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सं. 30]	नई दिल्ली, जुलाई 17—जुलाई 23, 2016, शनिवार/आषाढ़ 26—श्रावण 1, 1938
No. 30]	NEW DELHI, JULY 17—JULY 23, 2016, SATURDAY/ASADHA 26—SRAVANA 1, 1938

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

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

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

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 13 जुलाई, 2016

का.आ. 1457.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) अनुभाग-12, लखनऊ की अधिसूचना सं. 1382(4)/6-पीयू-12-2015-9(12)डी/15 दिनांक 15.10.2015 के माध्यम से प्राप्त सहमति से भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 302 के तहत पुलिस थाना कोतवाली, बदायुं, उत्तर प्रदेश में पंजीकृत मामला अपराध सं. 444/15 में तथा उक्त मामले से सम्बद्ध तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न प्रासंगिक अन्य मामलों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त उत्तर प्रदेश राज्य में विस्तार करती है।

[फा. सं. 228/48/2015-ए.वी.डी.-II]

मो. नदीम, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 13th July, 2016

S.O. 1457.— In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, Grih (Police) Anubhag-12, Lucknow vide notification No. 1382(4)/6-PU-12-2015-9(12)D/15 dated 15.10.2015, hereby extends the powers and jurisdiction of the members of the Delhi Special Police

Establishment to the whole of the state of Uttar Pradesh for the investigation of case crime No. 444/15 under sections 302 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Kotwali, District Badaun, Uttar Pradesh, and in relation to or in connection with the said case in the course of the same transaction or arising out of the same fact or facts in relation to the aforesaid case.

[F. No. 228/48/2015-AVD-II]

Md. NADEEM, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 13 जुलाई, 2016

का.आ. 1458.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्वारा, केंद्र सरकार भारत के दूतावास, खारतम में श्री पुख्रामबम रंजीत सिंह, सहायक अनुभाग अधिकारी को दिनांक 13 जुलाई, 2016 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 13th July, 2016

S.O. 1458.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Pukhrambam Ranjit Singh, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Khartoum to perform the Consular services with effect from 13 July, 2016.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(दूर संचार विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 15 जुलाई, 2016

का.आ. 1459.—भारत संचार निगम लिमिटेड का मुख्य महाप्रबंधक का कार्यालय, उत्तर प्रदेश (पश्चिम), दूर संचार परिमंडल, देहरादून से मेरठ स्थानांतरित हो गया है और इस कार्यालय के 80 प्रतिशत से अधिक कर्मचारियों को पहले से ही हिंदी का कार्यसाधक ज्ञान प्राप्त है । अतः केन्द्रीय सरकार, एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित 1987, 2007 तथा 2011) के नियम 10 (4) का अनुसरण करते हुए भारत संचार निगम लिमिटेड के मुख्य महाप्रबंधक का कार्यालय, उत्तर प्रदेश (पश्चिम), दूर संचार परिमंडल का कार्यालय, बाउन्ड्री रोड, दूरभाष केन्द्र, मेरठ को अधिसूचित करती है ।

2. इसके अतिरिक्त मुख्य महाप्रबंधक के कार्यालय के अंतर्गत आने वाले निम्नलिखित 5 कार्यालयों के स्तर में परिवर्तन होने के कारण उनको निम्नांकित स्तर के अनुसार राजभाषा नियम, 1976 (यथा संशोधित 1987, 2007 तथा 2011) के नियम 10 (4) के अनुसार पुनः अधिसूचित किया जाता है :

स्तर, जिस पर अधिसूचित हैं

1. दूरसंचार जिला प्रबंधक, गाजियाबाद

स्तर, जिस पर अधिसूचित किया जा रहा है

महाप्रबंधक, दूरसंचार जिला, गाजियाबाद

- | | |
|--------------------------------------|--------------------------------------|
| 2. दूरसंचार मण्डल अभियंता, आगरा | महाप्रबंधक, दूरसंचार जिला, आगरा |
| 3. दूरसंचार मण्डल अभियंता, मुरादाबाद | महाप्रबंधक, दूरसंचार जिला, मुरादाबाद |
| 4. उपमंडल अधिकारी तार, इटावा | दूरसंचार जिला प्रबंधक, इटावा |
| 5. दूरसंचार मण्डल अभियंता, मैनपुरी | दूरसंचार जिला प्रबंधक, मैनपुरी |
3. यह अधिसूचना भारत के राजपत्र में प्रकाशन की तारीख से लागू होगी।

[सं. ई-11016/01/2016- राजभाषा]

अमित यादव, संयुक्त सचिव

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY**(Department of Telecommunications)****(O.L. DIVISION)**

New Delhi, the 15th July, 2016

S.O. 1459.—Office of the Chief General Manager, Uttar Pradesh (West) Telecom Circle, Dehradun of Bharat Sanchar Nigam Limited (BSNL), has been shifted to Meerut and more than 80% of its staff are already having working knowledge of Hindi. Therefore, Central Government, in pursuance of rule 10(4) of the Official Languages (Use for Official Purposes of the Union) Rules, 1976 (as amended 1987, 2007 and 2011), hereby notifies the Office of the Chief General Manager, Uttar Pradesh (West) of Bharat Sanchar Nigam Limited (BSNL), Telecom Circle, Boundary Road, Telephone Exchange Meerut.

