vide cash receipts no. 10840 dated 22.04.2007 and 10852 dated 28.04.2007 respectively, so there was no loss to the party No. 1 and due to stoppage of two increments with cumulative effect, he is suffering huge monetary loss and the action of party No. 1 is unjust and improper and as such, the reference is required to be answered in the affirmative in his favour.

3. The party No. 1 in the written statement has pleaded inter-alia that the schedule of reference as made by the Central Government is vague and the punishment imposed against the workman was the result of the domestic enquiry conducted against him, for the wrongs committed by him and there is no question of sustaining of any heavy loss by the workman. It is further pleaded by party No. 1 that the statement of claim has been filed by the workman himself and not by the union, who has been made a party in the reference and therefore, the statement of claim is not valid and liable to be rejected and no material has been filed to show that the present dispute has been espoused and championed by the trade union in question in the required manner, as per law and as such, the present dispute cannot sustain scrutiny of it being an industrial dispute under section 2-k of the Act and on this count alone, the reference is liable to be rejected.

The further case of party No. 1 is that charge sheet no. 2750 dated 20.10.2008 came to be issued against the workman, by the Disciplinary Authority as provided under the certified standing orders, for the misconduct of indulging in monetary transactions by the workman and the workman submitted his reply to the charge sheet and after considering the reply, the Disciplinary Authority felt if necessary to order the departmental enquiry and accordingly, Shri U.S. Gonela was appointed as the Enquiry Officer and the workman attended the enquiry with the co-worker of his choice and copies of the documents relied upon by it were given to the workman and parties were given opportunity to cross-examine the respective witnesses and the day to day proceedings of the enquiry were given to the workman and the Enquiry Officer submitted his findings on 18.04.2009, holding the charges to have been proved against the workman and the copy of the findings of the Enquiry Officer was provided to the workman and the Disciplinary Authority accepted the findings of the Enquiry Officer and after getting sanction from the competent authority, passed the final order of punishment of stoppage of two annual increments and the appeal preferred by the workman also came to be rejected and the departmental enquiry conducted against the workman is valid, just and fair and the misconduct committed by the workman reflects upon his basic character and integrity and therefore, the punishment should have been more stringent, but in view of the past record and age of the workman, the punishment impugned was found appropriate by the competent authority and the findings of the Enquiry Officer are also proper and not perverse and the punishment is just, reasonable and proper and the workman is not entitled to any relief.

4. The rejoinder has been filed by the union on behalf of the workman. It is pleaded by the union in the rejoinder that the statement of claim filed by the workman be treated as statement of claim filed by it and the Enquiry Officer and the management representative were officers working under the Disciplinary Authority and the enquiry was conducted only to victimize the workman and the enquiry was illegal, arbitrary, improper and unjust, as the Enquiry Officer acted as per the direction of the Disciplinary Authority and inspite of the demand made by the workman and his defence representative, the Enquiry Officer did not call the Area Timber Officer, Chandrapur Area, Shri S.M. Singh as a witness and the letter written by Shri Singh dated 27.10.2008, clearly shows the workman not to have committed the alleged misconduct and the charges levelled against the workman were not proved and the findings of the Enquiry Officer are not based on evidence adduced in the enquiry and the same are perverse and the enquiry was conducted in violation of the principles of natural justice. The union has also pleaded that copies of the relevant documents were not supplied to the workman and the punishment imposed against the workman is harsh and disproportionate and is illegal.

5. As the punishment has been imposed upon the workman, in the departmental enquiry conducted against him, the validity or otherwise of the departmental enquiry had been taken up as a preliminary issue for consideration and by order dated 26.06.2014, the departmental enquiry conducted against the workman has been held to be legal, proper and in accordance with the principles of natural justice.

6. It is to be mentioned here that the case was fixed to 14.10.2014 for hearing of argument on the questions of perversity of the findings and the proportionality of the punishment. However, on 14.10.2014, neither the party No. 1 nor the advocate for the party No. 1 appeared in the case to make argument. So, after hearing argument from the side of the workman, argument was closed and the reference was fixed for award.

7. During the course of argument, it was submitted by the learned advocate for the workman that the punishment imposed against the workman is illegal, as penalty of "stoppage of annual increment with cumulative effect" has not been prescribed in the certified Standing Orders of the company and therefore, the punishment of stoppage of two annual increments with cumulative effect passed against the workman cannot be sustained.

It was further submitted by the learned advocate for the workman that the workman had made application for sanction of 6 days of earned leave from 01.02.2007 to 06.02.2007 for availing leave travel concession, which was sanctioned by his Controlling authority, the Area Timber Procurement Officer, but due to sickness of his son, the workman made another application to the Personnel Manager (Administration), through his controlling authority for change of the dates of sanctioned leave and to grant him leave from 08.02.2007 to 13.02.2007 and his application was duly forwarded by his controlling officer and thereafter, being directed by his controlling officer, the workman proceeded to attend timber auction on 01.02.2007 and 02.02.2007 and so also, on 06.02.2007 and 07.02.2007, after taking the T.A. advances, which were duly recommended by the controlling officer and after completing the official tours, he submitted his final T.A. bills and collected the final amounts of Rs. 463/- and Rs. 556/- on 27.03.2007 and as per the verbal communication made by the Accounts Department, he refunded the said amounts and the mistake was committed unknowingly by the workman and the Controlling

Officer of the workman also recommended to exonerate the workman from the charges, but no heed was paid to the same and the findings of the Enquiry Officer are not based on the evidence on record of the enquiry and though, the workman denied the charges, the Enquiry Officer has wrongly mentioned in his report that the workman admitted his guilt and the findings of the Enquiry Officer are perverse and the punishment imposed on the workman, basing on such perverse findings is also illegal and more over, the punishment is shockingly disproportionate to the charges and therefore, the order of punishment is liable to be quashed and set aside.

8. The first submission made by the learned advocate for the workman is that the imposition of the punishment of stoppage of two annual increments with cumulative effect is illegal, because such punishment has not been prescribed in the standing Order. However, the said submission is to be mentioned and rejected in fairness of things, because clause 27.1(e) of the certified Standing Order prescribes punishment of “stoppage of increment with cumulative effect” for commission of the misconduct.

9. In view of the other submissions made by the learned advocate for the workman, I think it proper to mention the principles settled by the Hon’ble Apex Court in a number of decisions in regard to the power of the Tribunal to interfere with punishment awarded by the competent authority in departmental proceedings.

In a number of decisions, the Hon’ble Apex Court have held that:-

“The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

It is also settled by the Hon’ble Apex Court that:-

“A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

It is also settled beyond doubt that departmental enquiry is not bound by strict rules of Evidence Act, but by fair play and natural justice. Only total absence, but not sufficiency of evidence before Tribunal is ground for interference. If the enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the court and in a departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”.

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

10. On perusal of the record, it is found that the workman applied for earned leave for the period from 01.02.2007 to 06.02.2007 to avail leave travel concession. The workman has admitted that he was paid the amount in cash towards leave travel concession for the period from 01.02.2007 to 06.02.2007 and being informed orally by the Personnel Manager (Administration) that the leave period for LTC was not extended, he showed the LTC period as 01.02.2007 to 06.02.2007 and during that period also, he claimed of going on official tour and received the TA amount of Rs. 463/- and Rs. 556/-. On perusal of the record of the departmental enquiry including the report of the Enquiry Officer, it is found that the findings of the Enquiry Officer are based on the evidence on record of the departmental enquiry. The Enquiry Officer has analyzed the evidence on the record of the departmental enquiry in a rational manner and has assigned reasons in support of his findings. It is also found that the findings of the Enquiry Officer are not as such, which cannot be arrived at by a reasonable man on the

materials on record of the departmental enquiry. It is not a case of total absence of evidence on record of the enquiry or that the findings of the Enquiry Officer are totally against the evidence on record. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

11. So far the question of proportionality of the punishment is concerned, it is found that grave misconduct of dishonesty in connection with the employer's business or property and willful and deliberate act which is subversive of discipline and detrimental to the interest of the company have been proved against the workman in a properly conducted departmental enquiry. Hence, the punishment of stoppage of two annual increments with cumulative effect imposed against the workman cannot be said to be shockingly disproportionate. From the facts and circumstances of the case, it is found that there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:-

ORDER

The action of the management of M/s.. WCL in awarding punishment of stoppage of two annual increments with cumulative effects to Shri Prakash D. Shende, clerk is proper and justified. The workman is not entitled to any relief.

J.P.CHAND, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. 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, नागपुर के पंचाट (संदर्भ संख्या 47/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/12/2014 को प्राप्त हुआ था।

[सं. एल-22012/70/2009—आईआर (सीएम- II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 47/2009 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Kamptee Sub Area of WCL, and their workmen, received by the Central Government on 11/12/2014.

[No. L-22012/70/2009 - IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

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

Case No. CGIT/NGP/47/2009

Date: 17.11.2014.

Party No. 1 : The Sub Area Manager,
Kamptee Sub Area of WCL
Post- Kamptee,
Distt.- Nagpur.

Versus

Party No. 2 : Shri Amrut Laxman Chakole,
Nilaj(PO-Salwa),
Tahshil-Parseoni,
Nagpur.

AWARD

(Dated: 17th November, 2014)

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 Kamptee Sub Area of WCL and their workman, Shri Amrut Laxman Chakole, for adjudication, as per letter No. L-22012/70/2009-IR (CM-II) dated 26.02.2010, with the following schedule:-

SCHEDULE

“Whether the action of the Sub Area Manager, Western Coalfields Limited, Kamptee Sub Area, Distt. Nagpur in imposing punishment of termination from services vide its order dated 11/12.08.2005 upon Shri Amrut Laxman Chakole, Dumper Operator, Kamptee Open Cast Mine w.e.f.13.08.2005 is legal, justified and proper? To what relief is the workman concerned entitled?”

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Amrut Laxman Chakole, (“the workman” in short) filed the statement of claim and the management of WCL, (“party no.1” in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was appointed as a permanent underground loader in Inder colliery of Kamptee Sub Area on 03.03.1981 and due to his hard work, sincerity, honesty and technical skill, he was promoted as Electrical Helper Category II, vide order dated 13/15.07.1991 and he was further promoted as Dumper Operator (Trainee) vide order dated 11.03.1999 and he was sent for dumper operator training to Chandrapur Area and on completion of the training, he was posted in the security department w.e.f. 25.08.2002 and he was promoted and confirmed as Dumper Operator Category V, vide order dated 24.12.2002 and during his long service of 23 years from 03.03.1981 to 31.03.2004, neither any warning letter nor any show cause nor any charge sheet was issued against him and his entire service carrier was clean and unblemished.

The further case of the workman is that on 28.03.2004, he was on duty in the third shift from 12 midnight to 08 A.M. and his duty was to issue keys to the dumper and dozer operators and at about 4.30 A.M., one Rajaram, a canteen mazdoor, who was also on duty in the third shift came to the key room and reported him that when he went to attend call of nature, he found some thieves committing theft of diesel and as he raised shout, the thieves ran away from the spot, leaving a cane containing diesel, which was in a gunny bag and as there was no security guard nearby, he being in the security department thought it proper to bring the diesel cane into the duty room and then to report the matter to the security guard and the security in charge and when he was bringing the diesel cane along with Rajaram, Shri Raut, the security in charge and Shri Ansari, the head security guard came there in a jeep and stopped them and took away the diesel cane, without issuing any seizure memo or panchnama and without conducting any preliminary enquiry or issuing any show cause notice, three days after the incident, all of a sudden, the Mine Manager/ Supdt. of Mine of Kamptee Open Cast Mine, who was not a competent authority, issued the charge sheet dated 31.03.2004, leveling fabricated, concocted and false charge of theft of diesel, under clauses 26.1, 26.5 and 26.22 of the Standing Order against him and he submitted his reply to the charge sheet, denying the charges and the Enquiry Officer was one of the officials of the party No. 1 and he was biased and partial and the Enquiry Officer failed to conduct a fair and impartial inquiry and the enquiry was a farce and during the enquiry, the vital document of the seizure of the diesel cane and panchnama at the spot were not produced and theft of diesel was taking place with the connivance of the Security sub Inspector and Head Security Guard and as he was active in reporting the theft cases of diesel, he was falsely implicated in theft of diesel by the security inspector and head security guard to harass and victimize him and to take revenge against him and a false case of theft of diesel was instituted against him and he was not allowed to cross examine the management’s witnesses and the only eye witness to the incident supported his claim in the enquiry and the evidence of the witnesses examined by the party No. 1 in the enquiry was contradictory to each other and he was falsely implicated by the witnesses and the enquiry was conducted in undue haste, in violation of the principles of natural justice and the enquiry report was submitted by the Enquiry Officer on 30.04.2005, i.e. four months after the last sitting of the departmental enquiry on 30.12.2004 and the second show cause notice dated 12.05.2005 was issued by the Sub Area Manager, Kamptee Sub Area, without having any authority or power, as he was neither the Disciplinary authority nor he was the appointing authority and as such, the entire departmental enquiry is void ab-initio and the second show cause notice is incurably defective, as in the said notice, it was not mentioned as to whether the Sub Area Manager agreed with the findings of the enquiry officer or not.

It is also pleaded by the workman that there was no preliminary enquiry, which was required to be done before deciding to hold regular departmental enquiry and no show cause notice was issued to him prior to the issuance of the charge sheet, in violation of clauses 28.1 and 28.2 of the Standing Order and the charge sheet was issued by the Mine Superintendent, a subordinate to the Disciplinary Authority and he was not competent to issue the charge sheet and for that also, the entire departmental enquiry against him was vitiated and the findings of the Enquiry Officer were without taking into consideration of the submissions made by him and the findings are based on suspicion, conjecture and surmises and the findings of the Enquiry Officer are perverse and vital document were not supplied to him inspite of demand made by him and the departmental enquiry is illegal, unjustified and improper.

3. The party No. 1 in the written statement has pleaded inter-alia that the workman was caught red handed by the concerned officer, while he was towing away the cane after committing theft and right from the beginning, the workman is trying to make out a story that he was innocent and did not commit the theft and the concerned officer could not lodge the FIR or recorded the spot panchanama as the incident took place in the wee hours and the said officer, on the next day in the morning immediately reported the matter to the authority concerned and as no loss was caused to it (party no.1) and the cane was seized, it did not thought it fit to report the matter to the police authorities and when admittedly the diesel cane was seized from the workman, the fact as to whether the seizure report or panchanama was made or not is of no consequence.

The further case of party No. 1 is that as the workman was caught red handed, the question of conducting any preliminary enquiry does not arise and the charge sheet was rightly issued by the competent authority against the workman and till the date of filing of the statement of claim, no challenge had been made by the workman regarding the competency of the authority issuing the charge sheet or the appointment of the Enquiry Officer, rather on the contrary, the workman participated in the enquiry proceedings and the workman had never requested for production of documents and there was no occasion for the workman to bring to the notice of the Enquiry Officer about the fact of huge theft of diesel and at no point of time, the workman had brought to the notice of any authority about theft of diesel and wild allegations have been made against its officer by the workman to save his skin, after the fact finding authority had reached the conclusion that the workman committed the theft and without making the concerned officers as parties to the proceedings, the workman is not entitled to make such allegations and the workman has also not pleaded that the said officers were having some grudge against him and therefore, they made false report against him and the enquiry was conducted in accordance with the principles of natural justice and it was not conducted in a haste and just for the purpose of making allegations of violation of natural justice in the enquiry proceedings, such contentions have been raised by the workman and not a single instance has been mentioned by the workman as to in what manner the enquiry was conducted in a haste and by violating the principles of natural justice and in view of the proved misconduct, the only punishment which could be awarded to the workman was to terminate his services for loss of confidence.

The party No. 1 has also pleaded that the second show cause notice and dismissal order were issued by the competent authority, as per the provisions of the standing order and circulars/notifications issued from time to time and the workman was given all the opportunities during the enquiry proceedings and the act of misconduct proved against the workman is of grave nature and in no manner, the same can be ignored, in order to maintain discipline in the organization and the reference is liable to be answered in the negative.

4. In the rejoinder, denying the pleadings made by the party No. 1 in the written statement, the workman has reiterated the facts mentioned in the statement of claim.

5. As this is a case of termination of the workman from services, after holding of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 02.04.2014, the enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. It is to be mentioned here that the case was fixed to 10.10.2014 for hearing of argument on the questions of the perversity of the findings and proportionality of the punishment. However, on 10.10.2014, even though the workman appeared in the case, the union representative, who was representing the workman remained absent, so no argument was advanced on behalf of the workman.

7. During the course of argument, it was submitted by the Representative for the party No. 1 that as per order dated 02.04.2014, the Tribunal has already held the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and the scope of interfering with the findings of the enquiry officer by the tribunal is very limited and the punishment to be imposed is the sole prerogative of the employer for the misconduct committed by the employee and in the entire statement of claim, except the bald statements, the workman has nowhere pleaded as to how the findings of the Enquiry Officer are perverse and that the quantum of punishment is not proportionate to the misconduct committed by him and the workman was caught red handed while taking away the cane filled with diesel and such fact was duly proved in the departmental enquiry and the findings of the Enquiry Officer are not perverse and the management has lost confidence in the workman and taking into consideration, the grave misconduct committed by the workman, the punishment cannot be said to be shockingly disproportionate and as such, there is no scope to interfere with the punishment imposed against the workman and the reference is to be answered in the negative and against the workman.

8. In view of the submissions made by the Representative for the party No.1, I think it proper to mention the principles settled by the Hon'ble Apex Court in a number of decisions in regard to the power of the Tribunal to interfere with punishment awarded by the competent authority in departmental proceedings.

In a number of decisions, the Hon'ble Apex Court have held that:-

“The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter of the Tribunal to concern itself with. The

Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

It is also settled by the Hon'ble Apex Court that:-

“A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

It is also settled beyond doubt that departmental enquiry is not bound by strict rules of Evidence Act, but by fair play and natural justice. Only total absence, but not sufficiency of evidence before Tribunal is ground for interference. If the enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the court and in a departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”.

9. Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

On perusal of the record, it is found that the findings of the Enquiry Officer are based on the evidence on record of the departmental enquiry. The Enquiry Officer has analyzed the evidence on the record of the departmental enquiry in a rational manner and has assigned reasons in support of his findings. It is also found that the findings of the Enquiry Officer are not as such, which cannot be arrived at by a reasonable man on the materials on record of the departmental enquiry. It is not a case of total absence of evidence on record of the enquiry or that the findings of the Enquiry Officer are totally against the evidence on record. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

10. So far the question of proportionality of the punishment is concerned, it is found that grave misconduct of theft in connection with the employer's property, willful neglect of work and willful and deliberate act which is detrimental to the interest of the company have been proved against the workman in a properly conducted departmental enquiry. Hence, the punishment of termination from service imposed against the workman cannot be said to be shockingly disproportionate. From the facts and circumstances of the case, it is found that there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:-

ORDER

The action of the Sub Area Manager, Western Coalfields Limited, Kamptee Sub Area, Distt. Nagpur in imposing punishment of termination from services vide its order dated 11/12.08.2005 upon Shri Amrut Laxman Chokele, Dumper Operator, Kamptee Open Cast Mine w.e.f.13.08.2005 is legal, justified and proper. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3210.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. 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 79/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/12/2014 को प्राप्त हुआ था।

[सं. एल-22012/179/1997-आईआर (सी- II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.79/2002 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Kamptee Sub Area of WCL, and their workmen, received by the Central Government on 11/12/2014.

[No. L-22012/179/1997 - IR(C-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/79/2002**

Date 27.11.2014

Party No. 1 : The Sub-Area Manager,
WCL Kamptee Sub Area,
PO: Kamptee Colliery,
Disstt. Nagpur.

Versus

Party No. 2 : The Jt. General Secretary,
Rashtriya Koyla Khadan
Madzoor Sangh (INTUC), 604-
Giripeth, Nagpur-10 (MS)

AWARD(Dated: 27th November, 2014)

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 WCL and their workman, for adjudication, as per letter No.L-22012/179/97-IR (C-II) dated 30.07.1998, with the following schedule:-

"Whether the action of the management of WCL at Kamptee Colliery in dismissing Sh. Michel Ramasundram a driver in Kamptee colliery from the service w.e.f. 23.09.92. is legal, proper and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Michel Ramasundram, ("the workman" in short) through his union, the "Rashtriya Koyla Khadan Mazdoor Sangh (INTUC)", ("the union" in short) filed the statement of claim and the management of WCL ("party no.1" in short) filed the written statement.

The case of the workman as projected by the union in the statement of claim is that the workman was initially employed on 17.04.1971 and was in continuous employment till he was wrongfully dismissed by the Sub-Area Manager, Kamptee Sub Area w.e.f. 23.09.1992 and charge sheet dated 14.04.1992 (wrongly mentioned as 10.09.1990) was issued against the workman and he submitted his reply to the said charge sheet, but party No. 1 conducted a departmental enquiry against the workman and the enquiry officer, while conducting the enquiry, did not follow the laid down procedure of a departmental enquiry and did not allow to prove the medical certificate no. 58 dated 08.04.1992, (wrongly mentioned as 08.09.1992 in the statement of claim) issued by the medical officer, Mayo hospital, Nagpur, by summoning the medical officer, who had issued the said certificate and thus committed serious error in conducting the enquiry and the enquiry officer did not give fair and reasonable opportunity to the workman to defend himself and did not provide copies of documents relied on by the management, before recording the statement of the witnesses and also taking on record the documents filed by the management and the enquiry so conducted was unlawful and the enquiry officer did not explain the procedure of the departmental enquiry at the beginning of the enquiry, as in the Standing Orders, no procedure for departmental enquiry has been prescribed and the workman was not supplied with a copy of the enquiry report and thus, the action of the management in dismissing the workman is unjustified and against the law.

It is further pleaded by the union on behalf of the workman that while dismissing the workman, his past clean and unblemished service record was not considered and the punishment of dismissal was harsh and unfair and management of WCL had filed a complaint with the police at Kamptee Police station in regard to the alleged accident occurred on 08.04.1992 against the workman and police submitted charge sheet under section 279, 337 and 427 of I.P.C. against the workman in criminal case no. 350/92 and the workman faced his trial in the court of Judicial Magistrate First Class, Nagpur and the learned J.M.F.C., by its judgment dated 31.07.1996 acquitted the workman and as such, the order of dismissal of the workman from services is required to be set aside.

Prayer has been made by the union to set aside the order of punishment dated 23.09.1992 and to reinstate the workman in service with continuity and full back wages and all other consequential benefits.

3. The party No. 1 in its written statement has pleaded inter-alia that the claim filed by the union is not only vague, but also sham and frivolous and the workman was on duty in the 2nd shift of 08.04.1992 in the school bus and he took the school bus bearing registration no. MTG 5123, from the garage around 3.30 PM and went to bring the students from the school and

he collected the students from different schools and was coming back to Kamptee at around 6 PM and the school bus met with an accident near Kalipaltan, Kamptee, as a result of which, about 15 to 16 children were injured and the left portion of the school bus was completely damaged and the accident took place as the school bus dashed against truck no. MGT 3377 and soon after the accident, the workman was found absent from the spot of accident and the injured children were taken to Municipal hospital, Kamptee by some Military persons, who arrived at the spot immediately and the workman was heavily drunk and not in a position even to talk and walk properly. The further case of the party No. 1 is that the workman while on duty, took liquor and while driving the school bus with children, he dashed the bus against a cyclist, who was working in Khandelwal Company and the workman lost control of the bus and turned the same to the right side, as result of which the bus dashed against the truck no. 3377, which was coming from Kanhan and in the past also, several warnings were given to the workman due to complaints received from the parents of the school going children and the accident took place due to the carelessness and negligence of the workman, so the workman was charge sheeted on 14.04.1992 and he was given full chance of being heard by the enquiry officer and after enquiry, charges were proved against him and he was dismissed from services, vide dismissal order dated 23.09.1992 (wrongly mentioned as 03.02.2004 in the written statement) and as the workman was taken to Municipal Hospital, Kamptee for getting his medical examination, as he was in a fully drunken state and the Municipal Hospital authority referred him to Mayo Hospital, Nagpur for thorough examination and the enquiry officer explained the procedure of the departmental enquiry to the workman and the workman did not co-operate to complete the enquiry smoothly and on one occasion, he left the enquiry saying that he would not sign any paper and the copy of the enquiry report was sent to the workman in his residential address and every time, the same was returned back with a note that the house was locked and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the validity of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 24.05.2012, the departmental enquiry conducted against the workman was held to be illegal, improper and not in accordance with the principles of natural justice.

As the party No. 1 in the written statement itself has pleaded to allow it to prove the charges against the workman by leading evidence before this Tribunal, in case of holding the departmental enquiry not to be fair, the party No. 1 was allowed to lead evidence to prove the charges against the workman.

5. The English version of the charges levelled against the workman under the certified Standing Order is as follows:

17 (i) (6): Neglect of work or habitual neglect of work.

17 (i) (7): Habitual indiscipline.

17 (i) (9): Causing willful damage to work in progress or to property of the employer.

6. In order to prove the charges against the workman, party No. 1 has adduced the evidence of two witnesses, namely, Shri Devgiri D. Goswami and Shri R.S. Raghuvanshi. In rebuttal, the workman has examined himself as a witness.

7. The respective examination-in-chief of the two witnesses examined on behalf of the party No. 1 are on affidavit.

Shri Devgiri D. Goswami, the first witness for the party No. 1 in his evidence has stated that the workman was on duty in the second shift on 08.04.1992 in Kamptee Sub Area as a driver in the school bus MIG 5123 and he (witness) was the conductor of the said bus and the workman took the school bus from the garage at around 3.30 P.M. to bring the students from the schools and around 4.35 P.M., students of Rabbani school boarded the school bus and after some time, the workman arrived there and at that time he was drunk and was not in a position to drive the bus and when he asked the workman not to drive the bus, the workman scolded him and again at Nagarpalika, he asked the workman not to drive the bus, because he was drunk, but the workman at about 5.20 P.M. started the bus and after crossing "Ajni Fatak", Children in the bus started shouting, so, he turned around and saw that in order to save a cycle rider, the bus dashed against a truck coming from Kanhan side and when he stood up after falling in the bus, he found the conductor's side of the bus was totally damaged and inspite of sustaining injuries, he took the injured children for treatment with the help of the military personnel and one person proceeded towards Kamptee for giving information about the accident. This witness has further stated that the workman had consumed liquor while on duty and while he was driving the school bus towards Kamptee, he dashed the bus against a cyclist and lost control of the bus and turned the bus towards the right side, as a result of which, the bus dashed against the truck No. 3377 and due to the careless driving of the workman in a drunken state, the mishap took place and in the accident, number of school children were injured and the workman was rightly removed from services after due enquiry.

In his cross-examination, this witness has admitted that on 09.04.1992, he submitted the report, Ext. M-II about the accident and in Ext. M-II, he has mentioned that in order to save a cyclist, the bus dashed against the truck, which was coming from the opposite direction and to save the cyclist, the workman drove the bus towards the ride side and the ride side of the bus dashed against the truck in the accident. This witness has further admitted that he had given evidence in the criminal case registered against the workman for causing the accident and paragraph 7 of his affidavit, he has mentioned that to rescue one cycle rider, the bus dashed with the truck coming from Kanhan side and the contents of paragraph 7 of his affidavit are true.

The witness No.2, Dr. R.S. Raghuvanshi in his examination-in-chief has stated that the workman was on duty in the second shift on 08.04.1992 and as per the records of the company, he took the school bus No.MTG-5123 from the garage at about 3.30 P.M. and went to bring the students from the schools and he collected the students from the schools and while returning to Kamptee, the school bus met with an accident near Kalipaltan, Kamptee and due to the accident, 15 to 16 students were injured and he was present at the spot and saw the bus personally and the accident was so serious that the left portion of the bus was completely damaged and the school bus was on the right side of the road and its left side front portion was badly dashed against the truck No. Mgt 3377 and the driver of the school bus were not there and after preliminary examination, the injured children were taken to the Municipal Hospital, Kamptee by the military persons. This witness has further stated that he got information about the accident at around 6 p.m. from Shri Gurudeo Singh and he alongwith Shri Gurudeo Singh immediately went to the spot of accident and then to the Municipal Hospital to see the injured children and when he returned to the spot of accident, he found the workman sitting on the road in a badly drunken state and he was unable to talk and walk properly and the workman was also not in a position to answer the questions asked by him and no medical examination was required to come to a conclusion that the workman was heavily drunk, which could even be ascertained by a common person and he took the workman to Municipal Hospital for his medical examination with the assistance of the bus conductor, Shri Devgiri, as the workman was not in a position even to stand up on his own and at Kamptee Hospital, the workman was examined by the doctor and the doctor confirmed that the workman was over drunk and then the workman was referred to Mayo hospital for medical checkup and to ascertain the quantum of alcohol in his blood and Dr. Bajaj of Municipal hospital prepared the chit referring the workman to Mayo hospital and the workman was sent to Mayo hospital for his further medical examination and the accident took place for the sole reason that the workman was drunk.

Demolishing his own evidence, in his cross-examination, the witness No. 2 has stated that he was present at the spot at the time of the alleged accident and after getting information of the accident at about 6 P.m. from Shri Gurudeo Singh, he went to the spot of accident and the medical report regarding examination of the workman for alcohol has not been filed before this Tribunal and he did not submit any written report in regard to the drunkenness of the workman and he was not a witness in the criminal case instituted against the workman for the accident.

8. In his evidence on affidavit on rebuttal, the workman has mentioned the facts mentioned in the statement of claim. The workman has further stated that Shri P.V. Venkateshan, Personnel Officer had lodged the F.I.R. on 09.04.1992 about the accident and on the basis of the said F.I.R., Police filed charge sheet against him in Criminal Case No. 350/1992 U/s 279, 337 and 427 of the Indian Penal Code and after trial, he was acquitted by the Judicial Magistrate First Class (Court No. 7), Nagpur and on 08.04.1992, while he was returning with the school children in the bus to Kamptee all of a sudden, a cyclist came in front of the bus from the left side and to save the cyclist, he turned the bus towards the right side and at that time the bus dashed against the truck MTG-3377 coming from the opposite direction and at the time of the accident, the bus was not in a high speed. In his cross-examination, the workman has denied the suggestion that on 08.04.1992, he consumed liquor from the liquor shop situated near Rabbani School of Kamptee and he caused the accident by driving the bus in a state of intoxication and the accident took place due to his negligence.

9. At the time of argument it was submitted by the representative for the Party No. 1 that the charges against the workman relate to the safety of the school going children and the workman being in the habit of drinking due to which the fatal accident took place and in the post also, the workman had indulged in such incidence resulting to the charge sheet on 10.09.1990 and the workman in his cross-examination has admitted that he was driving the school bus of WCL on the fateful day and his medical examination at Kamptee and Mayo Hospital was done and his blood sample was taken at Mayo Hospital and a judicial note is to be taken that blood sample is taken only if the driver is drunk and not for any other purpose and though the workman was acquitted in the criminal case, the criminal proceedings cannot be equated with the disciplinary proceedings and the acquittal of the workman in the criminal case was due to non production of the chemical analysis report and Party No. 1 has been able to prove the case by examining the two witnesses, Dr. R.S. Raghuvanshi and Shri Devgiri Goswami and their evidence clearly proves that the workman was drunk and their virtually unchallenged evidence is sufficient to prove the guilt of the workman and Party No. 1 has been able to prove the charges levelled against the workman and the punishment awarded against the workman is justified and the management cannot take the risk to continue to employ such a person, who is a chronic alcoholic to drive a bus carrying children and the workman has been rightly dismissed and management is also taking the recourse of the law of "lack of confidence" against the workman, if the findings of the Tribunal will be otherwise.

In support of such submissions, reliance was placed on the decisions of the Hon'ble Apex Court in Case No. Appeal (CrL.) 775 of 2005 (Prabhakaran Vs. State of Kerala) and in the decisions reported in 2000 (I) Bombay CR. 593 (Municipal Corporation of Greater Vs. Siddheswar Shivaji Kamble), JT 2000 (10) SC-228 (U.P. State Road Transport Vs. Mohanlal Gupta).

10. Per contra, it was submitted by the union representative that the preliminary issue of the fairness of the departmental enquiry was answered by the Tribunal against the Party No. 1 and as it was held that the departmental enquiry conducted against the workman was unfair, improper and not in accordance with the principles of natural justice, the Party No. 1 was given the scope to prove the charges against the workman by adducing evidence before the Tribunal and in order to prove the charges against the workman, Party No. 1 has examined Shri Devgiri, the bus conductor and Dr. Raghuvanshi

and in rebuttal, the workman has examined himself as a witness and it is clear from the evidence of Shri Devgiri, the bus conductor that the bus was at moderate speed at the time of the accident, which indicates that the school bus was not driven by the workman rashly with high speed and it is also clear from the evidence of Dr. Raghuwanshi that he was not present at the spot at the time of the accident, so his evidence is of no value.

It was also submitted by the union representative that though the allegation made against the workman is that he was heavily drunk at the time of driving of the school bus, the Party No. 1 has failed to prove the same, as because, Dr. Raghuwanshi though have stated that the workman was heavily drunk when he found the workman at the spot, in his cross-examination, he has admitted that he did not submit any certificate or report to the higher authorities about the drunkenness of the workman and though the workman was medically examined at Kamptee Municipal Hospital and Mayo Hospital, Nagpur after the accident, no medical certificate is produced and proved by the Party No. 1 to prove such allegation and as such, it can be held that Party No. 1 has failed to prove the charges levelled against the workman.

The further submission made by the union representative was that the workman was charge sheeted by the Police for causing the accident of the bus in question, but he was acquitted by the Court honourably and in the criminal case also, Police failed to produce any medical certificate about the medical examination of the workman and Shri Devgiri, the bus conductor who had been examined as a witness in the criminal case had admitted in his evidence that the school bus was being driven in a moderate speed at the time of the accident and from the materials on record and the evidence adduced by the parties, it can be found that Party No. 1 has failed to prove the charges against the workman and the evidence of the workman that he has not been gainfully employed after his dismissal from service has not at all been questioned and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

The union representative has placed reliance on the decisions of the Hon'ble Madras High Court reported in 2013 LIC NOC 1 (E.Maari Vs. The Managing Director, Tamilnadu State Transport Corporation).

11. At this juncture, I think it proper to mention the principles enunciated by the Hon'ble Apex Court in the decisions mentioned below in regard to the procedure to be adopted by the Tribunal in case of holding the departmental enquiry to be unfair.

The Hon'ble Apex Court in the decision reported in AIR 1976 SC 98 (Bharat Iron Works Vs. Bhagubhai Balubhai Patel) have held that "On the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any and also to the workman to rebut it if he so chooses. In the later event the Tribunal will be entitled to arrive at its own conclusions on merits on the evidence produced before it with regard to the proof of the misconduct charged and the Tribunal then, will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such event, the employer's findings in the domestic enquiry will lapse and these will be substituted by the independent conclusions of the Tribunal on merits."

The Hon'ble Apex Court in the decisions reported in 1970 II LLJ 1 (SC) (The management of Travancore Titanium Products Ltd. Vs. Their workmen) have held that "It is well settled that while dealing with an Industrial Disputes arising from the dismissal of an industrial employee, the employer fails to prove to the satisfaction of the Tribunal that the domestic enquiry was fair, it is open to him to lead evidence justifying the impugned dismissal; and in such a case, the Tribunal has to consider the evidence itself and decide whether the dismissal was justified or not. Ordinarily, the decision of such a question depends upon appreciating evidence, both oral and documentary."

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

12. The first and foremost submission made by the representative for the Party No. 1 was that the charges levelled against the workman relate to the safety of the school going children and habitual drunkenness of the workman. However, on perusal of the charge sheet submitted against the workman, it is found that no charge was levelled against the workman either relating to the safety of the school going children or of habitual drunkenness of the workman. So, there is no force in the contention raised by the representative for the management.

The Party No. 1 by examining the two witnesses before this Tribunal has tried to prove that on 08.04.1992, the workman drove the school bus, MIG 5123 in a state of intoxication and dashed the bus against a truck coming from the opposite direction, as a result of which the school going children in the bus were injured and the bus was also damaged.

It will not be out of place to mention that for causing the accident in question, a criminal case had been registered by the Police against the workman and after the investigation, Police submitted charge sheet against the workman U/Ss 279, 337 and 427 of the Indian Penal Code and the workman faced his trial before the Court of Judicial Magistrate First Class, Nagpur in Criminal Case No. 350/1992 and was acquitted on 31.07.1996.

13. So far the evidence adduced by the party No.1 is concerned, it is found that though it is the claim of party No.1 that the workman was sent for his medical examination after the accident, to Municipal Hospital, Kamptee and so also to Mayo Hospital, Nagpur, not a single document in regard to such examination has been produced by the party No.1. Such documents

were also not produced by the party No.1 in the departmental enquiry conducted against the workman. It is also clear from the evidence of Dr. Raghuvanshi that he was not present at the time of the accident. It is also clear from the evidence of Dr. Raghuvanshi that when he went to the spot of accident, he did not find the workman present there and after some time, when he returned to the spot of accident, he found the workman present there heavily drunk. So, the evidence of Dr. Raghuvanshi that the accident took place due to driving of the bus by the workman in a state of intoxication is not reliable and no reliance can be placed on the same.

The other witness examined by the party No.1, Shri Devgiri was the conductor of the bus in question. It is the categorical evidence of this witness that on 08.04.1992, the workman drove the bus, while he was quite drunk and when he asked the workman not to drive the bus in such a condition, the workman scolded him. Such assertion has not been seriously challenged in his cross-examination. However, it is clear from the evidence of this witness that to save a cycle rider, the workman drove the bus towards the right, as a result of which, the bus dashed against the truck coming from the opposite direction and there was damage to the school bus and the children in the bus were injured. It is clear from the evidence of this witness that the accident did not take place as the workman was drunk while he was driving the bus or due to his rash and negligent driving.

14. The evidence adduced by the party No.1 does not prove the charges under the clauses 17 (i) (6): Neglect of work or habitual neglect of work, 17 (i) (7): Habitual indiscipline and 17 (i) (9): Causing willful damage to work in progress or to Property of the employer of the standing order, which are levelled against the workman. As party No.1 has failed to prove the charges levelled against the workman, there is no question of imposing of any punishment, what to say about the punishment of dismissal from services, against the workman.

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 cited by the representative for the management, with respect, I am of the view that the said decisions have no clear application to the case in hand.

15. The only question, however, is what consequential order should be passed in the present case. As Party No. 1 has failed to prove the charges against the workman, the workman is entitled for reinstatement in service with continuity of service and without loss of seniority in the post to which he would have been entitled on the basis of his continuous service. It is to be mentioned here that at the time of argument, it was intimated by the Union representative that the workman has already attained the age of superannuation and accordingly it is necessary to mould the relief in favour of the workman. As the workman has already attained the age of superannuation as submitted, there is no question of his regular reinstatement in service. Taking into consideration the entire facts and circumstances of the case, I think that payment of 25% of the back wages to the workman from the date of his dismissal from service till the date of reinstatement would serve the ends of justice. Hence, the workman is entitled for 25% of the back wages from the date of his dismissal till the date of his reinstatement in service. Hence, it is ordered:-

ORDER

The action of the management of WCL at Kamptee Colliery in dismissing Sh. Michel Ramasundram a driver in Kamptee Colliery from the service w.e.f. 23.09.92. is illegal, improper and unjustified. The workman is entitled for reinstatement in service with continuity of service and without loss of seniority in the post to which he would have been entitled on the basis of his continuous service, but as he has already attained the age of superannuation, he is not entitled for regular reinstatement in service. However, the workman is to be reinstated in service notionally, for the purpose of determination of his seniority and calculation of his back wages. The workman is entitled for 25% of the back wages from the date of his dismissal till the deemed date of his superannuation. The Party No. 1 is directed to give effect to the award within one month of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. 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 46/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/12/2014 को प्राप्त हुआ था।

[सं. एल-22012/98/2013-आईआर (सीएम- II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfields Limited, New Majri O/C Mines Sur Area, and their workmen, received by the Central Government on 11/12/2014.

[No. L-22012/98/2013 - IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

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

Case No. CGIT/NGP/46/2013

Date: 17.11.2014.

Party No. 1 (a) : The Director (Personnel),
M/s. Western Coalfields Limited,
Coal Estate,
Civil Lines, Nagpur.

(b) The Sub Area Manager,
New Majri O/C Mines Sub Area,
Majri Area, WCL,
P.O. Shivaji Nagar,
The. Bhadrawati,
Distt. Chandrapur(M.S.)

Versus

Party No. 2 : Shri M.M. Makode,
Area Secretary,
Sanyukta Khadan Mazdoor Sangh (AITUC),
Qr. No. B/79, Kuchna Colony,
Majri Area, P.O. Kuchna,
Distt. Chandrapur (M.S.)

AWARD

(Dated: 17th November, 2014)

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 M/s. Western Coalfields Limited and their workman, Shri Deepak Ramkrushna Dhoke, for adjudication, as per letter No.L-22012/98/2013-IR (CM-II) dated 21.08.2013, with the following schedule:-

"Whether the action of the management of New Majri Open Cast Mine Sub Area. Majri Area of WCL and WCL HQ in denying promotion and monetary benefits to Shri Deepak Ramkrushna Dhoke is legal and justified? If not, is the workman eligible for the same with back date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Sanyukta Khadan Mazdoor Sangh (AITUC), ("the union" in short) filed the statement of claim on behalf of the workman, Shri Deepak Ramkrushna Dhoke, ("the workman" in short) and the management of Western Coalfields Limited ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim by the union is that the workman was appointed as an Assistant Foreman trainee by party No. 1 as per order dated 20.11.1995 and the workman joined his duties on 22.11.1995 and after 22.11.1995, three employees, namely, Shri S.R. Joshi, Shri S.D. Chilate and Shri J.M. Umare joined as Assistant Foreman trainees on 25.11.1995, 26.1.1995 and 27.11.1995 respectively and due to the negligence of party No.1, the above named three employees were treated as seniors to the workman and Shri S.R. Joshi and Shri S.D. Chilate by order dated 16.08.2001 and Shri J.M.Umare by order dated 13.01.2003 were illegally promoted as Foreman, by overlooking the seniority of the workman and though, the workman was appointed earlier to the said employees, the party No. 1 wrongly recorded the joining date of the workman as 30.11.1995 instead of 22.11.1995 and after the intervention of the union, party No. 1 by order dated 30.12.2010, rectified the date of joining of the workman as 22.11.1995, instead of 30.11.1995, but refused to give him the benefit of seniority and wages and due to such action of party No.1, the workman is suffering from heavy financial loss of

about Rs. 2575.70 per month and the action of the party No. 1 denying promotion and monetary benefits to the workman w.e.f. 16.08.2001 is unjustified and illegal.

Prayer has been made by the union to direct the party No. 1 to give promotion to the post of Foreman w.e.f. 16.08.2001 with monetary benefits and other reliefs as deemed fit.

3. The party No. 1 denying all the adverse allegations made in the statement of claim, in the written statement has pleaded inter-alia that the reference is not maintainable in the eye of Law, on the ground that the schedule of reference is vague and no date has been specified in the same for giving the benefit to the workman.

It is further pleaded by the party No. 1 that initially, the grievance of the workman was agitated by the SKKMS union and on the representation of the said union, the matter was discussed and examined at headquarters level of the Company and as a result of the discussion, the case of the workman was settled by giving him notional fixation of pay and in accordance to the said decision, the workman reported for duty and the benefits of the agreement were given to him and having accepted the decision and reporting for duty, the workman is bound by the principles of estoppels and he is barred from agitating the issue again and the workman is not entitled to any relief.

4. In the rejoinder, the union on behalf of the workman has pleaded that the objection raised by the party No. 1 regarding the maintainability of the reference is not proper and justified and though party No.1, after 15 years of the appointment of the workman corrected the date of his appointment, refused to give him promotion and monetary benefits and on the contrary three juniors of the workman were given promotion.

5. Besides placing reliance on documentary evidence, both the parties have led oral evidence in support of their respective cases.

Shri M. M. Makedo, the Area Secretary of the union has been examined by the union as a witness in support of the stand taken by it.

The party No. 1 has examined Shri Omprakash Karole, the Manager (Personnel) of New Majri Opencast Sub-Area as the only witness in support of its case.

6. In his evidence on affidavit, witness, Shri M.M. Makode has reiterated the facts mentioned in the statement of claim. In his cross-examination, this witness has stated that in the year 2003, the union had raised the dispute with the management for not giving promotion to the workman and management had informed the union that the workman joined duty after completion of his vocational training and as such, not giving of promotion to him was justified and the vocational training of the workman was completed on 30.11.1995 and the workman joined vocational training on 22.11.1995. The witness has denied the suggestion that the workman was junior to Shri Santosh Chilatare, Shri S.R. Joshi and Shri J.M. Umare.

7. Shri Omprakash Karole, the witness for the party No. 1 also in his evidence on affidavit has reiterated the facts mentioned in the written statement. However, in his cross-examination, the witness for the party No. 1 has categorically admitted that under the Vocational Training Rules, vocational training is not required for supervisory staff and Foreman and inspite of such Rules, the workman was sent for vocational training, on his joining on 22.11.1995 and Shri Santosh Chilatare, Shri S.R. Joshi and Shri J.M. Umare, who joined as Assistant Foreman Trainee, after the joining of the workman at Chargaon Sub-Area and Majri Underground were appointed directly as Assistant Foreman trainees and they were not sent for vocational training. This witness has also categorically admitted that though the workman was senior to Shri Santosh Chilatare, Shri S.R. Joshi and Shri J.M. Umare, he was overlooked for promotion and his juniors were given promotion and the workman is entitled for promotion from the date, on which his juniors were promoted. This witness has further admitted that as per order No. 2215 dated 14.12.2012, the date of appointment of the workman was changed to 23.11.1995 instead of 30.11.1995 and the workman is entitled for his placement in the seniority list above Shri Santosh Chilatare, Shri S.R. Joshi and Shri J.M. Umare.

8. At the time of argument, it was submitted by the union representative that the workman joined as an Assistant Foreman on 22.11.1995 and Shri Santosh Chilatare, Shri S.R. Joshi and Shri J.M. Umare joined as Assistant Foreman on 26.11.1995, 25.11.1995 and 27.11.1995 respectively and they were juniors to the workman and illegally, the party No. 1 recorded the date of joining of the workman in service on 30.11.1995 and overlooking the workman, gave promotion to Shri Santosh Chilatare and Shri S.R. Joshi on 16.08.2001 and to Shri J.M. Umare on 13.01.2003 respectively as Foreman and such action of party No. 1 is illegal and unjustified and though party No. 1 rectified the date of joining of the workman after raising of the dispute by the union, refused give him promotion and monetary benefits and due to such illegal action of the party No.1, the workman is suffering from huge loss and the witness for the party No. 1 has admitted such facts in his cross-examination and the workman is entitled for promotion as foreman from 16.08.2001 and all consequential benefits including the monetary benefits.

9. Per contra, it was submitted by the management representative that the union for the first time raised the grievance of promotion of the workman in a meeting held on 05.01.2003 at Area Level and after detailed discussions with the

union, the management instructed the union to submit all relevant documents to enable it to take a decision, but the union did not submit the required information/documents as agreed and in 2008, the workman applied for correction of his date of appointment and the union again raised the same demand on 11.03.2009 and the grievance of the workman regarding his promotion was discussed in IR meeting held on 27.08.2010 and it was decided that management will consider the grievance of correction of the date within 15 days and the demand regarding promotion, monetary benefits etc. were neither raised nor discussed by the union in the meeting held on 27.08.2010 and in pursuance of the discussion, by office order dated 14.12.2010 was issued for correction of the date of appointment of the workman as 23.1.1995 instead of 30.11.1995, without any monetary or consequential benefits and the union as well as the workman accepted the said order and therefore, the management implemented the said order and corrected the date of appointment of the workman in the records and service book of the workman and as no specific demand regarding loss of seniority or promotion or monetary benefits was raised either by the workman or the union, the workman/union is estopped in Law from agitating the same and the reference is liable to be answered in the negative.

10. Perused the record including the evidence adduced by the parties and considered the submissions made by the representatives of the parties. In this case all most all the facts are admitted by the parties. It is not disputed that the workman joined in service on 22.11.1995 as an Assistant Foreman trainee and employees Shri S.R. Joshi, Shri S.D. Chilatre and Shri J.M.Umare also joined as Assistant Foreman trainee on 25.11.1995, 26.11.1995 and 27.11.1995 respectively and the date of joining of the workman in service was mentioned as 30.11.1995, but party No.1, on the representation made by the workman and the union on his behalf, rectified the same and corrected the same as 23.11.1995. However, inspite of correction of the date of joining of the workman in service, party No. 1 did not give the workman promotion to the post of Foreman and monetary benefits. It is also not disputed the employees, Shri S.R. Joshi and Shri S.D. Chilatre, who were junior to the workman were promoted as Foreman by order dated 16.08.2001 and employee, Shri J.M. Umare was given promotion as Foreman vide order dated 13.01.2003.

In the written statement, the only objection raised by the party No. 1 to give the reliefs claimed by the workman is that the grievance of the workman was initially agitated by the RKKMS union and the matter was examined and discussed at Headquarters level of the Company and as per the discussion, the case of the workman was settled by giving him notional fixation of pay and accepting the decision, the workman reported for duty and as such, he is estopped from challenging the same again as per the provisions of estoppel.

However, it is to be mentioned here that the witness for the party No. 1 has categorically admitted that the workman is senior to Shri S.R. Joshi, Shri Santosh Chilatre and Shri J.M.Umare and he was overlooked for promotion and his juniors were given promotion and the workman is entitled for promotion from the date, when his juniors were promoted.

It is also necessary to mention that the submissions made during the course of argument by the representative for the party No. 1 cannot be taken into consideration in absence of any such pleadings in the written statement and in view of the evidence on record.

It is clear from the materials on record that the workman is entitled to be promoted as a Foreman from 16.08.2001, the date on which his juniors, namely, Shri S.R. Joshi and Shri Santosh Chilatre were given promotion and the workman is also entitled for all the consequential benefits arising out of such promotion including monetary benefits and respective seniority in the promotional post. Hence, it is order:-

ORDER

The action of the management of New Majri Open Cast Mine Sub-Area. Majri Area of WCL and WCL HQ in denying promotion and monetary benefits to Shri Deepak Ramkrushna Dhoke is illegal and unjustified. The workman is entitled for promotion as a Foreman from 16.08.2001, the date on which his juniors, namely, Shri S.R.Joshi and Shri Santosh Chilatre were given promotion and the workman is also entitled for all the consequential benefits arising out of such promotion including monetary benefits and respective seniority in the promotional post/Cadre. The party No. 1 is directed to give effect to the award within 30 days of the date of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. 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, हैदराबाद के पंचाट (संदर्भ संख्या 3/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/12/2014 को प्राप्त हुआ था।

[सं. एल-22012/67/2004-आईआर (सीएम- II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Limited, and their workmen, received by the Central Government on 11/12/2014.

[No. L-22012/67/2004 - IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

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

Present: Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 19th day of November, 2014

INDUSTRIAL DISPUTE No. 3/2005

Between:

The General Secretary,
(Sri Bandari Satyanarayana),
Singareni Collieries Employees Council(TNTUC)
BCH 30, Vittal Nagar,
Godavarikhani – 505209.

...Petitioner

AND

The Chief General Manager,
Singareni Collieries Company Limited,
Ramagundam-I Division,
Godavarikhani-505209.

...Respondent

APPEARANCES:

For the Petitioner : M/s.. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri P.A.V.V.S. Sarma, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/67/2004-IR(CM-II) dated 10.1.2005 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The term of reference is as under:

“Whether the action of the Chief General Manager, M/s.. Singareni Collieries Company Ltd., Ramagundam-I Division, Godavarikhani in not granting Cat.II and Cat.III under seniority linked upgradation (SLU) in respect of Sri Yadagiri Rajesham, General Mazdoor, Cat.I GDKJ-1 Inc., of M/s.. S.C.Co.Ltd., Ramagundam-I, Godavarikhani is legal and justified? If not, to what relief the workman is entitled?”

On receipt of the reference notices were issued to parties concerned. Both the parties appeared before the Tribunal and engaged their respective counsels with the consent of each other and the leave of the Tribunal.

2. The Petitioner has filed his claim statement seeking for grant of Cat.II wages with effect from 17.11.1993, and Category III wages with effect from 17.11.2000 under service linked upgradation scheme, to Sri Yadagiri Rajesham, Ex. General Mazdoor, Category I, GDK.I Incline and to pay the differential terminal benefits in Category II and III.

3. Whereas, the Respondent Management filed their counter admitting that the workman is entitled for upgradation to next higher category II under service linked upgradation notionally with effect from 1.1.1996, and with monetary benefit from 1.1.1997 and that he is not entitled for upgradation to category II with effect from 17.11.1993 and also for category III with effect from 17.11.2000 as claimed by him.

4. Across the bar, Learned Counsel for the Petitioner has prayed for passing of an award granting the claims admitted by the Respondent Management in their counter. That means, it is an admission on their part that workman is not entitled for the claims made over and above, the admissions made by the Respondent Management in their counter.

5. Further, the claim of the Petitioner as far as it is admitted by the Respondent is taken as found to be proved by way of such admission.

6. Therefore, the reference is answered as follows:

The action of the Chief General Manager, M/s. Singareni Collieries Company Limited, Ramagundam-I Division, Godavarikhani, in not granting Cat. II under seniority linked upgradation in respect of Sri Yadagiri Rajesham, General Mazdoor category-I, GDK-1 Inc., of M/s.. Singareni Collieries Company Limited, Ramagundam-I, Godavarikhani is neither legal nor justified. Said workman is entitled for upgradation to next higher Cat. II under service linked upgradation notionally, with effect from 1.1.1996, with monetary benefit from 1.1.1997. The workman is not entitled for any upgradation to Cat. III. The differential terminal benefits of the workman, consequent to this award shall be calculated and paid to the workman by the Management forth with.

Award is passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Documents marked for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Respondent

NIL

नई दिल्ली , 11 दिसम्बर, 2014

का.आ . 3213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 34/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/12/2014 को प्राप्त हुआ था ।

[सं. एल-22012/301/2002-आईआर (सीएम- II)]

बी. एम . पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3213.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Dankuni Coal Complex, South Eastern Coalfields Ltd. and their workmen, received by the Central Government on 11/12/2014.

[No. L-22012/301/2002 -IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 34 of 2003

Parties:—Employers in relation to the management of Dankuni Coal Complex, South Eastern Coalfields Ltd.

A N D

Their workmen.

Present:—Justice DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : None.

On behalf of the Workmen : None.

State: West Bengal

Industry : Coal

Dated: 25th November, 2014

AWARD

By Order No.L-22012/301/2002-IR(CM-II) dated 16.10.2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action taken by the management of Dankuni Coal Complex, Dankuni against Mr. Masum Ali, Grade-I Clerk by imposing stoppage of three increments with cumulative effect due on April, 2001, April 2002, April 2003 is legal and justified? If not, to what relief the workman is entitled?”

2. When the case is taken up today for hearing, none appears on behalf of either of the parties. It appears from the record that the union at whose instance the instant reference has been made has not turned up since 30.07.2014. Considering the above facts and circumstances and the conduct of the union, it may reasonably be presumed that the union is not at all interested to proceed with the case further.

3. Considering the above facts and circumstances, it appears that no fruitful purpose will be served in keeping the matter pending.

4. Instant reference is accordingly disposed of by passing a “No Dispute Award”.

Dated, Kolkata,
The 25th November, 2014

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 17/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/12/2014 को प्राप्त हुआ था।

[सं. एल-22012/207/2000-आईआर (सीएम- II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 17/2001 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Dankuni Coal Complex, South Eastern Coalfields Ltd. and their workmen, received by the Central Government on 11/12/2014.

[No. L-22012/207/2000 - IR(CM-II)]
B.M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 17 of 2001

Parties: Employers in relation to the management of the Chief General Manager, Dankuni Coal Complex

AND

Their workmen.

Present: Justice DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management	:	Mr. Alope Banerjee, Ld. Counsel with
	:	Mr. Uttam Kumar Mondal, Ld. Counsel.
On behalf of the Workmen	:	Mr. Saibal Mukherjee, Ld. Counsel.

State: West Bengal

Industry : Coal.

Dated: 19th November, 2014.

AWARD

By Order No.L-22012/207/2000-IR(CM-II) dated 15.05.2001 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of Dankuni Coal Complex of SECL, Dist. Hooghly in declaring Sh. Pravash Ghosh and Sh. Pravash Pal, Clerk Grade-II as junior to Sh. Sh. Masum Ali and others is legal and justified? If not, to what relief the workmen are entitled to?”

2. When the case is taken up today for hearing, Ld. Counsel for both the parties appear. Ld. Counsel for the union, however, files a petition stating that both the concerned workmen of this reference are not interested to proceed with the case further and as such the instant reference may be dropped.

3. Perused the petition of the union as well as the petition of the two concerned workmen which has been made Annexure ‘A’ to the application. It appears that both the workmen at the instance of whom the instant reference has been initiated, are not willing to proceed with the case further. In such circumstances, this Tribunal has neither any scope nor any reason to proceed with this case further.