2. In addition to these, consequent upon change in level of the five offices coming under the Office of the Chief General Manager, following offices are also renotified as per following levels in pursuance of rule 10(4) of the Official Languages (Use for Official Purposes of the Union) Rules, 1976 (as amended 1987, 2007 and 2011) :—

Level, at which it is notified**Level, at which it is being notified**

- | | |
|---|--|
| 1. Telecom District Manager, Ghaziabad | General Manager, Telecom District, Ghaziabad |
| 2. Telecom Divisional Engineer, Agra | General Manager, Telecom District, Agra |
| 3. Telecom Divisional Engineer, Moradabad | General Manager, Telecom District, Moradabad |
| 4. Sub-Divisional Officer, Wire, Etawah | Telecom District Manager, Etawah |
| 5. Telecom Divisional Engineer, Mainpuri | Telecom District Manager, Mainpuri |

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

[No. E-11016/01/2016-O.L.]

AMIT YADAV, Jt. Secy.

कृषि एवं किसान कल्याण मंत्रालय

(कृषि, सहकारिता एवं किसान कल्याण विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 14 जुलाई, 2016

का.आ. 1460.—केन्द्रीय सरकार, एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, कृषि, सहकारिता एवं किसान कल्याण विभाग, कृषि एवं किसान कल्याण मंत्रालय के सार्वजनिक उपक्रम राष्ट्रीय बीज निगम लिमिटेड, नई दिल्ली के अंतर्गत निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालय को जिसके 80% कर्मचारी-वृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :

प्रक्षेत्र कार्यालय
राष्ट्रीय बीज निगम लिमिटेड
6, माईल पंजाबरी रोड,
गुवाहाटी, पिन-781022

[सं. 3-3/2011-रा.भा. नीति]

राजेश कुमार सिंह, संयुक्त सचिव

MINISTRY OF AGRICULTURE AND FARMERS WELFARE

(Department of Agriculture, Cooperation and Farmers Welfare)

(OFFICIAL LANGUAGE DIVISION)

New Delhi, the 14th July, 2016

S.O. 1460.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notify the following office which is under the administrative control of the National Seed Corporation Limited, New Delhi, an undertaking of the Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare whereof 80% staff have acquired the working knowledge of Hindi :

Area Office,
National Seed Corporation Limited,
6 Mile Panjabari Road,
Guwahati,
Pin : 781022

[No. 3-3/2011-Official Language Policy]

RAJESH KUMAR SINGH, Jt. Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

शुद्धि-पत्र

नई दिल्ली, 3 जून, 2016

का.आ. 1461.—इस विभाग की दिनांक 26.5.2016 की अधिसूचना सं. यू-12012/25/2016-एमई-I (भाग-I) के अनुसरण में, कालेज के नाम को, वह जहां भी आए, डॉ एस.एन. मेडिकल कालेज, जयपुर के स्थान पर डॉ. एस.एन. मेडिकल कालेज, जोधपुर पढ़ा जाए ।

[सं. यू-12012/25/2016-एमई-I (भाग)]

अमित बिश्वास, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

CORRIGENDUM

New Delhi, the 3rd June, 2016

S.O. 1461.—In continuation to this Department's Notification No. U-12012/25/2016-ME-I (Pt.) dated 26.5.2016, the name of the College may be read as Dr. S.N. Medical College, Jodhpur in place of Dr. S.N. Medical College, Jaipur, wherever it occurs.

[No. U-12012/25/2016-ME-I (Pt.)]

AMIT BISWAS, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1462.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मित्रा एस.के. प्राइवेट लिमिटेड, हाउस सं. 1917, सुकलभटवाडी एट एंड पोस्ट रेडी, तालुका वेंगुरला, जिला-सिंधुदुर्ग, महाराष्ट्र-416517, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 से उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क (समूह-I), अर्थात् लौह अयस्क, निर्यात से पूर्व उक्त लौह और अयस्क, निरीक्षण करने के लिए एक अभिकरण के रूप में रेडी और किरणपनी, महाराष्ट्र निम्नलिखित शर्तों पर मान्यता प्रदान करती है, अर्थात् :

- (i) मैसर्स मित्रा एस.के. प्राइवेट लिमिटेड, हाउस सं. 1917, सुकलभटवाडी एट एंड पोस्ट रेडी, तालुका वेंगुरला, जिला-सिंधुदुर्ग, महाराष्ट्र-416517, खनिज और अयस्क (समूह-I) का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण का कार्यान्वयन के लिए उनके द्वारा अपनाई गई निरीक्षण पद्धति की जांच करने के लिए निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) मैसर्स मित्रा एस.के. प्राइवेट लिमिटेड, हाउस सं. 1917, सुकलभटवाडी एट एंड पोस्ट रेडी, तालुका वेंगुरला, जिला-सिंधुदुर्ग, महाराष्ट्र-416517, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगे।

[फा. सं. 4/7/2015-निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 11th July, 2016

S.O. 1462.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Mitra S.K. Private Limited, H.No.-1917, Sukalbhatwadi At and Post Redi, Taluka: Vengurla, District: Sindhudurg, Maharashtra-416517, as an agency for a period of three years from the date of publication of this notification, for inspection of Minerals and Ores (Group-I) namely, Iron Ore, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce *vide* S.O. 3975, dated the 20th December, 1965, prior to export of the said Minerals and Ores at Redi and Kiranpani, Maharashtra subject to the following conditions, namely: -

- (i) that M/s. Mitra S.K. Private Limited, H.No.-1917, Sukalbhatwadi At and Post Redi, Taluka: Vengurla, District: Sindhudurg, Maharashtra-416517, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965, and;
- (ii) that M/s. Mitra S.K. Private Limited, H.No.-1917, Sukalbhatwadi At and Post Redi, Taluka: Vengurla, District: Sindhudurg, Maharashtra-416517, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F.No. 4/7/2015- Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1463.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उप-धारा (1) द्वारा प्रदत्त

शक्तियों का प्रयोग करते हुए, मैसर्स क्वालिटी सर्विसेज और सोलुशन्स (गोवा), हाउस सं. 1576, सुकलभटवाडी, तालुका वेंगुरला, जिला-सिंधुदुर्ग, महाराष्ट्र-416517, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 से उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क (समूह-I), अर्थात् लौह अयस्क और बाक्साइट, निर्यात से पूर्व उक्त लौह और अयस्क, निरीक्षण करने के लिए एक अभिकरण के रूप में रेडी और किरणपनी और जाड्गढ पोर्ट, महाराष्ट्र निम्नलिखित शर्तों पर मान्यता प्रदान करती है, अर्थात् :

- (i) मैसर्स क्वालिटी सर्विसेज और सोलुशन्स (गोवा), हाउस सं. 1576, सुकलभटवाडी, तालुका वेंगुरला, जिला-सिंधुदुर्ग, महाराष्ट्र-416517, खनिज और अयस्क (समूह-I) का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण का कार्यान्वयन के लिए उनके द्वारा अपनाई गई निरीक्षण पद्धति की जांच करने के लिए निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) मैसर्स क्वालिटी सर्विसेज और सोलुशन्स (गोवा), हाउस सं. 1576, सुकलभटवाडी, तालुका वेंगुरला, जिला-सिंधुदुर्ग, महाराष्ट्र-416517, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगे।

[फा. सं. 4/6/2016-निर्यात निरीक्षण]

संतोष कुमार सांरंगी, संयुक्त सचिव

New Delhi, the 18th July, 2016

S.O. 1463.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Quality Services and Solutions (Goa), H.No.-1576, Sukalbhatwadi, Taluka: Vegurla, District: Sindhudurg, Maharashtra-416517, as an agency for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores (Group-I) namely, Iron Ore and Bauxite, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce *vide* S.O. 3975, dated the 20th December, 1965, prior to export of the said Minerals and Ores at Redi, Kiranpani and Jaigarh port, Maharashtra subject to the following conditions, namely: -

- (i) that M/s. Quality Services and Solutions (Goa), H.No.-1576, Sukalbhatwadi, Taluka: Vegurla, District: Sindhudurg, Maharashtra-416517, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965, and;
- (ii) that M/s. Quality Services and Solutions (Goa), H.No.-1576, Sukalbhatwadi, Taluka: Vegurla, District: Sindhudurg, Maharashtra-416517, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F.No. 4/6/2016-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 6 जुलाई, 2016

का.आ. 1464.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनएलसी लिमिटेड 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 (संदर्भ सं. 52/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/45/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 6th July, 2016

S.O. 1464.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of M/s. Neyveli Lignite Corporation Ltd. and their workmen, received by the Central Government on 06.07.2016.

[No. L-22012/45/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**Monday, the 20th June, 2016**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 52/2014**

(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 Neyveli Lignite Corporation Ltd. and their workman)

BETWEEN :

The General Secretary : 1st Party/Petitioner Union
NLC General Contract Workers & Staff Union
Near Bus Stand, Block-24
Neyveli-602801

AND

The General Manager : 2nd Party/Respondent
M/s. Neyveli Lignite Corporation Ltd.
Thermal Power Station-II
Neyveli-607802

Appearance :

For the 1st Party/Petitioner Union : M/s. V. Ajoy Khose, Advocates
For the 2nd Party/Respondent : M/s. N.A.K. Sarma, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-22012/45/2014-IR (CM-II) dated 30.06.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of NLC Ltd., Neyveli in denying Gate Pass applicable to workman Sri Panneerselvam, Contract Labour is legal and justified? If not, to what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 52/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and filed claim and counter statement respectively.

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

The petitioner is a Trade Union registered under the Trade Unions Act. The Respondent is involved in mining of lignite and generation of electricity through Thermal Power Stations. The Respondent is having several other service units also, apart from operating mines and thermal power stations. Originally, the Respondent had been employing direct and regular workers in all the units. But later the Respondent had started employing workmen in the name of contract labourers in place of regular workmen and in regular vacancies. The contract labourers are employed in all kinds of work and the strength of regular workers in the Respondent establishment is only 10,500. The number of contract labourers is more than 50,000. Since the contract labourers were not extended proper wages and other benefits a Society by name Industrial Cooperative Service Society shortly called INDCO-SERVE was formed in the year 1990. The contract labourers who were working as on date of the formation of the Society were allowed to give application to enroll themselves as members of the said Society. However, rather than based on length of service and seniority