4. In view of the above facts and circumstances, present reference is disposed of by passing a “No Dispute Award”.

Justice DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,
The 19th November, 2014.

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार 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 अहमदाबाद के पंचाट (संदर्भ संख्या 494/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/12/2014 को प्राप्त हुआ था।

[सं. एल-42012/134/2001-आईआर (सीएम- II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 11th December, 2014

S.O. 3215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 494/04 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Cotton Corporation of India, and their workmen, received by the Central Government on 11/12/2014.

[No. L-42012/134/2001-IR(CM-II)]

B.M. PATNAIK, Desk Officer

ANNEXURE

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

Present: SHRI BINAY KUMAR SINHA, Presiding Officer,

Ahmedabad,

Dated: 15th April, 2014

Reference (CGITA) No-494/04

Reference (ITC) No-44/2002(old)

Reference adjudication order No. L-42012/134/2001-IR(CM-II),

New Delhi, dated 03.06.2002

The General Manager,
Cotton Corporation of India,
Sakar-I, 7th Floor,
Ashram Road,
Ahmedabad(Gujarat)

.....First Party

And

Their Workman
Shri R.S. Kapoor,
4, Jai Santoshi Maa Flats,
Bharuch (Gujarat)

.....Second Party

For the First Party : Shri B.B. Thesia, Advocate
For the Second Party : Shri Vinod J. Patel, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi by order No. L-42012/134/2001 IR (CM-II) dated 03.06.2002, referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matters specified in the Schedule:

SCHEDULE

“Whether the action of the management of Cotton Corporation of India, Ahmedabad in terminating the services of Shri R.S. Kapoor w.e.f. 23.06.2000 is legal and justified? If not, to what relief the concerned workman is entitled to?”

2. The case of the 2nd party a per statement of claim (Ext.4) shortly stated is that he was initially appointed as a cotton selector on 04.10.1972 and posted at Branch office, Shriganganagar (Rajasthan) and also placed at different centres. Since 1977, he worked as centre in-charge at different centres where there were assistants to assist him. The entire administration of the centre was in the hands of Branch office and leave, salary and other benefits were sanctioned by Branch office and he had no power to kept under administration control over Assistant working except for taking work from them. He was designated as cotton purchase officer having same work and pay. He was promoted as senior cotton purchase officer Shriganganagar and was transferred to Branch office, Ahmedabad and working as different centres and taking works from Assistants posted there. In 1995, High official of branch office, develop grudge against him and in last week of November 1995 he was verbally asked to report to duty at Orissa on post of senior cotton purchase officer as centre incharge. Due to family problem he represented vide letter dated 28.11.1995, then he was transferred to non-active centre Virmagam vide order dated 06.12.1995. Again he was transferred to Orissa (Cuttak-Kesinga) vide order dated 01.01.1996, on the post of senior cotton purchase officer. He reported for duty at Cuttak Kesinga and he submitted resignation on 11.01.1996 since he remained sitting idle having without work and no assistants provided to him. On his representation he was subsequently appointed afresh by order dated 05.06.1997. on the same post of senior cotton purchase officer at Mumbai and his last pay was protected and a gross salary of Rs. 9,246/- was being paid. He was placed at Rs.4.440/- in I.D.A. pay scale of Rs. 2340-4890. On his re-appointment his pay as per 5th commission recommendation was not revised as that of other staff and he was placed in the basic pay of Rs. 6,140. He was not given benefits of employee pension Scheme 1995 and CCIS superannuation Scheme 01.11.199 by not counting past service. He was transferred from Mumbai to Ahmedabad but biased attitude of a high official continued and he was placed in the centre without assistants. Lastly he was posted at Arvind Intex Mills, Ahmedabad but there was no proper sitting arrangement and charge was not given inspite of reporting there. He was given the charge at Arvind Intex Mill on 10.05.2000 and on 23.06.2000 he was terminated from service after three years of his reappointment on the ground of unsatisfactory work. He was given various memo and adverse remarks in Annual confidential report was entered as bias attitude for victimising him. Against his termination he made representation and during conciliation process before A.L.C. (Central) Ahmedabad the management produced copy of appointment order dated 20.09.2000 but was not allowed to join. He had completed 240 days in each year service. His service was terminated without holding departmental inquiry, without paying retrenchment compensation. V.R.S. and without giving show-cause notice. On these grounds prayer is made to set aside the order of termination dated 23.06.2000 and to reinstate him to his original post with continuity of service and back wages from the date of reinstatement and also to grant relief to which he is found entitled.

3. As against this the case of the 1st party (management) as per written statement (Ext.6) inter alia is that the reference is not maintainable the 2nd party Shri R.S. Kapoor is not a workman u/s. 2(S) of the I.D. Act, and he was employed as senior cotton purchase officer. The allegation made para wise in S/c has been denied and the 2nd party is put to strict proof of the allegation. It has been denied that the entire administration of centre was in the hands of Branch office. Allegation made by the 2nd party against one gentleman of Branch office, Ahmedabad has been denied. It has been denied that the 2nd party was ever victimised due to any grudge. The 2nd party submitted his resignation on 11.01.1996 of his own will to which the corporation accepted and paid to him all legal dues –viz gratuity, P.F. etc. and the 2nd party accepted without any objection. The 2nd party was appointed as a fresh senior cotton purchase officer at Mumbai. On 20.06.1997 and the corporation clarified the position that he is appointed afresh and so seniority will be counted afresh from the date of his joining the duty in C.C.I. and the 2nd party accepted the same without objection 2nd party was as a fresh in 1997, so he was

not entitled to get the benefits of the employees' pension Scheme and he was not entitled to get benefits of the 5th charter of demands effective from 01.09.1996 as he join the corporation as a fresh vide appointment letter dated 05.06.1997. His pay fixation was in order. It has been denied that he was transferred from Mumbai to Ahmedabad due to bias attitude to harass the S.P. It has been denied about no sitting arrangement for the 2nd party in Arvind Intex Mill. It is true that the 2nd party has submitted representation on 27.06.2000 but it is denied that he was not allowed to join the service in view of fresh appointment order dated 20.09.2000 by the 1st party corporation. It is denied that the 2nd party has completed 240 days in each year of service. The case of the 1st party further is that the 2nd party Shri R.S. Kapoor was appointed as a fresh probationer and his probation period was extended from time-to-time and he has not completed the probation period satisfactorily and so he was terminated on 23.06.2000 and he was also paid proper retrenchment compensation. The 2nd party was appointed as fresh twice on humanitarian grounds and not on past satisfactory service. His service during probation period was not found satisfactory and so he was discontinued by order dated 23.06.2000. The 1st party corporation paid him notice pay and retrenchment compensation even though he was not entitled to get the same since the 2nd party had resigned from the service of the corporation on 11.01.1996 and he was again appointed as a fresh probationer, so the 2nd party was not entitled to get the benefit of CCI superannuation Scheme 1995 rather the employees of the corporation on the roll of the corporation as on 26.08.1996 were entitled to get the benefits of the said Scheme. Since the 2nd party at the time of order of discontinuance dated 23.06.2000 was a probationer, so there is no need to hold any departmental inquiry. Again on the representation of the 2nd party the corporation has sympathetically considered and he was offered job and posted at Bhilwara (Rajasthan) by order dated 20.09.2000 but the 2nd party refused to go there. So the 2nd party is not entitled to get reinstatement and/or back wages or any relief and the reference is fit to be dismissed with cost.

4. In view of the rival contention of the parties the following issues are taken for determination:-

ISSUES

- (i) Is the reference maintainable?
- (ii) Has the 2nd party Shri R.S. Kapoor any valid cause of action in this case?
- (iii) Whether the 2nd party Shri R.S. Kapoor reappointed afresh as senior cotton purchase officer comes under definition of workman as per section 2(S) of the I.D. Act?
- (iv) Whether the 2nd party has any right for reckoning his past service for continuity even on acceptance of resignation on 11.01.1996 (F.N.)? Whether after acceptance of his resignation w.e.f. 11.01.1996 (F.N.) he (Mr. R.S. Kapoor) can be said to be employee on the roll of corporation (1st Party) for claiming benefits of CCI superannuation Scheme 1995?
- (v) Whether reappointment as a fresh senior cotton purchase officer vide order dated 05.06.1997 with probation period likely to be extended was accepted by him (Mr. R.S. Kapoor)?
- (vi) Whether the corporation (1st party) has any legal liability to start departmental enquiry against the 2nd party Shri R.S. Kapoor on reappointment as a fresh probationer? Whether on the date of discontinuation/termination vide order dated 23.06.2000, the 2nd party was undergoing probation period?
- (vii) Whether corporation ever victimised Shri R.S. Kapoor either before his submitting resignation letter dated 10.01.1996 or after his reappointment afresh vide order dated 05.06.1997 or his subsequent reappointment dated 20.09.2000?
- (viii) Whether the 2nd party Shri R.S. Kapoor is entitled to reinstatement with back wages or any alternative relief in this case?
- (ix) Whether the action of the management of Cotton Corporation of India, Ahmedabad in terminating the services of Shri R.S. Kapoor w.e.f. 23.06.2000 is legal and justified?

FINDINGS

5. **ISSUE NO. (iv) & (vii):-** From copy of office order dated 05.06.1997 (Annexure-A) filed by the 2nd party it is crystal clear that Shri R. S. Kapoor who had resigned on 11.01.1996 was appointed afresh as Sr. CPO as a very special case at Kalambolli complex, Mumbai and he was to be on probation for period of one year from the date of his joining, Annexure 'B' filed by the 2nd party is the clarification letter dated 20.06.1997 of corporation to Mr. R.S. Kapoor informing at (a) you may thus get a gross salary of Rs. 9,246 per month (b) appointment is afresh as a very special case, seniority will be counted

afresh from the date you join duty in CCI (c) extension of time is accepted and you may join duty on or before 1st July 1997. Annexure 'C' is copy of letter dated 26.06.1998 of R.S. Kapoor to Dy. General Manager (personal) Mumbai is self-made revised representation regarding revised pay 8165+265 which are redundant in this case since he (Mr. Kapoor) was afresh appointee and question of removing anomaly in revised pay scale is not matter in issue in this reference case so needless to go into detail.

6. The 2nd party by a list (Ext.8) submitted 40 documents which have been given Exts. 16 to 51. Ext. 16, appointment letter dated 23.09.1972, Ext. 17, confirmation order dated 11.01.1975 after completing the period of probation satisfactorily, Ext.18, Ext.19 office order dated 13.11.1986 regarding confirmation in Sr. C.P.O after probation period are not relevant documents regarding the terms of reference in this case. Likewise Ext.20 letter of appraisal dated 07.01.1986 of corporation to Mr. R.S. Kapoor, Ext.21 circular of corporation Branch office Ahmedabad dated 16.10.1995, Ext.22 letter of corporation to R.S. Kapoor dated 24.02.1995, have nothing to do with the terms of reference. Ext.23 is copy of telegram to R. S. Kapoor (2nd party) requesting and reminding him by corporation to go on tour of Cuttak and to give his presence in Branch office, Ahmedabad. The language of telegram does not show any bias attitude of so called gentlemen of Branch office, Ahmedabad that the service carrier of Shri R.S. Kapoor was to be ruined as pleaded in statement of claim. Ext. 24 office order dated 06.12.1995 rather goes to show that Mr. Kapoor representation dated 28.1.1995 was sympathetically considered by the so called gentleman of Branch office, Ahmedabad and he (Mr. Kapoor) was transferred to Viramgam a sr. Cotton purchase officer and centre In-charge. This does not go to show any humiliation of Mr. Kapoor by Branch office of corporation. Likewise office order dated 01.01.1996 (Ext.25) of corporation transferring Mr. Kapoor with immediate effect by way of tour to Cuttak under control of Branch office, Kolkata can not be looked into as victimising attitude of a so called gentleman of Ahmedabad Branch office and the 2nd party Mr. Kapoor failed to name that gentleman, also failed to make any complaint, against that gentleman to H.O., Mumbai, So all these inaction on part of Mr. R.S. Kapoor on the contrary go to show that a cook and bull story was weaved by him in the name of a fictitious gentleman of Branch office, Ahmedabad, having no existence in reality. This aspect can be examined from another angle that from his initial appointment under jurisdiction of Branch office Shriganganagar he remained posted in different centres for more than decade without agitating about bias attitude of a gentleman thereon. Thereafter Mr. Kapoor was promoted as Sr. Cotton purchase officer while working under control of Branch office, Ahmedabad. More so, before submitting resignation on 11.01.1996 he was holding the same post of Sr. C.P.O. even at Cuttak, Since being an employee (Sr. C.P.O.) he must be aware of the real facts that his post is transferrable by corporation all India basis/ Interstate transfer because transfer is not made in order to victimise any officer/employee rather transfer is incidence of service condition. Ext.26 is copy of certificate dated 20.03.1996 granted by general manager of the corporation to the effect that Mr. R.S. Kapoor served this corporation w.e.f. 07.11.1972 to 10.01.1996 on various posts and he resigned from the service of the corporation w.e.f. 11.01.1996 (F.N.) on his own accord as Sr. Cotton Purchase Officer. So the resignation submitted by Mr. Kapoor has nothing to do with his baseless allegation of any bias attitude or victimisation in the name of a fictitious 'gentlemen'. If it is yet examined from another angle it speaks a volume against the 2nd party Mr. R.S. Kapoor that since he had settled at Bharuch with family he himself taken his transfer to Cuttak as curse and so weaved out a fictitious story of victimisation at the hands of a gentleman of Branch office, Ahmedabad but having no any basis. Rather as per Ext.27 office order dated 08.04.1996 of Branch office, Ahmedabad he (Mr. Kapoor) was granted reward of two increments on 01.01.1996 on completing more than 15 years' service in the corporation. That go to discard the story weaved by Mr. Kapoor as to alleged victimisation at the hand of a 'gentleman'. Likewise document at Ext. 28 regarding pension Scheme of corporation dated 19.05.1997. Ext. 30 circular dated 06.04.1995 of the corporation, Ext. 31 is copy of letter dated 20.05.1997 of Mr. R.S. Kapoor to Chairman-cum-Managing Director of corporation, Mumbai has nothing to do with bias attitude of 'gentleman' of corporation as alleged in statement of claim. Ext.32 is copy of office order dated 05.06.1997 regarding afresh appointment of Mr. R.S. Kapoor in the corporation has already been discussed above. Likewise Ext.33 has also been discussed above and no need for repetition.

7. Ext.34 is copy of representation of the 2nd party R.S. Kapoor dated 20.01.1998 i.e. during tenure of his reappointment afresh sent to the Dy. G.M. (Personnel) of corporation, Mumbai regarding claiming pension benefits before the acceptance of resignation. Such issue is not directly involved in the terms of reference of this case and so needless to go into details for any conclusion. Ext.37 is dated 24.07.1998 forwarding of representation of R.S. Kapoor regarding anomaly in revised scale, documents at Ext. 38, Ext.39, Ext.40, Ext.41, and Ext.42 with annexures have already been discussed above. Ext.43, Ext.44 are also not relevant documents for issue No. (iv) and (vii) in any way and so are redundant documents.

8. Such oral evidence Ext.9 of the 2nd party Shri R.S. Kapoor at para 2 (last few lines that "my all transfer have been done with a prejudicial mind and with intention to harass me" has no any corroboration by any cogent evidence. During

cross-examination by the 1st party lawyer Shri B.B. Thesia, Mr. R.S Kapoor categorically admitted that he had given his resignation on 10.01.1996 and his designation was of Sr. Cotton Purchase officer and that I had not filed any case in the court against my resignation. That proves that resignation by Mr. R.S. Kapoor was of his own accord and not under coercion or due to victimisation. On the other hand the 1st party witness Shri Badruddinn Mufizuddin Shaikh in his oral evidence Ext.62 has supported the stand of the 1st party as per w.s. (Ext.6) and stated that there was no occasion for harassing and victimising Mr. Kapoor by his transfer. He was cross examined at length by Mr. V.J Patel, Advocate for the 2nd party but nothing could have been gained to connect bias attitude of so called 'gentleman' of branch office, Ahmedabad. More so, nothing could have been gained to show that the 2nd party has any right for claiming his past service of 23 years to be reckoned for continuity even accepting of resignation on 11.01.1996 (F.N.). From the evidence-oral and documentary scrutinized above it is crystal clear that after resignation w.e.f. 11.01.1996 (F.N) Mr. R.S. Kapoor cannot be said to be employee on the roll of corporation/1st party for claiming benefits of C.C.I superannuation scheme, 1995.

9. So, Issue No. (iv) and (vii) are answered in negatives.

10. ISSUE NO. (v) & (vi) :- From perusal of service regulations (general) of cotton Corporation of India, produce by the 1st party at Ext.11/1, para-9 deals with probation-regarding persons recruited direct in any post and employees promoted from one post to any higher post shall be placed on probation. Admittedly as per own documents produced by the 2nd party marked Ext.16 to 51 there are several documents to show that before tendering resignation by Shri R.S. Kapoor he during service tenure after joining and getting promotions had under gone probation period. In this para-9 with 'Note'- states- the appointing authority may dispense with the above provision regarding probation in the case of purely temporary appointment not likely to exceed a period of one year and such an employee shall be liable for reversion or termination of service at any time without notice. In the light of para 9 with 'note' let us examine the status of Shri R.S. Kapoor. It has been held while deciding Issue No, iv and vii that since after acceptance of his resignation w.e.f. 11.01.1996 (F.N.) he no longer remained on the roll of corporation and having no right for any claim as to his past regular service for any benefits. The 2nd party Shri R. S. Kapoor has admitted in his evidence during cross examination after he resigned the 1st party (Corporation) has paid the amount of gratuity, CPF to him. Thus it is obvious that the employer corporation had already made payment of legal dues to the 2nd party. The 2nd party in his cross examination also accepted that on his making representation after my resignation, the corporation gave him job by order dated 05.06.1997 and his posting was for one year probation from date of joining. He also admitted that he did not oppose to extending of period of probation vide Ext.54 and that he did not make any application for making him permanent and that he received the order Ext.55 for termination/relinquishment from service. The 2nd party also admitted in cross examination that I have deposited the cheque of three months' notice salary. The 1st party's witness Mr. Badruddin in his evidence (Ext.62) para-5 states that the 1st party corporation sympathetically considered his (Mr. Kapoors') appeal and he was offered a fresh employment as a Sr. Cotton purchase officer as a very special case vide letter dated 05.06.1997 (Ext.32). He also deposed that Shri R.S.Kapoor voluntarily accepted re employment for a fresh appointment without any protest and he joined his duty as per terms and condition as stated in Ext.32. Vide para-6 he deposed that probation period i.e. from 05.06.1997 to 22.06.2000 by written order dated 23.06.2000 vide Ext.47. He also states that at the time of termination Shri R.S. Kapoor has been paid one month notice pay and retrenchment compensation for 45 days the amount of notice pay and retrenchment compensation was accepted by Mr. Kapoor without protest.

11. Ext. 53 is office order dated 05.06.1997 of corporation regarding appointment of Mr. Kapoor a fresh as Sr. C.P.O. as a very special case..... He (Shri Kapoor) will be on probation for a period of one year from the date of his joining. Ext.54 is office order of corporation dated 29.06.1998 regarding extending period of probation for one year from 30.06.1998. Ext.11/4 is office order of the corporation dated 25.06.1999 regarding extending period probation of Mr. R.S. Kapoor for one year more from 01.07.1999. Ext.11/5 letter of G.M. of corporation to ALC (central) dated 03.11.2000 go to show that Mr. R.S. Kapoor reported for duty on 30.06.1997 as per order of appointment afresh dated 05.06.1997. The G.M. intimated to A.L.C. (central) that Mr. R.S. Kapoor was terminated from service while on probation in view of unsatisfactory performance. It was also intimated to A.L.C (central) that on representation of Mr. Kapoor received and looking to his age and his hardship on humanitarian ground management has again appointed him (Mr. R.S. Kapoor) vide office order dated 20.09.2000 as Sr. C.P.O. with posting at branch office, Bhilwara but he (Mr. R.S. Kapoor) did not report for duty till stipulated time 09.10.2000. Ext.55 (11/6) is (confidential) office order dated 23.06.2000 regarding order of termination due to unsatisfactory performance during probation period and a cheque amounting to Rs. 29,077/- towards (1) One month pay in lieu of notice period and (ii) 45 days retrenchment compensation was sent to Mr. R.S. Kapoor and as per own admission of 2nd party (Mr. Kapoor) he deposited the amount of cheque in his Bank A/c. That goes to prove that Mr. Kapoor without objection accepted his termination order during probation period and also accepted the cheque amount. So there remains no

iota of grievance to Mr. Kapoor to unnecessarily raised dispute regarding his illegal termination vide Ext. 55/Ext.47. Ext.46 filed by the 2nd party regarding office order dated 30.05.2000 of corporation regarding grant of leave from 05.06.2000 to 23.06.2000 does not provide sigh of relief to the 2nd party that since he was on leave upto 23.06.2000 so his termination order dated 23.06.2000 Ext. 55/47 is illegal and unjustified. Because it is admitted fact that on the date of termination on 23.06.2000 Mr. R.S. Kapoor was still on probation and his performance was poor and unsatisfactory as per memos issued to him during probation period and so it was quite under competency of his employer (corporation) to terminate him without notice as per para 9 (note) of Ext.11/1. More so acceptance of one month notice pay and 45 days of retrenchment compensation by the 2nd party Mr. R.S. Kapoor and depositing the amount of cheque in his Bank Account make the situation crystal clear that it was accepted by him without any protest. So, no ground is available to him (Mr. Kapoor) to challenge the action of the employer corporation in terminating him due to poor and unsatisfactorily performance during probation period and there was no need to start departmental enquiry because he was not confirmed on fresh reappointment. Ext. 35 is copy of confidential adverse remarks against Mr. Kapoor for the year 1996-97 dated 09.02.1998 as to promptness in disposal of work, amenability of discipline, punctuality in attendance below average and relation with fellow employees, public relation-very poor and fitness for promotion not yet fit and final assessment still on probation and needs to be observed for longer period. The 2nd party vide Ext.36 made representation dated 24.02.1998 but no cogent evidence has been produced that the adverse remarks entry so made was ever expunged by the corporation. This tribunal is not sitting to examine the propriety of the adverse remarks rather the area of consideration of this tribunal is to adjudicate within the frame of the terms of reference. Though Mr. R.S. Kapoor made representation dated 27.06.2000 to the Chairman cum Managing Director of C.C.I. Ltd., Navi Mumbai vide Ext.48 praying there in to set aside office order dated 23.06.2000 regarding his termination but it was not set aside, rather as per Ext. 11/7 filed on behalf of the 1st party vide office order dated 20.09.2000 Shri R.S. Kapoor, who was formerly working as Sr. C.P.O. in CCI, Ahmedabad and his service were terminated vide office order dated 23.06.2000, in consideration of his representation dated 27.06.2000 addressed to CMD it has been decided to give him fresh appointment as Sr. C.P.O. as a very special case, on compassionate ground with basic pay of Rs. 6530/- and he is to report for duty at Branch Manager, Bhilwara on or before 09.10.2000, failing which this order is liable to be treated as cancelled. So it is crystal clear that another opportunity to the 2nd party Mr. Kapoor was given by way a fresh appointment as Sr. C.P.O as a very special case, on compassionate ground but instead of being obliged to the corporation he himself kicked off this offer (Ext.11/7) to join at Bhilwara (Rajasthan) on the unfounded basis that the fresh appointment order for Bhilwara was not received by him where as copy of telegram on behalf of corporation filed by 2nd party (Ext.9/50 (pucca Ext.39) is very much clear which is by way of reminding him (Mr. Kapoor) at his address Bharuch 4, Jai Santoshi Maa Flats your appointment as Sr. CPO you were required at B.O. Bhilwara on or before 9th October but you have not reported But even then as per return intimation Ext.9/51 (pucca Ex. 40) go to the extent unable to understand contents of your telegram 12th October go to show much arrogance on part of the 2nd party (Mr. Kapoor) himself rather than his self-creation of unfounded story of so called victimisation, biased attitude of a 'gentleman'.

12. As per discussion and consideration made at para 10 & 11 in the foregoing, I am of the considered view and therefore find and hold that the reappointment of Mr. R.S. Kapoor a fresh Sr. C.P.O. vide order dated 05.06.1997 with probation period likely to be extended was accepted by him. I further find and hold that since Mr. Rajnder Singh Kapoor was undergoing two times extended probation period due to adverse remarks of unsatisfactorily performances and he had not been confirmed on his reappointment a fresh so, there was no legal liability of the Cotton Corporation of India Ltd. to start departmental inquiry against him (Mr. Kapoor) and that since on the date of termination (discontinuation) vide order dated 23.06.2000, he (Mr. Kapoor) was undergoing probation period. Thus issueNo (v) is answered in affirmative and 1st part of issue No. (vi) is answered in negative whereas and part of issue No.(vi) is answered in affirmative.

13. ISSUE NO. (ix) :- The case law relied upon by Shri Vinod J.Patel, Learned counsel for the 2nd party 1998 II CLR 160 is not applicable in the case of the 2nd party since 2nd party was reappointed afresh on probation and thereafter two times probation period of one year each was extended and his termination order dated 23.06.2000 is admittedly within probation period. Whereas in the given case law Division Manager was appointed on probation period of one year and after that he was confirmed employee and so in that view of the matter his termination by giving three months' pay in lieu of notice was held illegal. So this case law does not help to the 2nd party. On the other hand Shri B.B. Thesia, Learned counsel for the 1st party (corporation) has relied upon the case law of Chaitanya Prakash & another Vs. Omkarappo (2010 1 CLR 481) it has been held – termination of respondent during period of probation by an order of termination simpliciter due to unsatisfactory service is neither stigmatic or due to misconduct rather it is a case of termination simpliciter due to unsuitability of respondent. He further relied upon case law of Head master, Lawrence School, Lovedole vs. Jayanti Raghu &Ans (2012 CLR 514)- termination of a teacher without holding an enquiry by the management of the school after expiry of

initial period of three years' probation will not be illegal..... there will not be any deemed confirmation in absence of express order of confirmation. Also relief up on the case law of sayaji Industrial Ltd. Vs. T.G. Mathew (2007 III CLR 440) Gujarat H.C. Just before completion of his probation period- petitioner terminated the services of respondent workman – Labour court held it illegal- passed award for reinstatement- Held that labour court was absolutely unjustified in directing reinstatement. Yet another case law reported in 2007 III CLR 442 Bombay H.C. has been relied on question of termination. In the case law reported in 1991 II CLR 826 S.C. the termination is held to be proper. In the case law of unit Trust of India & others Vs. T. Bijay Kumar and another (1993 LLR 153 S.C) it has been held during the probation period of performance of the probationer was watched and was not found to be satisfactory despite he having been given an opportunity to show improvement. Hence the management was constrained to put an end to his service by an order of discharge simpliciter, the management had acted within the frame work of rules. It has been held by the Hon'ble Gujarat High Court in case of Prashant Manvantrai Shah Vs. State of Gujarat & others (1995 CLR 1045) - No reason is required while terminating the services during extended period of probation and can be relieved without notice if his work was not satisfactory.

14. Thus in view of the findings to issue No. (iv), (v), (vi) & (vii) in the foregoing together with consideration of the case laws relied upon by the 1st party as well as the 2nd party in connection with respective case, I am of the considered view and therefore find and hold that the action of the management of Cotton Corporation of India Ltd., Ahmedabad in terminating the services of Shri Rajender Singh Kapoor w.e.f. 23.06.2000 is legal and justified. This issue is accordingly decided in affirmative.

15. **ISSUE NO. (iii) :-** The learned lawyer for the 1st party (corporation) has argued vehemently that the 2nd party Mr. Rajender Singh Kapoor was discharging duty of senior Cotton Purchase officer and was centre Incharge and under him several Assistant were working and he was also doing administrative function and was selecting cotton for purchase of cotton from the farmer independly and that his monthly basic salary was more than 1600/- per month and so he does not come under category of workman defined under section 2(S) of the I.D. Act. He also argued that in the year 2010 there has been amendment in section 2(S) of I.D. Act with respect to wages that has been raised from 1600/- to 10,000/- p.m. but having no retrospective effect. So the 2nd party Mr. R.S. Kapoor's case for determining whether he comes under section 2 (S) has to be examined in this respect of clause (iv) who being employed in a supervising capacity, draws wages, exceeding on thousand six hundred rupees permensem or exercise either by nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. On the other hand, it has been argued on behalf of the 2nd party that mere designation is not criterion to determine whether the person is working in managerial capacity or administrative capacity to discard him that he is not workman u/s. 2(S) of I.D. Act. He argued that the 2nd party Mr. Kapoor was not working in managerial or supervisory capacity rather all the instructions were received from Head Office or Branch office and the 2nd party had no power to sanction leave of Assistants working under him. In support of argument, the learned counsel for the 2nd party Shri V.J. Patel has cited a case law of Devkinandan Mishra Vs. Sayaji Iron and Engineering Co. Pvt. Ltd. and another (2008 I CLR 905) Gujarat High Court wherein a machinist was discharged from service for being found sleeping while on duty –labour court hold that he is not workman u/s. 2(S) of the I.D. Act. Held labour court erred in holding the petitioner not a workman. He also cited case law of Batuk S. Chauhan Vs. Factory Manager and another (2010 LLR 598) (Gujarat High Court) wherein it was held- Labour court has erred in holding that the junior Engineer was not a workman since he was appointed in a supervisory capacity where as there was no evidence in support that he was discharging supervisory duty. He also relied on a case law of Sharad Kumar Vs. Govt. of N.C.T. of Delhi and other (2002 II LLJ 299 S.C.) –Question whether person workman or not depends on nature of duties, principal duty in particular assigned to him and not necessarily on designation. On the other Shri B.B. Thesia, Learned counsel for the 1st party has relied upon case laws of S Kalyan Krishnan Vs. Blue Star Limited (2011 III CLR 1048) (Gujarat High Court) - The supervisor is an individual having authority of the employer to hire, transfer, suspend, lay off, recall, assign, reward or discipline other employees, or responsibility to direct them to adjust their grievances or to recommend action to be taken by the management. Work of supervisor is not of a merely routine or clerical nature, but require use of independent Judgement. Another case law relied upon is of H. Rama Murthy Vs. K.R.D. Technology Ltd. & another (2009 LLR 380 Andra Pradesh H.C.) – A supervisor, when he takes a specific plea that he was employed as supervisor , also supervising the work of other workers and also drawing emoluments exceeding Rs. 1600/- is not covered under the definition of workman under section 2 (S) of the I.D. Act and hence not entitled to claim any benefit under section 33 C (2) of the Act.

16. Now coming to examine the nature of work performed by the 2nd party Mr. R.S. Kapoor before his termination w.e.f. 23.06.2000. It is obvious that Shri R.S. Kapoor was appointed afresh as Sr. Cotton Purchase officer in the I.D. A. pay scale of 2340-11-2890 -120-3490-130-4140-50-4890. He was drawing total emolument of many times more than the selling

of Rs. 1600/-. As per claim made by Mr. Kapoor as per Ext. 42 regarding revised pay scale vide letter dated 26.06.1998 (during afresh reappointment as Sr. C.P.O.) he demanded basic pay of 8165 + 265(one increment)from the corporation where as it had been intimated to him earlier by corporation vide letter dated 20.06.1997 (a) pay. The basic pay and special increment incentive drawn by you last, would be protected. You may thus get a gross salary of Rs. 9246/- p.m. so admittedly the wages drawn by Mr. Kapoor p.m. was exceeding more than five times of exceeding one thousand six hundred permensem before his termination on 23.06.2000. It is admitted position that wage ceiling raised to 10,000/- by 2010 amendment in clause (iv) of section 2 (S) of the I.D. Act is not applicable in the case of the 2nd party since having no retrospective effect. In the statement of claim (Ext.4) at para-1 Mr. Kapoor stated that some worker was assisting to him at centre and that he was taking work from persons working under him. In oral evidence (Ext.9) he (Mr. R.S. Kapoor) at Page 1 on affidavit he was centre incharge and he was looking after the whole administrative work at Shriganganagar (Rajasthan) where he has worked as centre incharge. Thus it is apparent that he was exercising administrative control over staff working under him being centre Incharge at Shriganganagar in 1977 thereafter he got promotion as cotton purchase officer and then senior cotton purchase officer at Ahmedabad several staff were working under him at different centre. As per evidence of management witness Mr. Badruddin (Ext.62) para-3 while working as a senior cotton purchase office he was having sole discretion with regard to quality and purchase the cotton from cotton sellers , while performing the duties Shri R.S. Kapoor was taking the work and he was supervising the work of the staff who were working under him. As per evidence at para 12 during cross examination (last line) on recommendation of Mr. R.S. Kapoor leave of staff workingunder him was being sanctioned by the Branch office, speaks a volume that Mr. R. S. Kapoor was also exercising by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

17. Thus on consideration of the evidence and materials on the record and the case laws relied upon by the 1st party much acceptable then the case laws relied upon by the 2nd party, I am of the considered view and therefore find and hold that the 2nd party Mr. Rajender Singh Kapoor before his termination on 23.06.2000 was working in the capacity of supervisory and managerial and administrative capacity and so he is not a 'workman' under section 2(S) clause (iv) of the Industrial Disputes Act, 1947. This issue is decided against the 2nd party and answered in negative.

18. **ISSUE No. (i) & (ii) :-** In view of the findings to issue no, (iii),(iv),(v),(vi), (vii) and (ix) in the foregoing paras, I further find and hold that the reference is not maintainable and the 2nd party (Mr. R.S. Kapoor) has no cause of action in this case.

19. **ISSUE No.Viii:-** In view of the findings in the foregoing, I am of the considered view and therefore further find and hold that the 2nd party Mr. R.S. Kapoor is not entitled to any relief in this case.

Accordingly the reference is dismissed. However no order of cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट संदर्भ संख्या (80/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 प्राप्त हुआ था ।

[सं. एल-41011/109/2013-आई आर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.80/2013) of the Nagpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 10/12/2014

[No - L-41011/109/2013 - IR(B-I)]

SUMATI SAKLANI, Section Officer

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

Case No. CGIT/NGP/80/2013

Date: 24.11.2014.

Party No.1 : The Divisional Railway Manager,
Central Railway, Nagpur Division,
Kings Way, Station Road,
Nagpur-440001.

Versus

Party No.2 : Shri S.K. Shukla, Executive Vice President,
All India Guards Council,
69, Surendra Nagar, R.P.T.S. Road,
Nagpur (MS) 440015.

ORDER

(Dated: 24th November, 2014)

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 Central Railway and their workmen, for adjudication, as per letter No. L-41011/109/2013-IR (B-I) dated 30.01.2014, with the following schedule:-

"Whether the action of the Divisional Manager, Central Railway, Nagpur Division, Nagpur in denying in granting pay fixation benefit/increment on promotion from senior Goods Guard to Passenger Guard and from Passenger Guard to Mail/Express Guard in same pay band & same grade pay is just, fair and legal? To what relief the concerned workmen are entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "All India Guards Council", ("the union" in short) filed the statement of claim and the management of Central Railway, ("party no.1" in short) filed an application to reject dismissed the reference on the ground of this Tribunal having no jurisdiction to adjudicate the dispute in view of the bar created by the Administrative Tribunal Act, 1985. After hearing the parties, the following order is passed.

3. This order arises out of the application dated 05.09.2014 filed by the management of Central Railway, Nagpur Division for dismissal of the reference, on the ground of this Tribunal having no jurisdiction to adjudicate the dispute in view of the bar created by the Administrative Tribunals Act, 1985.

4. The case of the management is that the union, "All India Guards Council" has raised the present dispute on behalf of its members, who are working as Guards in different trains and the said Guards are the permanent employees of the Railway and on behalf of the guards, the union has claimed the benefits of MACP Scheme as per the judgments of CAT and the Division Bench of the Hon'ble Allahabad High Court in W.P. No.18244/2013, from the date on which, the scheme of MACP became applicable in the Indian Railways and other benefits and after the enactment of Administrative Tribunals Act, 1985 and the constitution of the Central Administrative Tribunal to adjudicate the dispute relating to service condition of the central government servants, the Central Administrative Tribunal is only empowered to decide the dispute as raised by the union and according to section 14 of the Administrative Tribunals Act, 1985, all service matters pertaining to the Central Government are to be adjudicated by the Central Administrative Tribunal and section 28 of the said Act provides that, "On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except the (a) the Supreme court, (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law or the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters." And the expression "service matter" occurring both in sections 14 and 28 has been defined in clause "q" of section 3, which says that "service matters" in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, in respect of -

- (i) Remuneration (including allowances), pension and other retirement benefits;
- (ii)

- (iii)
- (iv)
- (v) Any other matter whatsoever;

And it is clear from the aforesaid provisions of the Administrative Tribunals Act, 1985 that it is the Central Administrative Tribunal, which has the jurisdiction, power and authority to adjudicate the dispute and this Tribunal is lack of jurisdiction to decide the issue and as such, the reference is liable to be dismissed, the same being bad in law.

5. The Union has resisted the application by filing its objection and stating therein that it is a registered trade union under the Trade Unions Act and it has every right to raise the dispute under section 2(k) of the Industrial Disputes Act, 1947, before the appropriate Government and the provisions of Section 28 of the Administrative Tribunals Act, 1985 do not preclude the jurisdiction of the Industrial Tribunal and it is the choice of the union or the workman to approach either of the forums and it had raised the dispute under section 2(k) of the Industrial Disputes Act and after failure of the conciliation proceedings, the appropriate Government has referred the dispute to this Tribunal for adjudication under section 10(1) of the Industrial Disputes Act and the Tribunal has to decide the reference within the frame work of the schedule of the reference and therefore, the objection raised by the management is frivolous and liable to be rejected with exemplary cost for causing the delay.

6. Perused the record. Considered the submissions made by the learned advocates for the parties. It is not disputed that the guards, on whose behalf this dispute has been raised by the Union are the permanent employees of the Central Railway, Nagpur Division and the dispute raised is in regard to service matters concerning members of any service or persons appointed to any service or post with the affairs of the Union (Government).

It is clear from the provisions of sections 14 and 28 read with section 3(q) of the Administrative Act that the Central Administrative Tribunal under the Act is only competent to decide the issue raised by the Union on behalf of the guards and this Tribunal is precluded from entertaining the reference for adjudication and this Tribunal is not entitled to exercise the jurisdiction, power or authority in relation to such service matters.

ORDER

Hence, the application filed by the management of Central Railway, Nagpur Division is allowed. It is ordered that the reference is not maintainable before this Tribunal on the ground of this Tribunal of not having any jurisdiction, power or authority to decide the dispute. However, the Union is at liberty to approach the appropriate competent forum, i.e. the Central Administrative Tribunal for redress, if it so likes.

J. P. CHAND, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3217.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय लक्ष्मी विलास बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट संदर्भ संख्या (132/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था ।

[सं. एल-12012/38/2006-आई आर (बी- I)
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2006) of the Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Lakshmi Vilas Bank Ltd. and their workmen, received by the Central Government on 10/12/2014.

[No - L-12012/38/2006- IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

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

Present : BINAY KUMAR SINHA, Presiding Officer
CGIT cum Labour Court,

Ahmedabad, Dated 5th November, 2014

Reference: (CGITA) No-132/2006

Order No. L-12012/38/2006-IR-(B-I)

1. The Manager,
Lakshmi Vilash Bank Ltd.,
Siddharth Law College Campus,
GIDC, Sector-16, Gandhinagar,
Gujarat, GANDHINAGAR
2. The General Manager,
Lakshmi Vilash Bank Ltd.,
Salem Main Road, Kothaparai, Karur,
KARUR

(management) First Party

And

Their Workman
Sh.Shukla Ghanshyambhai Rasiklal
H-1, Shivkedar Flats,
Ground Floor,
Near Durga School, Chandlodia,
Ahmedabad, (Gujarat)

(workman) Second Party

For the first party : Shri Sachidanand Mishra, Advocate

For the second party : Shri AzadSingh J. Parihar, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi vide Order No. L-12012/38/2006- IR (B-I) dated 29.05.2006, referred the dispute for adjudication to this tribunal in respect of the matters specified in the Schedule:

SCHEDULE

“Whether the action of the management of Laxmi Vilas Bank Ltd. by retrenching the services of Shri Shukla Ghanshyambhai Rasiklal w.e.f. 13.06.2003 without following the procedure as laid down under sanction 25F & 25G of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workman is entitled to and to what extent?”

2. The case of workman (2nd party) as per statement of claim (Ext.4) is that he was engaged at Anand branch of bank as sub staff from 01.08.1996 to 02.12.1996 and then from 03.12.2002 to 13.06.2003 he was engaged as Pattawala (Peon) at Anand and Gandhinagar branch and that he completed 240 days of work in Calendar year and that he worked as regular sub staff but bank did not make him permanent/regular. He was regularly working at Anand branch of Bank but for the purpose of vexing him he was transferred to Gandhinagar branch of bank on the basis of alleged created interview papers. He was kept at Gandhinagar branch as probationer but his services was terminated w.e.f. 13.06.2003 on non-confirmation of probation period whereas he had continuously worked at Anand branch of bank and his such period of service was not considered and by wrong and illegal order he was removed from service at Gandhinagar branch due to so called non confirmation of probation period. The management of the 1st party adopted unfair labour practice against him to remove him from the service which is contrary to the principle of natural justice. He tried to get job elsewhere but he could not get. The action of the 1st party is illegal, and improper in retrenching him w.e.f. 13.06.2003 and so he be reinstated to service with back wages and costs.

3. As against this the case of the 1st party interlia as per written statement (Ext.7) is that the workman Ghanshyam Rasiklal Shukla was appointed as probationary peon vide order dated 15.11.2002. The terms and conditions of his appointment were duly mentioned in the said terms and conditions and submitted consent ‘FORM’ dated 20.11.2002. He underwent an orientation programme at Bank’s staff Training College at Karur for two days on 27th and 28th November, 2002. He joined duty at Gandhinagar branch on 03.12.2002, while working in Gandhinagar branch, he did not report for duty on 11.12.2002. It was informed that an arrest warrant was issued against him in a complaint filed in Anand Police station. He remained absent from duty till 19.12.2002. He was called for explanation by Bank’s letter dated 24.12.2002. His period of absence from 10.12.2002 to 19.12.2002, 10 days was treated under loss of pay and so his probation period got extended upto 13.06.2003 and a letter dated 19.05.2003 was issued to him for extending his probation period by 10 days. Further contention is this that he was not punctual in attending office despite being repeatedly advised by the Branch Manager. In reply to bank he admitted that he is commuting from Anand. He was informed to be punctual in duty. His service during probation was not satisfactory and so his probation was terminated on 13.06.2003 his probation was not confirmed in the Bank’s service and one month basic pay was paid to him. Necessary correspondence made with him by the bank regarding unsatisfactory work. The Bank (1st party) have denied para I to para VI of the statement of claim saying those all are false. The workman (Mr. Shukla) never completed 240 days’ work in calendar

year. He was engaged temporarily for a fixed period at the Anand branch of Bank on leave vacancy arising in the branch from time to time. He worked for a short period against leave vacancy and he was never engaged for more than five days in a week or 15 days in a month which never exceeded 180 days in a year at all. During the period of his work on leave vacancy for fixed period only at Anand Branch, he was called for an interview conducted on 24.05.2002 for recruitment of peons on permanent post as new entrant in Bank. He was successful in the selection process and he was appointed vide order dated 15.11.2002 and was asked to join the service as peon on probation for six months at Gandhinagar branch. He was asked to give his consent if he is agreeable to serve the Bank on the terms and conditions set out in the order dated 15.11.2002 he gave his consent dated 20.11.2002 and agreed to the said terms and conditions. It was not a transfer at all and the concerned workman wrongly claimed towards his harassment. On these scores, prayer is made to dismiss the reference since the 2nd party (workman) is not entitled to get any relief.

4. Considering the rival contention of the parties the following issues are taken for determination:

ISSUES

- (i) Is the reference maintainable?
- (ii) Has the concerned workman (2nd party) valid cause of action?
- (iii) Whether the concerned workman Ghanshyam Rasiklal Shukla completed 240 days' work in calendar year during the period of temp/casual works from 01.08.1996 to 02.12.2002?
- (iv) Whether the concerned workman appointed on probation period for six month can be terminated by the 1st party Bank before the end of probation period on unsatisfactory performance? Whether such termination will be treated as termination simpliciter not amounting to retrenchment?
- (v) Whether the management of the 1st party have contravened the provision of section 25F of the Industrial Disputes Act, 1947?
- (vi) Whether the action of the management of Laxmi Vilas Bank Ltd by retrenching/terminating the services of Shri Shukla Ghanshyambhai Rasiklal is legal and justified?
- (vii) Whether the 2nd party workman Ghanshyam is entitled to the relief in this case and if so, to what extent?

FINDINGS

5. ISSUE NO.(iii) & (V) :- The 2nd party workman produced 35 documents through a list marked 14. Ext. 14/1 is letter dated 01.08.1996 regarding engagement of Ghanshyam as temporary peon which clearly reveals that he should be engaged for a period not more than 5 days in a week and 15 days in a month. Such engagement should not exceed 180 days in a calendar year. (i.e.) from 1st January to 31st December,). Further stipulation is that Ghanshyam will be completing 27 years of age on 30.09.2002. Therefore he shall not be engaged from 01.10.2002 and his name also gets automatically deleted from the panel. So from engagement letter (Ext.14/1) it is obvious that workman Ghanshyam was engaged for 180 days in calendar year every year till 30.09.2002. Ext. 14/4 and Ext.14/5 (worksheet for payment of bonus 1996-97 only go to show that his total pay was Rs. 9193.95 upon which got bonus Rs. 765.85 and at 8.33%. Ext.14/7 is Xerox of monthly statement of temporary person (Ghanshyam) for the month of August-97 that shows that he was engaged for 15 days in a month in consonance with Ext. 14/1. Ext.14/8 and Ext.14/9 go to show temp. status of Ghanshyam. Ext.14/10 & Ext.14/11 dated 02.08.1999 does not go to show the status of Ghanshyam as regular substaff. Ext.14/12 is redundant document for this issue. Through Ext.14/13 Ghanshyam was paid bonus of Rs. 1483.42 for the year 1999-2000 on total pay from April 99 to March 2000 Rs. 17805.75. This does not show that he worked for 240 days in that calendar year not more than 180 days as per Ext.14/1. Ext. 14/14 and Ext. 14/15 dated 15.07.2000 and 26.08.2000 of Anand branch does not show that he was working as regular staff. As per Ext. 14/16 Ghanshyam and one sweeper Jashodaben got bonus of Rs. 4281.15 for the year 1999-2000. Ext. 14/17 does not show regular substaff status of Ghanshyam. Ext. 14/18 is Xerox of vouchers for Ghanshyam temporary substaff to payment of wages of Rs. 1755.23 to Ghanshyam for the year 2000-2001. From the above documents it is clearly proved that workman Ghanshyam was working as temp. Peon (sub staff) at Anand branch of Lakshmi Villas Bank Ltd. and he was engaged for 5 days in week and 15 days in month and 180 days in a calendar year and according to 15 days payment of wages through vouchers his bonus @ 8.33% was being calculated and paid to him at the end of Financial year. The 1st party has also filed copy of engagement letter Ext. 15/1 of Ghanshyam dated 01.08.1996 which is the same as Ext. 14/1 and already discussed above.

6. The oral evidence of Ghanshyam vide Ext.13 that he was engaged on 01.08.1996 at Anand branch is O.K. as that Ext.14/1=15/1 but his such claim that he worked upto 02.12.2002 is not worthy of credence because none of documents produced by Ghanshyam (2nd party) go to prove that he was engaged further as temp. peon after 30.09.2002. Since he had completed aged 27 years on 30.09.2002 so he was not be engaged any further as temporary peon as per letter of bank Ext. 14/1=15/1. His further evidence that he worked for 240 days in a year is falsified by Ext. 14/1=15/1 and Ext. 14/2 to 14/19 already discussed. During cross examination vide para-10 that he worked from 01.08.1996 to 13.06.2003 at Anand branch of Lakshmi Villas Bank Ltd. is not worthy of credence, because he was appointed as probationer as being

successful in interview and had joined orientation programmed for two days – 27.11.2002 to 28.11.2002 at staff Training College, Karur of Lakshmi Villas Bank Ltd and he was given staff No 2978 as per Ext. 14/22 and he joined as Gandhinagar branch as per appointment order on 03.12.2002. So in no case he can be presumed to be on duty at Anand branch w.e.f 01.10.2002 to 02.12.2003. As per Ext. 14/20 Ghanshyam was called for interview on 24.05.2002 at 9 a.m. He admits vide para-10 (last line) he was given appointment letter as probationary peon vide Annexure-B dated 15.11.2002 (his admission vide first line of para 11) and vide Ext.15/5. Vide para 12 of cross Ghanshyam workman admits he has not given any proof of working 240 days every year at Anand branch and admits he was being paid wages by vouchers. On the other hand, the 1st party (Bank) witness Mehul Chandrakant Dave, then branch manager, Anand in his evidence (Ext.17) para-1 is that Ghanshyam was engaged in Anand branch as temporary/casual employee. He says he worked in this status from 01.08.1996 to 02.12.2002. It has been discussed above that no documents of the 2nd party workman or the 1st party bank go to establish that Ghanshyam continued work as temp substaff after 30.09.2002 rather his name in the panel was automatically scrapped w.e.f. 01.10.2002 because of crossing the age of 27 as per Ext. 14/1=15/1. As per para -3 total period of work of Ghanshyam at Anand branch is only 180 days for each year and he had never worked for 240 days. The 1st party has produced copy of Bank's statement month wise from 1996 and onward showing clearly that Ghanshyam worked for 15 days in a month vide Ext.1, Ext.1-A, 1-B, 1-C, 1-D, 1-E, and Ext. 1-F for the year 1996, 1997, 1998, 1999, 2000, 2001 and 2002 respectively. In each month of every year Ghanshyam engaged for work 15 days i.e. 15×12=180 days in a year. Ext. 1-F also go to prove that Ghanshyam had been engaged for work for 15 days in between 2nd September 2002 to 28th September, 2002. The 1st party has also attached month wise vouchers in token of wages payment for 15 days in a month from August 1996 to September, 2002.

7. Thus as per discussion and consideration of the oral evidence of workman and management side together with connecting documents of both side, I am of the considered view and therefore find and hold that the concerned workman Shri Ghanshyam Rasiklal Shukla never completed 240 days' work in any calendar year from 01.08.1996 to September 2002 and so he cannot claim his retrenchment on account of violation of section 25F of the Industrial Disputes Act, 1947. SO issue No. III is answered innegative against the 2nd party and Issue No. V is also answered in negative in favour of the 1st party (management).

8. **ISSUE No. iv & vi:-** The workman Ghanshyam states clearly in his evidence (Ext.13) vide para-10 that he was called for interview on 24.05.2002 at 9 a.m. and to bring all original testimonials and that he was interviewed and he was selected and that he was given appointment letter as probationary peon. He further admits that he submitted joining report on 03.12.2002 at Gandhinagar. He also admits vide para-13 that he as per direction of Bank authority joined two days orientation training at Karur. He clearly says that Ext. 14/27 is in his pen and signature. Ghanshyam (2nd party) in his evidence during cross examination admitted as to office order dated 15.11.2002 of Bank's personal Dept. Karur (Marked Annexure-B) regarding his appointment as probationary peon, joining Training Programme at Karur Staff Training college on 27th & 28th November 2002, direction for joining the services of Bank as probationary peon at Gandhinagar branch of Bank and that his service will count from the date of joining at this branch office, accepting as to probation period of six months the date of joining at the branch office in the pay scale of 2750-5080 plus D.A. The office order also shows that during the period of probation leave rules as applicable will be applicable to him (Ghanshyam) para-5 of office order dated 15.11.2002 (Annexure-B) clearly stipulates that” if his progress and behaviour are not satisfactory in the opinion of the management, the bank may extend probation for a further period of 3 months. If his services during probation are not satisfactory his probation may be terminated at any time during the period specifying the reasons for such termination by giving one month's notice or one month's basic pay in lieu thereof. The probationer may also leave the services after giving one month's notice on one month's basic pay in lieu thereof. “Ext. (Annexure-B-1) dated 20.11.2002 filled form of consent by Ghanshyam R. Shukla agreeing to attend the orientation training and accepting offer as a probationary peon and undertaking to work wherever I am posted/transferred. This consent it is in pen and signature of workman Ghanshyam. Ext. Annexure B-2 is joining report dated 03.12.2002 of Ghanshyam at Gandhinagar branch. Ext. 14/27 is Xerox copy of leave application filled up form by Ghanshyam for one day. It is admitted fact that Ghanshyam had applied for one day leave on 10th December, 2002 but he remained absent from duty upto 19th December, means for 10 days. Then as Ext.14/25 leave availed by Ghanshyam from 10.12.2002 to 19.12.2002- 10 days had been sanctioned as ELOP. This order is dated 21.01. 2003 By that time for the month of December, establishment prepared pay bill of Ghanshyam for whole month of December, 2002 without deducting pay for 10 days ELOP as per Ext. 14/23. But as per Ext.14/26 the Xerox copy of pay bill of Ghanshyam for the month of January 10 days period of ELOP was deducted with basic pay only 1862.90 instead of 2572.58. so these papers submitted by the 2nd party itself proves that 10 days ELOP left to be deducted from December, 2002 pay was deducted in the month of January 2003. As per Ext. 14/28 xerox copy of letter dated 19.05.2003 of Administrative office, Karur, due to availing 10 days leave in excess of eligible leave and same treated as ELOP resulting in probation period of Ghanshyam extended by 10 days, i.e. Upto 13.06.2003. It is undisputed that before completion of extended period of probation of 10 days that was to be completed after 13.06.2003, Ghanshyam probation was not confirmed vide Ext. 14/31 and was terminated from the services of the bank as probation not confirmed. The 1st party has also submitted this documents as Ext. Annex-C3.

9. The 2nd party workman in his oral evidence vide para-14 admitted as to extending 10 days probation period vide Annexure-B/4. As per evidence vide para-15, he did not make protest as to his signing on form of consent on 20.11.2002 (vide Ext) Annexure B-1 (Ext.15/4). He also admitted as to Ext. M-15/11 dated 02.05.2003 as to observing and maintaining punctuality in attending duty. Vide para 16 he states that 5-6 candidates were faced interview among whom Ranjitbhai is working at Baroda branch of Bank. Vide para-17 he admitted as to receiving letter dated 13.06.2003 (Annexure-C/3) by which his probation was not confirmed and vide Ext. 14/32 his service were termination from the bank and that he did not make written protest. He admitted that with termination letter one month pay Rs. 2750/- also sent through demand draft. The 2nd party workman does not deny as to refusal to accept one month pay by demand drafts on his termination from the services.

10. The 1st party witness Mr. Mehul in his oral evidence vide para-17 clearly stated that workman (Ghanshyam) was since on probation period at the time of termination and so there was no need for conducting department inquiry. Monthly report was being sent by branch manager to H.O. regarding workman. Vide 20 he has no idea whether Ghanshyam remained unemployed after termination and vide para-2, the bank will not keep Ghanshyam in service due to non-confirmation of probation period. Annexure –C dated 10.03.2003 is regarding performance of Ghanshyam during probationary period 03.12.2002 to 31.12.2002 and for month of January and February 2003 that shows that he (Ghanshyam) was not punctual in attending to the office at Gandhinagar and was being advised by the branch manager repeatedly to maintain punctuality. This letter was given to Ghanshyam by giving opportunity to attune himself so that such adverse reports on discipline are not observed in future. In reply to this letter Ghanshyam in his letter dated 26.03.2034 (Annexure C-I) he is coming to Gandhinagar from Anand and his wife is studying there and there is no possibility to shift the family..... assuring to discharge his duties to the utmost satisfaction of superior..... assuring to maintain timing The management of Bank vide letter dated 02.05.2003 (annexure C-2) was not satisfied with reply of Ghanshyam that as to shifting family from Anand. Since Ghanshyam appears to be not maintaining punctuality and daily commuting from Anand to Gandhinagar and so management of Bank was not satisfied with his such behaviour during probation period inspite of giving repeated warning to him as a result his probation was not confirmed and was terminated from the services of bank with one month pay.