enrolment was done on whims and fancies of the Respondent. In the year 1995 a settlement was signed between the Unions and Respondent to regularize the service of the contract labourers who were members of the Indco-Serve Society. The members of the Society were thus being regularized. The contract labourers who were not members of the Society, though seniors to those who were enrolled as members of the Society, were not given absorption in the Corporation. They filed Writ Petition seeking absorption without reference to enrolment in the Society, but based on seniority. This Writ Petition was allowed and the order was confirmed in Appeal. Paneerselvam who is a member of the Petitioner Union was employed by the Respondent in the name of contract labourer from the year 1995. From the date of his initial engagement he has been continuously employed in Thermal Power Station-II. Though the Contractors who were appointed by the Respondent changed, Paneerselvam continued to serve in the same place and do the same work. Paneerselvam used to be issued Gate Entry Pass with the designation Skilled Worker. However, in the entry pass issued to him from the year 1998-1999 to 2007-2008 his designation is shown as Supervisor. In spite of this he continued to do the very same skilled work as he was doing earlier. After judgment of the Hon'ble High Court for regularization of contract labourers, in the year 2008, the Respondent issued printed formats for collection of details of contract workmen so as to get the particulars of each contract labourers for preparing a seniority list based on length of service. Though initially Paneerselvam was not issued a printed format proceeding as if he was a Supervisor on the intervention of Dy. General Manager printed format was issued to him and he submitted his application providing the details of his employment. In the seniority list published subsequently the name of Paneerselvam also was shown without serial number. In the next seniority list the name of Paneerselvam was shown as S.No. 4530. Paneerselvam was enrolled as member of the Provident Fund from 1990 onwards. He was issued with Gate Entry Pass showing his designation as Skilled Worker in 2008-2009. However, in March 2011 the concerned Supervisor insisted that Gate Entry Pass with designation Supervisor alone will be given. When the concerned workmen pointed out that it would deprive him of benefits of Skilled Worker he was refused Gate Entry Pass w.e.f. 15.03.2011. This resulted in denial of employment to the workman concerned from 15.03.2011. Though the concerned workman was given work in other areas through another Contractor he was not given work for all the 26 days in a month. Even this work was stopped from January 2014. The industrial dispute is raised accordingly. An order may be passed holding that the action of the Respondent in denying Entry Pass to the concerned workman, Paneerselvam is illegal and unjustified, directing the Respondent to reinstate the workman concerned as a Skilled Worker in Boiler Operation and Adjustment Division, TPS-II with continuity of service, backwages and all other attendant benefits and to issue him Gate Entry Pass with the designation as Skilled Worker and also to include his name in the seniority list of contract labourers prepared for permanent absorption and also to enroll him as a member of Indco-Serve based on his seniority.

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

The dispute has been raised on a misconception and is frivolous. It is based on the wrong assumption that the concerned individual was employed by the Respondent. The Respondent is not issuing Gate Pass as stated in the Claim Statement, but only temporary entry permit. It used to be issued to an individual only on the requisition of the Contractor. There was no employer-employee relationship between the concerned individual and the Respondent. He was being engaged by private contractors intermittently as Supervisor. So the dispute raised by the Petitioner is not maintainable. The subject matter of the reference and the prayer in the Claim Statement are entirely different and the claims made in the Claim Statement are beyond the scope of the reference and not legally permissible. The non-impleadment of the respective Contractors who employed the concerned individual is fatal to the dispute. The Respondent used to issue Identity Cards to its regular employees and temporary entry permits to the Contract Workers on specific requisition by the Contractors. The Respondent had not rejected or kept pending any requisition from any Contractor regarding engagement of the concerned individual. The concerned individual is not an employee of the Respondent. So the dispute is not maintainable in terms of Section-2K of the Industrial Disputes Act. The Respondent engages private contractors for executing various types of work. The Contractors engage contract workers in accordance with the Contract Labour (Regulation and Abolition) Act. The respective Contractors shall submit a list of persons with requisite details of the individuals to the Respondent with a request to issue temporary entry permit from time to time till the completion of execution of the contract work. The Respondent will issue permits on such requests. An individual who is not a regular employee of the Respondent has no right to seek issue of temporary entry permit. The concerned individual, Paneerselvam was engaged by the Contractor by name M/s Emkay Fabricators, Neyveli as Supervisor in 1993. Since then he was being engaged intermittently in this capacity. On the basis of interim direction of the Supreme Court dated 16.08.2010 a provisional seniority list of contract workers was prepared and the list was displayed in the respective units calling for objections. The name of the concerned individual was in the list as Seniority Number 4530 as a contract worker. However, this was a mistake as the concerned individual had always worked as Supervisor. On 29.12.2012 another list was published omitting the names of ineligible candidates, long absentees, etc. It came to the knowledge of the Respondent in the meanwhile that the concerned individual was not engaged from 01.07.2011. He did not challenge the discontinuance of engagement by the Contractor. So his name was deleted alongwith 18 others from the seniority list of contract workers. He did not object this at the time. Consequent to the order of the Supreme Court dated 16.4.2013 the seniority list was updated and made available to all the units and was displayed in the respective units on 30.12.2013 calling for objections. The individual did not raise any

objection to the omission of his name in the list. The concerned individual was being engaged by M/s Macawber Veekay Pvt. Ltd. through the principal employer, BHEL in a totally different new project and is having a temporary entry permit at the instance of the said Contractor. The petitioner is not entitled to any relief. The petition is liable to be dismissed.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and also documents marked as Ext.W1 to Ext.W16 and Ext.M1 to Ext.M6.

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

- (i) Whether the action of the Respondent, if any in denying Gate Pass (temporary entry permit) to the concerned contract labour is legal and justified?
- (ii) Whether the concerned contract labour is entitled to other reliefs made in the Claim Statement?
- (iii) What, if any, are the reliefs to which the concerned contract labour is entitled?

The Points

7. The dispute is raised by the Petitioner Union on behalf one Paneerselvam who is said to have been a contract labour who had been continuously working in the Respondent establishment from the year 1993 in the Ash Handling System / Maintenance in Thermal Power Station-II. According to the petitioner the Gate Pass having been refused the concerned contract labour was not getting any employment in the Respondent establishment.

8. The Respondent has contended in the Counter Statement that there was never employer-employee relationship between it and the concerned individual but he was only working as Supervisor under different Contractors during intermittent period. It is the further contention of the Respondent that it never used to issue temporary permit to contract workers directly but only through the Contractor. It is for the Contractor to make a request to the Respondent who is the principal employer with the necessary particulars of each of the contract employees and only then permit would be given. The Respondent has also contended in the Counter Statement that the then Contractor had stopped engaging the concerned individual from 01.07.2011 and there was no request from the Contractor to issue temporary work permit to the concerned contract labour.