11. The learned lawyer for the 2nd party argued that action of the management of Lakshmi Vilas Bank Ltd. is illegal and unjustified in terminating the services of Ghanshyam w.e.f. 13.06.2003 without conducting departmental inquiry and so his termination is retrenchment without paying compensation. But the learned counsel has not cited befitting case law that termination on unsatisfactory performance during period of probation will be retrenchment and not termination simpliciter. On the other hand, the learned counsel for the 1st party has emphatically argued that since termination of probationer's service is not a retrenchment as per settled proposition of law and since Ghanshyam Shukla's work as probationary peon was not satisfactory based on his overall performance in the Bank during the probation period as per rules and service conditions of the Bank, his service were terminated and the same is termination simpliciter and not at all retrenchment. Reliance is placed on the case law of municipal committee, sirsa and Munshi Ram (2005-I- LLJ.1047 S.C) termination simpliciter casting no stigma during probation period, there was no need for formal proceedings of inquiry. In the case of Chaitnaya Prakash & another vs. Omprakash (2010 LLR 225 S.C) if an order of termination of a probationer refers too unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In the case of Paramjitsingh vs. Director, Public instruction & others (2011 LLR 16 S.C) – termination of a probationer on account of unsatisfactory performance can never be treated as penal. Case law of Bharat Petroleum Corp Ltd. Vs. D. Nagendra (2006-1-LLJ Madras 938) has also been relied upon. Ext. 14/32 notice of termination dated 14.06.2003 clearly shows unsatisfactory performance of duty by Ghanshyam inspite of repeated reminder and caution, instruction as a result management not able to confirm him in our employment. Accordingly probationary employment of Ghanshyam at close of office hours on 13.06.2003 is terminated with remittance of draft for Rs. 2750/- being one month's basic pay and also accepted by the 2nd party (Ghanshyam).

12. As per discussions and consideration above I am of the considered view and therefore find and hold that concerned workman Shri Ghanshyam R. Shukla who had been appointed on probation of six month can be terminated by the management of 1st party on unsatisfactory performance before the end of probation period and his termination dated 13.06.2003 will clearly be treated as termination simpliciter having no stigma. I further find and hold that the action of the management of Lakshmi Villas Bank Ltd. by terminating/retrenching the services of Shri Ghanshyam R. Shukla are legal and justified. Thus issue No. IV and VI are answered accordingly.

13. ISSUE NO. (i) & (ii) :- In view of findings in the foregoing to issue No. iii, iv, v & vi, I find and hold further that the reference is not maintainable and the concerned workman (2nd party) has no valid cause of action to raise this Industrial dispute. Accordingly further Ext.6 the separate application of the 1st party to decide preliminary issue and reply of the 2nd party (Ext.9) kept pending on the record to be looked into and considered while deciding all issue along with maintainability of the reference as per order (Ext.12) dated 26.12.2011 needs no separate consideration now. Since after deciding of main issue above that the reference is not maintainable and the workman having no cause of action.

14. **ISSUE No. (vii) :-** In view of findings to issue no (i) to (vi) in the foregoing, the 2nd party workman Shri Ghanshyam R. Shukla is not entitled to any relief in this case.

Accordingly thereference is dismissed. No order of any cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट संदर्भ संख्या (39/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था 1

[सं. एल-41011/100/2011-आई आर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.39/2012) of the Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Paschim Railway and their workmen, received by the Central Government on 10/12/2014

[No. L-41011/100/2011 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present : Binay Kumar Sinha,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad, Dated 29th August, 2014

Reference: (CGITA) No-39/2012

Adjudication order No-L 41011/100/2011-IR(B-I)

The Works Manager,
Signal Workshop, Western Railway,
Sabarmati, 'D' Cabin,
Ahmedabad(Gujarat)

...First Party

Versus

The Joint Divisional Secretary,
Paschim Railway Karmachari Parishad,
28/B, Narayan Park,
Behind Chandkheda Railway Station,
Sabarmati,
Ahmedabad(Gujarat)

...Second Party

For the 1st party : Shri Harish B. Shah, Advocate

For the Second Party : Shri Raghuveer Singh Sisodia, President, (P.R.K.P)

AWARD

The Government of India/Ministry of Labour, New Delhi vide order No. L-41011/100/2011(IR (B-I)) dated 30.01.2012 referred the dispute for adjudication to this tribunal (C.G.I.T.-cum-Labour Court, Ahmedabad) in respect of the matters specified in the schedule:

SCHEDULE

"Whether the action of the management of works Manager, Signal workshop, Western Railway, Sabarmati, Ahmedabad in not paying family pension to Ms. Bimlaben, daughter of late Shri Hanuman Prasad Gosai, Ex-Moulder is legal and justified? What relief the workman is entitled?"

2. As per statement of claim (Ext.3) the case of the Union (P.R.K.P) is that the Union raised a charter of demand against the 1st party seeking pensionary benefits to Ms. Bimlaben, unmarried daughter of late Hanuman Prasad Gosai, who was working as Ex-Moulder. The workman Late Hanuman reaching the age of Superannuation retired from service w.e.f. 31.05.1983. He was getting pension. He expired on 05.04.1994. Thereafter family pension was given to his widow Maniben who died on 20.04.2009. After death of Maniben, Bimlaben claiming to be unmarried daughter of Hanuman Prasad Gosai submitted an application to the 1st party for grant of family pension to her. The 1st party did not grant said benefit to Bimlaben. On the ground that in the settlement paper/nomination filed by the workman Hanuman Prasad Gosai She (Bimlaben, daughter of Hanuman) has been shown 'married'. The Union has contended that factually status showing Bimlaben as married daughter of workman Hanuman Prasad Gosai is incorrect and is a bonafide mistake while filing up nomination form by the workman Hanuman Prasad Gosai. The marriage of Bimlaben was never solemnized till date which is supported by election commission of Identity card. Affidavit of Bimlaben and Indemnity bond of Bimlaben given before the 1st party under taking to indemnify the 1st party if she is found married and the certificate obtained from Municipal Councillor, Ration Card to show her unmarried. On these grounds, the 2nd party/Union has prayed for directing the 1st party to grant family pension to Vimla, daughter of deceased workman Hanuman Prasad Gosai from the date of death of her mother with interest and to grant any other relief to which the 2nd party is found entitled.

3. As against this the contention interlia of the 1st party as per written statement (Ext.6) is that the dispute raised by the Union is not Industrial dispute and that granting or non-granting pensionary benefit to employee or through employee by way of family pension does not fall within the ambit of industrial dispute. It is the contention of the 1st party that pensionary benefit or family pensionary benefit is a policy matter viz eligibility of pensionary benefit on reaching age of superannuation or leaving employment or sickness and in case of death family pensionary benefit can be availed by family member only. It is policy matter and all members of deceased employee are not eligible to family pensionary benefits. The dispute raised by charter of demand by union and referred for adjudication is individual dispute and not an Industrial dispute and so union is having no right to serve charter of demand or raise industrial dispute. Late Hanuman Prasad was a railway Employee and medically incapacitated and so retired before attaining age of superannuation on 31.05.1983 and he (Hanuman Pd.) expired on 05.04.1999. Hanuman Pd. On retirement was eligible for pensionary benefits and he has submitted an application with documents for settlement and he (deceased employee) had filed declaration in Appendix B (Form No. 118/F) wherein he declared/narrated name and marital status of his daughter married daughter does not fall within the purview of family. In declaration Form name of deceased's wife is mentioned and so after death of Hanuman Prasad Gosai, She being widow was getting family pension. During life time deceased Hanuman Prasad Gosai made declaration in prescribed form which is a conclusive evidence that Vimla daughter of deceased was having marital status and said declaration can be rectified by deceased employee. Further contention is that declaration of deceased Hanuman Prasad is conclusive proof of married daughter and only with a view to get undue benefits Vimla on ill advise from Union trying to get pensionary benefits on alleged ground of bonafide mistakes. Only deceased was having right to make necessary, rectification, but daughter can not avail such remedy to rectify mistake. After death of Hanuman Prasad Gosai, his widow also not drawn or submit any details of such mistake and so certificate of councillor or declaration by Vimla or Ration card is not authentic documents to rely upon. Evidence Act also discards the said documentary evidence referred above as conclusive proof. Further case is that deceased employee Hanuman got benefit of complimentary pass deceased's wife was also getting this benefit. But as per available records Vimla's name was not included to avail free pass complementary facilities since she was not eligible, She (Vimla) was not having unmarried status and so had not availed the facility of free pass. On these scores, prayer is for rejecting the reference since 2nd party/Union has no valid cause of action. Reference is not maintainable. Reference is also barred by delay and latches.

4. As per rival contention of the parties the following issues are taken for determination:

ISSUES

- (i) Is the reference maintainable?
- (ii) Has the 2nd party/Union (P.R.K.P.)/ Vimla any valid cause of action to raise dispute?
- (iii) Whether the action of the management of works Manager, Signal workshop, Western Railway, Sabarmati, Ahmedabad in not paying family pension to Vimlaben daughter of Late Hanuman Prasad Gosai, Ex-Moulder, is legal and justified?
- (iv) Whether Vimlaben daughter of deceased employee is entitled to get relief as claimed in the statement of claim filed by the Union (P.R.K.P)?

FINDINGS

5. ISSUE NO. (iii):- On behalf of the 2nd party Union P.R.K.P. 14 documents are filed with list Ext.5 and those documents are Ext. 5/1 to 5/14. Ext. 5/1 is copy of demand raised by P.R.K.P's joint secretary Hemant Kumar to general Manager, W.R. , Church gate, Mumbai and works manager ,Signal workshop D cabin, Sabarmati and its copy given to A.L.C (central) , Ahmedabad for necessary action. This charter of demand of P.R.K.P is dated 29.03.2011. Ext. 5/2 is Xerox copy of letter dated 09.03.2010 of works manager's office addressed to Vimlaben Gosai daughter of Late Hanuman Prasad

Gosai on the subject regarding pension to dependent unmarried daughter with reference to Vimla's application dated 20.07.2010. Through this letter it was informed to claimant Vimla that on verification of her father Hanuman Prasad Gosai, Moulder Grade-II filled paper concerning settlement in Form 136/F there is details of family members and she has been shown married daughter, (2) on verification of pass A/c her (Vimla's) father and mother wherein she (Vimla) has not been shown as unmarried daughter. So according to verification of above documents your application for grant of family pension being unmarried daughter is rejected. Ext.5/3 is Xerox of reminder letter of Vimlaben D/o Hanuman (deceased employee) addressed to works manager (signal) W.Rly. Near D Cabin, Sabarmati which is dated Nil September, 2009 with reference to her previous letter dated 30.01.209 and 03.07.2009 along with requisite enclosures supporting the claim. Ext. 5/4 is Xerox of Ministry of Personnel, P.G & Pension/ Ministry order dated 06.09.2007 as to extension of scope of family pension to unmarried daughters to the Govt. servants/pensioners even after attaining the age of 25 years....." Ext. 5/5 is Xerox copy of indemnity bond Vimla daughter of Late Hanuman Prasad Gosai which is dated 20.08.2010 mentioning that she is living with elder widow sister at E-45 Mayur Park, Ballard Park and that she is unmarried date of birth 22.07.1966 and studied up to 7th class. In this indemnity bond Vimla has mention names of her two other elder sisters at Sl. No. 1 and 2 and at Sl No. 3 She mentioned her names, at Sl No. 4 & 5 mentioned name of her two brothers Tikam and Rishi. She claimed that she is unmarried and now over aged and so she can't be married and is dependent and unemployed. In last para it has been incorporated to indemnify Rly. Department if her declaration and information are found false. This document indemnity bond (Ext.5/5) appears to be suo motto brought into existence by Vimla since her claim for family pension when rejected on 09.03.2010 by works Manager Signal, Sabarmati then there is no question that Rly administration has had asked from Vimla for giving such indemnity bond (Ext.5/5). Ext. 5/6 is Xerox copy of affidavit of Vimlaben dated 21.01.2009 to the effect that she lives with her mother who is suffering from paralytic attack and unable to move and that she is unmarried and that this affidavit is sworn for the purpose of filing before railway administration when it is required. This Ext. 5/6 is also self created document by Vimla in anticipation of laying future claim of pensionary benefit other when her mother who is alive and receiving family pension died. This is questionable why not Vimla's mother Smt. Mani Devi, Widow of deceased Hanuman who was receiving family pension, sworn any affidavit that her daughter Vimla is unmarried and living with her. So during life time of Smt. Maniben widow of deceased employee Hanuman Prasad Gosai there was no competency to Vimla to sworn affidavit dated 21.01.2009 when her mother was alive and died on 20.04.2009 as per admission of the 2nd party in para 2 statement of claim. Ext. 5/6-1 is another affidavit dated 25.01.2010 of Vimla sworn before Notary regarding self-declaration that she is unmarried and for the purpose of getting family pension from Rly. Dept. She is swearing. In this affidavit she has given her address E-45, Mayur Park Society, Ballard Park, D Cabin Sabarmati, Ahmedabad which is residential address of her second elder sister namely Sushila as per indemnity bond Ext. 5/5. In the affidavit dated 21.01.2009 address of Vimla is also the same E-45, Mayur Park Society, Ballav Park, D cabin, Sabarmati, Ahmedabad. These documents itself go to show that Vimla was living with her 2nd elder widow sister at E-45, Mayur Park and not with her mother Maniben who during life time was living in the quarter 633B allotted to Tikam, brother of Vimla with her two sons, Tikam and Rishi. As per self-statement of Vimla in suo motto indemnity bond (Ext.5/5) she (Vimla) had virtually no relation with her two brothers living Rly. Quarter. Vimla's living with her next elder widow sister Sushila at her residence E-45, Mayur Park from 01.01.2006 is proved from Vimla's Election Commission of India Identity Card (Ext.5/8) in which her residential address is mentioned B-45, Mayur Park. That go to show that during life time of Smt. Maniben widow of Hanuman Prasad Vimla was living with her next elder widow sister and not with her mother who was living with son. Moreover, Ext. 5/8 cannot be considered as relevant documents that Vimla is unmarried when her father had declared in Form 136F dated 31.05.1983 that his daughter Vimla is married as per Ext.5/13 the Xerox copy of that filled up form submitted with list by 2nd party Union and that documents has also been produced by 1st party (Railway). Ext.5/7 is certificate without date given by Municipal Councillor Shri Sunendra Kanmal Jurawala that Vimla is unmarried daughter of Hanuman Prasad Gosai, Municipal Councillor certificate is not relevant documents to discard the declaration made by Late Hanuman Prasad Gosai on 31.05.1983 in connection with settlement due to medically unfitness w.e.f. 31.05.1983. Ext. 5/9 is Xerox copy of ration card in the name of Hanuman Prasad Gosai showing names of four members with relation where Vimla aged 30 has been shown daughter of Hanuman. The ration card entry is not relevant document to prove the factum of unmarried status of Vimla in comparison to declaration by the ration card holder Hanuman Prasad Gosai himself on 31.05.1983 in declaration Form G 136/F which is with signature of Hanuman Prasad Gosai, Ext.5/10. Xerox copy of certificate of birth of Vimla dated 22.07.1966 has only relevancy to that she is daughter of Hanuman Prasad Gosai and Maniben and at the time of birth Vimla was living with parent in Railway New Co. 653-A, Sabarmati. Ext. 5/11 Xerox copy of school leaving certificate has only relevancy that Vimla Passed class 7 exam in April 1980 having date of birth mention 22.07.1966. This go to show that She (Vimla) passed class 7 exam at the age of 14 years whereas her father Late Hanuman Prasad Gosai had made declaration on 31.05.1983 that his daughter Vimla aged 17 is married. Ext.5/13 declaration of late Hanuman Prasad Gosai on 31.05.1983 on the eve of his retirement for submitting settlement paper for pensionary benefits clearly mentioned in the family particulars, his wife Maniben aged 40, Son Tikam aged 15 ad second son Rishi aged 11, eldest daughter Chandrakala aged 23 years-married, second daughter Sushila aged 20 years married and youngest daughter Bimla aged 17 years married. From examining this declaration by Late Hanuman Prasad it is evident that his wife Maniben gave birth to 1st baby child (Chandrakala) at the age of 16 years. So, such contention raised by Shri R.S. Sisodia (Union representative 2nd party) that Vimla was only 17 years on 31.05.1983 and she was not of marriageable age in view of child marriage Restraint Act had not been enacted and was not come into force on 31.08.1983

so it can be very well guessed that when Maniben was married to Hanuman Prasad Gosai at the age of about 16 years then it is not at all surprising matter that how Vimla aged 17 years incorporated "married" by her father Hanuman Prasad on 31.05.1983. More so right for any rectification in the filled up declaration Form was only to late Hanuman Prasad Gosai who admittedly died on 06.04.1999. After death of Hanuman his widow Smt. Maniben was getting family pension during her life time 19.04.2009. She might have some competency in pointing out to Rly administration that her daughter Vimla is unmarried or that her husband Late Hanuman Prasad Gosai had given in correct/wrong declaration about Vimla showing "married". Had Maniben given any objection to such declaration of her husband on 31.05.1983 during her life time to Rly Administration that might not have been conclusive evidence for rectification in the declaration Form- G.136/F filled by retired Rly. Employee Hanuman Prasad Gosai on 31.05.1983. In such view of the matter Vimla has no competency to raise dispute through the Union (P.R.K.P) that she is unmarried challenging the clear declaration made by her father Late Hanuman on 31.05.1983. Ext.5/13 is Xerox copy of death certificate of Hanuman Prasad Gosai on 06.04.1999. This is not disputed. Ext. 5/14 is Xerox copy of revised P.P.O. regarding family pension to Maniben w/o Hanuman Prasad Gosai dated 03.08.1999. This does not create a right in Vimla to receive family pension by her at revised rate. This Ext.5/14 was sent to Maniben Devi on the address W/o Hanuman Daulatram/620/ B Railway Colony, Sabarmati, Ahmedabad. This also go to discard that Vimla was living with her mother, rather documents discussed above proves that Vimla was living with next elder widow sister at B-45, Mayur Park Society, Chandkheda, Toluka Gandhinagar on 11.05.2007 as per Election I. Card (Ext.5/8) , as per Ext.5/7, as per Ext.5/6 and 5/7 and 5/5.

6. Ext.7 is affidavit in support of oral evidence of Vimla has tried to support the statement of claim submitted by the Union. But she at para-2 has stated wrong fact in claiming that "I am the only surviving heir of my deceased father who is available." The two sons of late Hanuman pd. Gosai are also very well alive and two other daughters Chandrakala and Sushila are also alive coming in the category of class-I heirs under section 8 of the Hindu succession Act, 1956. Again at para-4 She (Vimla) made quite wrong statement-"I am the only legal heir of my deceased father Shri Hanuman Prasad Gosai is available in the entire family." Her statement at para-5 does not also gather any confidence when she states indemnity bond and affidavit dated 21.01.2009 has already received by the 1st party (Western Rly. Administration). The question would who gave authority to Vimla to swear affidavit dated 21.01.2009 when her mother Smt. Maniben W/o Hanuman was very much alive and was receiving family pension. Again wrong statement has been made in affidavit by Vimla at para 7 (Page-4)..." the 1st party employer suo-motto not granting/extending me the pensionary benefits for which I am entitled after sad demise of my father. "It is very surprising situation how a married daughter-Vimla, declared by her father Hanuman on 31.05.1983 on the date of his retirement and died on 06.04.1999 without rectification by him in the declaration Form, can be entitled to family pension even surpassing widow of Hanuman who was getting family pension up to 19.04.2009 and how Rly. Authority will grant family pension suomotto to Vimla when she had been shown married daughter 3 by father. Again Vimla in her affidavit at para-8 has given contrary statement contradicting para 1 (on page 2) and para 2 (page-3) of statement of claim (ext.3) submitted by the Union P.R.K.P. In para-1 of S/c it has been incorporated "Hanuman on reaching the age of superannuation has retired from service..... On his death his wife was getting benefits of family pension till she remained alive. The wife of Hanuman Prasad Gosai also expired on 20.04.2009. After the death of wife of Hanuman Prasad Gosai his unmarried daughter named Vimlaben submitted application to grant her family pension" At para 2 of S/c in the middle....."Thereafter he (Hanuman Prasad) expired on 05.04.1999 and accordingly his wife was granted the benefit of family pension..... The wife of Shri Hanuman Prasad Gosai expired on 20.04.2009 and therefore unmarried daughter of Hanuman Prasad Gosai. Miss Vimlaben as a legal heir, applied for extending her the benefits of family pension. "At Para 5 (A) of S/c in relief portion it has been sought for....."the 1st party employer be directed to grant family pension to the daughter of deceased workman Shri Hanuman Prasad Gosai, from the date of death of her mother....." The Union as per statement of claim has demanded family pension for Vimla from 20.04.2009 i.e. date of death of her mother Smt. Maniben. But Vimla in her affidavit (Ext.7) vide para-8 has claimed entitlement for family pension from 05.04.1999 on death of her father which is beyond the relief portion at para-5 (A) of S/c. More so, during cross examination by the 1st party Lawyer Shri H.B. Shah vide para 11 she admitted that her father retired on 31.05.1983 and father had got terminal benefit and his pension was also fixed by the Rly. Deptt. However, she shows ignorance that her father had filled up Forms giving details of family members. Vide para-12 she admits that father got pension up to his death vide para 13 she states it is not true that father had filled form showing daughter Vimla married, She admitted that she is residing at Mayurbag society with her elder sister. Vide para-14 she admits that Rly. Department vide letter dated 09.03.2010 had sent reply to her that your father had in filled form declared you married and so your application for grant of family pension was rejected. Vide para-15 she admitted that after death of father family pass was given to mother also admitting that Rly department used to keep and maintain travelling pass register. Vide para-16 she also categorically admitted that in the year 1990, 1999 and 2003 her mother in railway pass had not mentioned her name as unmarried daughter. It was suggested to her during cross-examination that her father and mother in Railway records had not shown her unmarried daughter to which she stated that it is not a fact that her claim for getting family pension is wrong and false.

7. Another witness of 2nd party is Balu Ram who has deposed vide Ext.8 that he was knowing Hanuman Prasad Gosai who was Working in signal workshop, Sabarmati and he was working in Engg. Workshop, Sabarmati. This witness after retirement is residing at his native home at Ajmer. He vide para-2 says that Hanuman Prasad was suffering from Motiabind such is not case of the 2nd party. The 2nd party had not pleaded that Hanuman became blind and so he was retired earlier

than attaining the age of superannuation. This witness has deposed beyond pleading. There is clear pleading vide S/c para-2 Hanuman retired from the service on reaching the age of superannuation. Nowhere it has been pleaded by 2nd party that Hanuman was blind or suffering from eye disease Motiabind (cataract) or (glaucoma). This witness No. 2 BaluRam appears have been tutored to depose by developing new case that Hanuman was incapable of seeking and welfare Inspector used to get the Form filled up of retiring Rly employee two moth prior to retirement which is falsified by Ext. 5/13 which is Form 136/F filled on 31.05.1983 with signature of Hanuman. More so, in the statement of claim (Ext.3) nowhere it has been pleaded that welfare Inspector used to fill up Form of retiring employee two moth prior to retirement. Witness Balu Ram is not relative of Hanuman's family so he is not competent witness to say about relationship and marital status of family members of Hanuman. As per provision of section 50 of the Indian Evidence Act, near relative and kith and kin are only competent witness to say about factum of marital status of any person. The brothers of Vimla, the sisters of Vimla, the brother in law (Behnoi) of Vimla, the uncle, Aunt, Bua, father, mother, grandfather, grandmother etc. Can be said to be competent witness as per section 50 of evidence Act to say about factum of marriage of Vimla or to discard her marital status that she is not married. The category of Balu Ram under section 50 of Indian Evidence Act will be of third person having no special source of knowledge. Witness Balu Ram failed to say that he ever attended marriage ceremony of two elder daughters of Hanuman Prasad Gosai being a friend or neighbour or intimate for giving any impetus on his testimony that Vimla is unmarried. SO witness BaluRam appears to have been a tutored witness and so his evidence that Vimla is unmarried is not worthy of credence because of having no special source of knowledge, he was not present when Hanuman Prasad Gosai had filled settlement Form and he has no knowledge what facts and declaration were made by Hanuman. His statement in falsified that Hanuman had filled settlement form in 1985. Admitted fact is that Hanuman retired on 31.05.1983 and his filled up form mentioning family members their marital status is also dated 31.05.1983 with Hanuman's signature.

8. The 1st party has also examined a witness Shri Ram Gopal H. holding post of works Manager in signal workshop His affidavit with annexure us ext. 9, 9/1, 9/2, 9/3 and 9/4. He states at para 4 that claim of getting family pensionary benefits of Vimla is contrary to rules framed by Railway and also contrary to declaration of deceased moulder Hanuman. Vide para 5 deceased Hanuman moulder, who was father of Vimla was in service with 1st party that his service terminated on 31.05.1983 due to medical incapacity to work. Vide para-6 Hanuman due to medically unfit was relieved from service on 31.05.1983 according to service tenure, he was eligible vide para-10 Late Hanuman pensionary benefits fall within the purview of invalid pension as late Hanuman was relieved from service due to medically unfit for further service. Vide para-12 for getting the pensionary benefit a delinquent employee has to submit the application with requisite documents in Form No 136/F which relate to particular of family members, mode of payment of pension and address for communication. The said filled Form 136/F is also having signature of deceased Hanuman with date and counter signature of authority (Vide Ext.9/1) vide para-13 and 14 details of family members of deceased Hanuman is reproduced as per Form 136/F (Ext.9/1) of the 1st party. Similarly Ext.5/12 is submitted by the 2nd party. All the three daughters Chandrakala aged 23, Sushila aged 20 and Bimla aged 17 have been shown married daughters. Vide para 15 the witness further states that retired Railway employee also eligible for free pass, for which a register is kept by Railway. The said register contains names of deceased Hanuman and his wife Mani Devi, other family members names were not in the register of pass. Vide para 17 family pension will be admissible to only one person at a time of the following relatives 1 widow. Widower 2. Son until attaining age 25 3. Unmarried daughter until she attains 25 years or she marries whichever is earlier. Vide para 18 he says further Railway Board vide circular No. F (C) III/207/PMI/5 dated 18.09.2007 enter age of 25 years was removed and granted benefit of family pension to unmarried daughter above 25 years subject to other eligible children below 25 years have ceased to be eligible. The 2nd party has submitted office memorandum vide Ext.5/4 already discussed above while dealing with documents filed by the 2nd party. This office memorandum at para-2 says that grant of family pension to unmarried/widow/divorced daughter shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above her has become ineligible for grant of family pension. In this context examining the declaration Form 136/F of Hanuman with date and signature dated 31.05.1983 his minor son Tikam aged 15 years might have been entitled for family pension till 1993 and minor son Rishi aged 11years till 1997 had Hanuman died earlier and his wife Maniben also died earlier before 1993. But as per death certificate Ext. 5/13 Hanuman died on 06.04.1999 and his wife Maniben died on 20.04.2009 and so by that time both sons have crossed the age of 25 years. Yet examining from another angle as per Ext. 5/4 Vimla's elder widowed sister Sushila daughter of hanuman had better claim for getting family pension after death of her mother Maniben on 20.04.2009.

9. The 1st party witness states at para-19 that as per family pension scheme, the widow of deceased employee getting family pension benefits widow as nominated by deceased, getting benefit of pensionary benefit.... family pensionary benefit is not available to heirs of deceased..... Vide para 20 he states that statement of deceased (indicating) to Ext.9/1-5/12 is having force of law and said statement is made by deceased and so cannot be disbelieved in any circumstances. Vide para 22..... at the time of submitting requisite (Form 136/F) Vimla was married daughter and therefore rightly mentioned and said statement of deceased married daughter is having statutory force. Vide para 23 the demand for family pensionary benefits to Vimla at para-26 during cross examination by the 2nd party Shri R.S. Sisodia has categorically denied saying it is not true that health and welfare Inspector used to fill form of Rly pensioner.

He volunteers that whole and sole responsibility is of retiring/Retired Rly. Employee in filling the requisite Form and that welfare Inspector only used to help the Rly. Workman The Xerox copy of letter of Head quarter, Chuchgate, Bombay dated 19.07.1989 (ext.10/1) filed by the 2nd party says at para 2.2 In the case of those who are declared medically unfit for retention in service..... and opt to retire on medical grounds, immediate action should be taken to pay settlement dues by utilising the services of welfare Inspector who will arrange to get settlement Forms filled from the staff and ensure prompt settlement. So it is not to fill the Form himself rather to get it filled by the employee staff. Ext. 10/2 is Xerox copy of page 4 regarding staff & welfare Inspector para-9 is very much clear to help retiring staff in getting settlements and pension benefits and also to the families of deceased in getting dues. But does not indicate that welfare Inspector will himself fill up Form on behalf of retiring employee as suggested by Shri R.S. Sisodia, President P.R.K.P (2nd party) to witness of the 1st party at para 26 which the witness rightly stated it is not true that welfare Inspector used to fill settlement Form on behalf of retired Rly employee. More so, Ext. 9/2 and 9/3 & 9/4 register of free passes and P.T.O.'s issued to employees and also falsify claim of Vimla that she is unmarried as no pass ever issued showing her name too being dependant.

10. The argument advanced by Shri R.S. Sisodia for the 2nd party union is not tenable that indemnity bond Ext.5/5, Affidavit dated 21.01.2009 (Ext.5/6) and affidavit dated 25.01.2010 (Ext.5/7) of Vimla, certificate of municipal councillor (ext.5/7), Election Identity card of Vimla (ext.5/8), Ration card (Ext. 5/9), supported by affidavit examination in chief of Vimla (ext.7) and oral evidence of Balu Ram (Ext.8) will prevail upon Ext. 5/12-9/1 the filled up form 136/F by deceased Hanuman Prasad Gosai at the time of his retirement on 31.05.1983 regarding incorrect statement/declaration by him that Vimla his daughter is married and so it should be treated to be incorrect. The reasons in details have been incorporated while making discussion that no other person is competent to rectify the statement/declaration made by Hanuman (now deceased) and that it was Hanuman himself who could have rectified his own statement during his lifetime. Such argument of Shri H.B. Shah in his written argument (Ext. 13) vide para-10 Vimlaben has been shown married daughter in Form 136/F by her father Hanuman (ext.5/12=9/1) signed by Hanuman now deceased and counter signed by Rly authority is a conclusive proof of family members and marital status of family member of deceased and that such declaration cannot be altered or modified now on the basis of document submitted by the 2nd party union for providing pensionary benefit to Vimla. Vide para-11 of written argument it is submitted that on perusing settlement papers, widow of deceased employee was eligible for family pension and paid and that on death of widow any other family members/spouse are eligible is a question to be determined by Civil Court only. It has been also submitted in the written argument on behalf of the 1st party declaration made by deceased Hanuman as to his family members and their marital status has force of law and cannot be altered/rectified by Vimla for changing her status as unmarried by raising dispute through the union/P.R.K.P. So the argument placed on behalf of the 1st party is well acceptable.

11. The case law of Director, Fisheries terminal Dept. Vs. Bhikhubhai Meghajibhai Chavda (2010) I Supreme Court cases 47 and R.M. Yellatti vs. Asst. Executive Engineer 2005 (9) SCALE) relied upon by the 2nd party are not at all applicable in the instant case. On the other hand 1st party has relied upon the case law of Deokinandan Prasad vs. State of Bihar (AIR 1971 S... 1409- Right to pension flows from rules and not the order granting the pension to employee. It has been also argued by Shri H.B Shah Rly Advocate that order not granting benefit of family pension to the 2nd party (Vimla) is executive order and this tribunal is having no power to grant relief ignoring executive order and executive order non-granting benefits is amendable to writ of mandamus under Article 226-227 of the constitution and not fell within the purview of Industrial Disputes Act, 1947. The 1st party's lawyer has also cited case law of U.P. state Road transport Corporation, Varanasi Vs. State of UP and others (1997 LAB I.C 2438 on no employer, employee relationship and having no industrial dispute.

12. On consideration of the evidence oral and documentary adduced on behalf of the parties and also considering the submission of the parties in the forgoing paras, I am of the considered view and therefore find and hold that the action of the management of works manager, Signal workshop, Western Railway, Sabarmati, Ahmedabad in not paying family pension to Vimlaben daughter of late Hanuman Prasad Gosai Ext. Moulder, is legal and justified. So issue No. Iii is answered in affirmative in favour of the 1st party.

13. ISSUE NO. (i), (ii), & (iv) :—In view of the findings to main issue No (iii) in the foregoing paras no. 5 to 12, I further find and hold that the reference is not maintainable and the 2nd party/Union P.R.K.P and Vimla daughter of late Hanuman Prasad Gosai has no valid cause of action to raise industrial dispute and so Vimlaben daughter of deceased employees (late Hanuman Prasad Gosai is not entitled to family pension on taking such plea that she is unmarried whereas her late father had declared her as married daughter in form 136/F on 31.05.1983 at the time of furnishing settlement papers and the declaration made by Late hanuman Prasad has got force of law and cannot be altered/modified/rectified. I further find and hold that the 2nd party Union taking up the cause of Vimla is not entitled to get any of the relief as per para 5 (A) (B) & (C)

Accordingly the reference is dismissed. No order of any cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुम्बई-2 के पंचाट (संदर्भ संख्या 13/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 प्राप्त हुआ था ।

[सं. एल-41011/33/2003-आई आर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2004) of the Mumbai-2 as shown in the Annexure, in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 10/12/2014.

[No. L-41011/33/2003 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT: K.B. KATAKE Presiding Officer

REFERENCE NO. CGIT-2/13 of 2004

EMPLOYERS IN RELATION TO THE MANAGEMENT OF WESTERN RAILWAY

The Divisional Railway Manager (E)
Western Railway, Divisional Office
Mumbai Central
Mumbai 400 008.

AND

THEIR WORKMEN

The Divisional Secretary
Paschim Railway Karmachari Parishad
Chapra Building
Near Plaza Cinema
Dadar (W)
Mumbai 400 028.
APPEARANCES :

FOR THE EMPLOYER : Mr. Abhay Kulkarni, Advocate.

FOR THE UNION : Shri M. B. Anchan, Advocate.

Mumbai, dated the 1st October, 2014.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L-41011/33/2003-IR (B-I), dated 26.02.2004 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 Western Railway Administration, Bombay Central, Mumbai by illegally dismissing the services of Shri Bhoj Nath w.e.f. 10.04.2002 is justified? If not, what relief the workman, Shri Bhoj Nath is entitled to?”

2. After receipt of the reference, notices were sent to both parties. In response to the notice, second party, union appeared before this Tribunal and filed their Statement of Claim at Ex-5. According to the union workman Shri Bhojnath Rai was serving as a Khalasi Helper working under Sr. Electrical Foreman, Western Railway, Bandra, Mumbai. He was charge-sheeted on 25/7/2001 for the alleged misconduct agreeing to arrange a Railway Quarter on rental basis to outsider and he acted as agent and accepted Rs.1000/- as his commission from the decoy. According to the union neither workman was served with the chargesheet nor intimation of appointment of Inquiry Officer was given to him. The I.O. did not allow the

defense counsel and the workman to participate in the inquiry. The inquiry was conducted *ex parte*. The workman was not given any opportunity to defend himself, to cross-examine the management witnesses. He was also not allowed to lead his evidence. The inquiry was conducted *ex parte* and in violation of principle of natural justice. The findings of the I.O. are perverse. The copy of inquiry report was not served on the workman. On the basis of said report of I.O. the disciplinary authority terminated the services of the workman. Therefore workman has raised industrial dispute before ALC (C). As conciliation failed, on the report of ALC (C), Ministry of Labour and Employment sent the reference to this Tribunal. The union therefore prays that the inquiry be declared not fair and proper. The findings of I.O. be declared as perverse. The union also prays that the penalty of dismissal from service be set aside and the first party be directed to reinstate the workman with full back-wages and continuity of service.

3. The first party resisted the statement of claim vide their written statement at Ex-11. According to them, the workman was charge sheeted for misconduct of agreeing to arrange Railway Quarter to a needy person (The decoy) at Jogeshwari Railway Colony on rental basis and he accepted his commission of Rs.1000 from the decoy by acting as a middleman. The charge sheet dt. 25/7/2001 was sent at the residential address of the workman by RP AD. It was received by one of the family member of the workman. A copy of the said charge-sheet was also pasted on the notice board. Shri S. B. Marshale was appointed as inquiry officer. The order of his nomination was sent to the workman through RPAD. However it returned undelivered with endorsement "not claimed". Therefore the said order was pasted on notice board in presence of two employees. The I.O. made every effort to make the workman concerned to remain present on the date fixed for inquiry. Workman met I.O. on 3/12/2001 at late hours. Therefore preliminary statement was not recorded and he was called on 4/12/2001 when preliminary inquiry was conducted by the officer.

4. The inquiry officer fixed next date on 7/1/2002. On that day workman remained absent. However his defence counsel attended the inquiry. The inquiry officer again fixed the date of hearing on 14/01/2002, 15/1/2002, & 1/1/2002. Notice to that effect was sent to the workman by RPAD. Workman remained absent on 14th and 15th January 2002. Therefore I.O. sent his staff to the residence of workman to deliver him letter to attend the inquiry on 16/1/2002. In response thereto workman attended the inquiry on 16/1/2002 alongwith his defence counsel. The I.O. recorded the statement of Shri Samuel John as administrative witness. Inquiry Officer asked some questions to him in order to get his statement recorded properly and clearly. However the defence counsel shouted in rough language and interrupted the inquiry proceeding. He even threatened the I.O. of dire consequences. As chaotic and unpleasant incidents had taken place, the IO had to stop the inquiry proceeding. The workman choose to keep mum in respect of rude behavior of his defence counsel. The workman and his counsel did not participate in the inquiry and as such final report was prepared by the I.O. taking into consideration the participation of the workman. Disciplinary authority sent copy of inquiry report to the workman to file his reply. After giving an opportunity of hearing the disciplinary authority has dismissed the workman from service. Sufficient opportunity was given to the workman to defend himself through his counsel. The allegations are false that no opportunity was given to the workman to cross-examine the witnesses and to lead his evidence. The workman and his defence counsel were not intending smooth functioning of the inquiry. The inquiry was fair and proper. The findings of the IO are based on evidence on record and they are not perverse. The punishment of termination is not shockingly disproportionate. Therefore the first party pray that the reference deserves to be dismissed.

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

Sr. No.	Issues	Findings
1	Whether the inquiry is fair and proper?	Yes.
2	Whether findings are perverse?	No.

REASONS

Issue No. 1:

6. In the case at hand the fact is not disputed that the inquiry against the workman was conducted *ex parte*. According to the workman neither he was served with the charge-sheet nor given notice of inquiry. Workman also contended that he was also not given notice in respect of appointment of Inquiry Officer. Therefore he could not file his reply to the charge-sheet and when his counsel appeared in the inquiry proceeding on 7.1.2002, the Inquiry Officer told him not to attend the inquiry stating that workman was careless and unreliable and want to conduct the inquiry *ex parte*. In his affidavit (Ex-15) the workman has further stated that next date of inquiry was fixed on 14,15, & 16 January 2002. Defence counsel was informed about the inquiry dates and he was also given first class pass for attending inquiry on 14/1/2002. This contention in the affidavit falsify the claim of the workman that, his defence counsel was summoned by I.O. on 7/1/2002 and told him not to attend the inquiry on 7.1.2002 stating that workman was careless and unreliable etc. His contention also does not stand to reasons that he was not knowing the date of inquiry fixed on 14/1/2002 and 15/1/2002. He further contended in his affidavit that, on 14/1/2002 as he was absent, I.O. told the defence counsel to attend inquiry after lunch break however IO failed to

inform him about the inquiry. That day IO asked the defence counsel to attend the inquiry on 15/1/2002 and told that he would send staff to deliver the inquiry notice to him. He further says that the team sent by IO to deliver notice to him did not visit his residence and made false report that the workman was not residing at the given address. He further says that the defence counsel visited his residence on 15/1/2002 and told the IO that the workman was sick and he should not be forced to attend the inquiry. In his affidavit, workman says that IO instructed DR to take the team with him to serve the notice dated 7/1/2002 acknowledged by him. This version of the workman is unacceptable that his defence counsel was knowing the dates he was attending before IO when workman himself has no notice of the date.

7. From these events narrated by the workman himself it appears that on number of dates workman remained absent though he was knowing the date. It is unacceptable that his defence counsel was knowing the dates of inquiry and attending before IO and the workman was not knowing the dates. In his affidavit workman himself admitted that on 16/1/2002 defence counsel persuaded him to attend the inquiry as IO ordered him to make the workman present for the inquiry. Therefore he attended the inquiry with defence counsel though he was sick. The workman seems taking shelter of sickness and sometimes saying that he was not served of notice of date of the inquiry proceeding. Both the versions of the workman appear mere excuses. It is unacceptable that workman and his defence counsel have no communication at all. On the other hand workman should be more vigilant than his defence counsel about the dates.

8. From these state of affairs it appears that the workman deliberately avoided to attend the dates and when finally he attended the inquiry on 16/1/2002, the defence counsel has made hue and cry before the IO. All these appear preplanned hurdle in the inquiry proceeding. Therefore IO was restrained to conduct the inquiry exparte. The IO narrated the entire incident in his affidavit at Ex-34 which appears quite probable that on 7/1/2002, on 14/1/2002, 15/1/2002 the workman remained absent and his defence counsel attended the inquiry. He sent notices to the workman by RPAD on his address. In spite of that workman did not attend the inquiry on 14/1/2002 and 15/1/2002. Therefore he sent one of his staff to the residence of workman for delivering the intimation of inquiry on 16/1/2002. On 16/1/2002 workman attend the inquiry along with defence counsel. During the course of inquiry when he was asking some questions to the witness as IO, defence counsel in order to prevent the witness from stating true fact started shouting and screaming in loud voice and repeatedly interrupted the inquiry proceeding. He also threatened the IO of dire consequences. The Defence Counsel unruly manner uttered abusive words and shouted and behaved un-parliamentary manner in presence of the witnesses and the workman. I.O. requested the witnesses to give statement in respect of the unruly behavior of the defence counsel and their statements were recorded as part of the inquiry proceeding. Due to the hue and cry and threats of defence counsel the IO had to stop the inquiry proceeding. Workman also did not make any attempt to pacify the situation or tell his defence counsel to behave properly. Thereafter the workman never made any request to reopen the inquiry for cross-examination of the management witnesses or to lead his oral evidence.

9. These facts narrated by the Inquiry Officer in his affidavit remained unchallenged. Furthermore it appears plot of the workman and his defence counsel not to co-operate with the inquiry proceeding. Therefore on first few dates workman remained absent and lastly on 16/1/2002 the defence counsel made hue and cry, used abusive language and even threatened the IO of dire consequences and compelled him to close down the inquiry.

10. The version of the workman also is unacceptable that he was not served with the charge sheet and the report of the Inquiry Officer. Had he not be served with the chargesheet, how he has engaged defence counsel. Furthermore the copy of the charge-sheet was also exhibited on the notice board in the premises of the first party. The notice sent on the correct address returned with remark "unclaimed" indicates that the postman had been to the correct address and the addressee refused to accept the same. It amounts due service of notice. Furthermore the charge sheet as well as the order of nomination of I.O. were also exhibited on the notice board of the first party. The version of the workman is devoid of merit that he was not knowing the dates of inquiry proceeding and therefore he was absent on 7/1/2002, 14/1/2002 & 15/1/2002 for the simple reason as his defence counsel was present throughout on the aforesaid dates. It is not accepted that workman has no communication with his defence counsel.

11. From the facts and circumstances on record it appears that the workman and his defence counsel deliberately avoided to take part in the inquiry proceeding. They never applied or requested the IO to re-open the inquiry for cross-examination or for leading their evidence. In short the workman did not attend the inquiry deliberately and when he attend, he and his counsel did not co-operate with the Inquiry Officer and made him to close the inquiry. In the circumstances Rajasthan High Court ruling can be resorted to in Mohan Singh V/s. Jaipur Metal and Electricals Ltd. Jaipur 1996 LLR 448 wherein on the point of exparte inquiry and findings thereof, the Hon'ble Court observed that;

"In our view it is not open to him to raise his objection in appeal in as much as full opportunity was given to him. But he himself did not participate in the inquiry proceeding which went exparte."

12. In this respect it was often contended on behalf of the workman that the IO was bias and he did not give sufficient opportunity to the workman. In this respect the Ld. Adv. for the first party submitted that the contention of biasness is vague and general in nature. No specific allegation is made against the IO as to how he is inimical in terms with the workman. Without showing any such enmity, the allegation of biasness does not stand to reasons. In support of his argument the

Ld. Adv. for the first party resorted to Delhi High Court ruling in Jagjit Singh V/s. Administrator of Delhi & Ors. wherein the Hon'ble Court on the point observed that ;

“The Court agreed with the finding of the Delhi School Tribunal that the petitioner had not been able to allege anything by way of inimical personal relationship between him and the Enquiry Officer.”

13. From the averments made in the statement of claim and affidavit it is clear that the I.O. was not in inimical terms with the workman and allegation of biasness is a mere baseless pleading to get some benefit. The said averment in respect of biasness of IO is thus not acceptable at all.

14. Another objection raised to the inquiry proceeding is that the workman was not supplied with report of inquiry officer. In this respect Ld. Adv. for the first party submitted that the workman deliberately avoided to take part in the inquiry proceeding. The inquiry was conducted exparte. The copy of Inquiry Report was also sent to the workman on his correct residential address. though copy is not supplied to the workman, no prejudice would be caused to him and the workman has not pointed out any prejudice was caused to him. Therefore even non supply of report does not affect the inquiry and findings therein. In support of his argument Ld. Adv. resorted to Apex Court ruling in Haryana Finance Corp. & Anr V/s. Kailash Chandra Ahuja 2008-II LLJ 897 (SC) wherein Hon'ble Court observed that;

“Non-supply will not automatically result in quashing the order of punishment-Delinquent employee to show “Prejudice” no finding in the order of High Court that prejudice was caused-Appeal allowed and matter remitted back to render a finding to that effect.”

15. In the circumstances though inquiry is conducted exparte, it cannot be called illegal or improper as workman and his defence counsel deliberately did not take part in the inquiry proceeding Therefore I hold that the inquiry is fair and proper. Accordingly I decide this issue No. 1 in the affirmative.

Issue No.2:

16. In respect of the findings of the Inquiry Officer it is vaguely contended that they are perverse. However no details thereof are given as to how they are perverse. On the other hand the findings of the IO are found to be in consonance with the evidence on record. In respect of findings the Ld. Adv. for the first party submitted that findings are based on the evidence on record. He submitted that the inquiry officer has relied upon the evidence led before him and arrived at the conclusion that the workman was guilty for the misconduct of ‘Agreeing to arrange’ Railway quarter to a needy person (the Decoy) on rental basis and also negotiating the deal with the decoy as a middle man and agreeing to accept Rs.1000/- as his commission. The witnesses examined before the Inquiry Officer have given details thereof and he relied thereon. The findings of the Inquiry Officer which are based on the evidence on record and consistent thereto thus cannot be called perverse. 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 UP State Road Transport Corporation & Ors V/s. 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 IO. If the findings are based on uncontroverted material placed before the IO, it cannot be said that these findings are perverse.”

17. In short findings of the Inquiry Officer are based on evidence before him. They are not contrary to the evidence on record and cannot be called perverse. Thus 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 the point of punishment.

Date: 01/10/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बुरन स्टैनडर्ड कम्पनी लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसोल के पंचाट (संदर्भ संख्या 05/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था ।

[सं. एल-41011/112/2012-आई आर (बी.1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 05/2013) of the Asansol as shown in the Annexure, in the industrial dispute between the management of Burn Standard Co. Ltd. and their workmen, received by the Central Government on 10/12/2014.

[No. - L-41011/112/2012 - IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

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

PRESENT: Sri PRAMOD KUMAR MISHRA, Presiding Officer

REFERENCE NO. 05 OF 2013

PARTIES: The management of Burn Standard Co. Ltd., Burnpur & M/s. Tanu Traders

Vs.

Burn Standard Contract & Allied Workers Union (INTTUC)

REPRESENTATIVES :

For the management : None.

For the union (Workman) : None.

Industry: Iron & Steel

State : West Bengal

Dated – 05.11.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-41011/112/2012-IR(B-I) dated 04.04.2013 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of curtailment of 5% HRA and reduction of paid holidays from 05 to 03 by the principal employer M/s.. Burn Standard Co. Ltd., Burnpur and M/s. Tanu Traders, contractor to the contractor workers is justified? If not, what relief the workers are entitled to?”

Having received the Order of Letter No. L-41011/112/2012-IR(B-I) dated 04.04.2013 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. 05/2013 was registered on 13.05.2013 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned

Notices were sent to both the union and the management on 16.05.2013 and once more on 11.08.2014. In spite of several opportunities neither the union nor the workman appeared before the court. It appears that workman/union is not at all interested to proceed with the case. As such the case is closed and accordingly a ‘No Dispute Award’ may be passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for needful information. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईडीबीआई बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट संदर्भ संख्या (91/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था ।

[सं. एल-12012/78/2013-आई आर (बी.1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 91/2013) of the Chandigarh as shown in the Annexure, in the industrial dispute between the management of IDBI Bank and their workmen, received by the Central Government on 10/12/2014.

[No. L-12012/78/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 91 of 2013. Reference No. L-12012/78/2013-IR(B-I) dated 02.08.2013.

Smt. Shehnaz W/o Md. Zahid Iqbal, R/o Basti Jamalpura, Malerkotla, Distt. Sangrur (Punjab). ... Workman

Versus

1. The Chairman & Managing Director, IDBI Bank, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai-400005.
2. The General Manager, Personal Banking Group & Disciplinary Authority, IDBI Bank Ltd., Tower, WTC Complex, Cuffe Parade, Mumbai-400005.
3. The Chief General Manager, Personal Banking Group-HO & Appellate Authority, IDBI Bank Ltd., Tower, WTC Complex, Cuffe Parade, Mumbai-400005.
4. The Branch Manager, Tripuri Town Branch, IDBI, Patiala (Punjab). ... Respondent

APPEARANCES: :

For the Workman : Sh. P.K. Longia Advocate.

For the Management : Sh. Pankaj Katia Advocate.

AWARD

Dated:- 02.12.2014

Government of India Ministry of Labour vide notification L-12012/78/2013-IR(B-I) dated 02.08.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

“Whether the action of the Management of IDBI Bank Ltd. in terminating the services of Smt. Shehnaz w.e.f. 09.10.2012 is legal, just and valid? If not, to what relief the workman is entitled to and from which date?”

2. The brief facts of the case according to the workman are that she joined the bank on 17.08.2006 at Patiala Chhoti Baradari Branch and remained on probation for one year. After successfully completion of the probation period, she was put on duty of handling cash receipts etc. in the bank under the control and supervision of branch head. There was no complaint against the workman. It is further pleaded that the then branch head Rajiv Arora nursing zealously against the workman and he shifted the workman from front line officer seat to teller service seat. Branch head went further to construct a trap involving the workman in false case. It is pleaded that one party M/s. Patiala Teleservices having current account in the branch was run by Mrs. Lovleen Sadana. Her husband Amandeep Singh was taking care of the firm. The above firm deputed as usual two workers named Maninder Singh and Tanzy Bansal to deposit the cash for Rs. 6,84,190/- on 17.02.2011. The cash was counted by the workman and receipt was given in normal course. The branch head concocted a story that workman pocketed Rs.10,000/- as the cash was Rs.6,94,190/-. The branch head informed higher officers upon which the workman was issued notice for explanation. The workman replied to the explanation. Dissatisfied with the reply, the management issued charge sheet to the workman which is as follows:-

“During the course of your tenure as Assistant Manager, (Grade A) Tripuri Town, (PBG) Patiala Branch from April 1, 2008 till your suspension on March 18, 2011, acts of misconduct, as hereinafter mentioned, are alleged to have been committed by you.

That, in gross abuse of your official [position, you misappropriated the amount of Rs. 10,000/- from the amount of Rs. 6,94,190/- deposited in cash by the customer, M/s.. Patiala Teleservices in their Current Account No.0267102000001953 on February 17, 2011, which you denied till February 21, 2011, when you admitted before the Branch Head, in presence of

the customer and remitted the amount of Rs.10,000/- so misappropriated in the account of the customer M/s. Patiala Teleservices on February 23, 2011.”

3. The workman suitably replied to the charge sheet. Sh. G.S. Hyanki and later on Mrs. Shalu Sharma was appointed as inquiry officer and inquiry proceeding initiated on 09.02.2012 and concluded on 18.05.2012 and charges were held to be proved by the inquiry officer. It is further pleaded by the workman that inquiry is conducted totally in disregard to the principles of natural justice and liable to be set aside on various grounds as there was never any shortage of Rs.10,000/- on the part of the workman. The two employees of the above firm M/s. Patiala Teleservices deposited Rs.6,84,190/- only on 17.02.2011. The husband of the owner of the company Amandeep Singh never made a verbal complaint against the workman to the branch head or to Om Prakash Zonal Operational Manager. The documents were not provided to the workman during inquiry proceeding. The workman was not allowed to avail the services of retired bank officers from State Bank of Patiala to assist her in the inquiry proceedings as DR as she was not aware of the intricacies of proceeding and procedure of inquiry.

4. The above case of pocketing Rs.10,000/- is fabricated by branch head and inquiry officer followed him and investigation was just an eye-wash. The workman was pressurized many times and workman was harassed at every step. Even a police complaint was filed in Sector-43, Chandigarh, Police Station against the husband of the workman and ultimately FIR was dropped. The earlier inquiry officer Sh.G.S.Hyanki was changed and Smt. Shalu Sharma was appointed as inquiry officer who acted against the principle of natural justice and no weightage to defence witnesses was given by her in her inquiry report inasmuch as DW1 Jaswinder Singh who was an eye-witness to the incident was also disbelieved. Six witnesses of management were listed in the charge sheet in which there are three bank witnesses and three other the outsiders. The two witnesses were never produced in inquiry and Mr. Amandeep Singh was also not allowed to be cross-examined by the workman. Entire inquiry proceeding were eye-wash. It is prayed by the workman that inquiry may be vitiated and the workman may be reinstated along with consequential benefits and full back wages.

5. The management filed reply. It is submitted by the management that workman was selected by the bank as Assistant Manager Grade A and recruited as an officer and does not come within the meaning and definition of workman given in Section 2(s) of the I.D. Act, 1947. Therefore, she cannot present the reference and the reference deserves to be rejected. The management also filed copies of appointment letter and offer letter given to the workman. It is further pleaded that nature of work allotted and done by the workman is of an officer cadre and not that of a workman. From the appraisal report this can be seen that workman claimed herself that she had been performing the roles and performances as an officer supervision and managing the sales activity of OBST team. Therefore, the instant claim deserves to be dismissed on this solitary ground alone. It is further pleaded by the management that in the branch where the workman was posted, bank did not post Class III or IV persons and officers are deputed to core-banking roles including teller service executive. So that they can get all round exposure. Merely because Smt. Shehnaz was performing the role of Teller Service Executive does not mean that she become a workman. She was drawing the salary much more than a group A Gazetted Officer of Govt. of India. From her performance appraisals she herself claimed that she was performing the role of relationship officers with power to supervise the Outbound Sale Team which makes it clear that she was working as an officer in the bank. At the time of removal from the service, workman was drawing Rs. 44,000/- per month. She continues to draw subsistence allowances till her removal. The management also denied that branch head had nursing jealousy against her. It is further pleaded by the management that as a matter of fact two employees of M/s. Teleservices Ltd. visited the branch on 17.02.2011 to deposited a cash of Rs. 6,94,190/- which is entered in cash voucher. It is seen in CCTV footage recorded in CD that she is removing packet of Rs.100/- denomination of notes totaling Rs.10,000/- from the cash bundle and kept it back bending down from her chair. Her contention that the cash was counted on note counting machine and slip against the same was given in normal course was not that normal and routine as has been stated by her. She disputed that the cash was handed over less by Rs.10,000/- in comparison which mentioned in the voucher. The two employees are seen standing at the cash counter having an argument on the issue and after considerable gap of time, the voucher was modified. The workman got the fresh deposited slip filled by the customer and customer did so because they had to remit funds through RTGS. Later on customer complained against the incident to the branch manager to look into the matter. On 17.02.2011 the workman left the branch early on personal reason, 18.02.2011 was a bank holiday and on 19.02.2011 the workman was on leave and on 20.02.2011 due to Sunday, the branch was closed. The branch head received the complaint regarding less deposit in his account and it was observed in the CCTV that workman was removing a packet of Rs.100/- denomination note of cash bundle handed over by the customer to her. When the workman resume duty on 21.02.2011 she was informed about the complaint of the customer and she herself has written in her letter in response to the show cause notice that she came to know about the customer complaint, she thoroughly check cash lying in the trunk and she found an excess of cash of Rs. 10,000/- and informed the customer as well as the branch head in the evening. The customer came to branch and on asking by customer to deposit the same the workman deposited the same on 23.02.2011 as workman was on leave on 22.02.2011 and customer informed the branch head that as he got his money back and he was not in favour of giving written complaint but the incident was not in good taste. The branch head made a complaint to regional office and Sh. Om Prakash the then Zonal Operation Manager was deputed to investigate the matter and submitted his report on 07.03.2011 after visiting the shop-cum-office of the firm and in the investigation it was found by Sh. Om Prakash ZOM that customer has remitted Rs. 6,94,190/- on 17.02.2011 but since he got his money back he was not in favour of giving written complaint. The workman gave written statement on 01.03.2011 to the investigating

officer stating that less credit of Rs.10,000/- in the customer's account was a mistake on her part and she forget the amount received by her from a customer on account of currency exchange on 17.02.2011. After that workman was placed under suspension vide letter dated 04.11.2011. The workman informed disciplinary authority that due to advance stage of pregnancy she was leaving the place of posting and therefore disciplinary action was also slow down. She was issued charge-sheet dated 25.11.2011. Departmental inquiry was initiated against her on 17.01.2012. The inquiry was conducted adhering to the principles of natural justice. The workman was given proper opportunity to defend herself. The contention of the workman that Sh. Om Prakash had obtained her signature on pre-written paper and threatening, lacks substance. The workman made statements on 01.03.2011 before Sh. Om Parkash the contents of which is as under:-

“Respected Sir,

It is stated that one of our branch customer has deposit the cash on 17.02.2011 with our branch. While counting the cash it is noted that the denomination of Rs.100 (100x100=10000/-) was less with the written denomination on voucher.