9. Even from the evidence of the WW1, the President of the Petitioner Union it could be seen that the contention raised by the Respondent in respect of issue of temporary permit is correct. WW1 has admitted during his cross-examination that on award of the contract the Contractor used to submit an application to the Respondent seeking temporary permit for the persons he is going to engage. So it is clear that unless the Contractor makes a request to the Respondent there is no question of issuing temporary permit for a particular person. WW1 does not himself know anything about the details of the work done by the concerned individual, Paneerselvam on whose behalf the dispute is raised. It is only as informed by the individual that he came to know that he has been working under the Contractor since 1993. He has joined the Union only in 1998. He was not acquainted with him prior to 1998.

10. The concerned individual has been examined as WW1. He has also admitted during his cross-examination that it is only consequent to the Contractor submitting a list of persons to be employed by him, temporary entry permit will be issued to the contract workers employed. He has admitted during his cross-examination that he had worked as contract worker only till 14.03.2011. Unless the Contractor had made a request to the Respondent who is the principal employer, entry permit would not have been issued to him. During cross-examination WW2 has stated that the Contractor had submitted a letter to the Respondent to issue entry permit to him. However, it was not produced by him. Even as admitted by WW1 he was working with another Contractor, M/s Macawber Beekay. Pvt. Ltd. and he was issued entry permit for working with the said Contractor, who was a Sub-Contractor with BHEL. So even the case that entry permit was not issued does not seem to be correct.

11. There is the evidence given by MW1, Deputy Chief Manager of the Respondent alongwith Ext.M6 series in this respect. Ext.M6 series are requests given by M/s Macawber Beekay Pvt. Ltd. to the Thermal Power Station Unit of the Respondent to arrange renewal of the entry pass. Though the Respondent has objected to the use of the word "Gate Pass" and has insisted that it is temporary entry permit. Ext.M6 series refer to the document as Gate Pass itself. From Ext.M6 series numbering 11 also it is clear that the practice was to issue the entry permit to the contract employees when request is made by the Contractor. The name, Paneerselvam, the name of the individual involved in this dispute also is found in many of Ext.M6 series. As stated, WW1 himself has admitted that he was engaged through the Contractor, M/s Macawber Beekay Pvt. Ltd. even after 2011. Thus, in any case there is no justification for the petitioner seeking entry permit on behalf of the concerned contract labourer from the Respondent directly.

12. The only subject matter of the schedule of reference is the denial of Gate Pass to the concerned contract labourer. However, in the Claim Statement the petitioner has gone beyond the subject matter of reference and has prayed for several other reliefs also. One relief claimed is "to reinstate the workman concerned as a Skilled Worker in

Boiler Operation and Adjustment Division, TPS-II with continuity of service, backwages and all other attendant benefits". Another is "to extend him all the benefits including permanent absorption as made available and extend it to the other contract labourers whose names were included in the seniority list for absorption".

13. The claim of the petitioner for absorption of the concerned contract labourer is on the basis that he would be entitled to be absorbed if he was included in the seniority list prepared by the Respondent. For one thing this is not a subject matter of reference. Even assuming that the concerned labourer is entitled to be absorbed it's a matter to be done by the Respondent in a phased manner. There is nothing in evidence to show how many persons were absorbed, how many persons remained to be absorbed, etc. the question of absorption cannot be considered in this dispute at all.

14. Yet another claim made by the Petitioner, though not a subject matter of reference is that the name of the concerned individual should be included in the seniority list maintained by the Respondent. Though the issue is not a matter of reference, this seems to have been raised even before the Assistant Labour Commissioner. So the question whether the concerned individual was entitled to be included in the seniority list is being considered in spite of the matter having not been referred to in the schedule of reference.

15. The Respondent who had initially been employing only regular workers had subsequently started to engage workers through contract on a large scale. Since it was felt that the contract workers were not getting sufficient benefits, a Society by name Industrial Cooperative Service Society shortly Indco-Serve was formed in the year 1990. Those who were contract labourers were allowed to be enrolled as members of the Society. However, it happened that all those who were working as contract labourers were not getting enrolled as members but this was being done on the basis of certain biased considerations. In the meanwhile, the Respondent and the recognized unions had entered into a settlement agreeing to regularize the contract labourers who were members of the Society. Even then there were large number of persons who were contract labourers and not members of the Indco-Serve Society working for the Respondent. They were not entitled to get absorption on the basis of the settlement, they being outside the purview of the settlement. They approached the Hon'ble High Court of Madras for a remedy. By order dated 15.05.2002 in WP 8/1996 the Hon'ble High Court directed that "while considering the question of regular absorption in the categories' indicated in the settlement the case of all other workers coming within the eligible category should be considered according to the seniority and the case of none of the workers should be ignored merely because he has not been admitted as a member of Indco-Serve". This order was challenged by the Respondent in Writ Appeal 2045/2002. However, this Writ Appeal was dismissed and the order in the Writ Petition was confirmed. Ext.W6 is the copy of the order in the Writ Petition and Ext.W7 is the order in the Writ Appeal. The Respondent filed Civil Appeal before the Hon'ble Supreme Court against the order in the Writ Appeal. However, during the pendency of the appeal the Respondent made a statement that a common seniority list of the contract workers was being re-drawn by taking into consideration not only the date of membership with Indco-Serve but also their entry in the Respondent's service through any private Contractor. Later, the Apex Court was informed that the list has been prepared. The appeal was disposed accordingly. As per the direction given in the order of the Apex Court if any workman has any grievance to the seniority list he can submit objection to the Management and the Management is to consider the same.