As teller I have said the customer that one packet is less and he checked the cash with himself and said that his cash was ok.

I have made the entry with the new voucher made by the customer and asked the customer that I will tallied the cash within short time and let him know if there is any mistake.

In between I have made the entry from vault to teller for taken out of Rs.10,000/- with the fresh denomination of Rs.50(50x200=10,000/-) and it has to remitted to one of our customer.

After the one hour I have made tallied my cash and found it was tallied but the physical cash of Rs.10,000/- which has to be taken out from vault was not mixed with the teller cash because of the vault cash was already showed with teller cash was tallied.

After the completion of the all entries of the day with cash and taken out the vault cash remitted to the customer with fresh denomination cash was found tallied.

There was a mistake of not get exchange cash from the customer of Rs. 10,000/- and put into the teller cash remitted the fresh cash to him. Due to that reason there was no any difference on the with cash. I have handover the cash to the other staff as I was on leave on 19.02.2011..... on same on Monday and the same customer has come to me and said that his cash was not less on 17.02.2011. I have told him that I was on leave on Saturday and I will check all the detailed entries by today and revert him in the evening if there is any mistake from my side and the customer got ready. In the evening I have checked and inform the customer that there was unknowing made a mistake of not get and put the exchange cash with fresh cash into actual teller cash. After confirming the customer I have made the entry of Rs.10,000/- in his A/c said by customer. The customer said ok and he has not any issue regarding the same.

Thanks & Regards

Shehnaz”

6. The contents of her letter dated 05.10.2011 are as under:-

“1(a) On 17.2.2011 one service boy of M/s. Patiala Tele Services came to deposit cash on the cash counter and requested to deposit the amount. After counting the case I informed to the service boy immediately that the amount counted is not tallying with the amount mentioned in the deposit slip. It was informed that an amount of Rs.10,000/- is less. The above said service boy fielded up a new deposit slip and corrected the amount accordingly. At the same time I ensured the above said service boy that if the amount is found excess with me I will inform the same to you and there is no need to worry as the bank is having a very high reputation in India and abroad also and we value our customers. The service boy told me that there might be less amount given by his boss so he would recheck with his boss and if amount less, he would inform then to do the needful.

1(b) In late evening on 17.2.2011, I handed over the cash keys and total cash to my colleague Mr. Inderdeep Singh in the presence of verifying officer Mr. Hitesh Diwan as I was supposed to be on leave on 19.2.2011 as the leave was already approved on 29.1.2011 by the officer concerned and on 18.2.2011 there was national holiday (Shri Guru Ravidas Jayanti). On 20.2.2011 it was Sunday and I joined the bank on 21.2.2011. On 21.2.2011 the above said Patiala Teleservices informed me that he has given excess cash on 17.2.2011 and requested to recheck the case again. Upon his request, I requested Mr. Hitesh Diwan, verifying officer and Mr. Inderdeep Singh if they checked the case on 19.2.2011 and found any excess cash and they said that they did not check the cash and could not count the entire cash so they did not know. After this, I myself checked the entire entries dated 17.2.2011. After going through the entries in the system and after thoroughly checking the entire teller cash it was found that an excess payment of Rs.10,000/- is

lying with the cash. I immediately informed to my verifying officer including the Branch Manager that Rs.10,000/- excess lying at cash counter and on the instruction of the Branch Manager I without any further delay called upon the person of M/s. Patiala Tele Service that Rs.10,000/- of excess payment has been lying with the cash and he can collect the same from me any time.

- 1(c) After receiving the call from me around noon, the owner of M/s. Patiala Tele Services informed me that he will collect the excess amount shortly. On 21.2.2011, when customer came to bank in the evening, he asked me to deposit this 10,000/- cash into his current A/c next day. On 22.2.2011, I was on leave so I informed Patiala Tele Services that I would be able to deposit same on next day. On 23.2.2011 as per request of customer, I deposited the same cash in his account. After depositing the cash the same was informed to the owner of M/s. Patiala Tele Services. The owner of M/s. Patiala Tele Services was satisfied with the service of the bank. Customer's query was solved out and he was happy with the courtesy extended."

7. Further also the contents of letter dated 19-12-2011 are given below:-

"On 17th February 2011 representative of M/s. Patiala Tele Services came to the bank at about 11.30 AM to deposit cash in their current account. The representative of M/s. Patiala Tele Services was told by the undersigned that the amount received by her was Rs.6,84,190/- whereas the representative of M/s. Patiala Tele Services insisted that he amount was Rs.6,94,190/-. The representative of M/s. Patiala Tele Services told the undersigned that he would check up on his return to his place of business and in the meantime the undersigned should tally the accounts at her end. At about 1.30 PM Sh.Ashok Kumar, a regular customer of the bank asked the undersigned for new notes of denomination of Rs. 50/- amounting to Rs.10,000/-. The undersigned made an entry to that effect and asked the customer to collect the amount after 3.30 PM i.e. when the cash transactions in the bank came to an end. At 3.30 PM the cash transactions came to an end. The amounts vis-à-vis receipt of cash were tallied by the undersigned and found to match. At this stage, it may be useful to bring to your notice that, as found later, the excess Rs.10,000/- deposit of M/s. Patiala Tele Services got set off/neutralized by the entry of Rs.10,000/- to be given to Sh.Ashok Kumar. The entry of Rs. 10,000/- existed for giving the amount to Sh. Ashok Kumar but the amount had actually not been brought from the vault. Therefore, the accounts tallied and no excess Rs.10,000/- was found. Sh.Ashok Kumar came after 4.0 PM to collect the new notes. The undersigned took Rs.10,000/- from Ashok Kumar, put the same in the trunk then put the entire cash in the vault. While in the vault, she from the vault received Rs.10,000/- in Rs.50/- denominations of new notes and after coming out gave the same to Sh. Ashok Kumar. The undersigned had tallied the accounts at about 3.30 PM and found them to be in order and now after 4.00 PM she had received Rs.10,000/- from Sh. Ashok Kumar and given him Rs.10,000/- new notes. Thus she continued to remain under the impression that the accounts vis-à-vis cash receipts by her still tallied."

8. It is further submitted by the management that the workman was under suspension and there was no pressure and threatening to the workman. All the documents provided to her along with the CD containing CCTV footage. Whenever she asked for documents she was supplied the documents. From the inquiry proceedings dated 09.02.2012, 22.02.2012, 20.03.2012, 02.04.2012 and 17.05.2012 itself revealed that workman used to sign the daily order sheet and on 02.04.2012 workman signed the daily order sheet under protest. The workman was refused defence representative of retired bank officer under the IDBI bank rules. She was advised to engage the service of some IDBI bank officers as defence representative. The workman was provided with full opportunity to prove her innocence. All the hearings in the departmental inquiry were conducted in branch/office under the camera and her contention that she was put to inconvenience is not correct. She was not pressurized or harassed by any official of the bank. On one occasion Zahid Iqbal the husband of the charge sheeted employee entered into the cabin and shouted on the presenting officer that his wife is being tortured. On a complaint made by the presenting officer to the bank authority, the bank lodged a complaint with the local police through Sh. G.S.Hyanki. As per IDBI officers rules there is no provision of providing personal hearing either by the disciplinary authority or by the appellate authority. The punishment was awarded to the workman was proportionate to the misconduct committed by the workman. She is not entitled to any relief. Complete enquiry and other documents also placed on file by the management.

9. The workman filed rejoinder to the written statement reiterating the claim made in the claim statement.

10. In evidence, workman examined WW1 Jaswinder Singh who tendered his affidavit Ex.W1. The workman also appeared as his own witness as WW2 and tendered her affidavit Ex.W2 in evidence. The management examined as many as six witnesses who also filed their affidavits. They were cross-examined by the learned counsel for the workman extensively.

11. I have heard the parties gone through evidence and record.

12. The first point to be determined in this case is whether the petitioner comes within the definition of 'workman' as defined under section 2(s) of the ID Act 1947. Section 2(s) as defined in the ID Act is as under:-

"2(s) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection

with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding Ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

13. With this law position management submitted that the petitioner was drawing Rs. 44000/- per month and was appointed as Assistant Manager in the Officer capacity therefore, the petitioner does not come within the ambit of workman as defined under the Act.

14. On the other hand learned counsel for the workman during arguments submitted that in numerous judgments of the Hon'ble Supreme Court and Hon'ble High Courts it has been held that designation of the employee is not of much importance, status be determined with reference to main duties performed by the employee and duties of an employee determine his status as to be covered or not within the definition of the workman. It is further submitted by the learned counsel for the workman that duties of the petitioner were neither managerial nor supervisory in nature. Learned counsel for the petitioner relied upon the following case laws to support his contention:-

Mr. C.Gupta Vs. Glaxosmithklin Pharma Ltd. 2007(3)SCT 822, S.K.Maini Vs. M/s. Carona Sahu Co.Ltd. 1994(3)SCT 312, V.P. Gupta Vs. M/s. Delton Cable India, 1994 AIR(SC) 914 Rajesh Garg Vs. Punjab State Tubwell Corpn. 1985(I) PLR 153, Sharad Kumar Vs. Govt.of NCT of Delhi, 2002(3) SCT 857.

15. Petitioner in her statement before this Tribunal stated that she was working on the cash counter as Teller and was recruited by way of direct campus placement from her college and she was told that the campus placement was for the post of Assistant Manager. Petitioner also stated that most of the time she worked as cashier in the bank. She also stated that she was posted at Teller counter and she was working in clerical cadre and not in officer cadre. In her affidavit also the petitioner clearly mentioned that duties of the workman was neither the managerial nor the supervisory in nature. The petitioner in her affidavit also mentioned that as a front line officer, she was also assigned the work of keeping a close liaison with the customer of the bank, handling the relationship building with the public, so to say, call relationship manager's duties were assigned to her.

16. Taking into consideration the facts and circumstances, the petitioner was working in the capacity of teller in the bank. She was not working in the capacity of managerial or supervisory officer in the bank. Certainly the petitioner comes within the definition of workman as defined under the ID Act 1947. Therefore, it is held that petitioner is 'workman' as defined under Section 2(s) of the I.D.Act 1947.

17. The next point to be determined in this case is whether the inquiry was conducted fairly and properly in accordance with the principles of the natural justice. It is the case of the management that on 17-2-2011 two employees of M/s. Patiala Teleservices came in the bank to deposit Rs.6,94,190/- as the amount to be transferred through RTGS and the petitioner was manning the counter at the relevant time took the amount and put behind one bundle of 100 denomination amounting to Rs. 10,000/- and the petitioner told them that these are only Rs. 6,84,190/-. After having arguments with the two employees petitioner asked the employees to fill up another form by mentioning Rs. 6,84,190/- which is short of Rs. 10,000/-. They made complaint to the branch head. The petitioner left early on 17-2-2011. On 18-2-2011 it was a bank holiday. On 19-2-2011 the petitioner was on leave and on 20-2-2011 due to Sunday the branch was closed. The branch head received the complaint regarding less deposit and it was observed in the CCTV footage that workman was removing a packet of Rs. 100/- denomination note of cash bundle handed over by the customer to her. When the workman resume duty on 21.02.2011 she was informed about the complaint of the customer and she herself has written in her letter dated 05.10.2011 in response to the show cause notice that she came to know about the customer complaint, she thoroughly check cash lying in the trunk and she found an excess of cash of Rs. 10,000/- and informed the customer as well as the branch head in the evening. The customer came to branch and on asking by customer to deposit the same the workman deposited the same on 23.02.2011 as workman was on leave on 22.02.2011 and customer informed the branch head that as he got his money back and he was not in favour of giving written complaint but the incident was not in good taste. The branch head made a complaint to regional office and Sh. Om Prakash the then Zonal Operation Manager was deputed to investigate the matter and submit his report on 07.03.2011 after visiting the shop-cum-office of the firm and in the investigation it was found by Sh. Om Prakash ZOM that customer has remitted Rs.6,94,190/- on 17.02.2011 but since he got his money back he was not in favour of giving written complaint. The workman gave written statement on 01.03.2011 to the investigating officer stating that less credit of Rs.10,000/- in the

customer's account was a mistake on her part and she forgot the amount received by her from a customer on account of currency exchange on 17.02.2011. She was placed under suspension and charge sheet dated 25-11-2011 was served upon her and inquiry was initiated against the petitioner.

18. It is revealed from the record that Shri G.S. Hayanki was appointed as Inquiry Officer. Documents were supplied to her. She was allowed to cross examine the witnesses of the management and also allowed to lead her evidence in defence. She was allowed to engage her defence representative from the officials of the IDBI Bank. During the course of inquiry also she was allowed documents as and when demanded by her. The workman signed the day to day proceedings of the inquiry in token of its correctness. Inquiry Officer was changed and Shalu Sharma was appointed as Inquiry Officer to start the proceedings from the position where Shri G.S.Hayanki left. The petitioner nowhere complained during inquiry that she is being denied the opportunity of defence. The petitioner was supplied the copy of inquiry report in which the charges were proved against the petitioner. The Show cause notice was given to the petitioner before awarding the punishment.

19. The learned counsel for the petitioner during arguments and written arguments relied upon 1992 (3) SCT 24 Hindustan Wires Ltd. Vs. Presiding Officer, 1972 AIR Supreme Court 136 State Bank of India Vs. R.K.Jain and Others, 2013 (3) AD (Delhi 625 Raja Ram Vs. Union of India, 2010 (4) MPHT 182 Vijay Jalali(Smt.) Vs. HMT Ltd. and Others, 1985 (1)CLR 314 Sahney Kirkwood Pvt. Ltd. Vs. B.G.Kondkar, 1995(3) PLR 603 MC Amritsar Vs. Presiding Officer, Labour Court Amritsar and 2012(6) SLR 479 Tara Keshwar Dubey Vs. Union of India and Others and submitted the petitioner was not given proper opportunity during inquiry and there was violation of principle of natural justice.

20. The facts and circumstances of the case laws cited by the learned counsel for the petitioner are quite different from the facts and circumstances of the case in hand therefore, not applicable in the present case. In the present case the petitioner failed to point out any infirmity in the conduction of the inquiry proceedings. The petitioner was allowed all possible opportunity to defend herself in the inquiry. She was not allowed Sh. D. P.Sharma a retired State Bank of Patiala Law Officer as defence representative because IDBI Rules does not permit for outsider as defence representative. Petitioner was allowed defence representative from the bank itself but the petitioner/workman choose not to engage any defence representative and taken part in the inquiry herself. Therefore, in view of the above it is held that inquiry was conducted fairly, properly in accordance with the principle of natural justice.

21. As regard the plea of the petitioner/workman that charges were not proved during the inquiry but the inquiry officer illegally and under the influence of the management proved the charge against the workman without any basis and against the petitioner/workman during inquiry. In 2013 LLR 190 Canara Bank Vs. Naresh Kumar Gupta it is held by the Hon'ble Delhi High Court that Industrial Tribunal does not enjoy power of Appellate Authority and can not re appreciate the evidence recorded in the domestic inquiry and Industrial Tribunal has no power in interfering with the findings of the inquiry officer.

22. As regard the plea of the petitioner/workman that punishment is not commensurate with the gravity of misconduct is concerned, the workman was charge sheeted for gross misconduct as mentioned in the charge sheet and she admitted of having committed mistake in her letter dated 1.3.2011, 5-10-2011 and 19-12-2011. The contents of the above mentioned communications clearly shows that the incident was very much happened on that day i.e. 17-2-2011 and she can not lateron blame branch head Rajiv Arora on the plea that it was the branch head who dictate these communications to her. It can not be denied that petitioner/workman is highly qualified having MBA degree. It can not be said that she can write and sign anything on the dictation of anybody. It is settled principle of law that a person holding the position of trust especially in the banking industry where honesty and integrity are in built requirement for proper and smooth functioning and in the case in hand the petitioner/ workman in her letters the contents of which are mentioned above admitted the mistake. Banking business runs on the faith and confidence of the general public. If this faith and confidence is shaken by the misconduct of the employee of the bank, certainly the bank earns bad reputation. In the present circumstances, the punishment awarded by the management is commensurate to the misconduct committed by the workman. Consequently the workman is not entitled to any relief.

23. The reference is answered accordingly. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

02.12.2014

S.P.SINGH, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 28/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था।

[सं. एल-12012/277/ 2003-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 28/2004) of the Hyderabad 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 10.12.2014.

[No. L-12012/277/2003 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

Present: Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 19th day of November, 2014

INDUSTRIAL DISPUTE No. 28/2004

Between:

Sri Nakka Balakrishna Murthy,
C/o P. Appa Rao,
D.No.6-277, Ganapathi Nagaram,
Rajahmundry.
East Godavari District.

...Petitioner

AND

1. The Assistant General Manager,
State Bank of India,
Zonal Office, RTC Complex,
Visakhapatnam.
2. The Branch Manager,
State Bank of India,
A.P. Paper Mills Branch,
East Godavari dist.
Rajahmundry.

...Respondents

APPEARANCES::

For the Petitioner : Sri M.J. Davidson, Advocate
For the Respondent : M/s.. B.G. Ravindra Reddy &
Y. Ranjith Reddy, Advocates

AWARD

Vide the proceeding No.L-12012/277/2003-IR(B-I), dated 27.4.2004 the Government of India, Ministry of Labour and Employment, made a reference to this Tribunal requiring this Tribunal to give its award on the question,

"Whether State Bank of India is the Employer of Sri Nakka Balakrishna Murthy, who was working as Canteen Boy in the Canteen run in State Bank of India, A.P. Paper Mills branch, Rajahmundry? If yes, whether the services of Sri Nakka Balakrishna Murthy has been terminated arbitrarily with effect from 21.6. 2003 after he rendered service from 1991? If not, to what relief the concerned workman is entitled?"

On receipt of the above reference this Tribunal issued notices to both the workman and Management and secured their presence. They both engaged their respective counsels to assist them, with consent of each other and leave of the Tribunal.

2. The workman filed his claim statement with the averments in brief as follows:

The workman who belongs to SC (Adi Andhra) community was engaged as a temporary employee in the State Bank of India, A.P. Paper Mills branch, Rajahmundry in the vacancy available and he joined the said service on 8.4.1985. The bank discontinued his service after completion of 79 days though there was continuation of the vacancy and proposed to take fresh candidates as temporary employees. At times, the bank utilized the services of the workman in the name of somebody else to avoid continuity of service. Thus, seniority as a temporary employee was affected. The bank used to follow its own

rules to avoid employment as per Industrial Disputes Act, 1947. In such situation bank has taken temporary employees for permanent posts. Two persons by name S/Sri P. Venkateshwara Rao and Ch.V.V. Satyanarayana who joined the bank on 15.4.1986 and 15.7.1985 respectively, i.e., subsequent to the workman joined the said bank, got permanent appointments. This resulted into the grave injustice to the workman. The instructions given by the bank to the Branch Managers reveal that bank is wilfully playing with lives of temporary employees and the said circular is anti-social and against law. The reference book on staff matters consolidated upto December, 1996 volume-I, circulated for the internal circulation of State Bank of India by Personal department, Head Office, Hyderabad of the Respondent bank contains recitals which instruct all the branches of the said bank to follow the rules framed by the bank contrary to the law. Chapter 29 (2)(d), 29(3)(c), annexure - V of Chapter 29 are all such recitals. In view of said instructions, 17 temporary employees have been taken at A.P. Paper Mills branch. On 24.6.1992, an interview was conducted for filling up some of the vacancies. The workman was asked to attend the same. In fact, he completed total 226 days services by the said date and there are two separate service certificates but only one service certificate was taken into consideration and considered that 158 days service was completed. In the said interview temporary employees who joined the service subsequent to the workman were selected and got permanent jobs. Thereafter a computer statement was forwarded to the A.P. Paper Mills branch wherein it was stated that workman was selected for Non-Messenger. But, unfortunately bank advertised amending the cut-off date of 31.7.1998 as 14.8.1991. The Branch Manager of A.P. Paper Mills branch has not forwarded the total service of the workman which comes to 228 days as a result, Sri Ch.V. V. Satyanarayana who worked for 178 days from 15.7.1985 to 10.1.1986 with breaks got permanent appointment. Whereas the workman could not get it. When the workman approached the Branch Manager, he said that workman services will be taken as usual as canteen boy. He was continuously working in the bank as water boy, sweeper, messenger and also as canteen boy. The bank never gave appointment order or any order of discontinuation or termination. After his service of 226 days, a service certificate was given towards service in the bank as canteen boy. Branch Manager signed it as President. Some of the canteen boys got permanent appointments in the bank. Their particulars are:

- (a) Sri Yarrapragada Gopala Krishna was selected from Innespeta Branch was got permanent post as Canteen boy at Rajahmundry branch.
- (b) Sri Satyanarayana who worked at Rajahmundry Bazar Branch got permanent post at Visakhapatnam branch.
- (c) Another canteen boy who worked at Rajahmundry Main branch by name Kamat got permanent appointment at Zonal office, Visakhapatnam.

Several other canteen boys also got permanent orders and are drawing salary working at various places. The workman is working as canteen boy also apart from discharging other duties from 24.12.1991 till the date of his abrupt removal i.e., 21.6.2003. The certificate issued by the Branch Manager, signing in the capacity of President, states that the workman has worked from 24.12.1991 to 30.6.1996 and that the said service includes, service in the bank as sweeper cum water boy on full time scale and water boy for hot weather amenities on $\frac{3}{4}$ scale in summer. The same service was rendered by the workman even from 1.7.1996 to 21.6.2003. But service certificate has not been provided to him for this period. When the workman appealed to ALC@, Visakhapatnam, the Management of the Respondent bank stated that by virtue of agreement between recognised federation the services of temporary sub-staff have been discontinued from 31.3.1997 and as per which no one is considered for engagement. Federation can only discuss regarding pay scales and service conditions of the workman whom it is representing. Temporary employees are not members/subscribers of the federation. Therefore, it is not justified to decide the fate of the temporary employees by a federation or Management by way of settlement. Temporary employee got every right to seek appointment as per the provisions of the Act. For this, the bank does not need any agreement with an unconcerned party. As per previous criteria any temporary sub-staff who worked for 240 days in any 12 calendar months and 270 days in three consecutive years and put in 30 days service in any of the calendar months are got confirmed to the criteria for empanelment in category C. But due to the instructions given to the Branch Managers by the bank not to continue the temporary service over and above the stipulated period mentioned so as to avoid attracting of Industrial Disputes Act. Forced the workman to face hardship unpleasant removal and non-employment. Due to the revision of cut-off date also the workman's interest got prejudice. The Branch Manager of State Bank of India, A.P. Paper Mills, refused to include subsequent service as published in the newspaper. The word poor rank is used for the workman though his services were being utilised till the date of removal from his service in various capacities, such as, water boy/sweeper boy/canteen boy etc. The local implementation committee which runs the canteen is not a separate organization. The canteen is being funded by the Respondent organization and the Management is having control over the functioning and affairs of the canteen. The canteen is being run on the premises of the bank itself. No rent is being paid to the bank for the accommodation of the canteen. The canteen boys are asked to work in the bank also as water boys etc.. the entire expenses including the salaries of the canteen boys will be paid by the bank and the total expenditure will be debited to the expenditure account of the bank. The implementation committee is nothing but a part of circle welfare committee which is a wing established for administrative convenience for the welfare of the employees of the bank. Number of temporary canteen boys were taken into permanent establishment. The certificate issued clearly shows that services in the canteen and the services in the bank are inter-linked. The services of the workman were engaged for several works inclusive of movement of vouchers, books etc.. The bank's records will prove the same. Thus, the workman is to be reinstated into the services of the bank.

3. The Respondent bank filed their counter with the averments in brief as follows:

The contention of the workman that though there was continuous vacancy available the Branch Manager discontinued the services of the workman and proposed to take fresh candidates as temporary employees and that at times, services of the workman were utilized in the name of somebody else to avoid continuity of service. Which adversely affected the seniority of the workman and that it resulted into his juniors like P. Venkateshwara Rao and Ch.V V Satyanaryana getting permanent employment is all incorrect. P. Venkateshwara Rao worked for 231 days and Ch V V Satyanrayaan worked for 179 days between 1.7.1975 and 31.7.1988 which is the crucial period. Thus, they both became seniors to the present workman. The contra contentions are incorrect. The workman's contention that he worked for 226 days by the time of interview is not correct. He worked only for 158 days during the relevant period. Therefore, his services could not be regularised. The All India State Bank of India Staff Federation which represents majority of the employees in the State Bank of India, comprises 98% of the work force as its members espoused the cause of the temporary employees who had put in less than 240 days of temporary services in 12 calendar months in the bank and who were ineligible for any kind of protection under the Industrial Disputes Act and requested the bank to give a chance for being considered for absorption and permanent appointment to such persons. After discussions the federation and the bank arrived at a settlement in the interest of the concerned temporary employees. The employees were categorised as A, B, and C and it was agreed that temporary employees as categorised would be given for a chance for being considered for permanent appointment in the bank's service against the vacancies which are likely to arise within the period 1987 to 1991. A further agreement was arrived at on 16.7.1988 to substitute the period for consideration of vacancies as 1987 to 1992. On 27.10.1988 a further agreement was arrived at agreeing to incorporate a clause to the effect that all persons to have been engaged in causal basis to work in leave/casual vacancies of Messengers, Farrashes, Cash Coolies, Water Boys, Sweepers etc., for any of the periods mentioned in category A,B and C will be given a chance for being considered for permanent appointment in bank's service against the vacancies likely to arise from 1988 to 1992. Vide letter dated 16.8.1990 Government of India, issued directions to all the public sector banks regarding recruitment and absorption of temporary employees. The said guide lines made clear that all the public sector banks may follow the provisions laid down in the Approach Paper which is specified that the cases of temporary employees who had put in not less than 240 days of temporary service in 12 consecutive months and who are entitled to the benefits under Sec.25F of the Industrial Disputes Act, 1947 may be decided by entering into a settlement with the representative union. The Respondent bank has followed the Government of India guidelines and also covered the cases of the employees who had worked for less than 90 days. Thus, there is no violation of any of the guidelines and directions. In pursuance of the IV settlement arrived at on 9.1.1991 the cut of the year 1992 was substituted with 1994. Separate panels were prepared for temporary employees and casual/daily wagers for filling up the vacancies arising between 1988 and 1994, in respect of temporary employees and in respect of casual and daily wagers who can be considered for the vacancies arising between 1995 and 1996 only. After following the procedure laid down the Management prepared the panels of qualified candidates of temporary employees and casual/daily wagers, zone-wise separately for messengers and non-messengers in the descending order of temporary service put in by the candidates during this stipulated period i.e., 1.7.1975 to 31.7.1988. In pursuance of the further agreement between the Management and the federation both the panels were kept alive upto March, 1997 for filling up the vacancies existing/arrived at as on 31.12.1994. A memorandum of understanding dated 27.2.1997 was also arrived at. The workman has not put in more number of days than those who are since now been absorbed. He never worked continuously for years. He has not put in aggregate temporary service of 240 days in a continuous 12 months period during 1.7.1975 to 31.7.1988. Thus, he had no right to seek a direction to consider his candidature for absorption. His case has been considered under the various settlements. The bank has not violated any of the provisions on terms of the said settlements. The panels lapsed and ceased to exist at the end of designated period i.e., 31.3.1997. The remaining candidates on the panels including the workman herein has no right or claim against the bank as expressly stated in settlements. There is no agreement to keep alive the panels till all the empanelled candidates are absorbed. If the workman did not intend to accept the settlement he should have raised the objection before appearing for interview and consequent empanelment. Having claimed the benefits accrued under the settlements and the consequent empanelment etc., he is debarred and estopped from questioning the validity of the settlements. It has been specifically agreed between the parties in the settlement dated 9.1.1991 that the vacancies arising upto December, 1994 will be filled from 1989 panel on the basis of seniority. Therefore, the said panels should lapse and the remaining candidates have no claim to be considered for permanent absorption of the bank. The number of days worked subsequent to 31.7.1988 will not be counted as per the agreements. The bank never promised that all the empanelled candidates will be absorbed. Mere empanelment will not give any right for absorption in favour of the workman herein. The application is admittedly based on settlements and not any independent right to seek regularization much less any provision of Industrial Disputes Act, 1947. The panels under the settlements were expressly by time bound. The last extension expired on 31.3.1997. This is an integral term of settlement and can not be modified under any proceeding under law. Those temporary employees who unfortunately could not be accommodated for want vacancies have not further right to be considered either under the settlements or otherwise. In WP No.12964 of 1994 filed by some of the temporary employees who are also empanelled is held that the only recourse to which those persons are entitled to is to claim for enforcement of settlements if there is any right flowing from it has been violated. The settlement do not suggest that the temporary employees could be continued indefinitely. If the relief sought for herein is permitted would result in making the practice of temporary employment permanent through back door entry which would not only contrary to

settlement but also to the articles 14 and 16 of constitution and deprive the chances of rightful claimant who would if necessary come through proper recruitment procedure. The settlements were made as one time measure to bring out an end to the practice of temporary engagement. There is no question of any legitimate expectation or estoppel, as the rights of the workman herein were crystallized by the operation of settlements. The observations made in the judgement in WP No.9206 of 1997 were of no consequence and it can not be relied upon. Sec.25F of Industrial Disputes Act, 1947 is not relevant since the workman herein has not worked for 240 days in any preceding 12 calendar months period. The allegation that he was terminated from service is not correct. The vacancies were filled up on regular vacancies in the order of seniority, non-engagement of the workman herein does not amount to termination. Very engagement of the workman was subject to availability of work. The bank never indulged in any unfair labour practice. The issue is covered by various judgements of Hon'ble Supreme Court of India and Hon'ble High Courts. There are no merits and the claim is to be rejected.

4. To substantiate the contentions of the Petitioner workman he has examined himself as WW1 and two others as WW2 and WW3. He has also marked documents Ex.W1 to W18. On the other hand, Respondent management has examined MW1 and marked documents Ex.M1 to M12.

5. Both the parties have filed their respective written arguments and the same are accepted. Heard the arguments of either party.

6. The points that arise for determination are:

- (i) Whether the State Bank of India is the employer of Sri Nakka Balakrishna Murthy, the workman?
- (ii) Whether the services of Sri Nakka Balakrishna Murthy, the workman has been terminated arbitrarily with effect from 21.6.2003 after he rendered service from 1991?
- (iii) To what relief the workman is entitled?

7. **Point No.I:**

It is the contention of the workman that he worked for State Bank of India and that State Bank of India is his employer whereas, it is the contention of the State Bank of India, the Management, that there is no employee and employer relationship between the workman and the said Management.

8. It is the contention of the Management that though the workman has worked in the premises of the State Bank of India A.P. Paper Mills Branch, Rajahmundry, he was not the employee of the said bank for the reason that he worked as a canteen boy in the canteen run in the said premises but not for the bank directly, that the canteen is not a part and parcel of the bank and that it is an institution run by a contractor and therefore, there is no employer and employee relationship between the Management of the bank and the workman. whereas it is the contention of the workman that he worked for the bank only in various capacities like sweeper, water boy, canteen boy etc.. and that just because he worked as canteen boy for some time it can not be said that he has not worked for the bank. It is his further contention that canteen is being run by the bank itself for the benefit of their staff and therefore it is part and parcel of the bank.

9. The way in which the canteen is being run by the bank can be proved by the bank only because they will be having the relevant documentation in their possession. They did not produce any such documents before the Tribunal to enable it to have comprehension of the question whether the canteen is part and parcel of the bank or otherwise. It amounts to suppression of relevant evidence.

10. Further more, it is an admitted fact that the workman has been called for interview conducted for regularization of services of temporary employees of the bank and he has been selected in the said interview. Ex.W6 and W7 prove the same. Apart from it MW1, the Branch Manager of the Respondent bank has admitted the truth of the contents of Ex.W6 and W7. Thus, it can be said that these are admitted facts. These admitted facts do establish that the workman has been treated as the employee of the Respondent bank, i.e., State Bank of India and he has been called for an interview conducted for regularization of services of temporary employees of the said Bank and has been selected for regularization. In the given circumstances, the contra pleas taken by the Respondent bank to the effect that there is no relationship of employer and employee between the bank and the Petitioner workman can be taken as a plea which is far from truth.

11. Further more, to substantiate his contentions regarding his being an employee of the Respondent bank, Petitioner workman adduced substantial evidence before the court by examining himself as WW1 and by examining WW2 and WW3, Employees of the Respondent bank apart from marking Ex.W6 and W7 discussed above.

12. In view of the fore gone discussion of the material on record, it can safely be concluded that State Bank of India is the employer of Sri Nakka Bala Krishna Murthy, the workman.

This point is answered accordingly.

13. Point No.II:

As can be gathered from the various service certificates of the workman which are marked as Ex.W1 to W4, the workman has worked for the Respondent bank since 1.7.1975 and upto the year 1996, in various capacities like sweeper cum water boy, canteen boy etc.. Ex.W1 shows that he worked for 158 days during the period from 1.7.1975 to 31.7.1988. As per Ex.W2 he worked for 68 days from February, 1989 to April, 1989 and as per Ex.W3 he worked for 171 days from March, 1994 to June, 1996, as per Ex.W4, the workman has worked in bank's subsidized canteen which comes under bank's welfare activity from 24.12.1991 to 30.6.1996 except on those days he was engaged as Sweeper cum water boy on full time scale and water boy for hot amenities on 3/4th scale in summer. That means during the period from 24.12.1991 to 30.6.1996 the workman has continuously rendered his services. Ex.W4 clearly shows that running of canteen is a welfare activity of the bank and in the said canteen the workman has worked. That means, the canteen was run by the bank itself. Therefore, it can clearly be seen that the workman has worked for the bank continuously from 24.12.1991 to 30.6.1996.

14. It is the contention of the workman that his services were abruptly removed on 21.6.2003. Whereas, it is the contention of the Respondent bank that since the workman has not put in the required number of working days his services could not be regularised and as the panels prepared for regularization of services of the temporary employees lapsed and ceased to exist at the end of the designated period that is, with effect from 31.3.1997, the remaining candidates on the panels including the workman herein has no right or claim against the bank as expressly stated in the settlements; that there is no agreement to keep alive the panels till all the empanelled candidates are absorbed, that if the workman did not intend to accept the settlement he should have raised objection before appearing for interview and consequent empanelment and that having claimed the benefits accrued under the settlements and consequent empanelment etc.. he is debarred and estopped from questioning the validity of settlements. It is further claimed that it has been specifically admitted between the parties in the settlement dated 9.1.1991 that the vacancies arising upto December, 1994 will be filled from 1989 panel, on the basis of seniority and that the remaining candidates have no right to seek for absorption in the bank's service. It is also pleaded that the settlement do not suggest that the temporary employees could be continued indefinitely and further that Sec.25F of Industrial Disputes Act, 1947 has no application to the case of the workman since he did not work for 240 days in any preceding 12 calendar months. It is the further contention of the Respondent that non-engagement of the workman does not amount termination and that very engagement of the workman was subject to availability of work.

15. When the above referred contentions of the Respondent bank are considered in the light of the specific contention of the workman that he is not a member of the employee federation which entered into settlement with the bank and therefore, he is not bound by the said settlements, it can be seen that there is no answer for this from the Respondent bank directly. It can be seen that the bank ventured to answer this contention indirectly by claiming that workman is debarred and estopped from making such claims since he availed the benefit of settlement, i.e., empanelment. This contention can not be accepted for the reason that there is no answer for the contention of the Petitioner that he is not a party to the settlement and therefore he is not bound by the settlement. The bank called for an interview of eligible candidates for empanelment for the regularization of services of the temporary employees. The workman being an eligible person, he attended the interview, got selected and his name was incorporated in the panels prepared for regularization of services. If calling for this interviews and empanelment of candidates took place as a result of a settlement between the bank and an employee federation to which the workman is not a party, it can not be said that he is bound by said settlement. Because he was an eligible candidate to attend the interview, he attended the interview and got selected. This does not debar or estop the workman from claiming for reinstatement into service, if he is entitled for the same.

16. Further more, it is the contention of the workman that some of his juniors were given regular employment whereas he was denied of the same. The bank is claiming that this is not a correct contention and none of the persons who are juniors to the workman were selected for regular employment. When such dispute arise it is for the bank to prove that regularization of services have taken place properly and that there was no discrimination, by producing the relevant record before the court. When it is the specific claim of the workman that one Sri Ch.V.V. Satyanarayana, Y. Gopala Krishna and C. Satyanarayana who were all his juniors were given regular employment, the Respondent bank which is disputing the correctness of this contention ought to have produced all relevant record pertaining to appointment of all these persons on regular basis to prove their contention. Non-production of the said documents on the part of the Respondents will certainly gives rise to an adverse inference. In any view of the matter as regularization of the services is not an issue now this question need not be considered here.

17. As to the contention of the Respondent bank that the work was not entrusted to the workman as it was not available and that it does not amount to termination of services is not an acceptable contention. When the entire evidence adduced on record is considered together, one can have a reasonable comprehension that the workman has been continuously working for the Respondent bank since years together and he was considered for regularization of services but unreasonably denied of the same, preferring his juniors over him and finally he was disengaged. This is certainly an arbitrary action on the part of the Respondent bank, who utilised the services of the workman for decades together.

18. In view of the fore gone discussion, it can safely be concluded that the action of the State Bank of India in terminating the services of Sri Nakka Bala Krishna Murthy with effect from 21.6.2003 is arbitrary and therefore, it is not justifiable.

This point is answered accordingly.

19. Point No.III:

In view of the findings given in points I & II above, the workman Sri Nakka Bala Krishna Murthy, is entitled for reinstatement into service with back wages and all attendant benefits with effect from 21.6.2003.

This point is answered accordingly.

Result:

In the result, the reference is answered as follows:

State Bank of India, is the employer of Sri Nakka Bala Krishna Murthy, the workman who worked as canteen boy in the canteen run by the State Bank of India, A.P. Paper Mills branch, Rajahmundry. Services of said Sri Nakka Bala Krishna Murthy has been terminated arbitrarily with effect from 21.6.2003. He is entitled for reinstatement into service with effect from 21.6.2003, with all attendant benefits including back wages.

Award is passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Nakka Balakrishna Murthy	MW1: Sri B. Chandra Sekhar
WW2: Sri Badde George Anthony	
WW3: Sri M. Pentaiah	

Documents marked for the Petitioner

Ex.W1:	Service certificate issued by the 1st Respondent dt.29.8.1988 for 158 days
Ex.W2:	Service certificate issued by the 1st Respondent dt.29.7.1989 for 68 days
Ex.W3:	Service certificate issued by the 1st Respondent dt.5.7.1996 for 171 days
Ex.W4:	Service certificate issued by the 1st Respondent Local Implementation Committee
Ex.W5:	Photostat copy of newspaper publication issued by the Respondent bank for appointments
Ex.W6:	Photostat copy of selected list issued by Respondent bank
Ex.W7:	Photostat copy of call letter for interview dt. 8.6.1992
Ex.W8:	Photostat copy of another call letter for interview dt. 13.6.1992
Ex.W9:	Original T.C. of Petitioner workman
Ex.W10:	Nativity certificate of the Petitioner workman
Ex.W11:	Caste certificate of the Petitioner workman
Ex.W12:	Lr.No.7/8/2003-ALC dt. 23.9.2003 from ALC (C) to WW1
Ex.W13:	Lr. dt.10.4.2002 addressed by SBI Staff Union to the Zonal office, Visakhapatnam.
Ex.W14:	FOC forwarding Lr.No.7/8/2003-ALC dt.23.10.2003
Ex.W15:	Minutes of conciliation proceedings.
Ex.W16:	Photostat copy of circular of temporary appointment and terms and service instructions to the Branch Managers
Ex.W17:	Photostat copy of circular of temporary appointment and terms and service conditions instructions to the Branch Managers
Ex.W18:	Photostat copy of statement showing no. of days worked by WW1

Documents marked for the Respondent

Ex.M.1:	Photostat Copy of settlement signed between All India State Bank of India Staff Federation and S.B.I. dt.17-11-1987
Ex.M.2:	Photostat Copy of settlement signed between All India State Bank of India Staff Federation and S.B.I. dt. 16-07-1988
Ex.M.3:	Photostat Copy of settlement signed between All India State Bank of India Staff Federation and S.B.I. dt.27-10-1988

- Ex.M.4: Photostat Copy of settlement signed between All India State Bank of India Staff Federation and S.B.I. dt.09-01-1991
- Ex.M.5 : Photostat Copy of Minutes of the conciliation proceedings held before the RLC , Hyderabad dt. 09-06-1995
- Ex.M.6: Photostat Copy of settlement signed between All India State Bank of India Staff Federation and S.B.I. dt.30-07-1996
- Ex.M.7: Photostat Copy of memorandum of Understanding. 27-02-1997
- Ex.M.8: Photostat Copy of statement given the Particulars of 1989 Messengerial Panel.
- Ex.M.9: Photostat Copy of statement of 1989 Non Messengerial Panel.
- Ex.M.10: Photostat Copy of statement of 1992 Panel.
- Ex.M.11: Photostat Copy of Judgment of Hon'ble High Court in WA No.86/98. dt.01-05-1998
- Ex.M.12: Photostat Copy of Judgment in SLP No. 11886-11888 of 1998. dt.10-08-1998

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच एस बी सी बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, दिल्ली के पंचाट संदर्भ संख्या (11/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था 1

[सं. एल-12012/115/ 2006-आई आर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.11/2011) of the Delhi -2 as shown in the Annexure, in the industrial dispute between the management of H.S.B.C. Bank and their workmen, received by the Central Government on 10/12/2014.

[No. L-12012/115/2006 - IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.II, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D.NO.11/2011

Shri Naduthodi Janardhan,
445, Pocket 5, Mayur Vihar,
Phase-I, Delhi-110 091.

... Workman

Versus

The Chief Executive Officer,
H.S.B.C., India Area Management Office,
52/60, M.G.Road, P.O. Box No.128,
Mumbai-400001.

...Management

AWARD

The claimant had initially joined the H.S.B.C. Bank on 02.12.1985 on a contract agreement as a computer shift operator (non-executive contract officer). The claimant was continuous working with the management till 07.09.2001. The claimant assails the vindictive and coercive action of the bank in forcing him to resign in the guise of voluntary resignation tendered. The bank accepted his resignation and he released from the services of the bank on 31.10.2001. He raised an industrial dispute before the Conciliation Officer. Since the Bank contested the 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-12012/115/2006-IR(B-II), New Delhi dated 27.01.2011 with following terms:

"Whether the demand of Sh.Naduthodi Janardhan, Ex-Computer Shift Operator/Staff Officer for his reinstatement in service w.e.f. 1.11.2001 with continuity of service and back wages is just valid and legal ? To what relief the workman is entitled ?"

2. In his claim statement, the claimant pleads that he joined the bank on 02.12.1985 on contract agreement as computer shift operator and he was confirmed in the post by permanent absorption in the service in the year 1990. He served continuously with the bank between 02.12.1985 to 07.09.2001. The bank forcing him, to resign the services of the bank w.e.f. 07.09.2001. The bank informed him on 15.10.2001 that his resignation was being accepted and till date there was no further communication from the bank as to the formal acceptance of his resignation which he was forced to submit on 07.09.2001.

3. Claim has been demurred by the bank pleading that the claimant voluntarily resigned from the services of the bank in 2001. The claimant who worked as an officer the bank cannot invoke the jurisdiction of the Tribunal by claiming himself to be a workman. The claimant application for conciliation was made in the year 2006, nearly after 5 years passed his voluntarily resignation from the services of the bank and petition is clearly time barred and as an afterthought with ulterior motives which is done by the claimant.

4. On the basis of pleadings of the parties, following issues were settled:

- (i) Whether claimant is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947?
- (ii) Whether delay in presentation of the claim, after resignation in October 2001, frustrates the cause of the claimant ?
- (iii) As in terms of reference.

5. Claimant made a statement to the effect that he was willing to accept Rs.15,00,000/- (Rupees fifteen lacs only) from the HSBC bank towards full and final settlement as per memorandum of settlement dated 17.9.2014, which taken on the record. He announced that on payment of Rs.15,00,000/- to him, his claim would stand satisfied. Shri Angad Verma, Vice President, representing of HSBC bank, unfolded that he was competent to settle the case on behalf of the bank with the claimant. On payment of a sum of Rs.15,00,000/- claim made would stand satisfied. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 13th November, 2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3224.—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 अरूनाकुलम के पंचाट संदर्भ संख्या (03/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2014 को प्राप्त हुआ था ।

[सं. एल-12012/22/2009-आई आर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.03/2011) of the ERNAKULAM 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 10/12/2014.

[No. L-12012/22/2009 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

Present: Shri. D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer

(Tuesday the 29th day of October, 2014/7th Kartika, 1936)

ID 3/2011

Workman :

Smt K Jagadamma
Naraka Parambu
Sakthi Nagar No. 30
Pazhaveedu South
Pazhaveedu PO
Alapuzha

By Adv. Shri K S Babu

Management :

The General Manager, SBI
Local Head Office
SS Kovil Road
Thampanoor
Trivandrum
By Adv. Shri P V Surendranath

This case coming up for final hearing on 14.10.2014 and this Tribunal-cum-Labour Court on 29.10.2014 passed the following:

AWARD

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 (14 of 1947), the Central Government/Ministry of Labour & Employment as per Order No. L-12012/22/2009-IR(B-I) dated 18.02.2011 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

"Whether the action of management of State Bank of India, Alleppey in terminating the service of Smt K. Jagadamma, Ex-Part-Time Sweeper, is legal and justified? To what relief the concerned employee is entitled?"

3. After appearance before this tribunal workman filed claim statement. The allegations made therein, in brief, are that the workman was engaged as a part-time/full time sweeper in the Alappuzha main branch of the State Bank of India from 1977 to 2008. She had worked continuously from 1979 to 1983 in that branch. From 1984 to May, 1994 she had worked as part-time sweeper/casual labour in various branches of the management bank in Alappuzha district. In June, 1994 she was engaged as casual sweeper/cleaner in the ADB branch of the management bank at Alappuzha. In March, 1997 when the permanent full time sweeper, Lakshmi Amma in that branch retired from service she was engaged as full time sweeper and worked there till 2001. From 2001 to 2008 she had worked as part-time sweeper at the ADB branch of the management bank in Alappuzha. She had also worked in the canteen run by the Local Implementation Committee of the management bank during that time. Even though she was paid wages the vouchers were obtained in the name of some others by the bank with the malafide intention to defeat her legitimate claim for regularisation. The sweepers worked in the temporary service in the bank for 30 days were regularized in service. She had submitted an application dated 31.01.2008 before the Central Public Information Officer of the management bank to get the details of the sweepers who were regularized and the details of her service and to which a reply dated 08.02.2008 was given stating that she was never been engaged as sweeper or as casual labour in the Alappuzha main branch or in the Alappuzha ADB branch of the management bank at any point of time and hence the question of priority or increase in wages or permanent absorption does not arise at all. She was receiving ₹ 700/- per mensem from the canteen run by the Local Implementation Committee of the management bank for 17 years and separate wages for casual sweeping works from the bank until the termination of her service on 16.01.2008. She had submitted a detailed representation dated 17.05.2008 before the General Manager, Local Head Office, State Bank of India, Thiruvananthapuram to engage her as casual sweeper and to regularize her service. Even though there existed vacancies in the various branches of the management bank in Alappuzha the bank had taken a recalcitrant attitude and refused to engage her. She filed WP(C) No.16073/2008 before the Hon'ble High Court of Kerala seeking direction to engage her in any of the vacancies of casual sweeper in Alappuzha and for other consequential relief. It was disposed of on 11.08.2008 by the Hon'ble High Court directing the General Manager to consider her representation and to pass orders thereon within one month from the date of receipt of the judgment. Her representation was rejected by the General Manager without considering her 17 years of regular service. Hence she raised the dispute before the Labour Commissioner (Central), Kerala, Thiruvananthapuram on 08.11.2008 and the same has resulted in this reference. She is entitled for reinstatement in service and also for regularisation considering her 17 years of service as sweeper and if otherwise irreparable loss and hardship will be caused to her.

4. In the written statement management would contend that the workman was not an employee of the management bank and hence there was no question of termination of her employment. The allegation in the claim statement that she was engaged as part-time and full time sweeper in the Alappuzha main branch from 1977 to 2008 is absolutely incorrect and hence denied. It is also not correct to say that during that period sweepers worked in the temporary service of the bank for thirty days were regularized in service. The workman was not entitled for appointment in any of the cadre of the management bank either temporarily or otherwise. The workman does not come under any of the three categories to be considered for regularisation as per the terms and conditions of the Bipartite agreements dated 17.11.1987, 16.07.1988, 09.01.1991 and 30.07.1996 entered into between the management bank and State Bank of India Staff Federation. The workman had worked in the Alappuzha main branch of the management bank as a casual sweeper on full time/part time basis for daily wages for an aggregate period of 44 days during the period from 01.07.1979 to 12.03.1983. There was no engagement before 1979 in the management bank. She was engaged for toilet cleaning/sweeping on part time basis for daily wage by way of casual engagement for 31 days during the period from 01.04.2006 to 15.01.2008. Such engagement as a casual labour on daily wage basis will not entitle her for appointment in any cadre in the bank or for regularisation. She was not engaged as casual sweeper/cleaner in ADB branch of the management bank in Alappuzha in 1994. Her engagement in

the canteen run by the Local Implementation Committee cannot be treated as engagement by the management bank in any manner. The management has no statutory/authorized staff welfare canteen in the main branch or ADB branch of the management bank in Alappuzha. The management bank would conduct staff welfare canteen in any branch or office only when there would be minimum staff strength of 100. There is no such staff welfare canteen in any of the branches of the management bank in Alappuzha district. If any canteen is run by employees of the management bank the employees of such canteen cannot be treated as employees of the management bank to claim regularisation. The workman was not engaged as full time sweeper after the retirement of the permanent full time sweeper Lakshmi Amma in the month of March, 1997. She had not worked in any capacity in the management bank during the period from 1984 to 2006. The allegation that she had worked as part time sweeper in the Alappuzha ADB branch from 2001 to 2008 is denied. It is incorrect to say that vouchers were obtained in the name of some others by the bank for payment of wages to defeat her legitimate claim for regularisation. As she did not come under any of the three categories of workmen entitled for regularisation/absorption as per the said Bipartite agreements she was not considered for regularisation at the relevant time. Her application for regularisation was not considered because she was not eligible for appointment. The reply given by the Central Public Information Officer is absolutely correct and if she was not satisfied she could have taken proper action under the Right to Information Act. She had not worked for 240 days in 12 calendar months immediately preceding the alleged date of termination. There was no termination of service at all and hence she is not entitled to any relief. The payment of wages for her engagement in the canteen run by the Local Implementation Committee cannot be treated as payment of wages by the bank in view of the allegation in the claim statement that she was receiving separate wages for her engagement by the bank. The Local Implementation Committee is an independent committee and the bank is not responsible or liable for engagement, if any, made by that Committee. The proceedings before the Assistant Labour Commissioner ended in failure as the claim made by the workman was thoroughly unjust and illegitimate which could not be acceded to by the management. She had not worked even for a total period of 240 days continuously or otherwise during the entire period. There is no question of illegal retrenchment or termination since it is not necessary to comply with the requirements under Section 25F of the Industrial Disputes Act. She is not entitled for reinstatement in service or for regularisation in the service of the bank and hence the claim made by her is liable to be rejected accepting the contentions of the management.

5. Workman filed replication denying the contentions in the written statement and reaffirming the allegations in the claim statement.

6. For the purpose of deciding the dispute three witnesses were examined from the side of the workman as WW1 to WW3 and Exts.W1 to W31 were got marked. On the side of the management two witnesses were examined as MWs 1 and 2. No document was sought to be admitted in evidence by the management bank.

7. The points for determination are:-

- (i) Whether the service of the workman was to be terminated in accordance with Section 25F of the Industrial Disputes Act, 1947?
- (ii) Whether the action of the management in terminating the service of the workman is legal and justified?
- (iii) Whether she is entitled to any relief?

8. **Point No.(i):-** The reference is only with regard to the legality and justifiability of the termination of service of the workman. There is no consistent case for the workman with regard to her engagement in the management bank and with regard to the termination of her service. In the first para of the claim statement it is alleged that she was engaged as a part time and full time sweeper in the Alappuzha main branch of the management bank from 1977 to 2008. But in paragraph 2 of the claim statement it is alleged that she was engaged in Alappuzha main branch of the management bank from 1977 to 1983 and afterwards she was engaged as part time sweeper/casual labour in various branches of the management bank in Alappuzha district. It is further alleged that she was engaged as casual sweeper/cleaner from June, 1994 to March, 1997, as permanent full time sweeper thereafter till 2001 and as part time sweeper from 2001 to 2008 in the ADB branch of the management bank. It is also her case that she was also engaged in the canteen run by the Local Implementation Committee during that period and was receiving ₹700/- as monthly wages apart from the wages received from the management bank. In para 6 of the claim statement the date of termination is stated to be on 16.01.2008. But in the proof affidavit filed by her in lieu of chief examination it is averred that she was terminated from service on 18.01.2008.

9. In the written statement management would contend that she was not an employee of the management bank and hence there was no question of termination of her employment and that she was engaged only as a casual sweeper on daily wage basis for an aggregate period of 44 days during the period from 01.07.1979 to 12.03.1983 and afterwards for toilet cleaning/sweeping on part time basis for daily wages by way of casual engagement for 31 days during the period from 01.04.2006 to 15.01.2008.

10. Now it is not in dispute that she was engaged only as a casual labour on daily wage basis in the management bank intermittently and the same is also evidenced by Exts.W1 to W6. In the representation dated 17.05.2008 submitted by her to the General Manager, Local Head Office, State Bank of India, Thiruvananthapuram, copy of which was marked as Ext.W9, it

is expressly stated that she was working as casual sweeper/cleaner in the management bank and also in the Welfare Fund Staff Canteen. Her request for engaging her as part time sweeper and regularisation of her service as casual sweeper was declined by the management as per Ext.W12 dated 27.09.2008. There is no reliable evidence in this case to prove that she was engaged as a casual labour from 1997 to 2008 as alleged by her. From the available evidence it cannot be held that the engagement in the canteen run by the Local Implementation Committee was made by the management bank. There is no evidence to prove that it was a statutory canteen run by the management bank. Even if she was engaged in the canteen it cannot be found that it was an engagement by the management bank.

11. As she was engaged by the management bank as a casual labourer it is to be considered whether termination is to be in accordance with Section 25F of the Industrial Disputes Act, 1947. In order to attract Section 25F the workman must have completed 240 days of continuous service preceding the year from the date of termination. The burden is on the workman to prove it by adducing satisfactory evidence.

12. In the decision reported in Surendranagar District Panchayat Vs. Dahyabhai Amarsinh (2005) 8 SCC 750 it was held that the onus to prove the requirement of 240 days of continuous service lies on the workman and he has to adduce evidence apart from examining himself or filing an affidavit to prove it. 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 the protection or compliance of the requirements under Section 25F of the Industrial Disputes Act, 1947. The scope of the enquiry is confined only to 12 months preceding the date of termination to decide the question of continuation of service for the purpose of 25F. It is now well settled that it is for the workman to lead evidence to show that he in fact worked for 240 days in the year preceding his termination.

13. There is no reliable evidence in this case to prove that she had worked for 240 days preceding the date of termination. Exts.W18 to W24 were produced to prove that she was using the bank address but it does not assume any significance as it does not relate to the relevant period. Even otherwise it is not of much use to prove her engagement by the management bank. Except Ext.W6 there is no evidence to prove that she was engaged at any time during the period of one year preceding the date of termination. Ext.W6 is only a debit slip with regard to the payment of cleaning charges for the period from 01.01.2008 to 15.01.2008. Workman has failed to adduce any convincing evidence to prove continuous engagement of 240 days in the year preceding the date of termination. The testimonies of WW2 and WW3 will not in any way help the workman to prove the same.

14. There is no reliable evidence to prove that she was engaged by the management bank as alleged by her or that she was in continuous service for 240 days preceding the date of termination. Being a casual labourer there is no question of termination of service in accordance with Section 25F of the ID Act if there was no continuous engagement of 240 days preceding the date of termination. Hence it can be held that there was no necessity to comply with the requirements under Section 25F of the Industrial Disputes Act for the termination of her service.

15. **Point No.(ii):-** As it is found that the workman was only a casual labourer and not a protected workman under Section 25F of the ID Act, the action of the management in terminating her service is legal and justified.

16. **Point No.(iii):-** In the result an award is passed holding that the action of the management in terminating the service of the workman is legal and justified and hence she is not entitled to any relief.