16. On the basis of Ext.W6 order the Respondent had issued printed formats to the Contract workers for submission of their details for consideration for absorption as permanent worker. Ext.W8 is the printed format submitted by the concerned individual, Paneerselvam even as admitted by the Respondent. WW2, the concerned individual himself has not given any evidence regarding any of these aspects. He has merely stated in his Proof Affidavit that he was not able to get any alternative employment after January 2014. WW1 who had referred to the aspects in the Proof Affidavit does not even know that the name of the concerned individual was deleted from the seniority list and was displayed on the Notice Board, as could be seen from his admission during cross-examination.

17. The name of the concerned individual was shown in the first seniority list without showing the serial number as seen from the Claim Statement. However, in the subsequent seniority list marked as Ext.W3, the serial number was given as 4530. The next seniority list, the part of which is Ext.W4 was issued without the name of the concerned individual. The S.No. 4530 shown in Ext.W3 is seen omitted from this. The case of the Respondent is that it was only by mistake his name was earlier included in the list, that his name was omitted from the revised list because the Contractor has stopped engaging him and also because he was working not as a workman but only as a Supervisor.

18. As already stated, the concerned individual has not stated anything about the contention raised by the Management. The Contractors who had been engaging the individual were not made parties to the dispute nor even any of them were examined to prove in what capacity the individual has been working with the Respondent. As seen from Ext.W6 order "all the workers coming within the eligible category should be considered" for absorption. As per Ext.W2 settlement "the workers" were to be absorbed. The petitioner does not seem to have a contention in the Claim Statement that even those who were working in the Supervisory category under the Contractors were eligible to be absorbed. On the other hand he too has a case that a Supervisor is not eligible. This could be deciphered from the case in the Claim Statement that "he had pointed out that giving the designation of Supervisor would deprive him of various benefits which he was enjoying as Skilled Labour".

19. Now the case of the Respondent that he was engaged as a Supervisor can be examined. The documents produced on behalf of the Respondent justify this case. Ext.M1 is a letter written by M/s Emkay Fabricators, a Contractor to the Respondent asking to make arrangement to provide electrical points at site. The four Supervisors authorized to receive the materials include Paneerselvam, the concerned individual. Ext.M2 is a letter issued by the Respondent authorizing to collect the articles. The materials are seen collected by Paneerselvam, the concerned individual and his designation is shown as Supervisor. In Ext.M3 dated 28.05.1998 given the heading as "Daily Labour Report", Paneerselvam has signed as Supervisor. Thus the above documents refer to the person as Supervisor and not as mere worker. In Ext.M5, the temporary entry pass issued to Paneerselvam, he is shown as Site-in-charge. It is an entry pass valid from 01.02.2008 to 30.04.2008. Thus upto 2008 he seems to have been working in a Supervisory capacity.

20. The petitioner has produced entry passes and these are marked as Ext.W9 series. However, all these are of the period from 2010. Entry pass referring to the previous period are not produced by the petitioner. MW1 has stated that Ext.W8 format was submitted by the concerned individual on 22.11.2008 and the entry passes marked as Ex.W9 series are only those that were obtained after 22.11.2008. Thus the contention of the Respondent that the concerned individual was working in a Supervisory capacity is not controverted. On the other hand, the very contention in the Claim Statement would show that in all the earlier entry passes he was shown as Supervisor. It is the Contractor who is engaging the contract labour and the principal employer could not have anything to do with it. There will be no necessity for the principal employer to make any entry dishonestly. The entry pass is usually issued based on the details furnished by the Contractor only. The eligibility of the concerned individual to be entered in the seniority list is not established. So the petitioner, in any case is not entitled to any relief claimed.

In view of my discussion above the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th June, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri K.P. Madhakrishnan
WW2, Sri P. Paneerselvam
For the 2nd Party/Management : MW1, Sri Satyanarayana Sunkara

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Registration Certificate of the First Party Union
Ext.W2	18.05.1995	12(3) Settlement
Ext.W3	-	Seniority list prepared by the Second Party Management in which the name of the workman concerned is found as S.No. 4530
Ext.W4	-	Seniority list prepared by the Second Party Management omitting to include the name of the workman concerned
Ext.W5	-	Seniority list prepared by the Second Party Management omitting to include the name of the workman concerned
Ext.W6	15.05.2002	Order in WP No. 8/96
Ext.W7	16.02.2008	Order in WP No. 2045/2002
Ext.W8	1993-2008	Filled-in Printed Format submitted by the workman concerned for absorption as permanent workers in NLC with attestation by NLC Officials
Ext.W9	2008-2011	Entry pass issued by the Second Party to the workman concerned
Ext.W10	1999 to 2010	EPF subscribers Annual Statement of Account issued to the workman concerned
Ext.W11	16.04.2013	Order in Civil Appeal No. 1629/2011
Ext.W12	04.11.2013	Remarks filed by the Second Party

Ext.W13	26.02.2014	Rejoinder filed by the First Party Union
Ext.W14	29.04.2014	Failure report
Ext.W15	30.06.2014	Order of Reference
Ext.W16	-	Resolution and minute book of the First Party Union

On the Management's side

Ex.No.	Date	Description
Ext.M1	20.05.1993	Letter of M/s Emkay Fabricators to the Second Party
Ext.M2	31.12.1996	Material Gate Pass of the Second Party
Ext.M3	28.05.1996	Controller's Daily Labour Report
Ext.M4	01.12.2012	Proceedings of the Second Party with Annexure
Ext.M5	01.12.2008	Temporary Entry Pass
Ext.M6	2014	Letter of M/s Macawber Beekay Pvt. Ltd. requesting renewal Gate Pass to the List of persons (Series) for various periods.