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

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witnesses for the workman

WW1	03.06.2013	Smt. K Jagadamma
WW2	07.01.2014	Shri E. P. Raja Rama Sharma
WW3	07.01.2014	Shri R Ponnappan

Witnesses for the management

MW1	10.07.2014	Shri N K Sreekumar
MW2	30.07.2014	Shri P P Pankajakshan

Exhibits for the workman

W1	-	Certificate of Temporary Service dated 10.08.1988 issued by the Branch Manager/Office Manager/Departmental Head, State Bank of India, Alleppey to the workman
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W2	-	Certificate of Temporary Service on daily wage basis dated 27.05.1991 issued by the Branch Manager/Office Manager/Departmental Head, State Bank of India, Alleppey to the Workman
W3	-	Copy of Debit Slip dated 17.04.2006 for ₹200/-
W4	-	Copy of Cash Receipt dated 17.04.2006 for ₹200/-
W5	-	Copy of Cash Receipt dated 11.07.2006 for ₹80/-
W6	-	Copy of Debit Slip dated 15.01.2008 for ₹300/-
W7	-	Copy of RTI application dated 31.01.2008 submitted to the General Manager/Central Public Information Officer, State Bank of India, Local Head Office, Thiruvananthapuram by the workman
W8	-	Letter dated 08.02.2008 addressed to the workman by the Central Public Information Officer, State Bank of India, Local Head Office, Thiruvananthapuram
W9	-	Copy of the letter dated 17.05.2008 addressed to the General Manager, Local Head Office, State Bank of India Thiruvananthapuram by the workman
W10	-	Copy of the Original Petition in WP(C) No.16073/2008 of the Hon'ble High Court of Kerala
W11	-	Copy of the Judgment dated 11.08.2008 in WP(C) No.16073/2008(L) of the Hon'ble High Court of Kerala
W12	-	Copy of the letter dated 27.09.2008 issued by the General Manager, State Bank of India, Local Head Office, Trivandrum to the workman.
W13	-	Copy of the application No.7(06)/2008/ALC/TVM dated 08.11.2008 filed by the workman before the Hon'ble Labour Commissioner(Central), Kerala, Thiruvananthapuram.
W14	-	Copy of the Letter No.HR/945-169 dated 29.12.2008 addressed to the Assistant Labour Commissioner(Central), Trivandrum by the General Manager, State Bank of India, Local Head Office, Thiruvananthapuram.
W15	-	Copy of the rejoinder filed by the workman before the Assistant Labour Commissioner (Central), Trivandrum
W16	-	Copy of the Letter No.7(07)/2008/ALC-TVM dated 27.02.2009 addressed to the Secretary to Government of India, Ministry of Labour, New Delhi by the Assistant Labour Commissioner (Central), Trivandrum
W17	-	Group photograph
W17(a)	-	Group photograph
W18	-	Acceptance letter cum first premium receipt dated 08.02.1997 issued by the Life Insurance Corporation of India, Kottayam to the workman
W19	-	Receipt No. 3578 dated 27.08.1997 for the premium paid by the workman to the Life Insurance Corporation of India
W20	-	Renewal premium receipt No.6847-02 dated 26.02.1998 for the premium paid by the workman to the Life Insurance Corporation of India
W21	-	Renewal premium receipt No.42110 dated 04.01.1999 for the premium paid by the workman to the Life Insurance Corporation of India
W22	-	Bonus Intimation Post Card dated 27.03.1999
W23	-	Renewal premium receipt No.21825 dated 28.08.1998 for the premium paid by the workman to the Life Insurance Corporation of India
W24	-	Proposal Deposit Receipt No.64898 dated 31.03.2000 for the premium paid by the workman to the Life Insurance Corporation of India
W25	-	Pass Book of the workman

W26	-	Copy of the letter dated 07.03.2012 addressed to the Branch Manager, State Bank of India, ADB, Alleppey by the workman
W27	-	Postal acknowledgement card addressed to the Branch Manager, State Bank of India, ADB by the workman
W28	-	Copy of RTI application dated 27.01.2012 addressed to the Central Public Information Officer & General Manager, SBI, Local HO, Trivandrum by Shri T Rajasekharan Nair
W29	-	Intimation letter No. AGM/RTI/51/11-12 dated 01.02.2012 addressed to Shri T Rajasekharan Nair by the CPIO & Asst. General Manager(P & E), State Bank of India, Local Head Office, Thiruvananthapuram
W30	-	Copy of the letter dated 25.03.2012 addressed to the Branch Manager, State Bank of India, ADB Alappuzha by the workman
W31	-	Copy of the reply letter No.GM/RTI/000897/16/490 dated 06.02.2009 addressed to Shri Ahamed Kabeer A J, Advocate, Trivandrum by the Central Public Information Officer, State Bank of India, General Manager's Secretariat, Local Head Office, Thiruvananthapuram.
Exhibits for the management	-	NIL

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3225.—औद्योगिक विवाद अधिनियम, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अरूणाकुलम के पंचाट संदर्भ संख्या (09/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था ।

[सं. एल-41011/122/2009-आईआर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 09/2011) of the Erunakulam as shown in the Annexure, in the industrial dispute between the management of Southern Railway and their workmen, received by the Central Government on 10/12/2014.

[No. L-41011/122/2009 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

Present: Shri. D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Thursday the 30th day of October, 2014/8th Kartika 1936)

ID 9/2011

Union	:	The Divisional Secretary Southern Railway Employees Sangh Palakkad Division, Kerala Palakkad By Adv. Shri T A Rajan
Management	:	The Divisional Railway Manager Southern Railway Palakkad Division, Kerala Palakkad By Adv. Shri P M M Najeeb Khan (Adl. Central Govt. Standing Counsel)

This case coming up for final hearing on 23.10.2014 and this Tribunal-cum-Labour Court on 30.10.2014 passed the following:

AWARD

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 (14 of 1947), the Central Government/Ministry of Labour vide Order No-L-41011/122/2009-IR(B-I) dated 25.04.2011 referred the industrial dispute Scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

“Whether the action of the management of Southern Railway, Palakkad not releasing the wages of typist to Shri Unnkrishnan Ponnann, Jr. Clerk for the period he was utilized as a typist from 03.02.1976 to 07.11.1993, is justified? To what relief the workman concerned is entitled?”

3. Union, after appearance before this tribunal, filed claim statement by making the allegations that the workman is a member of the union and he is now working as Junior Clerk in the personnel branch of the Divisional Office of Palakkad Division of Southern Railway. As he had passed pre-degree examination and KGT Typewriting English(Lower) he has the required qualification for appointment as Typist in the Railway. He was initially engaged as a casual labour on 03.02.1976. Considering his knowledge in typewriting he was allowed to work as typist as against a regular vacancy in the Office of the Assistant Engineer, Southern Railway, Palakkad. While working as typist he was granted temporary status as a casual labour in the scale of pay of ₹ 196 – 232/- w.e.f. 21.01.1977. Later he was empanelled as Gangman on 19.09.1985. Despite his empanelment as gangman he was retained and was allowed to continue as typist in that office. While so he had submitted a representation to the Senior Divisional Personnel Officer, Southern Railway, Palakkad for regular appointment as a typist. The Executive Engineer recommended his case by endorsement No. PGT/4/CL/IV dated 18.10.1990. From the endorsement it can be seen that he was working as typist for the past 14 years. No action was taken by the Senior Divisional Personnel Officer for appointing him as a regular typist. He had continued to work as typist in the scale of pay of casual labour and without remuneration prescribed for the post of typist in the scale of pay of ₹ 260–400/- and in the revised scale of pay of ₹ 950–1,500/- even though he was entitled to the pay of typist. While so by order dated 12.11.1991 the Senior Divisional Personnel Officer, Southern Railway transferred and posted a typist in the vacancy in which the workman was working. He had then approached the Hon’ble Central Administrative Tribunal, Ernakulam bench by filing OA 1798/91 challenging that order and for a direction to the management to pay remuneration of the typist for the period he was engaged as typist. As per dated 16.11.1992 it was disposed of with a direction to consider the claim of the workman for salary of a typist by making reference to the official records in the Office of the Assistant Engineer, Southern Railway, Palakkad and the nature of work discharged by the workman from his initial engagement. But without proper verification of the records/files the Senior Divisional Personnel Officer, Southern Railway, Palakkad denied the salary of the typist to the workman. As a vengeance he was transferred and posted as gangman. He had joined the post of gangman on 08.11.1993. Since he had worked as a typist from 03.02.1976 to 07.11.1993 he is entitled to get the wages of a typist for that period. As he was not given the wages of the typist for that period he filed a claim petition under Section 33C(2) of the Industrial Disputes Act as CP(C) No.94/94 before the Labour Court, Kozhikode claiming the difference in wages due to him. The Labour Court, Kozhikode without having a proper appreciation of the evidence dismissed the claim petition vide order dated 26.04.2000. The order of dismissal was challenged by him by filing OP No.17374/01 before the Hon’ble High Court of Kerala. The OP was dismissed by judgment dated 23.05.2008 after finding that the claim petition is not maintainable under Section 33C(2) of the Industrial Disputes Act and hence directed the workman to raise an industrial dispute regarding his claim for salary of a typist. Hence he raised the industrial dispute and the same has resulted in this reference. He is entitled to get the wages of a typist for the period from 03.02.1976 to 07.11.1993 since his service was that of a typist during that period. The denial of wages of typist for that period is arbitrary, unjust and illegal and also amounts to unfair labour practice. Hence it is necessary to declare that the denial of wages of typist to him for the period he was utilized as typist from 03.02.1976 to 07.11.1993 is not justifiable and to direct the management to give the wages with interest and costs.

4. Management filed written statement challenging the maintainability of the claim and contending that the workman was engaged only as a casual labour on daily wages w.e.f. 03.02.1976. He was granted temporary status in the scale of pay of ₹ 196 – 232/- w.e.f. 21.01.1977 and he was regularized as Gangman in the scale of pay of ₹ 200 – 250/- w.e.f.19.09.1985. Thereafter he was working as gangman in the engineering department of Southern Railway, Palghat until he was posted as peon on 01.03.1996 on medical grounds. There is no office order or authority issued with the approval of the competent authority posting him to work as a typist and entitling him to draw the wages to the post of a typist in the railway administration. He was not at all issued with an authority to work as a typist even on adhoc or on regular basis. It is after the successive failure in the cases filed by him before the Labour Court, Kozhikode, the Central Administrative Tribunal, Ernakulam bench and the Hon’ble High Court of Kerala he had raised the industrial dispute. In compliance of the order dated 16.10.1992 in OA 1798/1991 of the Central Administrative Tribunal Ernakulam bench the railway administration took all the effective steps and efforts and verified the workman’s claim and found that he is not eligible to get the salary of a typist. There is no authenticated record/substantial material to prove that the workman was at any time ordered or advised to work as a typist during the period from 03.02.1976 to 07.11.1993. The only letter that was produced by

the workman is the letter dated 16.10.1990 said to have been issued by the then Executive Engineer(Works) regarding his status as typist. It was not accepted by the railway administration as a valid document or authority. Hence reply was given to the workman informing that no benefit could be extended to him. It is after that the workman filed OA 1958/1993 before the Central Administrative Tribunal, Ernakulam bench. It was disposed of vide order dated 25.11.1993 giving direction to allow the workman to work as a typist till his turn for promotion as typist occurs pursuant to the selection or until the appointment of a regularly selected person. A selection for filling up of 25% of vacancies of typists was conducted during 1993. Workman had participated in it but he did not come out successful. He was working as a gangman under the Permanent Way Inspector, East, Southern Railway, Palghat and not as a typist on adhoc basis followed by regular absorption entitling him to get wages of the typist. The claim petition filed by him as CP(C) No.94/94 before the Hon'ble Labour Court, Kozhikode claiming the wages of typist was dismissed holding that he is not entitled to get salary and other benefits of a typist since there is no valid document to show that he had worked as a typist. OP No.17374/2001 filed by him before the Hon'ble High Court was dismissed by judgment dated 23.05.2008 without prejudice to his right to raise an industrial dispute. His claim for wages of typist for the period from 03.02.1976 to 07.11.1993 was rejected on the ground that there is no valid documentary evidence or substantial material in his possession to satisfy that he had worked as a typist at any time during that period entitling to have the wages of a typist. With the available records with the management it can be seen that he was working as a gangman during the period from 03.02.1976 to 07.11.1993. He was not utilized as a typist or had worked as a typist during that period and hence his claim is devoid of merits and is unjustified.

5. Workman filed rejoinder denying the contentions raised in the written statement to negative his claim and reaffirming the allegations in the claim statement.

6. After filing rejoinder an additional written statement was filed by the management on 17.07.2013 along with IA 64/2013 to accept the same. The IA was allowed based on the endorsement made by the learned counsel for the workman that there is no objection. Besides the contentions raised in the written statement it is further contended in the additional written statement that there was no sanction for a regular post of typist in the office of the Assistant Engineer, Palghat and no order was issued by the competent authority directing him to work as a typist. The occasional typing work, if any, done by him appears to be more in his interest so as to get training in typing and to avoid strenuous work in the 'gang' during the said period. However, such occasional typing, if any, will not entitle him to claim salary of a typist unless he has been regularly utilized as a typist against sanctioned post. It is a belated claim made by him after more than twelve years only as an experimental measure. It is also pertinent to note that the claim was made by him when action was initiated to post a regular typist.

7. For the purpose of deciding the dispute in this case WW1 and WW2 were examined and Exts.W1 to W15 were got marked from the side of the workman. On the side of the management one witness was examined as MW1 and Ext.M1 was marked.

8. The points for determination are:

- (i) Whether the workman continuously worked as a typist from 03.02.1976 to 07.11.1993 as alleged by him?
- (ii) Whether the workman is entitled to claim the wages of a typist for that period?
- (iii) Reliefs and costs?

9. **Point Nos. (i) & (ii):**—These two points can be conveniently considered together in order to avoid repetition and inconvenience. It is not in dispute that the workman was initially engaged as a casual labour and subsequently given temporary status as casual labour and later absorbed as gangman in the service of the management. It is the case of the workman that from the date of his initial engagement as a casual labour he was working as a typist continuously as against a regular vacancy in the office of the Assistant Engineer, Southern Railway, Palghat till 07.11.1993. Even though the plea is that his initial engagement was on 03.02.1976 it can be seen from Ext.W3, the copy of the order dated 06.09.1977 granting temporary status, that the date from which he was continuously working as casual labour is stated to be 21.09.1976. In Ext.W13, the copy of the service details given to him, also the date of initial engagement is given as 21.09.1976. Those documents produced by him to prove his case will go to show that his continuous engagement as a casual labour was from 21.09.1976.

10. He was given temporary status as a casual labour w.e.f. 21.01.1977. He was empanelled as gangman as per order dated 19.09.1985, copy of which was marked as Ext.W4. According to him from the date of initial engagement as a casual labour he was working as a typist and hence he is entitled to get the salary of a typist. The scale of pay of a casual labour was ₹ 196-232/- and that of the typist was ₹260-400/-. He was receiving the wages of a casual labour in the scale of pay of casual labour all the time he is alleged to have worked as a typist. His claim is to get the difference for the reason that he was continuously engaged as a typist in the office of the Assistant Engineer, Southern Railway, Palakkad.

11. There is no order appointing him as typist on adhoc basis or on temporary basis. He was never appointed as a typist. There is not even any office order by any competent authority engaging him as typist. During the cross examination of the workman when he was examined as WW1 it was expressly admitted by him that there is no document to prove that he was working as a typist and there was no office order or any other order authorizing him to work as a typist. It was further stated by him that it was as per the oral instructions he was working as typist and he was not issued with any communication from the management calling upon him to work as a typist on regular basis or on ad hoc basis. There is no office order or any other document about his engagement as a typist. The plea in para 3 of the claim statement is that he was allowed to work as typist as against a regular vacancy. It can be found to be not true in view of Ext.W13. Therein it is expressly stated that there was no sanctioned post of a typist in AEN/PGT's office.

12. No complaint is seen to have been made by him from 1976 to 1993 about non-payment of wages as a typist. Even if he was attending some typing work at any time during that period that can be voluntary or for his own experience or under some expectation. If he was to receive the wages of a typist there must be a written order of competent authority to attend the work of the typist. What prevented him from making any claim from 1976 to 1993 if he was continuously working as a typist is not known. No reason is stated by the workman for not making any claim at any time during that period.

13. It was after submitting the representation dated 25.09.1990 seeking appointment as typist, copy of which was marked as Ext.W5 and after the transfer and posting of Shri R Bhargavan Pillai as typist in the Assistant Engineer's Office, Palakkad as per office order dated 12.11.1991, copy of which was marked as Ext.W6, such a claim was put forward by the workman.

14. Based on the endorsement dated 18.10.1990 of the Executive Engineer marked as Ext.W5(a) it was submitted by the learned counsel for the workman that he was working as a typist. Ext.W5(a) is a recommendation for the appointment of the workman as an adhoc typist in the office of the Executive Engineer stating that there was no typist in that office. During the cross examination of WW1 it was stated by him that Ext.W5(a) endorsement was typed by him and it was signed by one K Balan under whom he had worked only for 1 ½ years. In the endorsement what is stated is that the workman was having 14 years of experience as a typist in that office. Without any office order or any other records as to his engagement as a typist on what basis it can be said that he had worked for such a long time. It is also pertinent to note that Ext.W5(a) does not bear any office seal. It was stated by WW1 that Ext.W5 was taken by him from the office. The person who is stated to have made the endorsement is not cited or examined as a witness in this case. Ext.W5(a) cannot be safely relied on to prove that he was working continuously for fourteen years as a typist.

15. Reliance was also placed by the learned counsel for the workman on Exts.W13 to W15 to satisfy that the workman was working as a typist. It will only go to show that he was utilized for typing work as and when required. Ext.W13 is not seen to have been signed by the person who issued it. Exts.W14 and W15 will also not help the workman to prove that he was continuously engaged as a typist. Management has produced Ext.M1 to satisfy that he was not engaged as a typist. Even if some typing work was done by him occasionally being a person having knowledge of typing the management is not bound to pay the salary of a typist to him.

16. The workman was not appointed as a typist at any time. He was not engaged as a typist as per any office order by any competent authority. He was engaged as a casual labour and subsequently as a gangman and was receiving salary in the respective posts. He is not entitled to make any claim after a long lapse of time saying that he was working as a typist and not working in his post. Hence I find that the workman is not entitled to get the wages of a typist for the period from 03.02.1976 to 07.11.1993.

17. Point No.(iii):—In the result an award is passed holding that the action of the management of Southern Railway, Palakkad in not releasing the wages of a typist to the workman for the period from 03.02.1976 to 07.11.1993 is justified and hence he is not entitled to any relief.

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

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witnesses for the workman

WW1	17.07.2013	Shri Unnikrishnan Ponnai
WW2	22.08.2013	Shri K. P. Antony

Witnesses for the management

MW1	07.01.2014	Shri Pampa Dasan P L
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Exhibits for the workman

W1	-	Copy of the mark list of the workman as to the final pre-degree examination held in April, 1975
W2	-	Copy of the workman's certificate of Typewriting(English) Lower held in August, 1976 by the Government of Kerala Technical examinations
W3	-	Copy of the Office Order No.W/52/77 dated 06.09.1977 issued by the Asst. Personnel Officer/II, Divisional Office(P.Branch), Southern Railway, Olavakkot
W4	-	Copy of O.O.No.PGT/16/85 dated 19.09.1985 issued by the Asst.Engineer/PGT, Southern Railway, Palghat
W5	-	Copy of the letter dated 25.09.1990 addressed to the Sr. Divl. Personnel Officer, Southern Railway, Palghat by the workman
W5(a)	-	Copy of Endt.No.PGT/4/Cl.IV dated 18.10.90 of the Executive Engineer/SW/PGT
W6	-	Copy of the O.O. No.9/91 dated 12.11.1991 issued by the Sr.DPO/PGT, Divisional Office, Personnel Branch, Southern Railway, Palghat
W7	-	Copy of the O.O.No.J/W/1/23/93 dated 29.03.93 issued by the DPO/PGT, Divisional Office, Personnel Branch, Southern Railway, Palghat
W8	-	Copy of the judgment dated 16.10.92 in Original Application No.1798/91 of the Central Administrative Tribunal, Ernakulam Bench
W9	-	Copy of the Order dated 25.11.1993 in Original Application No.1958/93 of the Central Administrative Tribunal, Ernakulam Bench
W10	-	Copy of telegraph message dated 07.06.94
W11	-	Copy of the Order dated 26.04.2000 in CP(C) 94/94 of the Hon'ble Labour Court, Kozhikode
W12	-	Copy of the judgment dated 23.05.2008 in OP No.17374/2001(R) of the Hon'ble High Court of Kerala
W13	-	Copy of letter No.PGT/4/cl.IV dated 03.12.1991 addressed to the Sr. DPO/PGT by the Assistant Engineer/PGT, Southern Railway, Palghat
W14	-	Copy of letter No.PGT/36/Court dated 22.02.1993 addressed to the DPO/PGT by the AEN/PGT, Southern Railway, Palghat
W15	-	Copy of letter No.J/PCAT-1798/91 dated 13.07.93 addressed to the AEN/PGT by the DPO/PGT

Exhibits for the management

M1	-	Copy of Service Register of Shri Unnikrishnan Ponnann, Man Mazdoor, Department of Engineering
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नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट संदर्भ संख्या (78/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2014 को प्राप्त हुआ था।

[सं. एल-41011/108/2013-आईआर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 78/2013) of the Nagpur as shown in the Annexure, in the industrial dispute between the management of Southern Railway and their workmen, received by the Central Government on 10/12/2014.

[No. L-41011/108/2013 - IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/78/2013**

Date: 24.11.2014.

Party No. 1 : The Divisional Railway Manager,
Central Railway, Nagpur Division,
Kings Way, Station Road,
Nagpur-440001.

Versus

Party No.2 : Shri S.K. Shukla, Executive Vice President,
All India Guards Council,
69, Surendra Nagar, R.P.T.S. Road,
Nagpur (MS) 440015.

ORDER

(Dated: 24th November, 2014)

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 Central Railway and their workmen, for adjudication, as per letter No. L-41011/108/2013-IR (B-I) dated 03.02.2014, with the following schedule:-

"Whether the Guards employed with Central Railway, Nagpur division are workmen as defined in section 2(s) of Industrial Disputes Act, 1947? If so, the action of the Divisional Manager, Central Railway, Nagpur Division, Nagpur in denying the verdict of various branches of CAT, the Hon'ble Allahabad High Court in WP No.18244/2013 and also of the Hon'ble Apex Court in Special Leave to Appeal (Civil) No. 26787/2008 in granting promotional/financial up-gradation under MACP Scheme, is just, fair and legal? To what relief the workmen are entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "All India Guards Council", ("the union" in short) filed the statement of claim and the management of Central Railway, ("party no.1" in short) filed an application to reject dismissed the reference on the ground of this Tribunal having no jurisdiction to adjudicate the dispute in view of the bar created by the Administrative Tribunal Act, 1985. After hearing the parties, the following order is passed.

3. This order arises out of the application dated 05.09.2014 filed by the management of Central Railway, Nagpur Division for dismissal of the reference, on the ground of this Tribunal having no jurisdiction to adjudication the dispute in view of the bar created by the Administrative Tribunals Act, 1985.

4. The case of the management is that the union, "All India Guards Council" has raised the present dispute on behalf of its members, who are working as Guards in different trains and the said Guards are the permanent employees of the Railway and on behalf of the guards, the union has claimed the benefits of additional increment when promoted as passenger Guard and for restoration of the incremental benefit granted earlier to senior goods Guards, when promoted as passenger Guards and to pay back the amount already recovered and for payment of the arrears of the incremental benefit from the date it had been effective in case of other traffic running staff and after the enactment of Administrative Tribunals Act, 1985 and the constitution of the Central Administrative Tribunal to adjudicate the dispute relating to service condition of the central government servants, the Central Administrative Tribunal is only empowered to decide the dispute as raised by the union and according to section 14 of the Administrative Tribunals Act, 1985, all service matters pertaining to the Central Government are to be adjudicated by the Central Administrative Tribunal and section 28 of the said Act provides that, "On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except the (a) the Supreme Court, (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law or the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters." And the expression "service matter" occurring both in sections 14 and 28 has been defined in clause "q" of section 3, which says that "service matters" in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, in respect of -

- (i) Remuneration (including allowances), pension and other retirement benefits;
- (ii)

- (iii)
- (iv)
- (v) any other matter whatsoever;

And it is clear from the aforesaid provisions of the Administrative Tribunals Act, 1985 that it is the Central Administrative Tribunal, which has the jurisdiction, power and authority to adjudicate the dispute and this Tribunal is lack of jurisdiction to decide the issue and as such, the reference is liable to be dismissed, the same being bad in law.

5. The Union has resisted the application by filing its objection and stating therein that it is a registered trade union under the Trade Unions Act and it has every right to raise the dispute under section 2(k) of the Industrial Disputes Act, 1947, before the appropriate Government and the provisions of section 28 of the Administrative Tribunals Act, 1985 do not preclude the jurisdiction of the Industrial Tribunal and it is the choice of the union or the workman to approach either of the forums and it had raised the dispute under section 2(k) of the Industrial Disputes Act and after failure of the conciliation proceedings, the appropriate Government has referred the dispute to this Tribunal for adjudication under section 10(1) of the Industrial Disputes Act and the Tribunal has to decide the reference within the frame work of the schedule of the reference and therefore, the objection raised by the management is frivolous and liable to be rejected with exemplary cost for causing the delay.

6. Perused the record. Considered the submissions made by the learned advocates for the parties. It is not disputed that the guards, on whose behalf this dispute has been raised by the Union are the permanent employees of the Central Railway, Nagpur Division and the dispute raised is in regard to service matters concerning members of any service or persons appointed to any service or post with the affairs of the Union (Government).

It is clear from the provisions of sections 14 and 28 read with section 3(q) of the Administrative Act that the Central Administrative Tribunal under the Act is only competent to decide the issue raised by the Union on behalf of the guards and this Tribunal is precluded from entertaining the reference for adjudication and this Tribunal is not entitled to exercise the jurisdiction, power or authority in relation to such service matters.

ORDER

Hence the application filed by the management of Central Railway, Nagpur Division is allowed. It is ordered that the reference is not maintainable before this Tribunal on the ground of this Tribunal of not having any jurisdiction, power or authority to decide the dispute. However, the Union is at liberty to approach the appropriate competent forum, i.e. the Central Administrative Tribunal for redress, if it so likes.

J. P.CHAND, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 460/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.12.2014 को प्राप्त हुआ था।

[सं. एल-17011/13/2001-आईआर (बी- I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th December, 2014

S.O. 3227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 460/2004) of the Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India Ltd. and their workmen, received by the Central Government on 10/12/2014.

[No. L-17011/13/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

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

PRESENT : BINAY KUMAR SINHA, Presiding Officer

CGIT-cum-Labour Court, Ahmedabad,

Dated 10th October, 2014

Reference: (CGITA) No.-460/2004

Reference (I.T.C.) No. 9/2002 (old)

Life Insurance Corpn. of India Ltd.
The Divisional Manager, LIC of India,
Divisional Office,
Jeevan Prakash, Tilak Road,
Ahmedabad

.....First Party

And

Their Workman
Through The General Secretary,
Gujarat Kamdar Mandal,
402/403, Shilp II,
Sales India, Income Tax,
Ashram Road,
Ahmedabad (GUJARAT)-380009

.....Second Party

For the 1st party : Shri K.V.Gadhia, Advocate
Shri M.K. Patel, Advocate

For the Second Party : None

AWARD

The Central Government/Ministry of Labour, New Delhi vide order No. L-17011/13/2001-IR (B-I) dated 22.01.2002 referred the dispute for adjudication in respect of the matters specified in the schedule:

SCHEDULE

“Whether the demand of the Union for reinstatement of Shri Roosevelt Kumar Rameshbhai Katara in service by the management of LIC of India with full back wages is legal, proper and justified? If so, what relief the concerned workman is entitled to and from which date?”

2. Upon notice to the parties, the 2nd party appear and filed S/c (Ext.7) on 18.12.2004 and its copy was received by the 1st party L.I.C on 16.02.2004 (Ext.7). The 1st party also filed W/s (Ext.8) on 07.04.2004 and its copy received by the 2nd party workman/Union, thereafter the case was running for leading evidence by the 2nd party workman but since after filing S/c and receiving the copy of W/s the workman and his Union representative were absent on dates whereas the 1st party (LIC) has been represent on dates by lawyer.

The onus is upon the 2nd party workman to prove the case as per the claim of statement (Ext.7) but he appear to have lost interest in this case and so is absenting himself since long. So in absence of any evidence on behalf of the 2nd party, the terms of reference is accordingly adjudicated in this way that the demand for reinstatement of Shri Roosevelt Kumar Rameshbhai Katara in service by the management of LIC with back wages is not legal, not proper and not justified. So the 2nd party workman is not entitled to get any relief in this case.

As such the reference is dismissed. No order of any cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई एवं श्रम न्यायालय, के पंचाट (संदर्भ संख्या 102/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/12/2014 को प्राप्त हुआ था।

[सं. एल-17012/125/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O. 3228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2014) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai, now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 10/12/2014.

[No. L-17012/125/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI****Monday, the 24th November, 2014****Present : K.P. PRASANNA KUMARI, Presiding Officer****Industrial dispute No. 102/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Life Insurance Corporation of India and their workman)

BETWEEN:

Sri M. Sindhan : 1st Party/Petitioner

AND

The Zonal Manager : 2nd Party/Respondent
LIC of India, Chennai Division-I
102, Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner : None

For the 2nd Party/Respondent : None

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/125/2014-IR (M) dated 28.10.2014 referred the following Industrial dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Life Insurance Corporation of India in terminating the services of Sri M. Sindhan w.e.f. 31.08.2013 is legal and justified? If not, to what relief the workman concerned is entitled?

2. The petitioner who has got ID 82/2014 also pending before this Tribunal has appeared in person in this matter. He has made an endorsement to the effect that ID 82/2014 which was directly filed by him before this Tribunal pertains to the same issue and therefore he does not want to proceed with this matter. Accordingly, the reference is answered against the petitioner as not pressed.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked**On the Petitioner's side**

Ex.No.	Date	Description
—Nil—		

On the Management's side

Ex.No.	Date	Description
—Nil—		

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3229.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.एस.आई. कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट संदर्भ संख्या (44/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/12/2014 को प्राप्त हुआ था।

[सं. एल-11012/4/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O. 3229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of ESI Corporation and their workman, which was received by the Central Government on 01/12/2014.

[No. L-11012/4/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

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

Monday, the 24th November, 2014

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial dispute No. 44/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of ESI Corporation and their workman)

BETWEEN:

Smt. A. Lingeswari : 1st Party/Petitioner

AND

The Administrative Director : 2nd Party/Respondent
ESI Corporation, 143, Sterling Road
Nungambakkam
Chennai-600034

Appearance:

For the 1st Party/Petitioner : Ms. P. Vijayagandhi, Advocate

For the 2nd Party/Respondent : M/s. C.V. Ramachandramoorthy, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-11012/4/2012-IR (M) dated 03.04.2013 referred the following Industrial dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of ESI Corporation, in terminating the services of Smt. A. Lingeswari, in violation of Section-25F of the Industrial Disputes Act, 1947 and demand for reinstatement as Sweeper/Cleaner, is legal and justified? What relief the workman is entitled?”

2. On receipt of the Industrial dispute this Tribunal has numbered it as ID 44/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The claimant has raised the dispute putting forward her claim for continuous employment and payment of all monetary benefits. The petition filed before the Conciliation Authority may be read alongwith the Claim Statement. The petitioner should have been reinstated in service with back wages and other benefits. The Respondent has denied employment to the petitioner. The Claim Petition may be taken on file and the matter may be disposed on merits.

4. The Respondent has filed Counter Statement contending as follows:

The petitioner was engaged by the Branch Manager, Branch Office, Mount Road, ESI Corporation as Part Time Sweeper as and when required. She is not an employee of the Respondent as defined under Section-2(s) of the ID Act. The Respondent is a Social Security organization and does not fit within the definition of “industry” as per Section-2(j) of the Industrial Disputes Act. The conditions of service of the employees of the ESI Corporation are provided under the ESI Act. There is no sanctioned post of Sweeper in the branch offices of ESI Corporation. The petitioner was sweeping the office approximately for 15-30 minutes in the morning even on the days she worked. Since the petitioner was not an employee of the Respondent she is not entitled to the relief of reinstatement.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 and Ext.W5 and Ext.M1 to Ext.M3.

6. **The points for consideration are:**

- (i) Whether the petitioner was terminated from service in violation of Section-25F of Industrial Disputes Act?
- (ii) Whether the petitioner is entitled to the relief of reinstatement? If not, what is the relief, if any to which she is entitled?

The Points

7. The claim Statement filed by the petitioner is bereft of any details which should be of help to the Tribunal in adjudicating the dispute. However, it is to be gathered from Para-4 of the Claim Statement that she was terminated from service by the Respondent and the relief claimed by her is reinstatement in service. However, the prayer portion of the Claim Statement does not say what is the relief she is claiming.

8. In the Claim Petition filed before the Labour Commissioner the petitioner has stated that she was appointed by the Respondent in the year 1998 and she was regularly sweeping the premises, bringing water, cleaning the toilet, etc. for the office. She has further stated that during the year 2009 the Respondent has engaged contract labour to do the work and she was asked either to work with the Contractor or to give up the job. She has claimed in the petition that she has worked continuously for 12 years in the branch of the Respondent at Mount Road and she was terminated from service without complying with Section-25F of the ID Act. She has further stated that she has written a letter to the Manager asking to reinstate her in service but he turned a deaf ear to her demand. The petitioner has also produced Ext.W2 the copy of the lawyer notice said to have been issued on her behalf addressing the Inspector of the Branch Office at Mount Road. She has stated in the notice that during the period before termination she was paid @ Rs. 450/- per month.

9. In the Counter Statement the Respondent has not denied the case of the petitioner that she has been working with the Respondent. However according to the Respondent she was not working on regular basis but used to be called for work as and when required only. Even on such occasions the time of the work was just 15-30 minutes and she was sweeping the office premises. According to the Respondent, the petitioner was not a employee of the Respondent and therefore she is not entitled to any reinstatement also.

10. In the Proof Affidavit filed by her, the petitioner has reiterated her case that she was appointed by the Respondent in the year 1998 for sweeping the office room, providing drinking water, cleaning the bathroom etc. Against her claim in the petitioner before the Labour Commissioner that she had worked for 12 years continuously, in the Proof Affidavit she has claimed that she had worked for about 16 years with the Respondent. According to her she was orally terminated by the Respondent and was asked to work under the Contractor as a fresh candidate. There is the evidence given by the Deputy Director of ESI Corporation examined as MW1 against the evidence of the petitioner. In his Proof Affidavit he has stated that the petitioner was never employed by the Respondent and so there was no question of her being terminated from service also. MW1 has also stated that the sweeping work was outsourced by the Respondent w.e.f. 01.01.2010. Ext. M1 a re-tender notice is produced to prove his case. Ext. M2 (series) the two agreements executed between the Respondent and the Contractor are produced to prove his case. Ext. M3 showing attendance marked by the Contractor is also there.

11. During cross-examination, the petitioner has wavered in her stand regarding the period she had worked with the Respondent. She has stated during her cross-examination that neither her case in the affidavit that she had worked with the Respondent for 16 years nor her case in the Claim Petition before the Labour Commissioner that she had worked for 12 years is correct. Initially she has stated that she used to report for work at 1000 AM and worked up to 0500 PM. Then she corrected her stand and stated that the office time starts at 0900 AM and she used to start her work at 0900 AM. According to her she had worked with the Contractor after she was terminated by the Respondent and she was getting salary @ Rs. 6,000/- per month then she stated that while she was working directly with the Respondent she was paid @ Rs. 500/- only by the Respondent. According to her she worked with the Contractor only for one year. She did not continue her job with him since she was not made permanent.

12. The only document produced by the petitioner to prove her claim that she has been working with the Respondent are three vouchers marked as Ext.W1 (series). However, on going through this it could be seen that all these

three vouchers are for the month of September 1999 and only one out of these contains her signature even according to her. What the petitioner has stated during her cross-examination is that during the year 2006 she was absent for three months because of her eye operation and her relative was doing the work during the period. She has then stated that out of Ext.W1 (series) one voucher was signed by her son, another voucher by her brother. She has no case that during 1999 she was having any problem and she was not working with the Respondent, but somebody else was doing her work. In any case one does not know how there are three vouchers for the same month, one for sweeping, one for carrying water and yet another one for scavenging work, all for Rs. 100/-. If the case of the petitioner is accepted she herself was doing the work of cleaning, water carrying as well as scavenging. If the vouchers are taken into account others were also doing the work claimed to have been done by the petitioner. When these vouchers are taken into account the case of the Respondent that the petitioner was being engaged occasionally and that also for only for less than an hour seems probable. There is the evidence given by MW1 that the petitioner was never appointed by the Respondent for any post. The petitioner herself has admitted during her cross-examination that she was not given any appointment order.

13. It could be seen from Ext.M3 (series) that the petitioner had been working with the Contractor and had been receiving wages from the Contractor. The name of the petitioner appears in one of the Attendance pages. There is also the evidence given by her regarding the same.

14. There is no acceptable evidence to show that the petitioner has been in continuous employment with the Respondent for more 240 days in a year and she was entitled to the benefit Section-25F of ID Act. Therefore, the petitioner is not entitled to any relief.

15. In view of my discussion above, the reference is answered against the petitioner.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner	:	WW1, Smt. A. Lingeswari
For the 2nd Party/Management	:	MW1, Sri S. Karuppusamy

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	9/1999	Voucher
Ex.W2	05.01.2010	Legal Notice
Ex.W3	1/2010	Claim Petition
Ex.W4	17.05.2010	Rejoinder Petition
Ex.W5	03.04.2013	Order copy

On the Management side

Ex.No.	Date	Description
Ex.M1	-	Documents relating to outsourcing of house-keeping of ESI Corporation
Ex.M2	21.12.2009 And 05.01.2012	Agreements between Respondent and Contractors
Ex.M3	-	Proof of Attendance and Receipt of Wages by the Claimant

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3230.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्शुरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 105/2014) प्रकाशित करती है, जो केन्द्रीय सरकार को 01/12/2014 को प्राप्त हुआ था ।

[सं. एल-17012/124/2014 आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O 3230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.105/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 01/12/2014.

[No.L-17012/124/2014 –IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

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

Monday, the 24th November, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial dispute No. 105/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Life Insurance Corporation of India and their workman)

BETWEEN:

Sri S. Balachandar : 1st Party/Petitioner

AND

The Zonal Manager : 2nd Party/Respondent
LIC of India, Chennai Division-I
102, Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner : None

For the 2nd Party/Respondent : None

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/124/2014-IR (M) dated 28.10.2014 referred the following Industrial dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Life Insurance Corporation of India in terminating the services of Sri S. Balachandar w.e.f. 30.08.2013 is legal and justified? If not, to what relief the workman concerned is entitled?

2. The petitioner who has got ID 83/2014 also pending before this Tribunal has appeared in person in this matter. He has made an endorsement to the effect that ID 83/2014 which was directly filed by him before this Tribunal pertains to the same issue and therefore he does not want to proceed with this matter. Accordingly, the reference is answered against the petitioner as not pressed.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked

On the Petitioner's side

Ex.No.	Date	Description
—Nil—		

On the Management's side

Ex.No.	Date	Description
—Nil—		

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3231.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दिलीप कंस्ट्रक्शन कंपनी/भिलाई स्टील प्लांट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 97/08) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/12/2014 को प्राप्त हुआ था ।

[सं. एल-26012/5/2008—आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O. 3231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.97/08) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. Dilip Construction Company/Bhilai Steel Plant and their workman, which was received by the Central Government on 01/12/2014.

[No. L-26012/5/2008 –IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/97/08

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Hemlal Sahu, Driver,
Form B No. 118,
Vill & PO Lataboad,
P.S.Balod,
Distt. Durg (CG)

...Workman

Versus

M/S. Dilip Construction Company,
Contractor,
Iron Ore Complex,
Dallirajhara,
Durg (CG)

...Management

AWARD

Passed on this 23rd day of May 2014

1. As per letter dated 29-7-08 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-26012/5/2008-IR(M). The dispute under reference relates to:

“ Whether the action of the management of M/S. Dilip Construction Company (Contractor of Bhilai Steel Plant at its Iron Ore Complex, Dallirajhara) in terminating the service of Shri Hemlal Sahu, Ex-Driver (B FormNo.118) from service vide letter dated 8-3-07 is legal and justified? If not, to what relief Shri Sahu is entitled?”

2. After receiving reference, notices were issued to the parties. Despite of repeated notices issued, Ist party workman failed to participate in reference proceeding. He is proceeded exparte on 27-1-2011. It is also a matter of regret that despite the matter was fixed for exparte Written Statement of IInd party, no Written Statement is filed by IInd party. Thus it is clear that parties failed to participate in reference proceeding. In absence of the statement of claim and Written Statement by parties to the dispute and failure to participate in reference proceeding, the dispute under reference related to the termination of service of Hemlal Sahu by management of IInd party could not be adjudicated. The reference is disposed off for non-participation of the parties.

R.B. PATLE, Presiding Officer

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3232.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार श्रीमती कंचनचौरसिया एल. आर. विडो ऑफ लेट श्री आर. के. चौरसिया/इंडियन ऑयल कारपोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 34/91) प्रकाशित करती है जो केन्द्रीय सरकार को 01/12/2014 को प्राप्त हुआ था ।

[सं. एल-30011/16/90 -आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O 3232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/91) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Smt. Kanchan Chourasia, LR-widow of Late Shri R.K.Chourasia/Indian Oil Corporation and their workman, which was received by the Central Government on 01/12/2014.

[No. L-30011/16/90 -IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/34/91

PRESIDING OFFICER: SHRI R.B.PATLE

President,
Lal Jhanda Mazdoor Union,
Dayal band,
Distt. Bilaspur (MP)

...Workman/Union

Versus

Smt. Kanchan Chourasia, LR-widow of
Late Shri R.K.Chourasia,
Loading and Unloading Contractor,
Indian Oil Corporation,
Depot, Bilaspur

...Management

AWARD

Passed on this 23rd day of September 2014

1. As per letter dated November 91 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-30011/16/90/IR(Vividh).The dispute under reference relates to:

“Whether the action of the management of Shri R.K.Chourasia, Loading and unloading contractor, IOC Ltd. Depot,Bilaspur in stopping from work S/ Shri Biren Masib, Seikh Rahim, Seikh Salim. Sukhi Ram, Narbat Ram, Yudhustra, Ashoka, Mahendra, Manu and Deepak w.e.f. 2-3-90 is justified? If not, to what relief are the workmen concerned entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 5/1 to 5/2. Case of Union is that workman Shri Biren Masib, Seikh Rahim, Seikh Salim. Sukhi Ram, Narbat Ram, Yudhustra, Ashoka, Mahendra, Manu and Deepak were working in IOL Depot Bilaspur since long time. They were rendering service between 2-10 years. Before Shri R.K.Chourasia, the workman worked under contractors and their services remained continued and uninterrupted though contractor has changed . workman were engaged for loading, unloading work. They were paid monthly pay Rs. 750/-. Their services were terminated from 2-2-90 without prior notice. No enquiry was conducted against them. The termination of their services is in violation of provisions of ID.Act. On such ground, Union prays for reinstatement with full back wages of all those workmen.

3. Notices were repeatedly issued to IInd party but he failed to participate in reference proceeding. Shri R.K.Chourasia contractor was reported dead. His widow Kanchan Chourasia is substituted as LR. After notice, he failed to appear in the proceeding.

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 Shri R. K. Chourasia, Loading and unloading contractor, IOC Ltd. Depot, Bilaspur in stopping from work S/ Shri Biren Masib, Seikh Rahim, Seikh Salim. Sukhi Ram, Narbat Ram, Yudhustra, Ashoka, Mahendra, Manu and Deepak w.e.f. 2-3-90 is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

5. Union is alleging that services of all above workmen are discontinued without notice, no enquiry was conducted against them. IInd party has not participated in reference proceeding. The affidavit of evidence of Shri Yudhustra, Sukhi Ram and Seikh Rahim are filed. Earlier affidavit of Shri Biren Masib, Seikh Rahim, Seikh Salim. Sukhi Ram, Narbat Ram, Yudhustra, Ashoka, Mahendra, Manu and Deepak are filed. Their evidence remained unchallenged. I find no reason to discard their contentions that their services are terminated without notice. Despite they were continuously working with IInd party contractor Shri R.K.Chourasia. termination of their service is illegal. Accordingly I record my finding in Point No. 1 in Negative.

6. Point No.2- in view of my finding in Point No. 1 that termination of services of above workmen is illegal, question arises whether they are entitled to reinstatement with back wages. As per terms of reference, all those workmen were working under contractor. Shri R.K.Chourasia, Principal employer was not impleaded as party to dispute. Though application for impleading IOC was filed, this Tribunal could not amend reference order. Application was rejected. The affidavit of respective workmen shows that they were working with contractor from 4-10-87. Considering period of working with contractor, reinstatement cannot be granted. Reasonable compensation would be appropriate relief. Considering length of service, compensation Rs. 75,000/- to each of the workmen would be reasonable. Accordingly I record my finding in Point No.2.

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

- (1) The action of Shri R.K.Chourasia, Loading and unloading contractor, IOC Ltd. Depot, Bilaspur in stopping from work S/ Shri Biren Masib, Seikh Rahim, Seikh Salim. Sukhi Ram, Narbat Ram, Yudhustra, Ashoka, Mahendra, Manu and Deepak w.e.f. 2-3-90 is not legal and proper.
- (2) IInd party contractor Shri R.K.Chourasia/ his widow Smt. Kanchan Chourasia is directed to pay compensation Rs. 75,000/- to each of above workmen.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. 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 दिसम्बर, 2014

का.आ. 3233.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिंदुस्तान कॉपर लिमिटेड, खेत्री नगर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 15/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/12/2014 को प्राप्त हुआ था ।

[सं. एल.—43012/28/95—आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O. 3233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.15/1996) of the Central Industrial Tribunal, Jaipur now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. Hindustan Copper Limited, Khetri Nagar and their workman, which was received by the Central Government on 05/12/2014.

[No. L-43012/28/95-IR (M)]

JOHAN TOPNO, Under Secy.

अनुबन्ध
केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर
केस नं० सी.आई.टी. 15/1996

रैफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक

एल-43012/28/95— आई.आर.(विविध) दिनांक 25.03.1996

एम.पी. जांगिड़ पुत्र श्री पोकरमल जांगिड़, ग्राम एवं पोस्ट पछरी,
 तहसील—खेतड़ी, जिला—झुंझुनू।

...प्रार्थी

बनाम

जनरल मैनेजर, मै० खेतड़ी कॉपर कॉम्प्लेक्स, हिन्दुस्तान कॉपर लि०,

पोस्ट—खेतड़ी, जिला—झुंझुनू

...अप्रार्थी

उपस्थित

पीठासीन अधिकारी : श्री हेमन्त कुमार जैन, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री बी.एम. बागड़ा

अप्रार्थी की ओर से : श्री आर.एस. राठौड़

दिनांक अवार्ड : 31.03.2014

अवार्ड

1. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक 43012/28/95 दिनांक 25.03.1996 से निम्न अनुसूची का विवाद “Whether the action of the management of Khetri Copper Complex of M/s. Hindustan Copper Ltd. Khetri Nagar is justified in dismissing the services of Shri M.P. Jangid S/o Sh. Pokar Mal Jangid w.e.f. 21-09-92? If not, to what relief the workmen is entitled to?” अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है।

2. प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर कथन किया कि प्रार्थी की नियुक्ति विपक्षी संस्थान में 21.11.73 को माईनर के पद पर हुयी थी। प्रार्थी के कार्य को देखते हुये वर्ष 1975 में प्रार्थी को बिट ग्राइन्डर के पद पर पदोन्नत किया गया। प्रार्थी को मिथ्या तथ्यों पर आधारित आरोप पत्र जारी कर दिनांक 21.11.90 को निलम्बित किया, जिसके विरुद्ध घोषणात्मक वाद पेश किये जाने पर उक्त आरोप पत्र को निरस्त कर दिया गया। प्रार्थी श्रमिक को दिनांक 21.09.92 के आदेश द्वारा सेवा से पृथक कर दिया गया, जिसकी प्रति प्रार्थी को नहीं दी गयी। प्रार्थी द्वारा पुनः प्रार्थना पत्र पेश करने पर कोई संतोषजनक जवाब नहीं दिया गया। प्रार्थी को सेवा पृथक करने से पूर्व न ही कोई आरोप पत्र दिया गया और न ही कोई विभागीय जांच की गयी। प्रार्थी को सेवा पृथक आदेश की प्रति व्यक्तिगत रूप से तथा डाक से भी नहीं दी गयी। जिसके विरुद्ध समझौता अधिकारी के समक्ष विवाद पेश किये जाने पर समझौता वार्ता विफल हो जाने से विवाद अधिनिर्णय हेतु इस न्यायाधिकरण को प्रेषित किया है। प्रार्थी को सेवा पृथक करने से पूर्व अपना पक्ष रखने का कोई अवसर नहीं दिया गया। सेवा पृथक आदेश स्थायी आदेशों के विपरीत होने के कारण से प्रभाव शून्य घोषित किया जावे तथा प्रार्थी श्रमिक को पुनः सेवा में समस्त वेतन लाभों सहित बहाल किया जावे।

3. अप्रार्थीगण की ओर से स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत कर कथन किया कि प्रार्थी की नियुक्ति दिनांक 21.11.73 को माइनर के पद पर हुयी थी तथा दिनांक 01.05.75 को रूटीन में बिट ग्राइन्डर के पद पर पदोन्नत किया गया तथा दिनांक 13.05.85 को आक्सीजन प्लांट ऑपरेटर 'ए' के पद पर पदोन्नत किया गया। प्रार्थी द्वारा घोर अनुशासनहीनता, नियमों का उल्लंघन, कंपनी की संपत्ति को नुकसान पहुंचाने, ड्यूटी में लापरवाही के कारण दिनांक 27.11.85 को चार्जशीट देकर निलम्बित किया गया। प्रार्थी को पूर्व में भी असंतोषजनक कार्य तथा अनुशासनहीनता के कारण आक्सीजन ऑपरेटर ए के पद से बिट ग्राइन्डर के पद पर पदोन्नत किया गया। प्रार्थी द्वारा अन्य श्रमिकों के कार्य में बाधा पहुंचाने, वरिष्ठ अधिकारियों के साथ झगडा करने के कारण आरोप पत्र देकर दिनांक 28.12.88 को डिसमिश कर दिया गया, लेकिन प्रार्थी द्वारा माफी मांगने पर उसे पुनः डिमोट कर ड्यूटी पर रख लिया गया। इसके बावजूद प्रार्थी द्वारा 21.11.90 को घोर अनुशासनहीनता तथा दुराचार करते हुये, वरिष्ठ अधिकारियों से झगडा, मारपीट करने के कारण चार्जशीट दी गयी। चार्जशीट का आरोप पत्र संतोषजनक नहीं पाये जाने पर विभागीय जांच की गयी। प्रार्थी द्वारा विभागीय जांच में भाग नहीं लेने तथा गवाहों को धमकाने आदि गंभीर दुराचरण किये जाने से विभागीय जांच के लम्बित रहने के दौरान ही दिनांक 18.09.92 को सेवा पृथक कर दिया गया। प्रार्थी के सेवा पृथक आदेश की प्रति उसके पते पर रजिस्टर्ड डाक से भेजी गयी थी तथा व्यक्तिगत रूप से नहीं लेने पर राजस्थान पत्रिका में भी प्रकाशित करवायी गयी थी। प्रार्थी को गंभीर दुराचरण के फलस्वरूप सेवा से पृथक किया गया है, जो उचित है।

4. प्रार्थी द्वारा जवाबुल जवाब पेश कर कथन किया कि विपक्षी नियोजक द्वारा आरोप पत्र दिनांक 27.11.85 को मिथ्या तथ्यों पर आधारित होने से वापिस ले लिया गया तथा दिनांक 28.12.88 का डिसमिसल आदेश भी वापिस ले लिया गया। प्रार्थी को सेवा पृथक करने से पूर्व कोई आरोप पत्र नहीं दिया गया और न ही कोई विभागीय जांच की गयी। प्रार्थी को सेवा में वापिस पूरे वेतन सहित बहाल किया जावे।

5. विपक्षी की ओर से साक्ष्य में सर्वश्री पी. हेमचन्द्रन, नीलमणि, सत्यवीर सिंह, करन सिंह सोमरा, आनंद शेखावत के शपथ पत्र पेश हुये, जिनसे प्रार्थी प्रतिनिधि द्वारा जिरह की गयी। प्रार्थी की ओर से साक्ष्य में सर्वश्री एम.पी. जांगिड़, सुभाषचन्द्र, चन्द्रपाल शर्मा, दीनदयाल, दिलीप सिंह, डॉ. अशोक कुमार परीक्षित हुये हैं। दस्तावेजी साक्ष्य में विपक्षी नियोजक की ओर से दस्तावेजात प्रदर्श एम-1 लगायत 18 पेश हुये हैं तथा प्रार्थी की ओर से दस्तावेजात प्रदर्श डबल्यू-1 लगायत 28 पेश हुये हैं।

6. उभय पक्षों की बहस सुनी गयी। पत्रावली का अवलोकन किया गया।

7. प्रार्थी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी को बिना जांच कराये सेवापृथक किया गया है। सेवापृथक आदेश प्रदर्श डवल्यू-1 में दिनांक 14.09.92 एवं 18.09.92 को दुर्व्यवहार करने के आरोप लगाये गये हैं। दोनों घटनाओं के आरोप नियोजक की ओर से प्रस्तुत साक्ष्य से साबित नहीं होते हैं। प्रार्थी के कार्य को देखते हुये उसे बिट ग्राइण्डर के पद पर पदोन्नत किया गया है। नियोजक के स्थायी आदेशानुसार प्रार्थी के विरुद्ध कोई जांच नहीं की गयी। प्रार्थी के विरुद्ध की गयी एफ.आई.आर. में भी कोर्ट द्वारा बरी किया जा चुका है। दोनों घटनाओं के संबंध में प्रार्थी को कोई आरोप पत्र नहीं दिया गया। नियोजक की ओर प्रस्तुत गवाह पी. हेमचन्द्रन ने अपनी जिरह में स्वीकार किया है कि दिनांक 14.09.92 को प्रार्थी की ड्यूटी कहीं पर थी, नहीं बता सकता। मैंने किसी के थप्पड़ मारते नहीं देखा, हल्ला करते सुना था, इस मारपीट की मेरे पास कोई रिपोर्ट नहीं आई। गवाह ने जिरह में बताया है कि कोई भी निलम्बित आदमी परिसर में नहीं जा सकता। गैस प्लांट को कोई प्रार्थी ने कोई नुकसान नहीं पहुंचाया। इसी प्रकार नियोजक की ओर से प्रस्तुत अन्य गवाह सर्वश्री नीलमणि, सतबीर सिंह, करण सिंह, आनंद शेखावत ने भी अपनी जिरह में स्वीकार किया है कि प्रार्थी ने उनके साथ कभी दुर्व्यवहार नहीं किया। गवाह नीलमणि ने जिरह में कहा है कि प्रार्थी को पत्थर मारते, गाली गलौच करते नहीं देखा। गवाह सतबीर सिंह ने दोनों घटनायें एक ही दिन की बतायी हैं। गवाह करण सिंह ने प्रार्थी के विरुद्ध भ्रष्टाचार के मामले होना बताया है, जिसमें प्रार्थी को दो वेतन वृद्धि रोकने की सजा देकर पुनः नौकरी पर लिया है। गवाह आनंद शेखावत ने भी अपनी जिरह में स्वीकार किया है कि प्रार्थी को व्यक्तिगत रूप से गाली देते हुये नहीं देखा। नियोजक की ओर से प्रस्तुत गवाहान ने अपनी साक्ष्य में नहीं कहा है कि उनके साथ दुर्व्यवहार किया है। स्थायी आदेशों के अनुसार बिना जांच कराये डिसमिश नहीं किया जा सकता। प्रार्थी का कार्य संतोषजनक रहा है, जिसके प्रशंसा के प्रमाण पत्र प्रदर्श डवल्यू 5 लगायत 11 जारी किये गये हैं। प्रार्थी के बीमार रहने के दौरान के अस्पताल टिकिट पेश किये हैं, जिन्हें साक्ष्य में डाक्टर अशोक कुमार ने प्रमाणित किया है। प्रदर्श डवल्यू 26 से 28 अस्पताल के प्रमाण पत्र हैं। साक्ष्य में कंपान्डर दिलीप सिंह को पेश किया गया है। प्रार्थी को इलाज हेतु जयपुर ले जाने हेतु बतौर सहायक भेजा गया था। गवाह सी.पी. शर्मा व दीनदयाल, जो नियोजक कंपनी के श्रमिक हैं, उन्होंने भी अपनी साक्ष्य में कहा है कि प्रार्थी निलम्बित था और उक्त दोनों ही दिन वह घर पर था, कंपनी में गया ही नहीं था। नियोजक की ओर से प्रस्तुत साक्ष्य से ही निलम्बित कर्मचारी परिसर में नहीं जा सकता और प्रार्थी दिनांक 21.11.90 से निलम्बित रहा है। नियोजक कंपनी में अधिकारी भ्रष्टाचार करते थे, उसकी शिकायतें भी हुयी थी और कई अधिकारीगण को सजा भी हुयी थी। प्रार्थी को बदले की भावना से 21.09.92 के आदेश से डिसमिश की सजा दी गयी है, जो अनुचित है। प्रार्थी के विरुद्ध कोई भी आरोप साक्ष्य से साबित नहीं होता है। अतः आदेश दिनांक 21.09.92 निरस्त किया जावे। चूंकि प्रार्थी अपनी सेवानिवृत्ति आयु पूर्ण कर चुका है अतः प्रार्थी श्रमिक को पिछला पूर्ण वेतन एवं समस्त सेवानिवृत्ति परिलाभ दिलाये जावें। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं —

1. 2005 लेब आई सी 467 सर्वेश कुमार बनाम स्टेशन डायरेक्टर एण्ड ए.ए. न्यूक्लीयर पॉवर कॉ0 ऑफ इण्डिया।
2. 2003(8) एस सी सी 745 नर्बदा देवी गुप्ता बनाम वीरेन्द्र कुमार जैयसवाल व अन्य।
3. 2008(3) डवल्यू एल सी (राज.) देवी सिंह बनाम स्टेट ऑफ राज. व अन्य।
4. 2013 (3) ए सी जे 234 (एस सी) यूपीएसआरटीसी बनाम सी.पी. गोस्वामी।
5. डी.बी. सिविल स्पेशल अपील संख्या 1477/1997 जगदीश प्रसाद वर्मा बनाम हिन्दुस्तान कॉपर लि. व अन्य में निर्णय दिनांक 02.05.02

8. विपक्षी के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी के विरुद्ध गंभीर दुर्व्यवहार एवं झगड़ा करने के आरोप हैं। प्रार्थी को पूर्व में चार्जशीट जारी की गयी है। प्रार्थी द्वारा जांच में सहयोग नहीं करने तथा दुर्व्यवहार तथा मारपीट करने से बिना जांच के ही हटाया था। प्रार्थी सेवानिवृत्ति आयु पूर्ण कर चुका है। नियोजक की ओर से गवाह सर्वश्री पी. हेमचन्द्रन, नीलमणि, सत्यवीर सिंह, करन सिंह सोमरा, आनंद शेखावत पेश हुये हैं, जिनकी साक्ष्य से एवं दस्तावेजात प्रदर्श एम-1 लगायत 18 से प्रार्थी पर लगाये गये आरोप पूर्णतया साबित होते हैं। प्रार्थी को तीन बार निलम्बित किया जा चुका है। प्रार्थी पहली बार दिनांक 27.11.85, फिर 30.08.88 एवं उसके बाद दिनांक 21.11.90 से निलम्बित रहा है। प्रार्थी के विरुद्ध दुर्व्यवहार करने के संबंध में एफ.आई.आर. भी दर्ज की गयी है। सेवापृथक करने के बाद भी प्रार्थी द्वारा दुर्व्यवहार किये जाने पर दिनांक 21.02.93 को उसके विरुद्ध एफ.आई.आर. दर्ज करायी गयी है। प्रार्थी को एक बार पूर्व में भी दिनांक 08.12.88 को प्रदर्श एम-5 द्वारा सेवा से बर्खास्त किया जा चुका है। प्रार्थी द्वारा माफीनामा प्रदर्श एम-9 मांगे जाने पर प्रार्थी को पुनः सेवा में लिया गया है। प्रार्थी को गंभीर दुराचरण के फलस्वरूप सेवामुक्त किया गया है, जो उचित एवं वैध है। क्लेम खारिज किये जाने योग्य है। अप्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं—

1. (2003) 4 एस सी सी 579 इंडियन रेलवे कन्स्ट्रक्शन कॉ.लि. बनाम अजय कुमार।
2. (2007) 1 एस सी सी 222 एपीएसआरटीसी बनाम रघुदा शिव शंकर प्रसाद
3. 1995 (4) एस सी सी 549 रोल्सटन जॉन बनाम सीजीआईटी
4. 1995 (2) एस एल आर 414 आईआरडीए बनाम रामप्यारे पांडे।
5. (1991) 3 एस सी सी 54 नंदगंज सिरौही शूगर कॉ0लि0 बनाम बद्रीनाथ दीक्षित व अन्य।
6. (2007) 9 एस सी सी 63 विजय सिंह बनाम यूनियन ऑफ इण्डिया व अन्य।
7. (2005) 6 एस सी सी 224 एम.एल. बिन्जोलकर बनाम स्टेट ऑफ एम.पी.।
8. ए आई आर 1987 एस सी 111 ओ.पी. भण्डारी बनाम टूरिज्म डवलपमेंट कॉ0 लि.।
9. (2004) 3 एस सी सी 172 परलाईट लाईनर्स प्रा0लि0 बनाम मनोरमा सिरसी।

9. उभय पक्षों के तर्कों का मनन किया एवं पत्रावली का गहनता से अवलोकन व अध्ययन किया गया।

10. पत्रावली के अवलोकन से प्रकट होता है कि प्रार्थी के विरुद्ध जारी सेवामुक्ति आदेश दिनांक 21.09.92 में प्रार्थी को दिनांक 14.09.92 को हिंदी दिवस के उद्घाटन के दौरान श्री जगदीश प्रसाद वर्मा, कोड नंबर 19019, वरिष्ठ लेजरकीपर, खेतडी कॉपर कॉम्प्लेक्स कोलियान कॉपर माईन के साथ नेतृत्व संभाल कर उद्घाटन समारोह को भंग करने तथा कंपनी के अधिकारियों के साथ दुर्व्यवहार करने की नीयत से माईन पर कंपनी के अधिकारियों को अश्लील गालियां देने, धरने के लिये एकत्रित भीड़ को दंगा करने के लिये प्रांतवाद जैसे गलत तथा धिनौने मुद्दों को भड़काने के आरोप लगाये गये तथा इसके साथ ही दिनांक 18.09.92 को तथाकथित संगठन के कार्यकर्ताओं द्वारा प्रशासनभवन को जबरन घेरने, प्रशासन के कर्मचारियों व अन्य व्यक्तियों के आवागमन रोके जाने तथा भीड़ को गैर कानूनी कार्य के लिये जमे रहने तथा दंगा फसाद करने के लिये भड़काने, कर्मचारियों तथा प्रशासन भवन पर पथराव शुरू करने के आरोप लगाये गये। जिससे प्रशासन भवन की संपत्ति को नुकसान पहुंचा।

11. प्रार्थी पर लगाये गये उक्त आरोपों के संबंध में नियोजक की ओर से पांच गवाह सर्वश्री पी. हेमचन्द्रन, नीलमणि, सत्यवीर सिंह, करन सिंह सोमरा, आनंद शेखावत परीक्षित हुये हैं। निष्कर्ष पर पहुंचने से पूर्व दोनों पक्षों की ओर से प्रस्तुत गवाहों के बयानों की विवेचना करना उचित होगा।

12. नियोजक की ओर प्रस्तुत गवाह श्री पी.हेमचन्द्रन ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि प्रार्थी श्रमिक को उसके अनुशासनहीनता के कारण उसे आक्सीजन प्लांट आपरेटर के पद से बिट ग्राइण्डर के पद पर पदावतन किया गया। श्री एम.पी. जांगिड गंभीर दुराचरण करने का आदतन श्रमिक था और उसकी मानसिकता आपराधिक थी। मारपीट करना, अपने उच्चाधिकारियों पर हमला करना तथा उनकी बेइज्जती करना उसकी प्रकृति में ही शामिल था। दिनांक 27.11.85 को प्रबंधन के कानूनी आदेशों की जानबूझकर अवहेलना करने के कारण उसे निलम्बित किया गया था। उसकी गंभीर लापरवाही के कारण प्लांट का कम्प्रेसर नंबर 2 बुरी तरह क्षतिग्रस्त हुआ, जिसके परिणामस्वरूप आक्सीजन की सप्लाई बंद हो गयी और कंपनी का उत्पादन बुरी तरह प्रभावित हुआ। दिनांक 27.11.85 का निलम्बन आदेश श्री करनेल सिंह वरिष्ठ व्यवस्थापक (स्मेलटर) द्वारा जारी किया गया था, जो प्रदर्श एम-1 है। करनेल सिंह बहुत पहले सेवानिवृत्त हो गये, जिनका पता अब मालूम नहीं है। श्री करनेल सिंह के हस्ताक्षर उक्त आदेश पर ए से बी है, जिनको मैं भलीभांति पहचानता हूँ। दिनांक 27.05.86 को श्री एम.पी. जांगिड ने सुरक्षा अधिकारी श्री एल.के. श्रीवास्तव को अपने कार्यालय में प्रवेश करने से रोका तथा श्री एस.आर. राव के साथ दुर्व्यवहार किया। जिसके लिये प्रार्थी श्रमिक को मेमो दिनांक 31.07.86 के द्वारा स्पष्टीकरण मांगा गया। उक्त मेमो प्रदर्श एम-2 श्री बी.एल. गुप्ता, वरिष्ठ प्रबंधक (खान) द्वारा जारी किया गया था। श्री बी.एल. गुप्ता भी काफी समय पूर्व कंपनी छोड़ चुके हैं और उनका पता ज्ञात नहीं है। उक्त मेमो प्रदर्श एम-2 पर ए से बी हस्ताक्षर श्री बी.एल. गुप्ता के हैं, जिनके हस्ताक्षर मैं अच्छी तरह से पहचानता हूँ।

आगे अपने बयान में श्री हेमचन्द्रन ने बताया कि इसी तरह दिनांक 19.11.86 को भी प्रार्थी श्रमिक ने वरिष्ठ यांत्रिक अभियंता पर हमला करके एक गंभीर दुराचरण किया था। जिस बाबत श्री एस.के. राव, व्यवस्थापक (स्मेलटर) द्वारा दिनांक 19.11.86 को एक आरोप पत्र जारी किया गया, जिस आरोप पत्र की प्रति प्रदर्श एम-3 है। श्री एस.के. राव भी कंपनी छोड़कर जा चुके हैं, जिनका पता भी ज्ञात नहीं है। इसी तरह दिनांक 16.08.88 को भी प्रार्थी श्रमिक के खिलाफ एक शिकायत प्राप्त हुयी कि उसने वरिष्ठ सचिवालय अधिकारी श्री के.पुरुषोत्तम के कार्यालय की सीट पर जोरजबर्दस्ती कब्जा कर लिया और जब उसे आफिस छोड़कर जाने को कहा तो उसने कंपनी के अधिकारियों के साथ दुर्व्यवहार किया तब प्रार्थी श्रमिक को आदेश दिनांक 30.08.88 द्वारा निलम्बित किया गया है। उक्त आदेश स्मेलटर के वरिष्ठ प्रबंधक श्री ए.के. श्रीवास्तव द्वारा जारी किया गया, जिसकी प्रतिलिपि प्रदर्श एम-4 है। प्रार्थी श्रमिक को दिनांक 22.11.88 को एक कारण बताओ नोटिस भी जारी किया गया। श्री ए.के. श्रीवास्तव के हस्ताक्षर ए से बी है, जिनको मैं जानता हूँ।

आगे अपने बयान में श्री हेमचन्द्रन ने बताया कि श्री एम.पी. जांगिड ने किसी भी जांच में भाग नहीं लिया तथा उसने गवाहों तथा जांच अधिकारी को धमकाया। उसे आदेश दिनांक 28.12.88 द्वारा बर्खास्त कर दिया गया, जिसकी प्रतिलिपि प्रदर्श एम-5 है। यह आदेश श्री ए.के. श्रीवास्तव, वरिष्ठ प्रबंधक (स्मेलटर) द्वारा जारी किया गया। ए.के. त्यागी, जांच अधिकारी का पत्र प्रदर्श एम-6 है, जिसमें प्रार्थी श्रमिक द्वारा दी गयी धमकियों का उल्लेख है। प्रदर्श एम-5 बर्खास्तगी आदेश पर ए से बी हस्ताक्षर श्री ए.के. श्रीवास्तव के हैं, उसके हस्ताक्षर मैं अच्छी तरह से पहचानता हूँ। श्री ए.के. श्रीवास्तव कंपनी छोड़कर जा चुके हैं। बाद में श्री एम पी जांगिड द्वारा क्षमा मांगने पर उसे क्षमा करते हुये उसे वापिस सेवा में ले लिया गया। श्री एम.पी. जांगिड को फिर दिनांक 21.11.90 को उपप्रबंधक (कार्मिक) के साथ भौतिक रूप से हमला और मारपीट करके गंभीर चोटें पहुंचाने के कारण, दुराचरण के कारण पुनः निलम्बित किया गया और श्री डी.विश्वास, वरिष्ठ व्यवस्थापक (खान) द्वारा पत्र दिनांक 21.11.90 के जरिये एक आरोप पत्र प्रार्थी श्रमिक को दिया गया। उक्त आरोप पत्र की प्रति प्रदर्श एम-7 है। उक्त आरोप पत्र प्रदर्श एम-7 पर ए से बी हस्ताक्षर श्री डी.विश्वास के हैं, जिनको मैं अच्छी तरह से पहचानता हूँ। इस संबंध में एक प्रथम सूचना रिपोर्ट पुलिस थाना खेतडी नगर में दिनांक 21.11.90 को दर्ज करवायी गयी थी, जिसकी प्रमाणित प्रति प्रदर्श एम-8 है। प्रार्थी श्रमिक ने दिनांक 27.11.90 को वरिष्ठ कार्मिक अधिकारी श्री के.के. त्यागी को गंभीर परिणामों की धमकियां दी। श्रमिक ने उनको धमकाया कि वो अपने जीवन का बीमा करवा लेवें। श्री के.के. त्यागी की शिकायत प्रदर्श एम-9 है। प्रदर्श एम-9 पर ए से बी हस्ताक्षर श्री के.के. त्यागी के हैं, हस्तलिपि भी उन्हीं की है। उक्त शिकायत व्यवस्थापक प्रशासन द्वारा पुलिस उपाधीक्षक खेतडी नगर के पत्र दिनांक 27.11.90 के जरिये पुलिस में भेजा गया। पुलिस को भेजा गया पत्र दिनांक 27.11.90 प्रदर्श एम-10 है। श्री के.के. त्यागी भी कंपनी छोड़कर जा चुके हैं। प्रार्थी श्रमिक ने कभी भी जांचों को आगे नहीं बढ़ना दिया तथा हमेशा गवाहों तथा जांच अधिकारी को धमकियों देता रहा। कभी भी प्रार्थी ने किसी भी जांच में भाग नहीं लिया। बाद में दिनांक 24.02.92 तथा 11.03.92 के पत्र जांच अधिकारी श्री एच.के. खन्ना के प्राप्त हुये, जो प्रदर्श एम 11 व 12 हैं। श्री एच.के. खन्ना भी सेवानिवृत्त हो चुके हैं और उनका पता भी ज्ञात नहीं है। उक्त पत्र मेरे समक्ष प्रस्तुत किये गये, जिन पर ए से बी मेरे हस्ताक्षर हैं।

प्रबंधन के गवाह हेमचन्द्रन ने आगे कथन किया है कि दिनांक 14.09.92 को प्रशासनिक भवन के लॉन में हिन्दी दिवस का आयोजन किया गया था। श्री एम पी जांगिड तथा जगदीश प्रसाद वर्मा ने मजदूर किसान संगठन के साथ मिलकर हिन्दी दिवस के कार्यक्रम में बाधा पहुंचाने की कोशिश की। उसने माईक ले लिया तथा मेरे साथ कंपनी के अधिकारियों के साथ दुर्व्यवहार किया। उसने जनता को कानून और व्यवस्था की स्थिति को बिगाड़ने के लिये उकसाया। मैं इस मीटिंग में उपस्थित था। अंततः पुलिस की मदद से ही उनको बलपूर्वक कार्यक्रम से बेदखल किया गया। दिनांक 11.09.92 को मैंने एक रिपोर्ट पुलिस थाना खेतड़ी आगार को प्रेषित की थी, जो एम-13 है और जिस पर ए से बी मेरे हस्ताक्षर हैं।

श्री एम.पी. जांगिड अपनी ड्यूटी से निलम्बित था, उसके पास बहुत समय था। इस दौरान उसने मजदूर किसान संगठन की स्थापना की। उसने अगस्त 92 से आंदोलन चालू कर दिया। उसने प्रशासनिक भवन के आगे प्रदर्शन, घेराव आदि किये। दिनांक 28.08.92 को खेतड़ी कॉपर कॉम्प्लेक्स के महाप्रबंधक के खिलाफ जे.पी. वर्मा के साथ मिलकर घेराव का आंदोलन किया। दिनांक 29.08.92 को उसने तथा उसके साथियों ने प्रशासनिक भवन की बिल्डिंग में कर्मचारियों का आना-जाना रोक दिया था। मेरा भी घेराव किया गया तथा मुझे भी आफिस से बाहर नहीं निकलने दिया। घेराव दिनांक 18.09.92 तक चला तथा 18.09.92 की शाम को प्रदर्शनकारी हिंसक और उग्र हो गये थे, जिन्होंने कंपनी के वरिष्ठ अधिकारियों पर पत्थर फेंके और दुर्व्यवहार किया। पुलिस को बुलाना पड़ा। पुलिस ने ही भीड़ को बलपूर्वक खदेड़ा।

हेमचन्द्रन ने आगे कथन किया कि दिनांक 18.09.92 को एम.पी. जांगिड ने मजदूर किसान संगठन के सदस्यों के साथ मिलकर प्रशासनिक भवन का घेराव किया। उस समय मैं अपने कार्यालय में था। श्री एम.पी. जांगिड व जे.पी. वर्मा ने अवैध रूप से सदस्यों को कानून और व्यवस्था की स्थिति को बिगाड़ने का प्रयास किया। मैंने उन लोगों को आंदोलन वापिस लेने को कहा, किन्तु उन लोगों ने मेरी नहीं सुनी। मैंने इस बात की सूचना जिलाधीश तथा पुलिस अधीक्षक को दी। केन्द्रीय सरकार औद्योगिक सुरक्षा बल को भी मौके पर बुलाना पड़ा। अवैध भीड़ ने कंपनी के भवन पर पत्थर फेंकना चालू कर दिया। जिस कारण से कंपनी की खिड़कियों तथा वाहनों के काफी नुकसान हुआ तथा पुलिस के भी कुछ अधिकारियों के चोटें आयी। पुलिस ने अश्रु गैस के गोले भी छोड़े, किन्तु अवैध जमाव के सदस्यों ने पथराव करना जारी रखा। श्री एम.पी. जांगिड, जे.पी. वर्मा ने तत्पश्चात् भीड़ को गैस टरबाइन प्लांट तक ले जाने लगे ताकि उक्त प्लांट को नुकसान पहुंचाया जा सके। केन्द्रीय सरकार औद्योगिक सुरक्षा बल ने भीड़ को रोकने की कोशिश की। इसके बावजूद वह भीड़ प्लांट की पाइप लाइन को काटने में सफल हो गयी। गैस टरबाइन प्लांट में अत्यधिक ज्वलनशील पदार्थ थे। जिसमें गैस टरबाइन प्लांट को नुकसान पहुंचाया। उक्त वारदात खेतड़ी कॉपर कॉम्प्लेक्स के संपूर्ण प्लांट को नुकसान हो सकता था तथा इस क्षेत्र में रहने वाले निवासियों को जान-माल का भी गंभीर खतरा हो सकता था।

हेमचन्द्रन ने आगे कथन किया कि उक्त निलम्बन के बाद भी श्री एम.पी. जांगिड का स्वभाव व प्रकृति वैसी ही बनी रही और जब दिनांक 21.02.93 को कंपनी के प्रबंधन तथा यूनियन के बीच एक दोस्ताना फुटबॉल मैच का आयोजन किया गया तब भी उसने उस मैच तथा कार्यक्रम में बाधा डाली। प्रार्थी श्रमिक अपने आदमियों तथा सपोर्टर के साथ आया और उसने सी.एम.डी. के माथे पर काले रंग का कैमिकल उड़ेल दिया और भाग गया। किसी तरह से केन्द्रीय सरकार औद्योगिक सुरक्षा बल द्वारा उसे पकड़ लिया गया और पुलिस के हवाले किया गया। इस बारे में एक एफ.आई.आर. भी पुलिस में प्रदर्श एम-14 दर्ज करवायी गयी।

अपने बयान के अंत में हेमचन्द्रन ने कथन किया कि श्री एम.पी. जांगिड के उपरोक्त प्रकार के व्यवहार को देखते हुये तार्किक रूप से घरेलू जांच करवाया जाना व्यवहारिक नहीं था। जो कि जांच नियमों में उल्लेखित है। इसके अलावा कंपनी की सुरक्षा के कारणों से भी प्रक्रिया में उल्लेखित जांच करवाया जाना सुरक्षा के कारणों से संभव नहीं था। अतः महाप्रबंधक ने अपने आदेश दिनांक 21.09.92 द्वारा एम.पी. जांगिड को सेवाओं से बर्खास्त कर दिया। उक्त आदेश दिनांक 21.09.92 की प्रति प्रदर्श एम-15 है। उक्त आदेश पर ए से बी हस्ताक्षर श्री एम. वसूल के हैं। श्री एम. वसूल कंपनी छोड़ चुके हैं और उनका पता ज्ञात नहीं है। उनके हस्ताक्षर ए से बी है, जिन्हें मैं अच्छी तरह से पहचानता हूँ। इस श्रमिक द्वारा मेरे खिलाफ तथा कंपनी के अधिकारियों के खिलाफ फौजदारी मुकदमे स्वयं ने तथा अन्य श्रमिकों से करवाये जो कि कालान्तर में माननीय उच्च न्यायालय द्वारा अपास्त किये गये। श्री एम.पी. जांगिड को उपरोक्त वर्णित दुराचरणों के कारण से सेवा से बर्खास्त किया गया।

13. गवाह पी. हेमचन्द्रन ने अपनी जिरह में कहा है कि वह खेतड़ी कॉपर में वर्ष 1986 में आया तथा वर्ष 1987 से प्रार्थी श्रमिक को जानने लगा। श्री जांगिड के दिनांक 28.11.91 से 24.09.92 तक अस्पताल में भर्ती रहने के बारे में कुछ नहीं कह सकना कथन किया है। आगे जिरह में कहा है कि कर्नल सिंह, श्री बी.एल. गुप्ता, श्री एस.के. राव सेवानिवृत्त हो चुके हैं तथा इनके अधीन मैंने कार्य नहीं किया। श्रीवास्तव वर्ष 1996-97 में रिटायर/रिजार्डन हुये थे। यह सही है कि दिनांक 08.12.88 को प्रार्थी की सेवायें समाप्त कर दी गयी थी। यह सही है कि प्रदर्श एम-9, 9ए को अपील अधिकारी के पास भेजा था, जिन पर अपने इनिशियल व हस्ताक्षर नहीं करे। प्रदर्श एम-1 से एम-15 मैंने तब-तब देखे, जब-जब वो बनाये गये। प्रदर्श डवल्यू-1 व 2 पर ए से बी हस्ताक्षर बी. विश्वास के हैं। प्रदर्श डवल्यू-3 व 4 पर किसके हस्ताक्षर हैं, मैं नहीं बता सकता। प्रदर्श एम-5 पर ए से बी हस्ताक्षर श्री मिश्रा के हैं। प्रदर्श एम-13 व 14 मेरे द्वारा दर्ज करायी गयी हैं। यह सही है कि मैं जब से श्री जांगिड को जानने लगा हूँ, तब से मेरे खिलाफ उसने कोई मारपीट या दुर्व्यवहार नहीं किया, यद्यपि विभिन्न विभागों में उसके खिलाफ ऐसी शिकायतें थी। प्रार्थी श्रमिक के खिलाफ कोई जांच पूरी नहीं हुयी, क्योंकि टेलीफोन से वर्कर उनको धमकी देता रहता था। प्रदर्श डवल्यू-6 पर ए से बी हस्ताक्षर श्रीवास्तव के, प्रदर्श डवल्यू-7 पर ए से बी हस्ताक्षर मेरे हैं। दिनांक 14.09.92 को हिन्दी दिवस के कार्यक्रम में दौरान श्रमिक व उसके साथियों ने सुबह 9 बजे न्यूसेंट किया। गेट पर मैंने भीड़ देखी थी, जो हजारों में होगी। दिनांक 18.09.92 को मैंने अपनी आँख से वर्कर को किसी को थप्पड़ मारते या मारपीट करते नहीं देखा, परन्तु हल्ला करते हुये मैंने जरूर कानों से सुना था। इस मारपीट की मेरे पास रिपोर्ट नहीं आयी, क्योंकि पुलिस आ चुकी थी। दिनांक 18.09.92 की घटना शाम के 5 बजे बाद की है, उस समय सी.आई.एफ.एस. के 24 घंटे ऑन दी रोड 400 आदमियों की ड्यूटी लगी रहती थी। गैस प्लांट को एम.पी. जांगिड ने कोई नुकसान नहीं पहुंचाया। आगे कहा है कि यह सही है कि गैस प्लांट को नुकसान पहुंचाया था, वह मैंने अपनी आँखों से नहीं देखा था, पर बाद में मैंने जाकर अपनी आँखों से देखा था।

14. नियोजक की ओर से प्रस्तुत गवाह श्री नीलमणि ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि वह सन् 1991 से 1993 तक केन्द्रीय सरकार औद्योगिक सुरक्षा बल के कमाण्डर की हैसियत से तैनात था, जिस कारण से मैं उक्त समय की सुरक्षा व्यवस्था में आई बाधाओं तथा बाधा उत्पन्न करने वालों से वाकिफ हूँ। एम.पी. जांगिड़ ने अपने व्यवहार एवं कार्य द्वारा कई बार वरिष्ठ अधिकारियों से दुर्व्यवहार कर अपमानित किया है तथा हिन्दुस्तान कॉपर कॉम्प्लेक्स की संपत्ति को नुकसान पहुंचाया है। उक्त गवाह ने दिनांक 18.09.92 एवं 21.02.93 की घटनाओं के संबंध में गवाह पी.ड. 1 पी. हेमचन्द्रन द्वारा दिये गये बयानों की तारीख की है।

15. उक्त गवाह ने अपनी प्रतिपरीक्षा में कहा है कि प्रार्थी श्रमिक अगस्त 91 से 21.09.92 तक बीमार हो, अस्पताल में हो, इलाज करा रहा हो तो, पता नहीं है। प्रार्थी श्रमिक द्वारा मेरे साथ अभद्र व्यवहार नहीं किया। मैंने प्रार्थी को पत्थरवाजी करते नहीं देखा।

16. नियोजक की ओर से प्रस्तुत गवाह श्री सत्यवीर सिंह ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि वह जून 1992 से सितम्बर 1994 तक बतौर रिजर्व इन्सपेक्टर/इन्सपेक्टर खेतड़ी कॉपर कॉम्प्लेक्स, खेतड़ी नगर में कार्यरत था। गवाह ने कहा है कि वह एम.पी. जांगिड़ को जानता था और उसने अपने व्यवहार एवं कार्य द्वारा कई बार अपने वरिष्ठ अधिकारियों से दुर्व्यवहार कर अपमानित किया तथा विपक्षी संस्थान की संपत्ति को नुकसान पहुंचाया। उक्त गवाह ने दिनांक 18.09.92 एवं 21.02.93 की घटनाओं के संबंध में गवाह पी.ड. 1 पी. हेमचन्द्रन द्वारा दिये गये बयानों की तारीख की है।

17. उक्त गवाह ने अपनी प्रतिपरीक्षा में बताया है कि श्री जांगिड़ ने श्री हेमचन्द्रन व अन्य अधिकारियों के साथ दुर्व्यवहार किया था, अन्य अधिकारियों के नाम ध्यान नहीं है, हेमचन्द्रन के साथ गाली-गलौच की थी व नारेबाजी भी प्रशासन के अंदर की थी। आगे जिरह में कहा है कि निलम्बित व्यक्ति प्रशासनिक भवन में अनुमति लेकर अंदर आ सकता है, लेकिन ये सब जोर जबर्दस्ती अंदर चले गये। आगे कथन किया है कि मेरे साथ कोई गाली-गलौच नहीं किया, सिक्थोरिटी गार्ड व अन्य लोगों के साथ किया था।

18. नियोजक की ओर से प्रस्तुत अन्य गवाह श्री करन सिंह सोमरा ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि वह दिनांक 03.06.68 से विपक्षी संस्थान में कार्यरत है। एम.पी. जांगिड़ एक आपराधिक मनोवृत्ति के व्यक्ति है, जिन्होंने अपने दुर्व्यवहार से कई बार वरिष्ठ अधिकारियों को अपमानित किया है तथा कई बार वरिष्ठ अधिकारियों के साथ मारपीट की है। श्रमिक द्वारा सन् 1986 में श्री एल.के. श्रीवास्तव को अपने कक्ष में जाने में अवरोध उत्पन्न किया तथा एस.आर. राव को अपशब्द कहकर अपमानित किया तथा उनके साथ दुर्व्यवहार किया, जिसके लिये प्रार्थी श्रमिक से स्पष्टीकरण मांगा गया। दिनांक 21.11.90 को कंपनी के वरिष्ठ अधिकारी श्री पी.एम. चाको, डिप्टी मैनेजर पर्सनल के साथ लात घूसों से मारपीट कर दुर्व्यवहार किया, जिस कारण श्रमिक को चार्जशीट दी गयी थी प्रथम सूचना रिपोर्ट भी दर्ज कराई गयी। उक्त गवाह ने दिनांक 18.09.92 एवं 21.02.93 की घटनाओं के संबंध में गवाह पी.ड. 1 पी. हेमचन्द्रन द्वारा दिये गये बयानों की तारीख की है।

19. उक्त गवाह ने अपनी प्रतिपरीक्षा में कहा है कि वर्ष 86 में श्री महावीर जांगिड़ की जांच में सहयोगी नहीं बनने पर मुझे गाली गलौच की गयी। श्री जांगिड़ ने मेरे खिलाफ फौजदारी केस दर्ज कराया था, जो अब खारिज हो चुका है। कंपनी ने फर्जी ओवर टाईम क्लेम करने के आरोप में मुझे चार्जशीट दी थी व सरपेंड किया था, लेकिन चार्ज प्रूव नहीं होने पर कंपनी ने मुझे वापिस सेवा में ले लिया। दिनांक 31.07.86 को कोलिया में उनके साथ दुर्व्यवहार किया। मेरे सामने उनके साथ कोई अभद्र व्यवहार नहीं किया। दिनांक 16.08.88 को पुरुषोत्तम के साथ श्री जांगिड़ को गाली-गलौच करते देखा था। दिनांक 18.09.92 को 3 बजे से 5 बजे के बीच श्रमिक 50-60 आदमियों के साथ प्रशासन के बाहर था। श्री जांगिड़ को 50-60 आदमियों के साथ गैस टर्बाइन की तरफ जाते देखा था, गैस टरबाइन के पास जांगिड़ चला गया था, परन्तु उसे पकड़ लिया गया, मैं भी उसके पीछे चला गया था। कन्स्ट्रैट प्लांट एक किलोमीटर दूर है, परन्तु उसकी लाइन गैस टरबाइन से जुड़ी है।

20. नियोजक की ओर से प्रस्तुत अन्य गवाह श्री आनंद शेखावत ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि वह विपक्षी संस्थान में वर्ष 1992 से हिन्दी अधिकारी के पद पर कार्यरत है। उक्त गवाह ने दिनांक 18.09.92 की घटना के संबंध में गवाह पी.ड. 1 पी. हेमचन्द्रन द्वारा दिये गये बयानों की तारीख की है।

21. उक्त गवाह ने अपनी जिरह में कहा है कि दिनांक 14.09.92 को एम.पी. जांगिड़ द्वारा कंपनी के अधिकारीगण के साथ अभद्र व्यवहार, गाली गलौच की कोई शिकायत नहीं की। मैं किसी अधिकारी का नाम नहीं बता सकता जिसके साथ प्रार्थी श्रमिक ने अभद्र व्यवहार, गाली गलौच किया हो। मैंने जूलूस अपनी आँखों से देखा था। मैंने श्री जांगिड़ द्वारा किसी अधिकारी व्यक्तिगत नाम से गाली देते नहीं देखा था लेकिन प्रशासन को जांगिड़ द्वारा गाली-गलौच करते सुना था।

22. प्रार्थी श्रमिक के विरुद्ध जो निष्कासन आदेश जारी किया गया है, वह स्वयं ही दो पेजों में स्पष्ट आदेश है। प्रार्थी श्रमिक को निलम्बित करना, कंपनी की संपत्ति को नुकसान पहुंचाना, कंपनी के उच्च अधिकारियों के साथ मारपीट, बल व हिंसा का उपयोग करना, ये सारे तथ्य विपक्षी की ओर से प्रस्तुत मौखिक एवं दस्तावेजी साक्ष्य से साबित हुये हैं और उनका विस्तार से उल्लेख प्रबंधन की ओर से प्रस्तुत दस्तावेजात् प्रदर्श एम-1 लगायत एम-15 में आया हुआ है। प्रबंधन की ओर से जो गवाह प्रस्तुत हुये हैं, उनकी जिरह में ऐसा कोई बात उभर कर नहीं आयी है कि उन्होंने जो मुख्य परीक्षण में बयान दिये हैं, वे असत्य हों या प्रार्थी के साथ कोई पुरानी दुश्मनी या रंजिश के कारण झूठे बयान दिये हों, बल्कि हकीकत में प्रार्थी का स्वयं का व्यवहार हिंसक और उग्र रहा है। प्रार्थी के कृत्य कंपनी के हितों के विपरीत रहे हैं। कंपनी के उच्चाधिकारियों के साथ अभद्रता से पेश आना, मारपीट करना, जांच करने वाले अधिकारियों को धमकाना, जान से मारने की धमकियाँ देना, हिंसक और उग्र आंदोलन करके कंपनी की संपत्ति को नुकसान पहुंचाना, यह सभी बातें उपरोक्त पांचों गवाहान के बयान से भली प्रकार से साबित हुयी हैं। प्रबंधन की ओर से जो न्यायिक दृष्टांत प्रस्तुत किये गये हैं, उनका भी सारांश यही है कि यूनियन का कोई सदस्य या श्रमिक यदि हिंसा का सहारा लेता है, तो कंपनी का प्रबंधन उसे सेवा से पृथक कर सकता है। यदि कंपनी के प्रबंधन का कर्मचारी में विश्वास समाप्त हो गया है तो भी कंपनी ऐसे श्रमिक/कर्मचारी को सेवा से पृथक कर सकती है। मेरे विनम्र मत में अभिलेख पर आई साक्ष्य से प्रबंधन ने यह भलीभांति साबित किया है कि प्रार्थी श्रमिक का आचरण हिंसक, उग्र, अनुशासनहीनता से परिपूर्ण और कंपनी के हितों के विपरीत था। ऐसी दशा में कंपनी के प्रबंधन का

श्रमिक के प्रति विश्वास समाप्त हो जाना स्वाभाविक था। इस श्रमिक को बार-बार दुचारण के कारण निलम्बित किया गया है, सेवा से पृथक भी किया गया है, पदावनत भी किया गया है, जो प्रदर्शित हुये दस्तावेजों से साबित है। जांच अधिकारियों ने श्रमिक के द्वारा डराने, धमकाने के लिये जो हथकण्डे अपनाये, उसकी भी शिकायतों की हैं। अतः ऐसी सूरत में उपरोक्त पांचों गवाहान के बयानात संदेह से परे इस बात की पुष्टि करते हैं कि प्रार्थी श्रमिक का आचरण अनुशासनहीनतायुक्त, हिंसक, उग्र एवं कंपनी के हितों के प्रतिकूल था। प्रदर्श एम-15 में विस्तारपूर्वक दोनों घटनाओं का उल्लेख किया हुआ है। किसी एक व्यक्ति विशेष के साथ रंजिश या दुश्मनी हो सकती है, किंतु कंपनी की ओर से जो प्रदर्शित भिन्न-भिन्न दस्तावेजों में कंपनी के विभिन्न स्तर के अधिकारियों ने समय-समय पर जो आदेश जारी किये हैं, उनसे भी साबित होता है कि प्रार्थी श्रमिक के खिलाफ किसी व्यक्ति विशेष की रंजिश अथवा दुर्भावना नहीं रही थी, बल्कि प्रार्थी स्वयं का आचरण अनुचित और अनुशासनहीनतायुक्त था। ऐसे श्रमिक को कंपनी में बने रहने का कतई और कोई अधिकार नहीं बनता है। दिनांक 18.09.92 को प्रार्थी ने अपने साथ के कुछ साथियों को लेकर केन्द्रीय सरकार औद्योगिक सुरक्षा बल के कर्मचारियों तथा प्रशासन भवन पर पथराव किया था, जिससे प्रशासन भवन की खिड़कियों के शीशे टूट गये तथा कंपनी के वाहनों को भारी क्षति पहुंची तथा राज्य पुलिस के कई कर्मचारियों के गंभीर चोटें आयीं पुलिस को अश्रु गैस के गोले छोड़ने पड़े तो भी पथराव जारी रखा गया। जिस प्लान्ट को नुकसान पहुंचाने के लिये कन्स्ट्रक्टर प्लांट में ईटीपी प्लांट से आने वाली लाईन को भी तोड़ दिया। इस तरह की हिंसा, बल और दंगाफसाद के तत्व गवाहों के बयानों से तथा प्रथम सूचना रिपोर्ट से और निष्कासन आदेश से साबित है। यदि गैस टरबाइन प्लांट में भी नुकसान होता तो उसमें पड़े ज्वलनशील पदार्थों से पूरा प्लांट जल जाता और आस-पास के निवासियों की जान-माल को क्षति पहुंचती। केन्द्रीय औद्योगिक सुरक्षा बल के कर्मचारियों तथा पुलिस कार्यवाही के कारण से ही जान-माल की क्षति बच पाई थी। हिन्दी दिवस पर भी कंपनी के सी.एम.डी. के साथ श्रमिक ने बल और हिंसा का प्रयोग किया, काले रंग का तरल द्रव्य उड़ेल दिया। पहले भी उच्चाधिकारियों के साथ मारपीट की थी। इन सभी बातों के कारण कंपनी के प्रबंधन का प्रार्थी श्रमिक के प्रति विश्वास समाप्त हो जाना स्वाभाविक था और ऐसी दशा में बिना जांच की कार्यवाही अमल में लाये प्रार्थी श्रमिक को सेवा पृथक करना भी उचित था। प्रार्थी ने अपने उग्र स्वभाव, बल और हिंसा के कारण ऐसी परिस्थितियां पैदा कर दी कि नियमित विभागीय जांच किया जाना संभव नहीं रह गया था। ऐसी दशा में प्रार्थी के बार-बार के दुराचरण को देखते हुये पूर्व के निलम्बनकाल को देखते हुये, पूर्व के सेवा पृथक आदेश को देखते हुये तथा पूर्व की पदावनति को देखते हुये कंपनी प्रबंधन का प्रार्थी श्रमिक के प्रति विश्वास समाप्त हो जाने के कारण ही नौकरी से पृथक करने का कदम न केवल उचित था, बल्कि विधिकपूर्ण भी था। अप्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों का मैंने बारीकी से अध्यापित विनम्रतापूर्वक अवलोकन किया। उपरोक्त सभी दृष्टांतों के तथ्य एवं परिस्थितियां हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से समानता रखते हैं, अतः उक्त सभी न्यायिक दृष्टांत हस्तगत प्रकरण में लागू होते हैं। जिनका प्रभाव यथोचित रूप से ऊपर विवेचना में दिया गया है।

23. श्रमिक श्री एम.पी. जांगिड़ ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि प्रार्थी को मिथ्या तथ्यों पर आधारित आरोप पत्र बिना दिये व जांच के बिना 21.09.92 का आदेश दिये बिना ही दैनिक राजस्थान पत्रिका में प्रकाशित करा कर सेवा से पृथक कर दिया। प्रार्थी को दिनांक 21.11.90 को महज परेशान करने की नीयत से निलम्बित किया गया, जिसके विरुद्ध एक घोषणात्मक वाद पेश किया, जिसमें नियोजक ने लिख करके दिया कि आरोप पत्र वापिस लेते हैं। दिनांक 21.09.92 को सेवा पृथक आदेश जारी करने से पूर्व कोई आरोप पत्र नहीं दिया गया और न ही कोई जांच की गयी। प्रार्थी को संस्थान के स्थाई आदेश प्रदर्श डवल्यू-3 के विपरीत महज परेशान करने की नीयत से सेवा से बर्खास्त करने की सजा दी गयी है। आगे कथन किया है कि दिनांक 14.09.92 को उसने किसी भी अधिकारी के साथ अभद्र व्यवहार नहीं किया और न ही गाली-गलौच की और न ही जगदीश वर्मा के साथ दिया। दिनांक 18.09.92 को कोई दुराचरण नहीं किया और न ही प्रशासन भवन में किसी को जाने से रोका। नियोजक द्वारा सेवा से बर्खास्त करने के बाद प्रार्थी के प्रतिवेदन पर कोई ध्यान नहीं दिया। प्रार्थी को सेवापृथक आदेश की नकल नहीं दी गयी, जिससे अपील भी पेश नहीं की जा सकी। उक्त आदेश के विरुद्ध धारा 2ए के तहत प्रार्थना पत्र पेश किये जाने पर कोई समझौता नहीं होने के कारण असफल प्रतिवेदन भारत सरकार को भेजा गया, जो प्रदर्श डवल्यू-4 है। मेरे कार्य के बारे में नियोजक द्वारा दिये गये प्रमाण-पत्र प्रदर्श डवल्यू 5 लगायत 10 हैं। दिनांक 28.11.91 से बीमार होने के कारण नियोजक द्वारा संचालित अस्पताल में इलाज करवाया गया था, जो प्रदर्श डवल्यू-11 है तथा अस्पताल का डुप्लीकेट कार्ड प्रदर्श डवल्यू-12 है। दिनांक 14.09.92 व 18.09.92 को नियोजक के किसी भी अधिकारी के साथ न तो किसी प्रकार का अभद्र व्यवहार किया और न ही गाली गलौच की और न ही नियोजक की संपत्ति को नुकसान पहुंचाया। आगे कथन किया है कि पी. हेमचन्द्रन व नियोजक के अधिकारियों द्वारा किये गये भ्रष्टाचार के लिये पेश किये गये प्रतिवेदन प्रदर्श डवल्यू 13 लगायत 21 हैं। श्री सोमरा द्वारा मुझे से व्यक्तिगत रूप से द्वेषता होने के कारण न्यायालय में मेरे विरुद्ध बयान लिये थे, क्योंकि मैंने श्री सोमरा द्वारा की गयी लाखों रुपये की फर्जी कार्यवाही के लिये नियोजक के अधिकारीगण व सी.बी.आई. को प्रतिवेदन पेश किये थे, जिनमें से कुछ प्रदर्श डवल्यू 20 लगायत 21 हैं। केन्द्रीय सरकार औद्योगिक सुरक्षा बल के अधिकारीगण के विरुद्ध मैंने संस्थान में समय-समय पर चोरी आदि के लिये प्रतिवेदन पेश किये थे, जो प्रदर्श डवल्यू 22 है। नियोजक द्वारा जारी आरोप पत्र में न्यायालय द्वारा मुझे बरी किया गया है, आदेश प्रदर्श डवल्यू-23 है। प्रार्थी ने कथन किया है कि उसे महज यूनियन का पदाधिकारी होने तथा श्री सोमरा दूसरी यूनियन के पदाधिकारी थे, के बदले की भावना से प्रेरित होकर मुझे सेवा से अलग किया है। श्री हेमचन्द्रन मेरे से व्यक्तिगत द्वेषता रखते थे, जिससे सेवा से अलग करने के बाद मिथ्या तथ्यों पर आधारित एफ.आई.आर. दर्ज करवायी गयी, जिसमें न्यायालय द्वारा दिनांक 04.12.93 को करणी सिंह सोमरा, देवराज भुडालिया व अन्य को न्यायालय में बुलाने का आदेश प्रदर्श डवल्यू-24 है। श्री हेमचन्द्रन के विरुद्ध दर्ज छूआछूत का प्रकरण की पंजाब केशरी में प्रकाशन की प्रति प्रदर्श डवल्यू-25 है। श्री हेमचन्द्रन द्वारा मुझे से व्यक्तिगत द्वेषता रखने के कारण मेरे खिलाफ बयान दिये गये हैं। नियोजक द्वारा मेरे को विकटीमाईज करने के उद्देश्य से बिना जांच के सेवा से अलग किया है। प्रार्थी ने कथन किया है कि दिनांक 14.09.92 व 18.09.92 को बीमार होने के कारण किसी भी घटना के समय नियोजक संस्थान में नहीं गया था।

24. उक्त गवाह ने अपनी प्रतिपरीक्षा में कहा है कि वर्ष 1986 में सेफटी आफिसर के साथ दुर्व्यवहार बाबत स्पष्टीकरण व आरोप पत्र गलत तथ्यों पर आधारित होने से वापिस ले लिया गया। मैंने सीनियर मैकेनिकल श्री भूप सिंह के साथ कोई मारपीट नहीं की।

श्री जांगिड़ ने अपनी जिरह में सीनियर सीक्रेट्री आफिसर के साथ दुर्व्यवहार करने से इंकार किया है। श्रमिक ने दिनांक 30.08.88 को जारी आरोप प. व 8.12.88 के सेवापृथक करने के आदेश के बाबत अपील पेश नहीं करना और माफी मांगे जाने से इंकार किया है तथा प्रदर्श एम-9 पर स्वयं के हस्ताक्षर होने से इंकार किया है। श्रमिक ने जानबूझकर जांच में भाग नहीं लेने, धमकियाँ देने, श्री चाको पर कातिलाना हमला करने के तथ्यों को गलत बताया है। गवाह ने वर्ष 92 में बीमार होने के कारण किसान मजदूर संगठन में भाग लेने से इंकार किया है तथा दिनांक 18.09.92 को हिन्दी दिवस के दौरान प्रशासन के विरुद्ध घेराव करने व पत्थरबाजी करने से इंकार किया है। प्रार्थी श्रमिक द्वारा भ्रष्टाचार के खिलाफ शिकायतें दर्ज कराने के कारण झूठी रिपोर्ट दर्ज कराना कथन किया है। आगे जिरह में कहा है कि मैंने मैनेजमेंट के अधिकारी श्री चाको, हेमचन्द्रन, के.पी. गुप्ता, पी.के. गोलासा, वेदालिखा व दत्ता के खिलाफ सी.बी.आई. में व प्रधानमंत्री को रिपोर्ट की थी। 1975 में मुझे ब्रिट गार्डनर के पद पर पदोन्नत किया गया था। प्रार्थी ने मैडीकल प्रमाण पत्र जांच में देरी करने के उद्देश्य से पेश करने के कथन को गलत बताया है। प्रार्थी ने दिनांक 21.02.93 को भी वैदालिखा चैयरमैन के साथ दुर्व्यवहार किये जाने से इंकार किया है।

25. श्रमिक ने अपने बयानों में यह बताने का प्रयास किया है कि कंपनी के अधिकारियों के खिलाफ उसने समय-समय पर शिकायतें की, इस कारण उन्होंने दुर्भावना से उसके खिलाफ गलत कार्यवाही की। श्रमिक ने अपने दस्तावेजों से यह भी साबित करने का प्रयास किया है कि उसे समय-समय पर अच्छी सेवाओं के लिये सम्मानित किया गया और पदोन्नति भी दी गयी। मेरे विनम्र मत में विधि के अनुसार दर्शाये गये पथ पर चलते हुये कंपनी के किसी भी अधिकारी के खिलाफ शिकायत की जा सकती है और कानून उस पर अपना कार्य करता है। कानून के काम में बल, हिंसा और उग्रता का कोई स्थान नहीं है। प्रार्थी द्वारा शिकायतें करना अलग बात है और उसका स्वयं का अनुशासनहीनता से युक्त होना और हिंसा के कृत्य करना अलग बात हैं। जब प्रार्थी ने जिस समय कुछ अच्छा कार्य किया होगा, तो उसे पुरस्कार भी मिले होंगे और सहानुभूति भी मिली होगी, किन्तु कालान्तर में उसके द्वारा किसान मजदूर संघ बनाकर उग्र हिंसक प्रदर्शन किये गये, तोड़फोड़ और हिंसा की कार्यवाही की गयी, उच्चाधिकारियों के साथ मारपीट, बल और हिंसा का उपयोग किया गया, के तथ्य भी रेकॉर्ड पर साबित हैं। ऐसी सूरत में प्रार्थी को इन तथ्यों से कोई सहायता नहीं मिलती है कि पूर्व में उसे कुछ पुरस्कार भी मिले थे और पदोन्नति भी मिली थी।

26. प्रार्थी की ओर से प्रस्तुत दूसरे गवाह श्री सुभाष चंद ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि मैं एम.पी.जांगिड़ का छोटा भाई हूँ। मेरे भाई दिनांक 21.09.92 से बेरोजगार हैं। दिनांक 28.11.91 से 24.09.92 तक नियोजक द्वारा संचालित अस्पताल में मेरे भाई का इलाज चला था। बाद में अस्पताल में इलाज करने से मना करने पर प्राइवेट वैद्य से हरियाणा में जाकर इलाज करवाया था। दिनांक 14.09.92 व 18.09.92 की अवधि में मेरे भाई नियोजक के यहाँ नहीं गये थे।

27. उक्त गवाह ने अपनी जिरह में कहा है कि रेवाड़ी के वैद्य से भी एम.पी. जांगिड़ का इलाज करवाया था। यद्यपि इस सुझाव को गलत बताया कि जांच से बचने के लिये झूठे तौर पर इलाज करवाने का बताया हो। मेरे विनम्र मत में एम.पी. जांगिड़ को कोई गंभीर बीमारी नहीं थी और वह प्रबंधक वर्ग द्वारा की जाने वाली अनुशासनिक कार्यवाही से बचने के लिये अपने आपको बीमार होना बता रहा था।

28. इस संबंध में प्रार्थी की ओर से तीसरे गवाह डॉ० अशोक कुमार ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि मैं विपक्षी संस्थान के अस्पताल में वर्ष 1982 से काम कर रहा हूँ तथा वर्तमान में सी.एम.ओ. हूँ। प्रदर्श डवल्यू-12 श्रमिक महावीर प्रसाद की ओ.पी.डी. बुक है। इसकी कॉपी प्रदर्श डवल्यू-12ए में 17.9.92 की ए से बी एंट्री, दिनांक 05.09.92 की सी से डी एंट्री दिनांक 11.9.92 की ई से एफ एंट्री, दिनांक 05.09.92 की जी से एच एंट्री मेरी कलमी है। प्रार्थी को एस.एम.एस. जयपुर के लिये एस्कॉर्ट एलाउ किया था। 11.08.91 से प्रार्थी का इलाज चल रहा हो तो मैं नहीं कह सकता।

29. इस गवाह ने अपनी जिरह में कहा है कि जब-जब प्रार्थी मेरे पास इलाज के लिये आया तो उसकी शारीरिक स्थिति बिलकुल ठीक रहती थी और वह कभी भी हमारे अस्पताल में भर्ती नहीं रहा। आगे जिरह में कहा है कि वह बिना लाईन में लगे आता था, ऐसा इनका व्यवहार था। प्रार्थी की ईसीजी, एक्स-रे की रिपोर्ट नॉर्मल पायी गयी। प्रार्थी को जयपुर भी उसकी प्रार्थना पर रैफर किया गया था, मेरी राय में जयपुर भेजने जैसी कोई बीमारी नहीं थी। मेरी राय में प्रार्थी को बीमारी नहीं थी तथा वह तारीखें लेने के लिये मेरे पास आता था।

30. इस प्रकार डॉ० अशोक कुमार की जिरह से यह भी साबित होता है कि प्रार्थी श्रमिक को किसी तरह की कोई बीमारी नहीं थी, वो कभी भी भर्ती नहीं रहा। प्रार्थी को जयपुर रैफर भी श्रमिक के दबाव के कारण करना पड़ा था, यहां तक कि वो लाइन में नहीं आकर पहले दिखाने का प्रयास करता। डॉ० अशोक कुमार की जिरह से काफी बातों से श्रमिक का स्वयं अनुशासनहीनता का ही व्यवहार साबित होता है।

31. प्रार्थी की ओर से प्रस्तुत गवाह श्री चन्द्रपाल शर्मा ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि मैं एम.पी. जांगिड़ को व्यक्तिगत रूप से जानता हूँ तथा मैं दिनांक 08.02.68 से नियोजक के यहाँ कार्यरत हूँ। प्रार्थी श्रमिक दिनांक 18.09.92 को नियोजक संस्थान में अपने जीवन निर्वाह भत्ता के भुगतान के संबंध में प्रशासन भवन में कार्यपालक निदेशक से मिलने गया था और वहाँ पर करीब दो घंटे तक रहा था, उस समय गेट के बाहर मजदूर व किसानों ने मीटिंग कर रखी थी। दिनांक 18.09.92 को हो रही मीटिंग में मैं स्टेज के पास ही बैठा था, मैंने एम.पी. जांगिड़ को वहाँ नहीं देखा। प्रार्थी श्रमिक को परेशान करने की नीयत से सेवा से अलग करने की कार्यवाही की गयी है।

32. उक्त गवाह ने अपनी प्रतिपरीक्षा में श्री एम.पी. जांगिड़ द्वारा अपने अधिकारियों को अपमानजनक शब्द कहने, लोगो को भड़काने तथा दिनांक 18.09.92 को प्रशासन भवन के सामने भीड़ को भड़काने, उनका नेतृत्व करने तथा पथराव किये जाने के कथन से इंकार किया है। दिनांक 18.09.92 को गवाह ने अपनी जिरह में प्रार्थी श्रमिक को बीमार होना बताया है।

33. प्रार्थी की ओर से प्रस्तुत गवाह श्री दीनदयाल ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि मैं विपक्षी संस्थान में 02.08.72 से नियोजित था तथा 31.03.99 को स्वेच्छिक सेवानिवृत्ति से सेवानिवृत्त हुआ। मैं प्रार्थी श्रमिक को व्यक्तिगत रूप से जानता

हूँ। नवम्बर 91 से सितम्बर 92 तक प्रार्थी की हालत ऐसी नहीं थी कि वह बिना सहायक के मकान से बाहर भी जा सकते थे और जब भी बाजार जाना होता तो गाड़ी में सहायक के साथ जाते थे। दिनांक 18.09.92 को मजदूर किसान संगठन की नियोजक कंपनी के समक्ष मांगों के संबंध में मीटिंग में प्रार्थी को नहीं देखा और न ही वह वहाँ गया था, क्योंकि मैं जब मकान पर वापिस आया तब प्रार्थी चारपाई पर लेट रहा था। प्रार्थी को नाराज होकर बदले की भावना से नौकरी से अलग किया है।

34. उक्त गवाह ने अपनी जिरह में प्रार्थी श्रमिक का अपने अधिकारियों के साथ गाली-गलोच व मारपीट करने के तथ्य से इंकार किया है। साथ ही गवाह ने श्री एम.पी. चाको के साथ मारपीट करने तथा प्रथम सूचना रिपोर्ट दर्ज कराने तथा प्रार्थी एम.पी. जांगिड़ के दिनांक 18.09.92 से पूर्व निलम्बित होने के बारे में पता नहीं होना बताया है। गवाह ने प्रार्थी श्रमिक के बीमार नहीं होने तथा जांच से बचने के लिये झूठे बहाने बनाने के तथ्यों से भी इंकार किया है। गवाह ने अपनी जिरह में दिनांक 14.09.92 से 18.09.92 तक प्रार्थी श्रमिक द्वारा किसानों व मजदूरों को कंपनी के खिलाफ भड़काने के बारे में पता नहीं होना कहा है।

35. प्रार्थी की ओर से प्रस्तुत गवाह श्री दिलीप सिंह ने अपनी साक्ष्य के मुख्य परीक्षण में कथन किया है कि मैं नियोजक कंपनी में संचालित अस्पताल में वर्ष 1970 से 03.04.01 तक ड्रेसर के पद पर था। मैं प्रार्थी को जानता हूँ। प्रार्थी का मैडीकल कार्ड प्रदर्श डवल्यू-12 है। दिनांक 28.11.91 से 24.09.92 तक महावीर प्रसाद की हालत शारीरिक व दिमाग की ऐसी नहीं थी कि वह बिना किसी ऐसकोर्ट के एक स्थान से दूसरे स्थान तक चल फिर नहीं सकता था और इसी कारण से अस्पताल में ऐसकोर्ट स्वीकृत किया गया।

36. उक्त गवाह ने अपनी जिरह में प्रार्थी श्रमिक के विरुद्ध जांच कार्यवाही चलने से इंकार किया है। साथ ही गवाह ने प्रार्थी को शारीरिक एवं मानसिक रूप से बीमार होना बताया है, लेकिन प्रार्थी किस बीमारी से पीड़ित था, पता नहीं होना कहा है तथा प्रार्थी की मानसिक बीमारी के संबंध में नहीं बता पाना कथन किया है।

37. गवाह चन्द्रपाल, दीनदयाल एवं दिलीप सिंह तीनों के बयानों से ऐसा कोई तथ्य अभिलेख पर प्रमाणित नहीं होता है कि प्रबंधन द्वारा किसी दुर्भावना से ग्रसित होकर प्रार्थी श्रमिक के खिलाफ कोई गलत कार्यवाही की गयी है। इन गवाहों ने एम.पी. जांगिड़ से हितबद्ध होकर उसे बचाने के उद्देश्य से गलत बयानी भी की है। गवाह चन्द्रपाल शर्मा तथा दीनदयाल ने यहाँ तक कह दिया कि एम.पी.जांगिड़ दिनांक 18.09.92 को मीटिंग में नहीं था, जबकि प्रबंधन की ओर से आई साक्ष्य से यह साबित हो जाता है कि दिनांक 18.09.92 के दिन धरने और प्रदर्शन और हिंसक कार्यवाही में एम.पी. जांगिड़ भी शामिल था।

38. गवाह दिलीप सिंह ने एम.पी. जांगिड़ की बीमारी के संबंध में बयान दिये हैं। जिरह में उसने कहा है कि एम.पी. जांगिड़ शारीरिक व मानसिक रूप से बीमार था, किन्तु आगे कहा कि वह नहीं बता सकता कि क्या बीमारी थी। खुद के अनुभव से कह रहा हूँ कि उसे मानसिक बीमारी थी। मेरे विनम्र मत में यह गवाह भी एम.पी.जांगिड़ से मिलकर गलत कथन कर रहा है, क्योंकि इस व्यक्ति को पता ही नहीं कि उसे किस किस की क्या बीमारी थी। जबकि डॉक्टर अशोक कुमार की जिरह में कई बातों से साबित हो जाता है कि एम.पी. जांगिड़ को शारीरिक व मानसिक बीमारी नहीं थी और केवल मात्र तारीखें लेने के लिये वो डॉक्टर के पास जाता था। डॉक्टर एक विशेषज्ञ होता है, उसके बयान बीमारी के संबंध में ठोस और महत्वपूर्ण होते हैं। अतः डॉ० अशोक कुमार की जिरह के प्रकाश में गवाह दिलीप सिंह के बयानों का कोई महत्व नहीं रह जाता है।

39. उपरोक्त साक्ष्य के विवेचन के फलस्वरूप यह स्पष्ट हो जाता है कि प्रार्थी श्रमिक श्री एम.पी. जांगिड़ अपने सेवाकाल में अपने दुराचरणों, उच्चाधिकारियों के साथ दुर्यवहार करने, मारपीट करने, जांच अधिकारियों को धमकियाँ देने, बल तथा हिंसा का उपयोग करने तथा यूनियन के अन्य श्रमिकों के साथ मिलकर घेराव व प्रदर्शन करने का आदी रहा है। इस बाबत प्रार्थी को कई बार सेवा से निलम्बित, पदावनत किया जा चुका है और एक बार सेवा से बर्खास्त भी किया जा चुका है। ऐसी दशा में प्रार्थी श्रमिक के प्रति विश्वास समाप्त हो जाने पर बिना जांच कराये ही सेवापृथक किया जाना उचित है।

40. प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों के तथ्य एवं परिस्थितियाँ हस्तगत प्रकरण से भिन्नता रखते हैं। अतः प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांत प्रार्थी श्रमिक के केस में लागू नहीं होते हैं।

41. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अवार्ड पारित किया जाता है:-

अवार्ड

“प्रार्थी श्री एम.पी. जांगिड़ को विपक्षी खेतड़ी कॉपर कॉम्प्लेक्स के प्रबंधन द्वारा आदेश दिनांक 21.09.92 से सेवापृथक किया जाना उचित एवं वैध है। प्रार्थी एम.पी. जांगिड़ कोई राहत पाने का अधिकारी नहीं है।”

42. अवार्ड आज दिनांक 31.03.2014 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

हेमन्त कुमार जैन, पीठासीन अधिकारी

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3234.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्सुरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 103/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/12/2014 को प्राप्त हुआ था।

[सं. एल-17012/123/2014-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O. 3234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.103/2014) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 01/12/2014.