नई दिल्ली, 6 जुलाई, 2016

का.आ. 1465.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 2/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/205/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 6th July, 2016

S.O. 1465.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Pandaveshwar Area of M/s. ECL and their workmen, received by the Central Government on 06.07.2016.

[No. L-22012/205/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

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

PRESENT: Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 02 OF 2010

PARTIES :

The management of Pandaveshwar Colliery of M/s. ECL.

Vs.

Shri Sanyasi Badyakar

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri. M. K. Badopadhyay, Ld. Advocate

Industry : Coal

State : West Bengal

Dated: 08.06.2006

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 letter NO. L-22012/205/2004-IR(CM-II) dated 28.04.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Pandaveshwar Colliery of M/s. ECL in dismissing Sri Sanyasi Badyakar, Cap Lamp Mazdoor is legal and justified? If not, to what relief is the workman entitled?”

1. Having received the Order NO. L-22012/205/2004-IR(CM-II) dated 28.04.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 02 of 2010 was registered on 28.01.2010 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.

2. Case called out. Sri P. K. Goswami, learned advocate is present on behalf of the management but none appears on behalf of the workmen / union.

3. On 26.05.2015, Sri M. K. Bandopadhyay, Learned Advocate for the management appeared and submitted that the concerned workman Sri Sanyasi Badyakar has expired and he has no connection with the legal heirs of the deceased workman. Notices to the workman were sent on 11.08.2014 and 10/11.02.2015 for filing substitution petition but none has so far turned up for filing substitution petition. Both the lawyers have submitted that the workman has expired and no one has filed any application for substitution petition. Since the workman is dead and his heirs do not want to contest the case any more the Tribunal has no option left but to close the case. As such the case is closed and a ‘No Dispute Award’ is hereby passed accordingly.

ORDER

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

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 8 जुलाई, 2016

का.आ. 1466.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 80/14) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/183/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2016

S.O. 1466.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/14) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfield Limited and their workmen, received by the Central Government on 08.07.2016.

[No. L-22012/183/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/80/14**

General Secretary,
Coal Mines Engineering Workers Association,
Zonal Office, Ward No.10, Gudi,
PO Palachaurai,
Distt. Chhindwara (MP)

...Workman/Union

Versus

Chief General Manager,
Western Coalfields Ltd.,
Pench Area,
PO Parasia, Chhindwara

...Management

AWARDPassed on this 16th day of June, 2016

1. As per letter dated 21-10-14 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-22012/183/2013-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Chief General Manager, Western Coalfields Limited, Pench Area, Parasia Post & Tel Parasia, Distt. Chhindwara in denying employment to Shri Rohit Bunkar dependent son of Shri Anakhilal, Ex-Driver, EDC Colliery who retired from service w.e.f. 30-6-2010 under the provisions of 10.4.4 of NCWA II and provisions of 9.4.4 of NCWA III is justified? If not, to what relief the ex-workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to appear in the proceeding after notice. Workman is proceeded exparte as per order dated 18-2-16.

3. 2nd party filed exparte Written Statement. The contentions of 2nd party are that workman has failed to submit statement of claim and documents within 15 days as per rule 10(B) of ID Act, Central Rules. That WCL is a subsidiary of Coal India Ltd. The service conditions coal mine workers are covered by NCWA. The details of NCWA are given in Para-7 of Written Statement. NCWA-I for the period 1-7-75 to 31-12-78, NCWA-II 1-1-79 to 31-12-82, NCWA-III for 1-1-83 to 31-12-86, NCWA-IV- 1-1-87 to 30-6-91, NCWA-V for 1-7-91 to 30-6-96, NCWA-VI for 1-7-96 to 30-6-01, NCWA-VII for 1-7-01 to 30-6-06, NCWA-VIII for 1-7-06 to 30-7-11 & NCWA-IX for 1-7-11 to 30-6-16.

4. That Shri Anakhilal was working as Driver at EDC Colliery of WCL, Pench Area. The age of superannuation in coal India is 60 years. The said workman has been retired w.e.f. 30-6-2010 on attaining the age of 60 years. Ist party claims to be dependent of Anakhilal and claims employment based on certain circulars. The coal India had issued circular dated 22-6-97 agreeing to provide employment to one dependent of employee rendering 35 years service. As per Ist party had submitted application dated 8-4-13 contending that the dependent employment be given to him as per circular. Ist party had raised his claim as per clause 1.4.4 of NCWA-II & clause 9.4.4 of NCWA-III. Management regretted to accept his claim. Dispute was raised. That clause 10.4.4 and 9.4.4 pertain to employment for dependent of retiring employees under NCWA-II, III. There is no provision in NCWA-IV for providing such employment. Provisions of NCWA-IV are reproduced in Para 14 of the Written Statement. The dependent employment is provided when worker is permanently disabled, monetary compensation to female dependents. Wife/ husband, unmarried daughter, son and adopted son are included as dependents. 2nd party has also referred to identical issue raised by one Shri Vasudev Raut who has filed WP No. 4996/15 and award passed in R/4/92 and decision in WP No. 2412/02. 2nd party reiterates that Ist party is not entitled for employment as dependents.

5. 2nd party submitted affidavit of evidence of shri Arun Kumar Singh supporting contentions in Written Statement filed by the management.