[No.L-17012/123/2014-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

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

Monday, the 24th November, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial dispute No. 103/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Life Insurance Corporation of India and their workman]

BETWEEN:

Sri G. Karthick : 1st Party/Petitioner

AND

The Zonal Manager : 2nd Party/Respondent

LIC of India, Chennai Division-I

102, Anna Salai

Chennai-600002

Appearance:

For the 1st Party/Petitioner : None

For the 2nd Party/Respondent : None

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/123/2014-IR (M) dated 28.10.2014 referred the following Industrial dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Life Insurance Corporation of India in terminating the services of Sri G. Karthick w.e.f. 30.08.2013 is legal and justified? If not, to what relief the workman concerned is entitled?

2. The petitioner who has got ID 84/2014 also pending before this Tribunal has appeared in person in this matter. He has made an endorsement to the effect that ID 84/2014 which was directly filed by him before this Tribunal pertains to the same issue and therefore he does not want to proceed with this matter. Accordingly, the reference is answered against the petitioner as not pressed.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked

On the Petitioner's side

Ex.No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 11 दिसम्बर, 2014

का.आ. 3235.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच. डी. एफ. सी. स्टैंडर्ड लाइफ इन्सुरेन्स कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 58/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/12/2014 को प्राप्त हुआ था।

[सं. एल-17012/5/2012—आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 11th December, 2014

S.O. 3235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of HDFC Standard Life Insurance Company Limited and their workman, which was received by the Central Government on 05/12/2014.

[No.L-17012/5/2012-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. 58/2012**Date of Passing Award – 27th February, 2014**Between:**

The Manager,
Regional Human Resource,
HDFC Standard Life Insurance Company Ltd.,
794, Saheed Nagar, 3rd Floor,
Bhubaneswar, Orissa.

: 1st Party-Management**AND**

Their workman Shri Pradeep Kumar Samal,
S/o. Shri R.C. Samal, Plot No. 227,
Unit-9, Bhoi Nagar, Baya Baba Math Lane,
Bhubaneswar, Orissa.

: 2nd Party-Workman**APPEARANCES :**None : For the 1st Party-ManagementShri Pradeep Kumar Samal : For himself the 2nd Party-Workman**AWARD**

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of HDFC Standard Life Insurance Company Limited and their workman 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 vide letter No. L-17012/5/2012-IR(M), dated 22.5.2012 in respect of the following matter:-

“Whether the action of the Management of HDFC Standard Life Insurance Co. Ltd., Bhubaneswar, in terminating the services of Shri Pradeep Kumar Samal, Ex-Assistant Branch Manager vide order dated 16.6.2011 without giving proper compensation package including LTA benefits, etc. is legal and justified? What relief the workman is entitled to?”

2. In pursuance of the letter of reference the 2nd Party-workman filed his statement of claim and stated that he was appointed as Financial Planning Officer by the Management of HDFC Standard Life Insurance Company Limited on 23.8.2007 and joined the said post on the very same date at Keshari Complex Branch, Bhubaneswar. In September, 2009 he was promoted to the post of Business Development Manager and thereafter to the post of Assistant Branch Manager in July, 2010. During the entire period of his employment he performed all his duties sincerely and satisfactorily without any stigma or adverse remark. But to his utter surprise his services were terminated with immediate effect vide letter dated 16.6.2011 issued by the Manager, Regional Human Resource, Bhubaneswar. Accordingly he was not allowed to do his duties with effect from 18.6.2011. Although the 2nd Party-workman was designated as Manager, but by nature of his duties and responsibilities he is a workman as per the definition of “workman” given under section 2(s) of the Industrial Disputes Act,

1947. At no point of time he was entrusted with any managerial or administrative work. He did not exercise any independent power and authority. He worked for more than 240 days during the last twelve calendar months, which constituted one year continuous and uninterrupted service as per provisions of Section 25-B of the Industrial Disputes Act. Refusal of employment amounts to retrenchment. Hence he is entitled to get the retrenchment compensation and benefits as provided under section 25-F of the Industrial Disputes Act and non-compliance of the provisions of Section 25-F renders his termination void-ab-initio. The termination of his service is not only illegal, unjustified, malafide and arbitrary, but also against the principles of natural justice. The Management has turned down his request to reinstate him. Hence this reference. The Management has also violated the provisions of Section 25-G and H of the Industrial Disputes Act. As such his termination be declared as illegal and unjustified and he be reinstated with full back wages and other consequential service benefits.

3. The 1st Party-Management despite service of notice did not turn up nor filed any written statement. Hence the case was set exparte against it.

4. The 2nd Party-workman Shri Pradeep Kumar Samal in exparte evidence has filed his own affidavit and four documents in the shape of xerox copies.

5. Having heard the 2nd Party-workman and perused the evidence filed by him in support of his claim it is prima facie proved on the basis of his evidence and documents that he was appointed as Financial Planning officer by the 1st Party-Management on 23.8.2007. He served the Management for nearly four years without any break. Although he was initially appointed as Financial Planning Officer and later promoted to the post of Assistant Branch Manager, but he worked like a workman without being entrusted with any managerial and administrative power. He had rendered one year's continuous service as defined under section 25-F of the Industrial Disputes Act. Hence before termination the 1st Party-Management had to follow the provisions of Section 25-F of the aforesaid Act. But the allegation of the 2nd Party-workman is that he was terminated from service without any legal notice or payment of retrenchment compensation. In this view of the matter his retrenchment from service is illegal and unjustified. Therefore he is entitled to be reinstated in service with full back wages as proved exparte.

6. The reference is answered accordingly.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2014

का.आ. 3236.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेपाल कार्गो हैंडलिंग एजेंट एसोसिएशन कंपनी लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 04/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.12.2014 को प्राप्त हुआ था ।

[सं. एल-32011/17/2003—आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 12th December, 2014

S.O. 3236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2004) of the Central Government Industrial Tribunal-com-Labour Court, Kolkata, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s.. Nepal Cargo Handling Agents Association and their workmen, received by the Central Government on 11/12/2014.

[No.L-32011/17/2003 -IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 04 of 2004

Parties: Employers in relation to the management of M/s. Nepal Cargo Handling Agents Association
AND

Their workmen.

Present: JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : Mr. G. C. Chakraborty, Ld. Counsel.

On behalf of the Workmen : None

State: West Bengal. Industry : Port & Dock.

Dated: 20th November, 2014

AWARD

By Order No.L-32011/17/2003-IR(B-II) dated 03.03.2004 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of MMTC Non-ferrous Metal Handling Workers Pool doing loading/unloading of Nepal Metal Cargo (inclusive of Zinc, Lead Ingots, Metals/Minerals etc. at NS Dock, Kolkata for M/s. Nepal Cargo Handling Agents Association, Kolkata are entitled for a rate of Rs. 83/- per tone as Khamali charges/loading/appraising charges w.e.f. the year 2001? Whether the action of M/s. Nepal Cargo Handling Agents Association, Kolkata in changing the metal cargo handling rates from Rs. 83/- per ton to Rs. 500/- per container, without giving notice under Section 9A of the ID Act w.e.f. 2001 is justified and legal? If not, what relief the workmen are entitled to?”

2. When the case is taken up for hearing today, none appears on behalf of the union though the management is represented by the Ld. Counsel. It appears from the record that inspite of service of notice, none on behalf of the union has turned up since 27.01.2014. Considering the above facts and circumstances, it appears that the union is not at all interested to proceed with this case further. So, no fruitful purpose will be served in keeping the matter pending.

3. Accordingly, the present reference is disposed of by passing a “No Dispute Award”.

Dated, Kolkata,
The 20th November, 2014

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 12 दिसम्बर, 2014

का.आ. 3237.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियन्टल बैंक ऑफ कामर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 17/94) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.12.2014 को प्राप्त हुआ था।

[सं. एल-12012/95/94-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 12th December, 2014

S.O. 3237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/94) of the Industrial Tribunal-Cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the management of Oriental Bank of Commerce and their workmen, received by the Central Government on 11/12/2014.

[No. L-12012/95/94 -IR (B-II)]

RAVI KUMAR, Desk Officer

अनुबन्ध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं० सी.आई.टी. 17/94

रैफरेंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक

एल-12012/95/94-आई.आर.(बी-2) दिनांक 26.07.1994

श्री कालूराम मीणा मार्फत महामंत्री, भारतीय मजदूर संघ,
जिला-भीलवाड़ा, भूपालगंज, भीलवाड़ा।

...प्रार्थी

बनाम

01. प्रबंधक, ओरियन्टल बैंक ऑफ कामर्स,
पेच एरिया, भूपालगंज, भीलवाड़ा।

02. उप महाप्रबंधक, ओरियन्टल बैंक ऑफ कामर्स,
प्रादेशिक कार्यालय, आनंद भवन, संसारचन्द्र रोड, जयपुर।

...अप्रार्थीगण

उपस्थित:

पीठासीन अधिकारी: श्री हेमन्त कुमार जैन, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री आर.सी. जैन
 अप्रार्थी की ओर से : श्री बी.एस. रतनू
 दिनांक अवार्ड: 28.11.2013

अवार्ड

1. केन्द्र सरकार,, श्रम मंत्रालय, नई दिल्ली ने उपरोक्त अधिसूचना के जरिये इस आषय का विवाद इस न्यायाधिकरण को अधिनिर्णय हेतु निर्दिष्ट किया है कि “Whether the action of the management of the Oriental Bank of Commerce, Bhilwara in terminating the service of Shri Kaluram Meena, Part-time workman w.e.f. 14.06.93 is justified? If not, what relief the said workman entitled to?”

2. विवाद जो भेजा गया उसके संबंध में प्रार्थी की ओर से स्टेटमेंट ऑफ क्लेम पेश हुआ कि प्रार्थी की नियुक्ति विपक्षी संस्थान में चतुर्थ श्रेणी कर्मचारी के पद पर दिनांक 07.12.90 को दैनिक वेतन पर की गयी थी। प्रार्थी श्रमिक द्वारा दिनांक 14.06.93 तक विपक्षी के यहाँ निरन्तर काम किया। प्रार्थी श्रमिक को दिनांक 14.06.93 को अकारण ही सेवामुक्त कर दिया गया। सेवामुक्त किये जाने के बारे में कोई आदेश भी जारी नहीं किया गया। प्रार्थी की सेवामुक्ति से पूर्व न तो कोई नोटिस दिया गया और न ही नोटिस वेतन का भुगतान किया गया और प्रार्थी को छटनी मुआवजा का भुगतान नहीं किया गया। प्रार्थी की सेवामुक्ति के समय उससे जूनियर श्रमिक भी कार्यरत थे तथा सेवामुक्ति के बाद भी नये श्रमिकों को विपक्षी द्वारा भर्ती किया गया है। विपक्षी द्वारा औद्योगिक विवाद अधिनियम की धारा 25—जी, 25—एफ, 25—एच तथा धारा 78 का उल्लंघन किया है। प्रार्थी को सेवामुक्त किये जाने से पूर्व प्रार्थी को न ही कोई आरोप पत्र दिया गया और न ही कोई जांच की गयी। अतः प्रार्थी को पुनः सेवा में लिये जाकर पिछला पूरे वेतन लाभ सहित समस्त लाभ—परिलाभ दिलाये जावें।

03. अप्रार्थी बैंक द्वारा प्रारम्भिक आपत्ति करते हुये जवाब पेश कर कथन किया कि प्रार्थी श्रमिक की परिभाषा में नहीं आता है, प्रार्थी को केवल पानी भरने व सफाई करने के लिये उसकी सहमति से एक दिन कार्य करने पर 20/— रु. दिये जाते थे। प्रार्थी श्रमिक व अप्रार्थी के मध्य कोई श्रमिक—नियोजक का संबंध नहीं था। प्रार्थी पर अप्रार्थी का कोई नियंत्रण एवं सुपरवीजन भी नहीं था। प्रार्थी की कभी चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्ति नहीं की गयी। प्रार्थी द्वारा कभी लगातार काम नहीं किया गया। प्रार्थी द्वारा एक कलेण्डर वर्ष में 240 दिन कार्य नहीं किया गया। अप्रार्थी द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एफ, 25 जी, 25 एच व नियम 77 व 78 का उल्लंघन नहीं किया गया। अतः क्लेम खारिज किये जाने योग्य है।

04. प्रार्थी की ओर से साक्ष्य में स्वयं प्रार्थी का शपथ पत्र पेश हुआ है, जिससे अप्रार्थी प्रतिनिधि द्वारा जिरह की गयी है। साक्ष्य अप्रार्थी में श्री ओ.पी. अग्रवाल का शपथ पत्र पेश हुआ है, जिससे प्रार्थी प्रतिनिधि द्वारा जिरह की गयी है।

05. उभय पक्षों की बहस सुनी गयी। पत्रावली का अवलोकन किया गया।

06. प्रार्थी के विद्वान प्रतिनिधि ने अपनी बहस में कहा है कि प्रार्थी द्वारा दिनांक 07.12.90 से 14.06.93 तक निरन्तर कार्य करने का तथ्य अप्रार्थी की ओर से प्रस्तुत चार्ट प्रदर्श एम—2 से साबित होता है। प्रार्थी द्वारा एक कलेण्डर वर्ष में 240 दिवस काम किया गया है। अतः प्रार्थी पर औद्योगिक विवाद अधिनियम के प्रावधान लागू होते हैं, परन्तु अप्रार्थी द्वारा 25 एफ की पालना नहीं की गयी। अप्रार्थी द्वारा प्रार्थी श्रमिक को पार्ट टाइम कर्मचारी बताया गया है, जबकि प्रार्थी को दिया जा रहे दैनिक वेतन के हिसाब से 520/— रु. से अप्रार्थी का कथन असत्य हो जाता है, क्योंकि बैंक कर्मचारियों के मध्य लागू समझौते के अनुसार 3 से 6 घंटे काम करने वाले श्रमिक को 175/— प्रतिमाह भुगतान किया जाता था। प्रार्थी प्रतिनिधि का तर्क है कि पार्ट टाइम कर्मचारियों के मामले में भी औ.वि. अधिनियम 1947 की धारा 25 एफ की पालना किया जाना अनिवार्य है। प्रार्थी प्रतिनिधि का कथन है कि बिना निर्धारित प्रक्रिया के नियुक्त कर्मचारी को सेवामुक्त किये जाते समय भी औ.वि. अधिनियम 1947 की धारा 25 एफ की पालना किया जाना आवश्यक है। प्रार्थी का कार्य ठेके की प्रकृति का था, इस संबंध में भी अप्रार्थी की ओर से कोई दस्तावेज पेश नहीं किया गया है। अप्रार्थी के गवाह ने भी अपनी जिरह में प्रार्थी द्वारा पानी भरने व सफाई कार्य करना स्वीकार किया है। प्रार्थी प्रतिनिधि का तर्क है कि अप्रार्थी द्वारा दिनांक 14.06.93 के बाद प्रार्थी द्वारा काम छोड़कर जाना बताया है, इस संबंध में केन्द्र सरकार ने न्यायाधिकरण को जो विवाद न्यायनिर्णयार्थ प्रेषित किया है, उसके अनुसार न्यायाधिकरण को केवल यह निर्णय देना है कि दिनांक 15.06.93 को सेवामुक्त किया जाना उचित एवं वैध है या नहीं?, न्यायाधिकरण द्वारा रेफरेंस की टर्म में कोई बदलाव नहीं कर सकता और न ही रेफरेंस से बाहर कोई कोई निर्णय दे सकता है। माननीय सर्वोच्च न्यायालय व माननीय राज. उच्च न्यायालय द्वारा अपने विभिन्न न्यायिक दृष्टांतों में पार्ट टाइम दैनिक वेतन भोगी श्रमिक को भी पिछले वेतन सहित सेवा में बहाल किये जाने का अधिकारी माना है। प्रार्थी प्रतिनिधि द्वारा अपनी बहस में कहा है कि विपक्षी बैंक एवं कर्मचारियों के बीच दिनांक 27.04.2010 को सम्पन्न समझौते के अनुसार पार्ट टाइम कर्मचारी जो केवल 6 घंटे प्रति सप्ताह अर्थात् प्रतिदिन एक घंटा ही काम करता है, उन्हें दिनांक 01.02.10 से नियमित सब स्टाफ कर्मचारी की वेतन श्रृंखला के न्यूनतम वेतन का 1/3 व भत्ते दिये जावें। अतः प्रार्थी को पुनः सेवा में बहाल किया जाकर इसी आधार पर वेतन व अन्य लाभ दिलाये जाकर अवार्ड पारित किया जावे। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :—

01. 2010 लैब आई सी 1089 (एस.सी.) फिशरीज टरमिनल डिवीजन बनाम भीखूभाई मेघाभाई चावदा।
02. 2001 (89) एफ एल आर 32 मुनिशिपल का0 कोटा बनाम रामचन्द्र श्रृंगी।
03. 2001 डवल्यू एल सी (यूसी) 607 मुनिशिपल का0 कोटा बनाम जज इन्डस्ट्रियल ट्रिब्युनल व अन्य।
04. 2007 (1) डवल्यू एल सी 707 स्टेट ऑफ राज0 व अन्य बनाम जज लेबर कोर्ट

05. 2006 (1) सी डी आर 105 (राज.) स्टेट ऑफ राज. बनाम लेबर कोर्ट भरतपुर।
06. 2010 (124) एफ एल आर 285 राज. एग्रीकल्चरल यूनिवर्सिटी बनाम इन्डस्ट्रियल ट्रिब्युनल व अन्य।
07. एस.बी. सिविल रिट पिटीसन नंबर 2813/94 यूनियन ऑफ इण्डिया बनाम लक्ष्मी नारायण में निर्णय दिनांक 12.02.98।
08. आर एल आर 1995 (1) पेज 705 चीफ इंजीनियर इरीगेशन बनाम कमलेश व अन्य।
09. 2008 (119) एफ एल आर 398 न्यू इंडिया एश्योरेंस कंपनी लि. बनाम ए. शंकरालिंगम।
10. 2012 डब्ल्यू एल सी (यू सी) 663 आराम सैनी बनाम सीजीआईटी
11. 2010 लेब आई सी 1039 (एस.सी.) रमेश कुमार बनाम स्टेट ऑफ हरियाणा।
12. 2010 लेब आई सी 1042 कैलाश विहारी बनाम यूनियन ऑफ इण्डिया।
13. 2010 (125) एफ एल आर 629 अनूप शर्मा बनाम पब्लिक हैल्थ डिवीजन नंबर 1 पानीपत।
14. 2010 (125) एफ एल आर 187 (एस.सी.) कृष्णा सिंह बनाम हरियाणा स्टेट एग्रीकल्चर मार्केटिंग बोर्ड, रोहतक।
15. 2003 (3) आर एल डब्ल्यू 1966 स्टेट ऑफ राज. बनाम श्री महेन्द्र जोशी।
16. 2010 (126) एफ एल आर 554 (राज. उच्च न्यायालय) राज0 स्टेट टेक्स्ट बुक बोर्ड बनाम श्री कचोडमल।
17. 2006 एस सी सी (एल एण्ड एस) 574 चीफ सीक्रेटरी हरियाणा व अन्य बनाम चेताराम।
18. 2007 (114) एफ एल आर 352 करुणा भट्टाचर्जी बनाम स्टेट ऑफ बंगाल व अन्य।
19. 2009 (1) डब्ल्यू एल सी 307 कैलाश चन्द्र बनाम जज लेबर कोर्ट।
20. 2006 (4) आर एल डब्ल्यू 3028 स्टेट ऑफ राज. बनाम हरीश चन्द्र शर्मा व अन्य।
21. 2001 (88) एफ एल आर 741 (एस.सी.) विक्रमादित्य पांडे बनाम इन्डस्ट्रियल ट्रिब्युनल।
22. 2005 एस सी सी (एल एण्ड एस) 963 बैंक ऑफ बड़ोदा बनाम घेमरभाई हरजीभाई राबरी।
23. 1984 (48) एफ एल आर 310 (एस.सी.) जैमन इंडिया लि0 बनाम निरंजन दास।
24. 2010 II एल एल जे 277 (एस.सी.) हरजिन्दर सिंह बनाम पंजाब स्टेट वेयरहाउसिंग का0
25. 2011 (130) एफ एल आर 337 देवेन्द्र सिंह बनाम म्युनिशिपल काउंसिल सानौर।
26. डी.बी. स्पेशल अपील रिट संख्या 1551/2012 यूको बैंक व अन्य बनाम नरेन्द्र कुमार शर्मा में निर्णय दिनांक 09.01.13
27. अस्थायी/पार्ट टाइम श्रमिक की सेवा शर्तें।
28. एक्सट्रेक्ट ऑफ सैटलमेंट दिनांक 10.04.89 व 27.04.10।

7. विपक्षी बैंक के विद्वान प्रतिनिधि का तर्क है कि प्रार्थी एक अंशकालीन श्रमिक था। रेफरेंस भी पार्ट टाइम वर्कर की सीमा तक ही है। प्रार्थी द्वारा ऐसा कोई आदेश पेश नहीं किया गया है कि विपक्षी बैंक द्वारा प्रार्थी की नियुक्ति चतुर्थ श्रेणी कर्मचारी के पद पर की गयी हो। न्यायाधिकरण रेफरेंस से बाहर नहीं जा सकता और न ही उसके बाहर जाकर कोई निर्णय पारित कर सकता है। प्रार्थी को केवल पानी भरने व सफाई के लिये बुलाया जाता था। प्रार्थी को विपक्षी बैंक द्वारा सेवामुक्त नहीं किया गया बल्कि वह स्वयं ही छोड़कर गया है। अप्रार्थी के गवाह ने भी अपनी साक्ष्य में बताया है कि प्रार्थी की नियुक्ति निर्धारित प्रक्रिया के अनुसार नहीं हुयी थी। जब प्रार्थी को विपक्षी बैंक द्वारा नियुक्त ही नहीं किया गया तो उसको पुनः नियोजित कैसे किया जा सकता है। प्रार्थी को अधिक से अधिक क्षतिपूर्ति राशि दिलायी जा सकती है। प्रार्थी उक्त रेफरेंस के जरिये कोई राहत प्राप्त करने का अधिकारी नहीं है। अतः क्लेम खारिज किये जाने योग्य है। अप्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :-

01. (1997) 4 एस सी सी 391 हिमांशु कुमार विद्यार्थी व अन्य बनाम स्टेट ऑफ विहार व अन्य।
02. 2005 एल एल आर 1229 विनोद कुमार II बनाम पी.ओ. लेबर कोर्ट व अन्य।
03. एल एल जे 1997 पेज 1204 स्टेट ऑफ यूपी. व अन्य बनाम अजय कुमार।
04. ए आई आर 2009 एस सी 3004 जगवीर सिंह बनाम हरियाणा स्टेट एग्रीकल्चर मार्केटिंग बोर्ड व अन्य।
05. (2005) 9 एस सी सी 171 सेन्ट्रल पी एण्ड डी इन्सट. लि0 बनाम यूनियन ऑफ इंडिया।
06. एफ जे आर वो. 55 पेज 511 पॉटरी मजदूर पंचायत बनाम परफेक्ट पॉटरी क. (एस.सी.)
07. 2002 एल एल आर 884 हिन्दुस्तान पेट्रोलियम का0 लि0 व अन्य बनाम पी.ओ. इन्डस्ट्रियल ट्रिब्युनल-I हैदराबाद व अन्य।

8. उभय पक्षों के तर्कों का मनन किया एवं उभय पक्षों द्वारा प्रस्तुत न्यायिक दृष्टांतों का मैंने अद्योपांत बारीकी से अवलोकन व अध्ययन किया।

09. प्रार्थी प्रतिनिधि द्वारा प्रार्थी श्रमिक की नियुक्ति चतुर्थ श्रेणी कर्मचारी के पद पर दिनांक 07.12.90 को किया जाना बताया है, लेकिन इस संबंध में प्रार्थी द्वारा ऐसा कोई दस्तावेज पेश नहीं किया गया है कि प्रार्थी की नियुक्ति विपक्षी बैंक द्वारा नियमित प्रक्रिया अपनाकर चतुर्थ श्रेणी कर्मचारी के पद पर की गयी हो। अप्रार्थी के गवाह श्री ओ.पी. अग्रवाल ने भी अपनी साक्ष्य में बैंक के स्थायी कर्मचारी के अवकाश पर जाने के दौरान उस अवधि के लिये सफाई कार्य करवाया जाना बताया है। उक्त गवाह द्वारा अपनी साक्ष्य में प्रार्थी को 20/-रु० प्रतिदिन की दर से केवल पानी भरने के लिये एवं कभी आवश्यकता पड़ने पर सफाई कार्य पर काम पर बुलाया जाना बताया है। प्रार्थी श्रमिक ने भी अपनी प्रतिपरीक्षा में स्वयं को दैनिक वेतन पर ही रखा जाना बताया है तथा स्वयं की नियुक्ति निर्धारित प्रक्रिया से नहीं होना स्वीकार किया है। प्रार्थी प्रतिनिधि ने अपनी बहस में यह तर्क दिया है कि पार्ट टाइम कर्मचारियों के संबंध में हुये समझौता दिनांक 27.04.10 द्वारा प्रार्थी श्रमिक को वेतन लाभ दिलाये जाने का निवेदन किया है, इस संबंध में मेरे विनम्र मत में उक्त समझौता प्रार्थी श्रमिक के केस में लागू नहीं होता है, क्योंकि प्रार्थी द्वारा दिनांक 14.06.93 तक काम करना बताया है और यह समझौता 27.04.10 को संपन्न हुआ है। प्रार्थी प्रतिनिधि द्वारा यह तर्क दिया गया है कि पार्ट टाइम श्रमिकों पर भी औद्योगिक विवाद अधिनियम के प्रावधान लागू होते हैं, अतः विपक्षी द्वारा 25 एफ की पालना की जानी चाहिये थी, इस संबंध में मेरे ध्यान में तीन न्यायिक दृष्टांत आये हैं :—

- (1) 2010 (III) डी.एन.जे. (एस.सी.) 1019 सीनियर सुप्रीटेंडेंट टेलीग्राफ (ट्रेफिक) बनाम संतोष कुमार (माननीय सर्वोच्च न्यायालय)
- (2) 2009 (15) एस सी सी 327 जगवीर सिंह बनाम हरियाणा स्टेट एग्रीकल्चर (माननीय सर्वोच्च न्यायालय)
- (3) एस. बी. सी. डब्ल्यू. नंबर 281/2012 किशन व अन्य बनाम जज लेबर कोर्ट संख्या 02 में निर्णय दिनांक 08.01.2012 (माननीय उच्च न्यायालय)

उक्त तीनों ही न्यायिक दृष्टांतों में यह अभिनिर्धारित किया गया है कि दैनिक वेतन भोगी श्रमिकगण जिन्होंने 1-2 वर्ष ही कार्य किया हो तो उनको सेवा में वापिस लिये जाने का आदेश तथा बकाया वेतन भत्तों के दिलाये जाने के आदेश को उचित नहीं माना है, बल्कि ऐसे मामलों में श्रमिकगणों को एकमुश्त क्षतिपूर्ति की राशि दिया जाना उचित माना है। विचारणीय प्रकरण में भी अप्रार्थी द्वारा प्रस्तुत प्रदर्श एम-2 के अनुसार प्रार्थी श्रमिक द्वारा दिनांक 07.12.90 से 14.06.93 तक लगभग ढाई वर्ष ही काम किया गया है; प्रार्थी द्वारा विपक्षी संस्थान में लगातार कार्य भी नहीं किया गया है। अतः माननीय सर्वोच्च न्यायालय तथा माननीय उच्च न्यायालय के नवीनतम निष्कर्षों को मद्देनजर रखते हुये प्रार्थी श्रमिक को पिछला वेतन एवं अन्य सभी लाभ दिया जाना तथा सेवा में पुनः नियोजित करना उचित नहीं समझकर प्रार्थी श्रमिक को एकमुश्त क्षतिपूर्ति राशि दिलाया जाना उचित समझता हूँ। अप्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांतों में प्रतिपादित सिद्धांतों में दिये गये दिशा-निर्देश हस्तगत प्रकरण में लागू होते हैं, जिनका प्रभाव ऊपर विवेचना में दिया गया है। लिहाजा इन नवीनतम न्यायिक दृष्टांतों में प्रदान किये गये दिशा-निर्देशों के मुताबिक प्रार्थी श्रमिक को केवल पचास हजार रुपये क्षतिपूर्ति राशि अदा कर देने से न्याय के उद्देश्य की पूर्ति हो जायेगी।

10. प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांतों का मैंने बारीकी से अध्योपांत विनम्रतापूर्वक अवलोकन किया। उपरोक्त सभी दृष्टांतों के तथ्य एवं परिस्थितियां हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से भारी भिन्नता रखते हैं, अतः उक्त सभी न्यायिक दृष्टांत प्रार्थीगण/श्रमिकगण के केस में लागू नहीं होते हैं।

11. उपरोक्त विवेचन के फलस्वरूप प्रकरण में निम्न अवार्ड पारित किया जाता है :—

विपक्षी बैंक द्वारा पार्ट टाइम श्रमिक श्री कालू राम मीणा की सेवा दिनांक 14.06.93 से समाप्त करना उचित एवं वैध है। प्रार्थी पुनः सेवा में नियोजित होने एवं पिछला लाभ-परिलाभ प्राप्त करने का अधिकारी नहीं है। प्रार्थी श्रमिक को पचास हजार रुपये क्षतिपूर्ति राशि के रूप में दिलाये जाते हैं।

12. अवार्ड आज दिनांक 28.11.2013 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

हेमन्त कुमार जैन, पीठासीन अधिकारी

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3238.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 104/2013, 105/2013, 106/2013, 107/2013, 108/2013, 109/2013,) को प्रकाशित करती है जो केन्द्रीय सरकार को 12.12.014 को प्राप्त हुआ था।

[सं. एल-40011/54/2013-आई आर (डीयू);
सं. एल-40011/55/2013-आई आर (डीयू);
सं. एल-40011/56/2013-आई आर (डीयू);
सं. एल-40011/57/2013-आई आर (डीयू);
सं. एल-40011/58/2013-आई आर (डीयू);
सं. एल-40011/59/2013-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 104/2013, 105/2013, 106/2013, 107/2013, 108/2013, 109/2013,) of the Central Government Industrial Tribunal-Cum-Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 12/12/2014.

[No. L-40011/54/2013 -IR (DU);
No. L-40011/55/2013 -IR (DU);
No. L-40011/56/2013 -IR (DU);
No. L-40011/57/2013 -IR (DU);
No. L-40011/58/2013 -IR (DU);
No. L-40011/59/2013 -IR (DU)]

P. K. VANUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 104 of 2013

Reference No. L-40011/54/2013/IR(DU) dated 26.09.2013

Shri Bhagat Singh S/o Sh. Badle Ram,
C/o Shri Hoob Lal Yadav, General Secretary, Mercantile Employees Association ,
530-Near Prem Public School, Dayal Nagar, PO Amar Nagar, Faridabad-121007 (Haryana)

...Workman

Versus

1. The General Manager, BSNL, Telephone Exchange, Sector-15A, Faridabad.

...Respondent

APPEARANCES :

For the Workman : None

For the Management : Sh. Anish Babbar

AWARD

Passed on : 3.12.2014

Government of India, Ministry of Labour vide notification No. L-40011/54/2013-IR(DU) dated 26.09.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

“Whether the action of the management of Bharat Sanchar Nigam Ltd. (BSNL), Faridabad, Haryana in terminating the services of Shri Bhagat Singh S/o Sh. Badle Ram, Ex-Guard, w.e.f. 01-09-2009 is legal and justified? To what relief the workman is entitled to and what date?”

2. Case repeatedly called. Despite repeated opportunities, none appeared for the workman nor any claim statement has been filed. The case was received from the Ministry of Labour in the month of September 2013. From the very first date, neither workman nor any of his representatives appear. Letter has been received from the Ministry of Labour stating therein that representation of workman regarding transfer of his case from IT Chandigarh to Central Govt. Industrial Tribunal-cum-Labour Court II, Delhi. This office already intimated the status of the case in November 2013. Since then neither workman appeared nor any claim statement had been filed by him. In the circumstances no purpose would be served in keeping the case pending with this court. In view of the above, the present reference is returned for want of prosecution.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

03.12.2014

S. P. SINGH, Presiding Officer,

ANNEXURE**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH****Case No. ID 105 of 2013****Reference No. L-40011/55/2013-IR(DU) dated 26.09.2013**

Shri Shyam Singh S/o Sh. Bansha Ram,
C/o Shri Hoob Lal Yadav, General Secretary, Mercantile Employees Association ,
530-Near Prem Public School, Dayal Nagar, PO Amar Nagar, Faridabad-121007 (Haryana)

...Workman

Versus

1. The General Manager, BSNL, Telephone Exchange, Sector 15-A, Faridabad.

...Respondent

APPEARANCES::

For the Workman : None

For the Management : Sh. Anish Babbar

AWARD

Passed On:-3.12.2014

Government of India, Ministry of Labour vide notification No. L-40011/55/2013-IR(DU) dated 26.09.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

“Whether the action of the management of Bharat Sanchar Nigam Ltd. (BSNL), Faridabad, Haryana in terminating the services of Shri Shyam Singh S/o Sh. Bansha Ram, Ex-Guard, w.e.f. 01-09-2009 is legal and justified? To what relief the workman is entitled to and what date?”

2. Case repeatedly called. Despite repeated opportunities, none appeared for the workman nor any claim statement has been filed. The case was received from the Ministry of Labour in the month of September 2013. From the very first date, neither workman nor any of his representatives appear. Letter has been received from the Ministry of Labour stating therein that representation of workman regarding transfer of his case from IT Chandigarh to Central Govt. Industrial Tribunal-cum-Labour Court II, Delhi. This office already intimated the status of the case in November 2013. Since then neither workman appeared nor any claim statement had been filed by him. In the circumstances no purpose would be served in keeping the case pending with this court. In view of the above, the present reference is returned for want of prosecution.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

03.12.2014

S.P. SINGH, Presiding Officer,

ANNEXURE**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH****Case No. ID 106 of 2013****Reference No. L-40011/56/2013-IR(DU) dated 26.09.2013**

Shri Harish son of Shri Om Prakash,
C/o Shri Hoob Lal Yadav, General Secretary, Mercantile Employees Association ,
530-Near Prem Public School, Dayal Nagar, PO Amar Nagar, Faridabad-121007 (Haryana)

...Workman

Versus

1. The General Manager, BSNL, Telephone Exchange, Sector-15A, Faridabad

...Respondent

APPEARANCES::

For the Workman : None

For the Management : Sh. Anish Babbar

AWARD

Passed on:-3.12.2014

Government of India Ministry of Labour vide notification No. L-40011/56/2013-IR(DU) dated 26.09.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference

“Whether the action of the management of Bharat Sanchar Nigam Ltd. (BSNL), Faridabad, Haryana in terminating the services Shri Harish Son of Shri Om Prakash, Ex-Peon, w.e.f. 01-09-2002 is legal and justified? To what relief the workman is entitled to and what date?”

2. Case repeatedly called. Despite repeated opportunities, none appeared for the workman nor any claim statement has been filed. The case was received from the Ministry of Labour in the month of September 2013. From the very first date, neither workman nor any of his representatives appear. Letter has been received from the Ministry of Labour stating therein that representation of workman regarding transfer of his case from IT Chandigarh to Central Govt. Industrial Tribunal-cum-Labour Court II, Delhi. This office already intimated the status of the case in November 2013. Since then neither workman appeared nor any claim statement had been filed by him. In the circumstances no purpose would be served in keeping the case pending with this court. In view of the above, the present reference is returned for want of prosecution.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

03.12.2014

S.P. SINGH, Presiding Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 107 of 2013

Reference No. L-40011/57/2013-IR(DU) dated 26.09.2013

Shri Dharam Pal S/o Sh. Ram Kishan, ex-guard,
C/o Shri Hoob Lal Yadav, General Secretary Mercantile Employees Association ,
530-Near Prem Public School, Dayal Nagar PO Amar Nagar, Faridabad-121007 (Haryana).

...Workman

Versus

1. The General Manager, BSNL, Telephone Exchange, Sector-15-A, Faridabad.

...Respondent

APPEARANCES::

For the Workman : None.

For the Management : Sh. Anish Babbar.

AWARD

Passed on:-3.12.2014

Government of India Ministry of Labour vide notification No. L-40011/57/2013-IR(DU) dated 26.09.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference

“Whether the action of the management of Bharat Sanchar Nigam Ltd. (BSNL), Faridabad, Haryana in terminating the services of Shri Dharam Pal S/o Sh. Ram Kishan, ex-guard, w.e.f. 01-09-2009 is legal and justified? To what relief the workman is entitled to and what date?”

2. Case repeatedly called. Despite repeated opportunities, none appeared for the workman nor any claim statement has been filed. The case was received from the Ministry of Labour in the month of September 2013. From the very first date, neither workman nor any of his representatives appear. Letter has been received from the Ministry of Labour stating therein that representation of workman regarding transfer of his case from IT Chandigarh to Central Govt. Industrial Tribunal-cum-Labour Court II, Delhi. This office already intimated the status of the case in November 2013. Since then neither workman appeared nor any claim statement had been filed by him. In the circumstances no purpose would be served in keeping the case pending with this court. In view of the above, the present reference is returned for want of prosecution.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

03.12.2014

S.P. SINGH, Presiding Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 108 of 2013 .

Reference No. L-40011/58/2013-IR(DU) dated 26.09.2013

Shri Ravinder S/o Sh. Sant Ram, ex-guard
C/o Shri Hoob Lal Yadav, General Secretary Mercantile Employees Association ,
530-Near Prem Public School, Dayal Nagar PO Amar Nagar, Faridabad-121007 (Haryana).

...Workman

Versus

1. The General Manager, BSNL, Telephone Exchange, Sector-15-A, Faridabad.

...Respondent

APPEARANCES::

For the Workman : None.

For the Management : Sh. Anish Babbar.

AWARD

Passed on:-3.12.2014

Government of India Ministry of Labour vide notification No. L-40011/58/2013-IR(DU) dated 26.09.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference

“Whether the action of the management of Bharat Sanchar Nigam Ltd. (BSNL), Faridabad, Haryana in terminating the services of Shri Ravinder S/o Sh. Sant Ram, Ex-Guard, w.e.f. 01-09-2002 is legal and justified? To what relief the workman is entitled to and what date?”

2. Case repeatedly called. Despite repeated opportunities, none appeared for the workman nor any claim statement has been filed. The case was received from the Ministry of Labour in the month of September 2013. From the very first date, neither workman nor any of his representatives appear. Letter has been received from the Ministry of Labour stating therein that representation of workman regarding transfer of his case from IT Chandigarh to Central Govt. Industrial Tribunal-cum-Labour Court II, Delhi. This office already intimated the status of the case in November 2013. Since then neither workman appeared nor any claim statement had been filed by him. In the circumstances no purpose would be served in keeping the case pending with this court. In view of the above, the present reference is returned for want of prosecution.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

03.12.2014

S.P. SINGH, Presiding Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 109 of 2013

Reference No. L-40011/59/2013-IR(DU) dated 26.09.2013

Shri Virender Singh S/o Sh. Shree Ram,
C/o Shri Hoob Lal Yadav, General Secretary Mercantile Employees Association ,
530-Near Prem Public School, Dayal Nagar PO Amar Nagar, Faridabad-121007 (Haryana).

...Workman

Versus

1. The General Manager, BSNL, Telephone Exchange, Sector-15-A, Faridabad.

...Respondent

APPEARANCES :

For the Workman : None

For the Management : Sh. Anish Babbar.

AWARD

Passed on:-3.12.2014

Government of India Ministry of Labour vide notification No. L-40011/59/2013-IR(DU) dated 26.09.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference :

“Whether the action of the management of Bharat Sanchar Nigam Ltd. (BSNL), Faridabad, Haryana in terminating the services of Shri Virender Singh S/o Sh. Shree Ram, ex-guard, w.e.f. 01-09-2009 is legal and justified? To what relief the workman is entitled to and what date?”

2. Case repeatedly called. Despite repeated opportunities, none appeared for the workman nor any claim statement has been filed. The case was received from the Ministry of Labour in the month of September 2013. From the very first date, neither workman nor any of his representatives appear. Letter has been received from the Ministry of Labour stating therein that representation of workman regarding transfer of his case from IT Chandigarh to Central Govt. Industrial Tribunal-cum-Labour Court II, Delhi. This office already intimated the status of the case in November 2013. Since then neither workman appeared nor any claim statement had been filed by him. In the circumstances no purpose would be served in keeping the case pending with this court. In view of the above, the present reference is returned for want of prosecution.

3. Reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

03.12.2014

S.P.SINGH, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3239.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया लिमिटेड के स्टेट ट्रेडिंग कॉर्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी 2/60 ऑफ 2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था ।

[सं. एल-42011/129/2007-आई आर (डीयू)]

पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Ref. No.CGIT-2/60 of 2007) of the Central Government Industrial Tribunal-cum-Labour Court-II, Mumbai now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of State Trading Corporation of India Ltd. and their workmen, which was received by the Central Government on 15/12/2014.

[No.L-42011/129/2007 -IR (DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT: K. B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/60 of 2007

EMPLOYERS IN RELATION TO THE MANAGEMENT OF THE STATE TRADING CORPORATION OF INDIA LTD.

The Branch Manager
The State Trading Corporation of India Ltd.
6/7th floors, Air India Building
Nariman Point
Mumbai 400 021.

AND**THEIR WORKMEN**

Shri Ashok B. Sumra
MazgaonTarwadi BIT Chawl
Chawl no.15, Room no.17
Station Marg, Mazgaon
Mumbai 400 010.

APPEARANCES:

FOR THE EMPLOYER : Mr. M. B. Anchan, Advocate

FOR THE WORKMAN : Mr. D. K. Sinha, Advocate

Mumbai, dated the 5th November, 2014.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42011 / 129 /2007-IR (DU), dated 15.11.2007 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 State Trading Corporation of India Ltd., Mumbai in terminating the services of their workman Shri Ashok B. Sumra w.e.f. 20/03/2006 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receipt of the reference, notices were issued to both the parties. Second party-workman filed his statement of claim at Ex-4. According to the workman, he was working with the first party since 1996 till 20/03/2006 as a Sweeper. His last drawn salary was Rs.150 per day. His services have been terminated orally w.e.f. 20.03.2006. Till then he used to work with first party from 7.30 a.m. to 1.00 p.m. every day. The first party has not paid earned wages of Rs.7300/- from October 2005 to February 2006. The second party workman demanded the earned wages and all other benefits on several occasions. On 17.03.2006 employer Mr. Parathe, G.A.D.Incharge visited the place where the workman was working and told the workman that he was not working properly and was spoiling other workmen working in the company and asked him not to visit in the company again and the first party has terminated the services of second party w.e.f. 20.03.2006. They told him that they would employ some other person to do his work at low salary. The first party has terminated the services of the workman illegally. The workman has worked more than 240 days in each calendar year. He has also not received the wages from October 2005 to February 2006. The workman therefore raised industrial dispute. As conciliation failed, as per the report of the ALC (C), the Central Labour Ministry has sent the reference to this Tribunal. The workman thus prays that the first party be directed to reinstate him with full back-wages and attendant benefits and continuity of service since 20.03.2006 and also prays for cost of the proceeding.

3. The first party management resisted the statement of claim vide their Written statement at Ex-7. According to them the workman has not come before the Tribunal with clean hands. He was engaged purely on temporary basis @ Rs.70/- per work/per job basis on any day as required. He was engaged temporarily on part time basis for 3-4 hours between 9 a.m. to 1.p.m. for the job of sweeping the office and toilets. He was neither engaged on regular basis nor worked continuously or on permanent basis. Work was not continuous and the workman was engaged intermittently/intermediately. They cannot employ him on permanent basis as there are already 3 permanent staff members for doing the said job. To reduce the strength management has introduced retirement scheme and reduced the staff to 110 and they cannot engage anybody on permanent basis. The workman was not engaged against any sanctioned post and thus cannot be reinstated. The first party has no requirement for house-keeping on continuous basis. They have denied the contents of the statement of claim that he was working continuously for more than 240 days in each calendar year since 1996. They denied that they have terminated the services of the workman orally. According to them workman was never their employee. He was part time daily wager. Therefore the reference is not maintainable. Thus they pray that the reference be dismissed with cost.

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

Sr. no.	Issues	Findings
1.	Whether the second party workman is employee of the first party and there exists employee-employer relationship between them?	Yes
2.	Whether the services of the second party were terminated illegally?	Yes
3.	Whether the second party can be reinstated in the service with full back wages as prayed for?	No
4.	What relief the second party is entitled to?	Compensation to the tune of Rs.75,000/-

REASONS**Issue no.1:—**

5. In this respect the Id. adv. for the first party submitted that the workman is neither full time worker nor recruited against clear vacancy by following the procedure prescribed for recruitment. On the other hand the workman is employed as part time sweeper. Furthermore he was a daily wager. Therefore he cannot be called employee of the first party. In this respect the Id. adv. for the second party submitted that even part time employee can be 'workman' as defined under Section 2 (s) of the I.D. Act. In support of his argument the Id. adv. resorted to Himachal Pradesh High Court ruling in Himachal Pradesh State Electricity Board and Anr. V/s. Laxmi Devi & Anr. 2011-I LLJ 819 (HP) wherein the Hon'ble Court observed that;

"A part time employee is 'workman' under Section 2 (s) of Industrial Disputes Act, 1947."

6. The Id. adv. for the second party also cited Gujarat High Court ruling in Telecom District Manager, Valsad V/s. Namalabhai Ranchodbhai Patel 2006 I CLR 559 (GUJ) wherein the Hon'ble Court observed that;

"Even a daily wager, casual worker who has worked continuously for 240 days is entitled to be termed as workman and hence entitled to protection of Section 25-F."

7. The Id. adv. for the first party in this respect submitted that no appointment letter was issued to the second party workman and he was never recruited by the first party. Therefore he cannot be termed as workman or the employee of the first party. On the point Id. adv. for the second party submitted that letter of appointment is not necessary. He further pointed out that the first party has not denied that workman was working with them as a Sweeper. Therefore the plea of the first party is devoid of merit that there was no appointment letter. In support of his argument, the Id. adv. resorted to Bombay High Court ruling in V.L.T. Cargo Movers (P) Ltd. V/s. Ajit Kumar S. Puri & anr. 2008 III LLJ 1035. In that case no letter of appointment was issued to the workman therein, but he used to put his signature on the muster roll. Labour Court held that respondent was workman under Section 2 (s) and termination was illegal as there was violation of Section 25-F of I.D. Act. The Hon'ble High Court in this case held that Labour Court rightly held respondent was a workman under Section 2 (s) of the I.D. Act.

8. In this respect the Id. adv. for the second party also referred Apex Court ruling in Divisional Manager, New India Assurance Co. Ltd. V/s. A. Shankaralingam 2008 III CLR 588 (SC). In this case after verifying several other judgements, the Hon'ble Court in para 16 of the judgement observed that;

"The question as to whether a part-time workman would be covered within the definition in Section 2 (s) of the Act and whether he would be entitled to the benefit of continuous service under Section 25-B and the benefit of Section 25 F is answered in favour of the workman-respondent. The appeal is accordingly dismissed."

9. In short, even a part time worker is also a workman as defined under Section 2 (s) of the I.D. Act. In the light of these rulings and evidence on record I come to the conclusion that the second party workman is 'workman' as defined under Section 2 (s) of the I.D. Act and he was employee of the first party and there exists employer-employee relationship between them. Accordingly I decide this issue No. 1 in the affirmative that the second party workman is employee of the first party and there exists employee-employer relationship between them.

Issue no.2: —

10. The second party workman was a workman and employee of first party. He has worked as a sweeper from 1996 till 20/3/2006. He has worked more than 240 days in each calendar year. Therefore as per the Gujarat High Court ruling in Telecom District Manager, Valsad and Apex Court ruling in Divisional Manager, New India Assurance Co. Ltd. referred supra a daily wager, casual worker who has worked for 240 days is entitled to be termed as workman and hence entitled to protection under Section 25 F of I.D. Act. In the case at hand while removing the workman from the services, admittedly the first party has not followed the procedure of retrenchment as contemplated under Section 25-F of the I.D. Act. Therefore the termination of his services cannot be called legal and valid. Accordingly it needs no further discussion to decide this issue No. 2 in the affirmative that termination of services of the second party workman was illegal.

Issues nos.3 & 4: —

11. In respect of reinstatement the Id. adv. for the first party submitted that the workman was not appointed after following recruitment process. Therefore directing his reinstatement as a regular worker would amount to back door entry which is not permissible. In support of his argument the Id. adv. resorted to the two Apex Court rulings in Accounts Officer (A & I) APSRTC & Ors. V/s. K.V. Ramana & Ors. (Appeal Civil 96 of 2007 decided on 08.01.2007) wherein the Hon'ble Court observed that;

"Even if the contract labourers or casual workers or ad-hoc employees have worked for a longer period they cannot be regularised dehors the rules for selection as has been held in Umadevi's case (supra)."

12. The Id. adv. also referred another Apex Court ruling in Secretary State of Karnataka & Ors V/s. Umadevi & Ors. 2006 II CLR 261 wherein the same ratio is laid down by the Constitutional Bench of the Apex Court.

13. In this case the Id. adv. for the first party further submitted that, there is also no vacancy and the workman was never appointed against any clear vacancy. Therefore he cannot be reinstated. In this respect as it is discussed above, the services of workman were terminated without following the procedure prescribed under Section 25-F of the I.D. Act. Under Sec 25-F of the Act the first party was expected to pay one month's pay, notice pay and retrenchment compensation. In this respect I would also like to point out that in every case of illegal termination it is not always necessary to reinstate the workman. Ratio to that effect is laid down in U.P. State Electricity Board V/s. Laxmikant Gupta 2009 I LLJ 593 wherein Hon'ble Apex Court on the point observed that;

“There is no such principle that for an illegal termination of service, the normal rule is reinstatement with back wages, instead the Labour Court can award compensation.”

14. In this backdrop I think it proper, instead of reinstatement, compensation can be awarded to the workman. While determining the compensation I would like to take into consideration the following facts; (1) Workman was not paid notice pay. (2) He was also not paid wages of one month and (3) They have also not paid retrenchment compensation to the workman. The workman was required to fight this legal battle since last 4 – 5 years. In the circumstances looking into the present rate of inflation I think it proper to award pay equal to one year by way of compensation. As per the present rate of minimum wages, it would be Rs.75,000/-. Accordingly I decide this issue No. 3 in the negative and issue no. 4 in the affirmative that workman is entitled to the adequate compensation for his illegal termination. Thus I proceed to pass the following order:

ORDER

- (1) The reference is partly allowed with no order as to cost.
- (2) The termination of services of workman is hereby declared illegal.
- (3) Instead of reinstatement and back-wages, the first party is directed to pay Rs.75,000/- to the workman by way of compensation within two months from the date of communication of this award.

Date: 05/11/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3240.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया लिमिटेड स्टेट ट्रेडिंग कॉर्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी 2/62/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था ।

[सं. एल-42011/130/2007-आई आर (डीयू)]

पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Ref. No.CGIT-2/62 of 2007) of the Central Government Industrial Tribunal-Cum-Labour Court-II, Mumbai, now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of State Trading Corporation of India Ltd. and their workman, which was received by the Central Government on 15/12/2014.

[No. L-42011/130/2007-IR (DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT:** K.B. KATAKE, Presiding Officer**REFERENCE NO.CGIT-2/62 of 2007****EMPLOYERS IN RELATION TO THE MANAGEMENT OF
THE STATE TRADING CORPORATION OF INDIA LTD.**

The Branch Manager
The State Trading Corporation of India Ltd.
6/7th floors, Air India Building
Nariman Point
Mumbai 400 021.

AND**THEIR WORKMEN.**

Shri Gurunath S. Bobde
Dharavi Kala Killa
New Parsi Chawl, Room no.11
Dharavi
Mumbai 400 017.

APPEARANCES::

FOR THE EMPLOYER : Mr. M. B. Anchan, Advocate

FOR THE WORKMAN : Mr.D. K. Sinha, Advocate.

Mumbai, dated the 7th November, 2014.**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-42011 / 130 /2007-IR (DU), dated 13.11.2007 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 State Trading Corporation of India Ltd., Mumbai in terminating the services of their workman Shri Gurunath S. Bobde w.e.f. 20/03/2006 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receipt of the reference, notices were issued to both the parties. Second party-workman filed his statement of claim at Ex-4. According to the workman, he was working with the first party since 1996 till 20/03/2006 as a Sweeper. His last drawn salary was Rs.160 per day. His services have been terminated orally w.e.f. 20.03.2006. Till then he used to work with first party from 1.00 p.m. to 6.00 p.m. every day. The first party has not paid earned wages of Rs.2660/- from January 2006 to February 2006. The second party workman demanded the earned wages and all other benefits on several occasions. On 17.03.2006 employer Mr. Parathe, G.A.D.Incharge visited the place where the workman was working and told the workman that he was not working properly and was spoiling other workmen working in the company and asked him not to visit in the company again and the first party has terminated the services of second party w.e.f. 20.03.2006. They told him that they would employ some other person to do his work at low salary. The first party has terminated the services of the workman illegally. The workman has worked more than 240 days in each calendar year. He has also not received the wages from January 2006 to February 2006. The workman therefore raised industrial dispute. As conciliation failed, as per the report of the ALC (C), the Central Labour Ministry has sent the reference to this Tribunal. The workman thus prays that the first party be directed to reinstate him with full back-wages and attendant benefits and continuity of service since 20.03.2006 and also prays for cost of the proceeding.

3. The first party management resisted the statement of claim vide their Written statement at Ex-7. According to them the workman has not come before the Tribunal with clean hands. He was engaged purely on temporary basis @ Rs.70/- per work/per job basis on any day as required. He was engaged temporarily on part time basis for 3-4 hours between 9 a.m. to 1.p.m. for the job of sweeping the office and toilets. He was neither engaged on regular basis nor worked continuously or on permanent basis. Work was not continuous and the workman was engaged intermittently/intermediately. They cannot employ him on permanent basis as there are already 3 permanent staff members for doing the said job. To reduce the strength management has introduced retirement scheme and reduced the staff to 110 and they cannot engage anybody on permanent basis. The workman was not engaged against any sanctioned post and thus cannot be reinstated. The first party has no requirement for house-keeping on continuous basis. They have denied the contents of the statement of claim that he was working continuously for more than 240 days in each calendar year since 1996. They denied that they have terminated the services of the workman orally. According to them workman was never their employee. He was part time daily wager. Therefore the reference is not maintainable. Thus they pray that the reference be dismissed with cost.

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

Sr. No.	Issues	Findings
1.	Whether the second party workman is employee of the first party and there exists employee-employer relationship between them?	Yes
2.	Whether the services of the second party were terminated illegally?	Yes
3.	Whether the second party can be reinstated in the service with full back wages as prayed for?	No
4.	What relief the second party is entitled to?	Compensation to the tune of Rs.75,000/-

REASONS

Issue No.1:—

5. In this respect the Ld. Adv. for the first party submitted that the workman is neither full time worker nor recruited against clear vacancy by following the procedure prescribed for recruitment. On the other hand the workman is employed as part time sweeper. Furthermore he was a daily wager. Therefore he cannot be called employee of the first party. In this respect the Ld. Adv. for the second party submitted that even part time employee can be 'workman' as defined under Section 2 (s) of the I.D. Act. In support of his argument the Ld. Adv. resorted to Himachal Pradesh High Court ruling in Himachal Pradesh State Electricity Board and Anr. V/s. Laxmi Devi & Anr. 2011-I LLJ 819 (HP) wherein the Hon'ble Court observed that;

"A part time employee is 'workman' under Section 2 (s) of Industrial Disputes Act, 1947."

6. The Ld. Adv. for the second party also cited Gujarat High Court ruling in Telecom District Manager, Valsad V/s. Namlabhai Ranchodbhai Patel 2006 I CLR 559 (GUJ) wherein the Hon'ble Court observed that;

"Even a daily wager, casual worker who has worked continuously for 240 days is entitled to be termed as workman and hence entitled to protection of Section 25-F."

7. The Ld. Adv. for the first party in this respect submitted that no appointment letter was issued to the second party workman and he was never recruited by the first party. Therefore he cannot be termed as workman or the employee of the first party. On the point Ld. Adv. for the second party submitted that letter of appointment is not necessary. He further pointed out that the first party has not denied that workman was working with them as a Sweeper. Therefore the plea of the first party is devoid of merit that there was no appointment letter. In support of his argument, the Ld. Adv. resorted to Bombay High Court ruling in V.L.T. Cargo Movers (P) Ltd. V/s. Ajit Kumar S. Puri & Anr. 2008 III LLJ 1035. In that case no letter of appointment was issued to the workman therein, but he used to put his signature on the muster roll. Labour Court held that respondent was workman under Section 2 (s) and termination was illegal as there was violation of Section 25-F of I.D. Act. The Hon'ble High Court in this case held that Labour Court rightly held respondent was a workman under Section 2 (s) of the I.D. Act.

8. In this respect the Ld. Adv. for the second party also referred Apex Court ruling in Divisional Manager, New India Assurance Co. Ltd. V/s. A. Shankaralingam 2008 III CLR 588 (SC). In this case after verifying several other judgements, the Hon'ble Court in para 16 of the judgement observed that;

"The question as to whether a part-time workman would be covered within the definition in Section 2 (s) of the Act and whether he would be entitled to the benefit of continuous service under Section 25-B and the benefit of Section 25F is answered in favour of the workman-respondent. The appeal is accordingly dismissed."

9. In short, even a part time worker is also a workman as defined under Section 2 (s) of the I.D. Act. In the light of these rulings and evidence on record I come to the conclusion that the second party workman is 'workman' as defined under Section 2 (s) of the I.D. Act and he was employee of the first party and there exists employer-employee relationship between them. Accordingly I decide this issue No. 1 in the affirmative that the second party workman is employee of the first party and there exists employee-employer relationship between them.

Issue No. 2: —

10. The second party workman was a workman and employee of first party. He has worked as a sweeper from 1996 till 20/3/2006. He has worked more than 240 days in each calendar year. Therefore as per the Gujarat High Court ruling in Telecom District Manager, Valsad and Apex Court ruling in Divisional Manager, New India Assurance Co. Ltd. referred supra a daily wager, causal worker who has worked for 240 days is entitled to be termed as workman and hence entitled to protection under Section 25 F of I.D. Act. In the case at hand while removing the workman from the services, admittedly the

first party has not followed the procedure of retrenchment as contemplated under Section 25-F of the I.D. Act. Therefore the termination of his services cannot be called legal and valid. Accordingly it needs no further discussion to decide this issue No. 2 in the affirmative that termination of services of the second party workman was illegal.

Issues Nos. 3 & 4: —

11. In respect of reinstatement the ld. adv. for the first party submitted that the workman was not appointed after following recruitment process. Therefore directing his reinstatement as a regular worker would amount to back door entry which is not permissible. In support of his argument the ld. adv. resorted to the two Apex Court rulings in Accounts Officer (A & I) APSRTC & Ors. V/s. K.V. Ramana & Ors. (Appeal Civil 96 of 2007 decided on 08.01.2007) wherein the Hon'ble Court observed that;

“Even if the contract labourers or casual workers or ad-hoc employees have worked for a longer period they cannot be regularised dehors the rules for selection as has been held in Umadevi's case (supra).”

12. The ld. adv. also referred another Apex Court ruling in Secretary State of Karnataka & Ors V/s. Umadevi & Ors. 2006 II CLR 261 wherein the same ratio is laid down by the Constitutional Bench of the Apex Court.

13. In this case the ld. adv. for the first party further submitted that, there is also no vacancy and the workman was never appointed against any clear vacancy. Therefore he cannot be reinstated. In this respect as it is discussed above, the services of workman were terminated without following the procedure prescribed under Section 25-F of the I.D. Act. Under Sec 25-F of the Act the first party was expected to pay one month's pay, notice pay and retrenchment compensation. In this respect I would also like to point out that in every case of illegal termination it is not always necessary to reinstate the workman. Ratio to that effect is laid down in U.P. State Electricity Board V/s. Laxmikant Gupta 2009 I LLJ 593 wherein Hon'ble Apex Court on the point observed that;

“There is no such principle that for an illegal termination of service, the normal rule is reinstatement with back wages, instead the Labour Court can award compensation.”

14. In this backdrop I think it proper, instead of reinstatement, compensation can be awarded to the workman. While determining the compensation I would like to take into consideration the following facts; (1) Workman was not paid notice pay. (2) He was also not paid wages of one month and (3) They have also not paid retrenchment compensation to the workman. The workman was required to fight this legal battle since last 4 – 5 years. In the circumstances looking into the present rate of inflation I think it proper to award pay equal to one year by way of compensation. As per the present rate of minimum wages, it would be Rs.75,000/-. Accordingly I decide this issue No. 3 in the negative and issue no. 4 in the affirmative that workman is entitled to the adequate compensation for his illegal termination. Thus I proceed to pass the following order:

ORDER

- (1) The reference is partly allowed with no order as to cost.
- (2) The termination of services of workman is hereby declared illegal.
- (3) Instead of reinstatement and back-wages, the first party is directed to pay Rs.75,000/- to the workman by way of compensation within two months from the date of communication of this award.

Date: 07/11/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3241.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 56/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/63/2010-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.56/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-42012/63/2010 -IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.****Present :** Sri Kewal Krishan, Presiding Officer**Case No. 56/2010**

Registered on 30.8.2010

Sh. Gulaba Ram, Employee Code No.6296 son of Sh. Dandu Ram, R/o Village Banaun, Post Office Kapahi, Tehsil Sunder Nagar, District Mandi, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla ...Respondents

APPEARANCES::

For the Workman - Sh. M.S. Gorski for the workman
For the Management - Sh. V.P. Singh for respondent No.1
Sh. H.R. Sharma for respondent No.2
Respondent No. 3 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/63/2010-IR(DU), dated 10.8.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor engaged by NTPC Kol Dam Hydro Electric Power Project, Bilaspur, in terminating the services of their workman Sh. Gulaba Ram w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 1 is constructing a dam known as “Koldam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 3 as sub-contractor. The workman was appointed through respondent No. 3 as Dozer Operator Skilled Workman and he served from 22.3.2005 to 3.9.2008 when his services were retrenched. His last pay was Rs.4500/- per month. It is pleaded that the persons junior to him were retained in service as well as new persons were appointed after his retrenchment, and as such, there is a violation of the provisions of the Act. That the management retrenched the services of the workman without obtaining permission from the appropriate Government. Thus the termination of the services of the workman is illegal and he is to be reinstated in service.

Respondent No. 3 was proceeded against ex parte.

Respondent No. 1 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 3 intermittently and his last pay was Rs.3605/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 1 and 2 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorski for the workman, Sh. V.P. Singh counsel for respondent No. 1 and Sh. H.R. Sharma, Law Officer for respondent No. 2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3242.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 49/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/60/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Ref. No.49/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No.L-42012/60/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri Kewal Krishan, Presiding Officer.

CASE No.49/2010

Registered on 30.8.2010

Sh. Kuldeep Kumar, Employee Code No.6361 son of Sh. Pritam Chand, R/o Village Balehu, Post Office Karot, Tehsil Sujanpur Tehra, District Hamirpur, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh ...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla ...Respondents

APPEARANCES::

For the Workman	-	Sh. M.S. Gorski for the workman
For the Management	-	Sh. V.P. Singh for respondent No.1
		Sh. H.R. Sharma for respondent No.2
		Respondent No. 3 ex parte

AWARD**Passed on 18.1.2014**

Vide Order No.L-42012/60/2010 (IR(DU)), dated 10.8.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor engaged by NTPC Kol dam Hydro Electric Power Project, Bilaspur in terminating the services of their workman Sh. Kuldeep Kumar w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 1 is constructing a dam known as “Koldam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 3 as sub-contractor. The workman was appointed through respondent No. 3 as Unskilled workman and he served from 6.9.2005 to 3.9.2008 when his services were retrenched. His last pay was Rs.3500/- per month. It is pleaded that the persons junior to him were retained in service as well as new persons were appointed after his retrenchment, and as such, there is a violation of the provisions of the Act. That the management retrenched the services of the workman without obtaining permission from the appropriate Government. Thus the termination of the services of the workman is illegal and he is to be reinstated in service.

Respondent No. 3 was proceeded against ex parte.

Respondent No. 1 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 3 intermittently and his last pay was Rs.3175/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 1 and 2 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorski for the workman, Sh. V.P. Singh counsel for respondent No. 1 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3243.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 64/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/69/2010-आई आर (डीयू)]
पी.के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.64/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-42012/69/2010 -IR (DU)]
P.K. VENUGOPAL, Desk Officer

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

Present: Sri Kewal Krishan, Presiding Officer.

CASE No.64/2010

Registered on 30.8.2010

Sh. Kishori Lal, son of Sh. Roop Pal R/o Village and, Post Office Segli, Tehsil Gohar, District Mandi, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh Applicant

Versus

1. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur. ...Respondents

APPEARANCES::

For the Workman	-	Sh. M.S. Gorski for the workman
For the Management	-	Sh. V.P. Singh for respondent No. 3
		Sh. H.R. Sharma for respondent No.2
		Respondent No. 1 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/69/2010-IR(DU), dated 10.8.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor engaged by NTPC Kol Dam Hydro Electric Power Project, Bilaspur in terminating the services of their workman Sh. Kishori Lal w.e.f. 29/8/2008 is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 3 is constructing a dam known as “Kol Dam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 1 as sub-contractor. The workman was appointed through respondent No. 3 as Driver and he joined the services on 27.08.2004 where he worked till 3.9.2008 when his services were retrenched in violation of the provisions of the Act as the persons junior to him were retained in service as well as new persons were appointed without calling him. Since his retrenchment is illegal, he is to be reinstated in service.

Respondent No. 1 was proceeded against ex parte.

Respondent No. 3 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 3 intermittently and his last pay was Rs.3605/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to lead its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 2 and 3 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorski for the workman, Sh. V.P. Singh counsel for respondent No. 3 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be

said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3244.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 54/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/71/2010—आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Ref. No.54/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No.L-42012/71/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No.54/2010

Registered on 30.8.2010

Sh. Roshan lal, aged 47 years, Employee Code No.4082 son of Sh. Chandu Ram, R/o Village Bhatar Post Office Barmana, District Bilaspur, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh ...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. M/s. Afcons Infrastructure Ltd., Kol Dam Hydro Electric Power Project, Sherpa, Post Office Harnora, District Bilaspur, Himachal Pradesh, through its Project Manager. ...Respondents

APPEARANCES::

For the Workman - Sh. M.S. Gorski for the workman
For the Management - Sh. V.P. Singh for respondent No. 1 & 2

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/71/2010-IR(DU), dated 13.8.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. Afcons R.N. Shetty & Co. Pvt. Ltd. (Joint Venture), in the establishment of NTPC, Distt. Bilaspur (HP) in terminating the services of their workman Sh. Roshan Lal w.e.f. 12.9.2007 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 1 is constructing the dam named as “Koldam Hydro Electric Power Project” at Harmoda. He was appointed through respondent No. 2 on 30.1.2006 as T.M. Operator/Dumper Operator at the rate of Rs.4500/- per month. He worked till 7.9.2007 when his services were retrenched. His retrenchment is illegal as the persons junior to him were retained in service, as well as the

management made fresh appointment without calling him. Since the retrenchment is in violation of the provisions of the Act, he is to be reinstated in service.

Respondent No. 1 filed written statement controverting the averments and denied any relationship with the workman.

Respondent No. 2 pleaded that the workman was engaged by M/s. Afcons Infrastructures Limited for the period from 28.1.2006 to 12.9.2007 who is not a party in the reference. That the workman was dismissed from service by M/s. Afcons Infrastructure Ltd. as he was guilty of serious misconduct. That he was not engaged by the party whose name is mentioned in the reference.

Parties were given opportunities to lead their evidence.

Workman was given several opportunities but did not lead any evidence. Last opportunity was given to the workman to produce its evidence on 15.10.2014. On that day, again, no evidence of the workman was present. There being no justification for further adjournment for evidence of the workman, the same was declined.

The representative of respondent No. 1 and 2 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No. 1 and 2.

It may be added that as per case of the workman his services were retrenched in violation of Section 25G of the Act and even some more persons were employed by the management after the termination of his services but he did not lead any evidence to prove both these facts. Thus it cannot be said that any person junior to the workman was retained in service when his services were retrenched or any new recruitment was made by the management.

In result, it is held that workman has failed to prove that the termination of his services is illegal and unjustified and he is not entitled to any relief and the reference is answered accordingly. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3245.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 53/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था।

[सं. एल-42012/58/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Ref. No.53/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workman, which was received by the Central Government on 15/12/2014.

[No.L-42012/58/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri Kewal Krishan, Presiding Officer.

Case No.53/2010

Registered on 30.8.2010

Sh. Sandeep Kumar, Employee Code No.6272 son of Sh. Banshi Ram, R/o Village Khangoy, Post Office Khurahal, Tehsil Sunder Nagar, District Mandi, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh. ...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla ...Respondents

For the workman - Sh. M.S. Gorsl for the workman

For the Management - Sh. V.P. Singh for respondent No.1
Sh. H.R. Sharma for respondent No.2
Respondent No. 3 ex parte

Passed on 18.11.2014

का.आ. 3246.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 14/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/28/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No.14/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workman, which was received by the Central Government on 15/12/2014.

[No. L-42012/28/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No.14/2010

Registered on 25.5.2010

Sh. Hem Singh, aged 40 years, Employee Code No.6166 son of late Sh. Breastu Ram, R/o Village Lohakhar, Post Office Kapahi, Tehsil Sadar, District Mandi, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh ...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla. ...Respondents

APPEARANCES:

For the Workman - Sh. M.S. Gorski for the workman
For the Management - Sh. V.P. Singh for respondent No.1
Sh. H.R. Sharma for respondent No.2
Respondent No. 3 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/28/2010 (IR(DU)), dated 12.5.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a sub contractor of M/s. Italian Thai Development Public Co. Ltd. Of NTPC, Koldam in terminating the services of Sh. Hem Singh w.e.f. 14/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 1 is constructing a dam known as “Kol Dam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 3 as sub-contractor. The workman was appointed through respondent No. 3 as Mason and he served from 12.8.2004 to 14.8.2008 when his services were retrenched. His last pay was Rs.5400/- per month. It is pleaded that the persons junior to him were retained in service as well as new persons were appointed after his retrenchment, and as such, there is a violation of the provisions of the Act. That the management retrenched the services of the workman without obtaining permission from the appropriate Government. Thus the termination of the services of the workman is illegal and he is to be reinstated in service.

Respondent No. 3 was proceeded against ex parte.

Respondent No. 1 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 3 intermittently and his last pay was Rs.3605/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 1 and 2 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorsri for the workman, Sh. V.P. Singh counsel for respondent No. 1 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3247.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 9/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/7/2010—आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.9/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workman, which was received by the Central Government on 15/12/2014.

[No. L-42012/7/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri Kewal Krishan, Presiding Officer.

Case No.9/2010

Registered on 4.5.2010

Sh. Parkash Chand, aged 34 years, Employee Code No.6294 son of Sh. Rulia, R/o Village and Post Office Diargi, Tehsil Sadar, District Mandi, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla. ...Respondents

APPEARANCES:

For the workman	-	Sh. M.S. Gorsl for the workman
For the Management	-	Sh. V.P. Singh for respondent No.1
		Sh. H.R. Sharma for respondent No.2
		Respondent No. 3 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/7/2010 (IR(DU)), dated 15.4.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor of the management of Kol dam Hydro Electric Power Project, NTPC, in terminating the services of their workman Sh. Parkash Chand w.e.f. 13/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 1 is constructing a dam known as “Kol Dam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 3 as sub-contractor. The workman was appointed through respondent No. 3 as Junior Carpenter and he served from 9.3.2005 to 14.8.2008 when his services were retrenched. His last pay was Rs.4105/- per month. It is pleaded that the persons junior to him were retained in service as well as new persons were appointed after his retrenchment, and as such, there is a violation of the provisions of the Act. That the management retrenched the services of the workman without obtaining permission from the appropriate Government. Thus the termination of the services of the workman is illegal and he is to be reinstated in service.

Respondent No. 3 was proceeded against ex parte.

Respondent No. 1 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 3 intermittently and his last pay was Rs.3175/- per month. That his services are retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 1 and 2 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorsri for the workman, Sh. V.P. Singh counsel for respondent No. 1 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3248.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 8/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/6/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No.8/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workman, which was received by the Central Government on 15/12/2014.

[No. L-42012/6/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

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

Present: Sri Kewal Krishan, Presiding Officer.

Case No.8/2010

Registered on 4.5.2010

Sh. Balwant Kumar, Employee Code No.6198 son of Sh. Sant Ram, R/o Village and Post Office Banot Kasal, Tehsil Sadar, District Bilaspur, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh ...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla. ...Respondents

APPEARANCES:

For the workman	- Sh. M.S. Gorski for the workman
For the Management	- Sh. V.P. Singh for respondent No.1
	Sh. H.R. Sharma for respondent No.2
	Respondent No. 3 ex parte

AWARD

Passed on 18.11.2014

Vide Order No. L-42012/6/2010-IR(DU), dated 15.4.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor of the management of Kol Dam Hydro Electric Power Project, NTPC, in terminating the services of their workman Sh. Balwant Kumar w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 1 is constructing a dam known as “Kol Dam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 3 as sub-contractor. The workman was appointed through respondent No. 3 as Helper in Unskilled workman category and he served from 18.8.2004 to 3.9.2008 when his services were retrenched. His last pay was Rs.3600/- per month. It is pleaded that the persons junior to him were retained in service as well as new persons were appointed after his retrenchment, and as such, there is a violation of the provisions of the Act. That the management retrenched the services of the workman without obtaining permission from the appropriate Government. Thus the termination of the services of the workman is illegal and he is to be reinstated in service.

Respondent No. 3 was proceeded against ex parte.

Respondent No. 1 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 3 intermittently and his last pay was Rs.2850/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent Nos. 1 and 2 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorski for the workman, Sh. V.P. Singh counsel for respondent No. 1 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3249.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 6/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/3/2010—आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No.6/2010) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workman, which was received by the Central Government on 15/12/2014.

[No. L-42012/3/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No.6/2010

Registered on 4.5.2010

Sh. Banta Singh, aged 37 years, Employee Code No.6293 son of Sh. Thakur Singh,
R/o Village Plahota, Post Office Upper Behli, Tehsil Sunder Nagar,
District Mandi, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh .

...Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla. ...Respondents

APPEARANCES:

For the Workman - Sh. M.S. Gorski for the workman
For the Management - Sh. V.P. Singh for respondent No.1
Sh. H.R. Sharma for respondent No.2
Respondent No. 3 ex parte

AWARD**Passed on 18.11.2014**

Vide Order No.L-42012/3/2010-IR(DU), dated 15.4.2010 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor of the management of Kol dam Hydro Electric Power Project, NTPC, in terminating the services of their workman Sh. Banta Singh w.e.f. 13/8/2008 is legal and justified? If not, what relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 1 is constructing a dam known as “Koldam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 3 as sub-contractor. The workman was appointed through respondent No. 3 as Junior Carpenter and he served from 9.3.2005 to 14.8.2008 when his services were retrenched. His last pay was Rs.4105/- per month. It is pleaded that the persons junior to him were retained in service as well as new persons were appointed after his retrenchment, and as such, there is a violation of the provisions of the Act. That the management retrenched the services of the workman without obtaining permission from the appropriate Government. Thus the termination of the services of the workman is illegal and he is to be reinstated in service.

Respondent No. 3 was proceeded against ex parte.

Respondent No. 1 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 3 intermittently and his last pay was Rs.3175/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent Nos. 1 and 2 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorsri for the workman, Sh. V.P. Singh counsel for respondent No. 1 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3250.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 165/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/255/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No.165/2011) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workman, which was received by the Central Government on 15/12/2014.

[No. L-42012/255/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

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

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No.165/2011

Registered on 24.5.2011

Sh. Pritam Lal, aged 53 years, son of Sh. Jagat Ram, R/o Village and Post Office Bhangrotu, Tehsil Sundernagar, District
Mandi, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh. ...Applicant

...Applicant

Versus

1. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur. ...Respondents

APPEARANCES:

For the Workman	-	Sh. M.S. Gorsri for the workman
For the Management	-	Sh. V.P. Singh for respondent No. 3
		Sh. H.R. Sharma for respondent No.2
		Respondent No. 1 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/255/2010-IR(DU), dated 20.4.2011 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the retrenchment of services of Sh. Pritam Lal, S/o Sh. Jagat Ram by the Managing Director, M/s. AKS Engineers and Contractors, Sanjay Sadan, Chhota Shimla vide order dated 29.8.2008 without following the principle of ‘Last come first go’ is legal and justified? What relief the workman is entitled to from the above employer?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 3 is constructing a dam known as “Koldam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 1 as sub-contractor. The workman was appointed through respondent No. 3 as Welder and he joined the services on 15.6.2005 where he worked till 3.9.2008 when his services were retrenched in violation of the provisions of the Act as the persons junior to him were retained in service as well as new persons were appointed without calling him. Since his retrenchment is illegal, he is to be reinstated in service.

Respondent No. 1 was proceeded against ex parte.

Respondent No. 3 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 1 intermittently and his last pay was Rs.3605/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to lead its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent Nos. 2 and 3 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorsri for the workman, Sh. V.P. Singh counsel for respondent No. 3 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the

termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3251.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 163/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/257/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.163/2011) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-42012/257/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri KEWAL KRISHAN, Presiding Officer

Case No.163/2011

Registered on 24.5.2011

Sh. Surya Parkash, aged 36 years, son of Sh. Daya Ram, R/o Village Phagla and Post Office Maloh, Tehsil Sadar, District Bilaspur, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh Applicant

Versus

1. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur. ...Respondents

APPEARANCES:

For the Workman - Sh. M.S. Gorski for the workman
For the Management - Sh. V.P. Singh for respondent No. 3
Sh. H.R. Sharma for respondent No.2
Respondent No. 1 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/257/2010-IR(DU), dated 20.4.2011 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the retrenchment of services of Sh. Surya Parkash, S/o Sh. Daya Ram by the Managing Director, M/s. AKS Engineers and Contractors, Sanjay Sadan, Chhota Shimla vide order dated 29.8.2008 without following the

principle of 'Last come first go' is legal and justified? What relief the workman is entitled to from the above employer?"

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 3 is constructing a dam known as "Koldam Hydro Electric Power Project" at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 1 as sub-contractor. The workman was appointed through respondent No. 3 as Senior Operator/Driver and he joined the services on 26.8.2004 where he worked till 3.9.2008 when his services were retrenched in violation of the provisions of the Act as the persons junior to him were retained in service as well as new persons were appointed without calling him. Since his retrenchment is illegal, he is to be reinstated in service.

Respondent No. 1 was proceeded against ex parte.

Respondent No. 3 filed written statement pleading that workman was never its employee.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 1 intermittently and his last pay was Rs.4670/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to lead its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 2 and 3 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorsri for the workman, Sh. V.P. Singh counsel for respondent No. 3 and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3252.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 141/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/204/2010-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.141/2011) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-42012/204/2010 -IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No.141/2011

Registered on 28.4.2011

Sh. Surinder Kumar, Code No.7144, son of Sh. Chintu Ram, resident of village Bilta Chhamb, Post Office Atehar, Tehsil Salooni, District Chamba, Himachal Pradesh. ...Applicant

Versus

1. The Managing Director, M/s. UR Infrastructure Company Private Limited, Kol Dam Hydro Electric Power Project, Village Chamb, Post Office Harnora, Tehsil Sadar, District Bilaspur (HP).
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur. ...Respondents

APPEARANCES:

For the Workman - Sh. M.S. Gorski for the workman
For the Management - Sh. V.P. Singh for respondent No. 3
Sh. H.R. Sharma for respondent No.2
Respondent No. 1 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/204/2010 (IR(DU)), dated 1.4.2011 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. UR Infrastructure Co. Pvt. Ltd. sub contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s. NTPC Ltd. in retrenchment of the services of Sh. Surinder Kumar S/o Sh. Chintu Ram w.e.f. 1/8/2008 without following the principle of ‘Last come first go’ is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No. 3 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 1 as its sub-contractor. The workman was engaged by respondent No. 1 on 6.12.2004 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No. 3 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. U.R. Infrastructures Company Private Ltd., who is impleaded as respondent No. 1 was proceeded against ex parte.

Respondent No. 3 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 1 who retrenched his services on partial completion of work after paying him Rs.2850/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 2 and 3 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gorski, counsel for the workman, Sh. V.P. Singh, counsel for respondent No. 3 and Sh. H.R. Sharma for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3253.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 138/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था ।

[सं. एल-42012/196/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.138/2011) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-42012/196/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No.138/2011

Registered on 28.4.2011

Sh. Shyam Bahadur, Code No.7131, son of Sh. Ram Sukh Singh, resident of village and Post Office Sehra Jalalpur, Tehsil Akbarpur, District Ambedkar Nagar, Uttar Pradesh, C/o Cheema Bhawan, Sector 30-B, UT, Chandigarh. ...Applicant

Versus

1. The Managing Director, M/s. UR Infrastructure Company Private Limited, Kol Dam Hydro Electric Power Project, Village Chamb, Post Office Harnora, Tehsil Sadar, District Bilaspur (HP).
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Tehsil Sadar, Bilaspur. ...Respondents

APPEARANCES:

For the workman	- Sh. M. S. Gorski for the workman
For the Management	- Sh. V. P. Singh for respondent No. 3
	Sh. H. R. Sharma for respondent No.2
	Respondent No. 1 ex parte

AWARD

Passed on 18.11.2014

Vide Order No. L-42012/196/2010-IR(DU), dated 1.4.2011 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. UR Infrastructure Co. Pvt. Ltd. sub contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s. NTPC Ltd. in retrenchment of the services of Sh. Shyam Bahadur S/o Sh. Sukh Ram Singh w.e.f. 1/8/2008 without following the principle of ‘Last come first go’ is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No. 3 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 1 as its sub-contractor. The workman was engaged by respondent No. 1 on 6.12.2004 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No. 3 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No. 2; whereas M/s. U.R. Infrastructures Company Private Ltd., who is impleaded as respondent No. 1 was proceeded against ex parte.

Respondent No. 3 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 1 who retrenched his services on partial completion of work after paying him Rs. 2850/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to prove its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 2 and 3 made separate statements not to lead any evidence.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V.P. Singh, counsel for respondent No. 3 and Sh. H.R. Sharma for respondent No. 2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3254.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 135/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था ।

[सं. एल-42012/198/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 135/2011) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of the Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-42012/198/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

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

Present: Sri KEWAL KRISHAN, Presiding Officer

Case No. 135/2011

Registered on 28.4.2011

Sh. Babu Ram, Code No.7205, son of Sh. Givind Ram, resident of village and Post Office Bahot Kasol, Tehsil Sadar, District Bilaspur, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT, Chandigarh. ...Applicant

Versus

1. The Managing Director, M/s. UR Infrastructure Company Private Limited, Kol Dam Hydro Electric Power Project, Village Chamb, Post Office Harnora, Tehsil Sadar, District Bilaspur (HP).
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur. ...Respondents

APPEARANCES:

For the Workman	-	Sh. M.S. Gorski for the workman
For the Management	-	Sh. V.P. Singh for respondent No. 3
		Sh. H.R. Sharma for respondent No.2
		Respondent No. 1 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/198/2010 [(IR(DU))], dated 1.4.2011 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. UR Infrastructure Co. Pvt. Ltd. sub contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s. NTPC Ltd. in retrenchment of the services of Sh. Babu Ram S/o Sh. Govind Ram w.e.f. 1/8/2008 without following the principle of ‘Last come first go’ is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman submitted statement of claim pleading that respondent No. 3 is the principal employer who is engaged for the construction of ‘Kol Dam Hydro Electric Power Project’ at Harmoda and has given contract to respondent No. 2 who in turn engaged respondent No. 1 as its sub-contractor. The workman was engaged by respondent No. 1 on 3.1.2005 where he worked till 1.8.2008 when his services were retrenched.

Workman has challenged the retrenchment on the ground that the persons junior to him were retained in service and the management also appointed large number of workers on the project after his retrenchment. It is also pleaded that the management did not take permission from the appropriate Government for effecting the retrenchment and as such the retrenchment is illegal and he is deemed to be in service.

The claim was contested by the NTPC i.e. respondent No. 3 as well as by the Italian Thai Development Co. Ltd. who have been impleaded as respondent No.2; whereas M/s. U.R. Infrastructures Company Private Ltd., who is impleaded as respondent No. 1 was proceeded against ex parte.

Respondent No. 3 filed written statement controverting the averments and pleaded that workman was never its employee and even not engaged by it.

Respondent No. 2 in its separate written statement pleaded that workman was engaged by respondent No. 1 who retrenched his services on partial completion of work after paying him Rs.2850/- in lieu of notice period and retrenchment compensation. That work is not perennial in nature. That the retrenchment is legal.

Parties were given opportunities to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to lead its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 2 and 3 made separate statements for not leading any evidence.

I have heard Sh. M.S. Gors, counsel for the workman, Sh. V. P. Singh, counsel for respondent No. 3 and Sh. H. R. Sharma for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3255.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोल बांध जल विद्युत परियोजना, एनटीपीसी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ सं. 119/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.014 को प्राप्त हुआ था ।

[सं. एल-42012/242/2010-आई आर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No.119/2011) of the Central Government Industrial Tribunal-Cum-Labour Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Kol Dam Hydro Electric Power Project, NTPC & Others and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-42012/242/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present: Sri KEWAL KRISHAN, Presiding Officer.

Case No. 119/2011

Registered on 5.4.2011

Sh. Sanjay Kumar, son of Sh. Ranjit Singh, R/o Village Panodi and Post Office Amarpur, Tehsil Ghumarwin, District Bilaspur, Himachal Pradesh, C/o Cheema Bhawan, Sector 30-B, UT Chandigarh. ...Applicant

Versus

1. The Managing Dir., M/s. AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil. Sundernagar, Mandi.
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur. ...Respondents

APPEARANCES:

For the Workman - Sh. M.S. Gorski for the workman
 For the Management - Sh. V.P. Singh for respondent No. 3
 Sh. H.R. Sharma for respondent No.2
 Respondent No. 1 ex parte

AWARD

Passed on 18.11.2014

Vide Order No.L-42012/242/2010-IR(DU), dated 22.3.2011 the Central Government 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 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s. AKS Engineers and Contractors, a contractor of NTPC Koldam Hydroelectric Power Project, Bilaspur (HP) in terminating the services of their workman Sh. Sanjay Kumar S/o Sh. Ranjeet Singh, w.e.f. 30.5.2007 for his alleged misconduct is legal and justified? What relief the workman is entitled to?”

In response to the notice, the workman appeared and submitted statement of claim pleading that respondent No. 3 is constructing a dam known as “Koldam Hydro Electric Power Project” at Harmoda. Respondent No. 2 is its main contractor who engaged respondent No. 1 as sub-contractor. The workman was appointed through respondent No. 1 as Unskilled workman and he joined the services on 6.5.2004 where he worked till 30.5.2007 when his services were retrenched in violation of the provisions of the Act as the persons junior to him were retained in service as well as new persons were appointed without calling him. Since his retrenchment is illegal, he is to be reinstated in service.

Respondent No. 1 was proceeded against ex parte.

Respondent No. 2 pleaded in its written statement that workman worked with respondent No. 1 intermittently and his last pay was Rs.2850/- per month. That his services were retrenched due to partial completion of the work as per law. That no person junior to him was retained in service or any fresh recruitment was made.

Parties were given opportunity to lead their evidence.

The workman availed several opportunities but failed to lead any evidence. Consequently last opportunity was given to the workman to lead its evidence on 15.10.2014. On that day again, no evidence of the workman was present. There was no justification for further adjournment and therefore the same was declined.

Respondent No. 2 made separate statement not to lead any evidence.

I have heard Sh. M.S. Gorski for the workman and Sh. H.R. Sharma, Law Officer for respondent No.2.

It is admitted case that the services of the workman were retrenched. The case of the workman is that the persons junior to him were retained in service when he was retrenched. But there is no evidence that any person junior to the workman was retained in service. Again, according to the workman persons were employed by the management after the termination of his services but the workman did not lead any evidence to prove that the management recruited any person after his retrenchment. As stated above, the workman did not lead any evidence in support of his case and thus it cannot be said that there was violation of any provisions of the Act and the termination of the services of the workman cannot be termed as illegal.

In result, the reference is answered against the workman and he is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3256.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिन्दुस्तान एयरोनॉटिक्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं.-2, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-2/20/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था।

[सं. एल-14011/24/2010-आई आर (डीयू)]
 पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th December, 2014

S.O. 3256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D.Ref. No. CGIT-2/20/2011) of the Central Government Industrial Tribunal-Cum-Labour

Court No.-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of the Hindustan Aeronautics Ltd. and their workmen, which was received by the Central Government on 15/12/2014.

[No. L-14011/24/2010 -IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT: K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/20 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF HINDUSTAN AERONAUTICS LTD.

The General Manager
Hindustan Aeronautics Ltd. Nashik Division
Final Assembly Complex
SU-30 (MKI) 098 Shop
HAL T/Ship, PO Ojhar (MIG)
Taluka Niphad
Nashik (MS).

AND

THEIR WORKMEN.

Smt. Anjali Anil Phadnis
PB No.7706, Thakkar Retreat
1-8, Old Gangapur Naka
Gangapur Road
Nashik (MS).

APPEARANCES:

FOR THE EMPLOYER : Mr.Abhay Kulkarni, Advocate.

FOR THE WORKMAN : Dr. C.S. Tembhurnikar Advocate.

Mumbai, dated the 31st October, 2014.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L- 14011 / 24 /2010-IR (DU), dated 09.05.2011 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 Hindustan Aeronautics Limited, Nasik Division, Nasik in terminating Smt. Anjali Anil Phadnis by way of dismissal w.e.f. 18/02/2009 is legal and justified? What relief the workman is entitled to?”

2. After receipt of the reference, notices were sent to both parties. In response to the notice, second party, appeared before this Tribunal and filed her Statement of Claim at Ex-8. According to the second party workman, she was appointed as Clerk-cum-Typist-B in the office of the first party. She was working since 03/07/1974 till the date of her dismissal when she was working as Assistant Supervisor, Administration. Her date of superannuation was 31/12/2007 after completion of 58 years. However management had given two years extension to her as she has rendered here services honestly and unblemished. She performed her duties regularly till 19/2/2008. On 20/2/2008 she had some argument and oral discussion with Shri Venugopal Sharma, Sr. Manager. On that count without giving any notice or calling her explanation the first party suspended her on 23/02/2008. No opportunity was given to her to give her explanation about the incident. On 29/02/2008 the first party issued a charge sheet under the signature of Additional General Manager, SU-30. The second party submitted her reply dated 12/03/2008. On 27/03/2008 first party decided to conduct departmental inquiry for the charges framed against the second party. The Inquiry Officer was Mr. S.R. Deshmukh, Sr. Manager (P & A). The inquiry was initiated. It was concluded and closed on 17/11/2008. After filing the written submission of the Presenting Officer and Defence brief of second party, the Inquiry Officer submitted his report to the General Manager, (AMD) and Disciplinary Authority of HAL. Show Cause Notice was issued to the second party. She replied the same. Thereafter the order of punishment of dismissal without notice or any compensation in lieu of notice was issued by the first party. It was received by the second party on 25/2/2009. The appeal of the second party came to be dismissed. According to the second party she had requested to supply

certified copies of order dt. 16/12/2009, the entire detailed order with reasons. However it was not supplied to her. The second party then raised industrial dispute. As conciliation failed, as per the failure report of ALC (C) the Central Labour Ministry has sent the reference to this Tribunal. The charges leveled against the second party were absence without leave, riotous and disorderly behavior or any act subversive of discipline etc. conduct which violates the common decency, deliberately making false complaints against superior etc.

3. According to the second party she was not given sufficient opportunity to defend herself in the inquiry proceeding. The Inquiry Officer did not explain the procedure of inquiry. She was not supplied with copies of documents she had sought for. She was not given opportunity to lead her evidence. She was also not allowed to engage defence representative. There was violation of principles of natural justice. The findings of the Inquiry Officer are against the evidence and thus perverse. Therefore the second party prays that the order of dismissal be declared illegal, unjust and the same be quashed and set aside and the period of suspension till the date of retirement be regularized and also claim full back-wages and consequential benefits and also prays for cost and compensation.

4. The first party resisted the statement of claim vide their written statement at Ex-10. According to them the reference is not maintainable. The second party workman was dismissed from service for act of serious misconduct. Before dismissing the workman from service, departmental inquiry was conducted fully in accordance with the principles of natural justice. The workman fully participated in the said departmental inquiry. After considering the entire materials on record the Inquiry Officer held that some charges leveled against the workman were proved and some charges were not proved. The Inquiry Officer has followed the proper procedure, given sufficient opportunity to the workman to defend her case and to lead her evidence. The Inquiry Officer found the workman guilty and submitted his report. The competent authority considered the past record of the workman which was highly unsatisfactory and full of adverse remarks, disciplinary actions and lighter punishments. The competent authority arrived at the conclusion that there is no possibility of improvement in the conduct of the workman. The misconduct proved against the workman was of serious and of grave nature. Therefore the competent authority awarded the punishment of dismissal. Before passing the order, the reply of the workman was taken into account. Number of advice, charge-sheets, warnings and punishments were given to the workman. Therefore punishment of dismissal from service is quite adequate and proportionate to the proved misconduct. They denied all the allegations of the workman. According to them she was found guilty of habitual absenteeism. On number of occasions she used to behave arrogantly with her colleagues and superiors as well. The I.O. has given sufficient opportunity. Copies of all the documents were given to the workman. The witnesses of the management were examined in the presence of workman. She was given full opportunity to cross examine them. They denied that procedure of inquiry was not explained by the inquiry officer. They denied that the I.O. has not given her sufficient opportunity to lead her evidence and to defend herself. According to them sufficient opportunity was given to the workman and findings of the I.O. are based on evidence on record. Therefore according to the first party the inquiry is fair and proper, findings of the I.O. are not perverse and the punishment of dismissal from service is not shockingly disproportionate to the proved misconduct. Therefore they pray that the reference be dismissed with cost.

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

Sr. no.	Issues	Findings
(i)	Whether the inquiry is fair and proper?	Yes
(ii)	Whether findings are perverse?	No

REASONS

Issue no.(i):—

6. In this respect facts are not disputed that the workman was served with the charge-sheet. She had also given written reply thereto. She has not disputed that the management witnesses were examined in her presence and she had cross examined them. She has also not disputed that copies of the documents on record were given to her. The objections raised on behalf of the workman are that; the Inquiry Officer has not explained to her the inquiry proceeding. She further contended that the inquiry proceeding was written in English and it should have been in Marathi. She further contented that the I.O. rejected her application for adjournment for leading her evidence. Therefore she did not get sufficient opportunity to defend herself. She was also not allowed to engage defence representative. I would like to discuss these objections categorically.

7. In respect of explaining the procedure of inquiry, the I.O. says on oath that he had explained the procedure of inquiry to the workman. He denied the suggestion in his cross at Ex-58 that he had not explained the inquiry procedure to the workman. In this respect the Id. adv. for the first party submitted that, workman has never raised this point or made any representation to any authority in respect of non-explanation of the inquiry procedure by the I.O. or refusing to allow her to engage defence representative. There is also no application on record to show that the workman had applied to engage any defence representative and the I.O. has rejected her request. It indicates that these pleas are baseless and unacceptable. In this respect fact is not disputed that the inquiry was conducted by the I.O. in Marathi and the proceeding was recorded in

English. In such circumstances inquiry cannot be called illegal or in violation of principles of natural justice. On the point Bombay High Court ruling can be resorted to in National Organic Chemicals Ltd. & Ors. V/s. Pandit Ladaku Patil 2008 III CLR 716 wherein the inquiry was conducted in Marathi and the evidence was recorded in English. The Hon'ble Court held that, the inquiry cannot be quashed for following such a procedure of recording evidence in English. The same principle was laid down in Bombay High Court ruling in Navinkumar B. Panchal V/s. Godrej Boyce Manufacturing Co. Ltd. & Ors. 2004 I CLR 47. In the light of the ratio laid down in these rulings the inquiry cannot be declared improper for recording the evidence in English.

8. Another objection to the inquiry proceeding raised on behalf of the workman is that, her application for adjournment was rejected and she was not allowed to engage defence representative. In this respect in her affidavit at Ex-39 the workman herself has contended that she requested the union to make union representative available as her defence representative. But union has not made any such representative available. It indicates her relations with her colleagues and the members and office bearers of the union were not good. It supports the version of the first party that her overall behavior was totally arrogant not only with the colleagues but with the superior officers as well. It shows that allegation of the workman does not stands to reasons that I.O. did not allow her to engage defence representative.

9. In respect of fair and proper inquiry, I would like to refer the Apex Court ruling and in the light of ratio laid down therein would like to examine whether the inquiry is fair and proper. In Sur Enamel and Stamping Works Ltd. V/s. Their Workmen 1963 II LLJ 367 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 leveled 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.

10. In the case at hand the Inquiry Officer has followed the proper procedure; i.e. he has explained the clear charge of misconduct framed against the workman. The witnesses were examined in the presence of the workman. She was given an opportunity to cross examine them and accordingly she had cross examined them. Copies of all the documents relied upon were given to her. She was also given an opportunity to lead her evidence. The Inquiry Officer has recorded the findings for adequate reasons. In the light of points laid down by Hon'ble Apex Court, it is clear that fair and sufficient opportunity was given to the workman and there was no violation of principles of natural justice as has been claimed. Therefore I hold that the inquiry was fair and proper. Accordingly I decide this issue No. 1 in the affirmative.

Issue no.(ii):—

11. 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 I.O. are found to be in consonance with the evidence on record. In respect of findings the Id. adv. for the first party submitted that findings are based on the evidence on record. He rightly submitted that the Inquiry Officer has relied upon the oral evidence of the witnesses examined before him. He has scrutinised their evidence properly while arriving at the conclusion that the workman was guilty for some of the charges of alleged misconduct. He rightly pointed out that the I.O. also exonerated the workman of some of the charges where he found there was no sufficient evidence. The witnesses have pointed out how the workman behaved with the colleagues and superior officers while on duty. In the circumstances I come to the conclusion that, the findings of the Inquiry Officer are based on the evidence on record and consistent thereto. Therefore findings of the I.O. cannot be called perverse.

12. 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 UP State Road Transport Corporation & Ors. V/s. 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 I.O. If the findings are based on uncontroverted material placed before the I.O., it cannot be said that these findings are perverse.”

13. In the light of above observations the findings of the Inquiry Officer cannot be called perverse as they are based on evidence before him. Neither they are contrary to the evidence on record nor can be called perverse. Thus I hold that the findings of the I.O. 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.

Date: 31/10/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3257.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर इंडिया लिमिटेड कालीकट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईनाकुलम के पंचाट (संदर्भ सं. 33/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था ।

[सं. एल-11012/13/2014-आई आर (सीएम-I)]
एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 15th December, 2014

S.O. 3257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2014) of the Central Government Industrial Tribunal-Cum-Labour Court, Ernakulam now as shown in the Annexure in the Industrial dispute between management of Air India Ltd. Calicut, and their workmen, received by the Central Government on 15/12/2014.

[No. L-11012/13/2014 -IR (CM-I)]
M. K. SINGH, Section Officer

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

Present: Shri D. SREEVALLABHAN, B.Sc., LL.B, Presiding Officer

(Friday the 31st day of October, 2014/9th Kartika, 1936)

ID- 33/ 2014

Union : The General Secretary
Airlines Casual Workers Union
PO Calicut Airport
Malappuram Distt.
Calicut

Management : The Station Manager,
Air India Ltd., Calicut
Kerala
Calicut

By M/s.. Menon & Pai

This case coming up for final hearing on 31.10.2014 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

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 (14 of 1947) the Central Government/Ministry of Labour vide its order No. L-11012/13/2014-IR(CM-I) dated 02.07.2014 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

“Whether the action of the Management of Air India in denying employment to Shri Vinod P S and Shri P K Prajosh, casual Drivers cum Peon, at the Calicut International Airport is justifiable? To what relief the Union/Workmen are entitled to?

3. After receipt of the reference summons was issued to the union and the management and the same was served on both parties. Management entered appearance after acceptance of summons. In spite of several adjournments union did not appear and file any claim statement. On account of the failure of the union to appear and file claim statement a “no dispute award” is passed in this case.

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

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3258.—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 नं.-2, धनबाद के पंचाट (संदर्भ सं. 24/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था ।

[सं. एल-20012/4/2011-आईआर (सीएम- I)]
एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 15th December, 2014

S.O. 3258.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2011) of the Central Government Industrial 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 15/12/2014.

[No.L-20012/4/2011 -IR (CM-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. 24 of 2011

PARTIES :

The President,
Jharkhand Mines Lal Jhanda Mines Mazdoor Union.

Vs.

The General Manager,
E.J. Area of M/s. BCCL, PO: Bhowra, Distt: Dhanbad.
Ministry's Order No. L-20012/4/2011-IR(CM-I) dt. 19.08.2011

APPEARANCES:

On behalf of the workman/Union : Mr. Raghunandan Rai, Ld. Union Representative

On behalf of the Management : Mr. U.N. Lal, Ld. Advocate

State : Jharkhand Industry Coal

Dated, Dhanbad, the 17th October, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them 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-20012/4/2011-IR (CM-I) dt. 19.08.2011.

SCHEDULE

“Whether the action of the management of Bhowra (N), UG Mine of M/s. BCCL in not regularizing Sri Hridaya Ram, Haulage Operator as Fan Operator is justified and fair? To what relief the concerned workman is entitled to?”

On receipt of the Order No. L-20012/4/2011-IR(CM-I) dt. 19.08.2011 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 24 of 2011 was registered on 06.09.2011 and accordingly an order to that effect was passed to issued notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

2. The case of workman Haridaya Ram as sponsored by the Union concerned is that the workman, Haulage Operator, is a regular workman in the Bhowra Colliery. The Management, Bhowra (North) engaged him as Fan Operator for 3(three) months as per the authority letter dt. 10.09.2004, since then it was kept on sanctioning him to work so for three months as per his letters dt. 08.12.04, 10.03.2005 and 26.06.2005. Since then he has been still continuously working as the Fan Operator for more than 240 days, as per the Standing Order under clause 7.2 and 7.5 of the company which provides for the workman the right to permanent regularization on the his continuous working for 6 months. The Management is satisfied with the job of the workman. So he is entitled to his regularization on the aforesaid post.

The Union in the rejoinder for the workman has categorically denied all the allegations of the OP/Management as total untrue and misleading.

3. On the other hand, flatly but specifically denying the allegations of the Union concerned for the workman, the OP/Management has stated in their written statement that workman Hridaya Ram is a permanent employee of Bhowra (North) U/G Mine with the designation as Haulage Operator in Cat. III. The status of the workman was also represented before the ALC(C), Dhanbad-III as per the letter No. 882 dt. 30.11.2009 in the I.D. raised by the Union on 16.10.2008. He was temporarily deployed to operate the Fan for temporary period in the year 2004-05, by the end of the 2005, to work as the Haulage Operator, for all of which he was paid his wages accordingly. The work of the Fan Operator is the job of the surface. It has its own Cadre Separate from that of the Cadre the workman belongs. The Management allowed him the service Link Upgradation as per the provision of the NCWA after putting in the required years of service. No requirement is for the post of the Fan Operator as per the sanctioned posts. No provision provides for regularization in the Cadre Scheme. Moreover, the workman as per the Office Order Dt. 169 dt. 10.03.2010 has got promotion in Cat. IV. The action of the Management in not regularizing the workman as the Fan Operator is justified. So the workman is not entitled to any relief, as he has been all his pay regularly also upgradation as per the provisions of the NCWA.

The OP/Management in their simultaneous rejoinder has categorically denied the allegations of the Union/workman, further stating that no workman can claim for higher post in separate cadre as per the provisions of Cadre Scheme and the policy of the company. Further growth is allowed against the vacancy in the higher grade in its own Grade. The workman is continuously to work in his own Cadre, and being paid his wages for it.

FINDING WITH REASONS

4. In the reference, WWI, Hridaya Ram, the workman on behalf of the Union, and MWI Dulal Chandra Choudhary, the Clerk (pers.) Bhowra (N) Colliery for the OP/Management have been examined respectively.

On Perusal of the materials available on the case record, it clearly appears to be the indisputable fact that the workman is still working as the Haulage Operator In Cat. IV since his promotion/regularization based on the D.P.C. recommendation as per the Office Order dt. 03.10.03.2010 (Ext. M.1). Formerly the workman was M/Loader and thereafter he was regularized as the Haulage Operator in Category III about in the year 1992 or 1993. The job of the Haulage Operator is usually under the ground as contrasted with the job of the Fan Operator on the Surface of the Colliery. The workman has also got one SLU (Service Link Upgradation) after seven years service of the Haulage Operator in the year 2004.

Sri Raghunandan Roy, the Union Representative for the workman as per his written argument has to submit that the workman as per the four authority Slips (Extt. 1 series) has admittedly served as the Fan Operator for more than 240 days, and he is still working accordingly, so he stands entitled to regularization the fan Operator as per the clause 7.2 and 7.5 of the Standing Order of the Company, and the provision of the Industrial dispute Act, 1947 as also the principle of natural justice demands; as such the claim of the workmen for his regularization as the Fan Operator is justified.

Whereas the contention of Mr. U.N. Lal, the Learned Counsel for the O.P./Management is that the workman was admittedly deployed as the Fan Operator for temporary period in the year 2004-05 as evident for the Authority Slips (Extt. W.1 series). Though he was a permanent employee as the Haulage Operator of Bhowra (N) U/G Mines who had got his SLU (Service Linked Upgradation) at due time under the provision of NCWA. It is also beyond the dispute that the workman

was promoted from the post of Haulage Operator Cat. III to Cat. IV along with the others on the recommendation of DPC (Departmental Promotion Committee) as per the Office Order dt. 03/10.03.2010 (Ext. M.1) and thereafter he was kept on probation for period of one year as per the norms of the Company. It may not be denied that the job of the Fan Operator is a surface job as contrasted with that of the Haulage Operator under the underground. Their jobs are quite different from each other. Since the workman was earlier employed as a Miner Loader and thereafter, was regularized as Haulage Operator in Cat-III in the year 1992-93. The workman was temporarily deployed to operate as the Fan Operator for three months only in 2004-05 as also represented by the Management as per the letter dt. 30.11.20090 (Ext. M. 2) before the ALC (C), Dhanbad; so the claim of the workman for his regularization as the Fan Operator is not legal or justified.

On perusal of the materials available on the case record and on consideration of the submissions of both the Parties Representative and Counsel concerned for the respective parties, I find that since the workman belongs to the cadre of Haulage Operator quite distinct from that of the Fan Operator, there is no provision for such regularization in different cadre; as such the claim of the workman for regularization is neither justified nor proper.

In view of the aforesaid findings, it is hereby awarded in the terms of the reference that the action of the management of Bhowra (N) U/G Mine of M/s. BCCL in not regularizing Sri Hridaya Ram the Haulage Operator as Fan Operator is justified and fair. Hence the workman concerned is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2014

का.आ. 3259.—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 एवं श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ सं. 77/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.12.2014 को प्राप्त हुआ था ।

[सं. एल-20012/81/2012-आई आर (सीएम -I)]
एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 15th December, 2014

S.O. 3259.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2012) of the Central Government Industrial Tribunal-Cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the the management of M/s.. BCCL and their workman, received by the Central Government on 15/12/2014.

[No. L-20012/81/2012-IR (CM-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. 77 of 2012

PARTIES :

The President,
Bihar Sharmika Sangh, A/32, A Block OP: Bhuli, Dhanbad.

Vs.

The General Manager,
Sijua Area of M/s. BCCL. PO Sijua, Dhanbad
Ministry's Order No. L-20012/81/2012-IR(CM-I) dt. 16.10.2012

APPEARANCES:

On behalf of the workman/Union : None
On behalf of the Management : None
State : Jharkhand Industry Coal

Dated, Dhanbad, the 16th October, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them 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-20012/81/2012-IR (CM-I) dt. 16.10.2012.

SCHEDULE

“Whether the action of the Management of Loyabad Coke Plant of M/s. BCCL is not providing employment of Sri Karu Dusadh, dependant son of Late Jathan Dusadh, after a lapse of more than 12 years under the provision of NCWA is legal and justified? To what relief is Shri Karu Dusadh entitled?”

2. Neither any Union Representative for Bihar Sharmik Sangh, Bhuli, nor petitioner Karu Dusadh S/o Late Jathan Dusadh appeared nor any written statement with any documents filed on his behalf till now. Likewise no representative for the OP/Management appeared.

On perusal of the case record, I find that despite three Reg. notices 20.12.12, 08.05.2013 and 28.03.2014 having issued to both the parties on their respective addresses as noted in the Reference itself, none of the parties could respond to any of the notices. The Union Representative for the petitioner could not file written statement with any documents on behalf of the petitioner. It stands clear that the Union Representative as well as the petitioner appears to be quite uninterested in contesting the reference. Hence it appears to be Industrial dispute as referred for the matter of employment exists. Therefore it is closed and accordingly, an order of ‘No Dispute’ is passed.

KISHORI RAM, Presiding Officer