6. Workman has not appeared in reference proceeding. He is proceeded ex parte on 18-2-16. The dispute under reference could not be decided on merit.

7. For reasons discussed above, No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 8 जुलाई, 2016

का.आ. 1467.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 90/13) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/71/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2016

S.O. 1467.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/13) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfield Limited and their workmen, received by the Central Government on 08.07.2016.

[No. L-22012/71/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/90/13**

General Secretary,
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),
Shramik Shakti Bhawan,
PO Chandametta,
Chhindwara

...Workman/Union

Versus

Chief General Manager,
Western Coalfields Limited,
Kanhana Area, Dungaria,
PO Dunhgaria,
Distt. Chhindwara

...Management

AWARDPassed on this 16th day of June, 2016

1. As per letter dated 3-10-13 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-22012/71/2013-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Western Coalfields Limited Kanhana Area, PO Dungaria, Distt. Chhindwara (MP) in not providing the employment to Kumari Puja Dhiman dependant of late Smt. Somtibai as per provision of NCWA-V is legal and justified? If not, to what relief Kumari Puja Dhiman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to appear in reference proceeding despite of repeated notices. Ist party was proceeded exparte as per order dated 14-12-15.

3. 2nd party filed exparte Written Statement. 2nd party submits that Ist party workman after raising dispute failed to file statement of claim and documents. As per Rule 10(B) of Central Rules, he is proceeded exparte. That late Somtibai was employed as General Mazdoor with the management. She died on 21-7-94. After death of said employee, no representations were received claiming compassionate appointment by LRs. That Writ Petition No. 8812/11 was filed. Writ petition was disposed vide order dated 28-6-14. Directions were given for deciding representation of petitioner. The petitioner had submitted representation dated 23-7-14 after death of Somtibai Madan, her mother in law applied

for monetary compensation which was refused as she is not coming under the definition of dependants. Ist party was of 5 years of age at the time of death of her mother. She applied to compassionate appointment after a lapse of about 14 years after the death of her mother on attaining the age of 18 years. Claim of workman was not covered under NCWA-V provided for employment. Claim of Ist party was deleted after 21 years of the death of her mother. The dependent employment is provided employment on the sudden demise of the bread earner of the family is to provide assistance to the bereaved family for facing the financial difficulty which is required to be given immediately. Writ Petition No. 21663/15 was filed by workman challenging order dated 28-9-15. On granting compassionate appointment, various facts have to be taken note of i.e. availability of vacancy, financial condition of the dependents, manpower requirements of the establishment, its financial position etc. there is no provision to wait for several years for providing employment to dependent of deceased employee. After lapse of several years, the dependent employment cannot be claimed as a matter of right.

4. Management also filed affidavit of witness Shri Amti Mahato supporting contentions in Written Statement. Workman has not appeared in reference proceeding, no statement of claim is filed.

5. In the result, No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 8 जुलाई, 2016

का.आ. 1468.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 20/1996) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/42/1992-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2016

S.O. 1468.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/1996) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of South Eastern Coalfield Limited and their workmen, received by the Central Government on 08.07.2016.

[No. L-22012/42/1992-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

NO. CGIT/LC/R/20/96

Dy.General Secretary,
National Colliery Workers Federation,
Jamuna & Kotma,
Post Jamuna Area,
Distt. Shahdol (MP)

... Workman/Union

Versus

General Manager,
SECL, Jamuna & Kotma,
Post Jamuna Area,
Distt. Shahdol (MP)

...Management

AWARD

Passed on this 13th day of June, 2016

1. As per letter dated 1-1-1996 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-22012/42/92-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of Jamuna and Kotma Area of SECL in not departmentalizing Timber Sawing Mazdoors (List enclosed) in various units of J&K Area is legal and justified? If not, to what relief the concerned workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party Workers Federation filed statement at page 7/1 to 7/11. Case of Ist party workers is that Union is registered as colliery workers federation, it is affiliated to National Labour Organisation. The colliery of Jamuna and Kotma area are owned by SECL, a subsidiary company of the Coal India Limited. The Union has a legal duty to spouse the claims and grievances of the workers under the collective bargaining system with the management. Union submits that 28 workers namely Sheikh Jalil and others were working as Timber Sawing mazdoors at units like Govinda, Bhadra, Jamuna, Kotma and Kotma West of Jamuna and Kotma Area from the year 1982 in the timber sawing machines of SECL. Though the Sawing mazdoors were working in the timber saw machines of SECL, with an intention to deprive them of the benefits of regularization/ departmentalization in services in the said collieries, the workers were kept on daily wage basis. The workers were claiming their departmentalization since last so many years but the management did not give any response. The Union therefore took up the matter and spoused the claim and grievance of the workers under the collective bargaining system with the management. But no decision was taken by the management in regard to departmentalization of the 28 workers working in timber sawing machines. Union raised dispute before ALC. After the dispute was seized in conciliation proceedings, notices were sent to the management. Conciliation ended in failure. The dispute has been referred.

3. Ist party Union further submits that Jamuna and Kotma area is bifurcated in various sub areas. The collieries namely Govinda, Bhadra, Jamuna No.1 and 2, Jamuna No.7 & 8, Kotma colliery, Kotma West colliery are in the administrative and economic control of the Jamuna and Kotma Area. Open cast as well as underground mines are operated for coal exploration. In underground mines, the coal cannot be explored without the arrangement of roof supporting system and without extensions of the tracks/ tram lines for which wooden sleepers and wooden planks are regularly required and for this purpose, in all the collieries, the management have established their own sawing machines in the mine premises including at collieries of J&K Area of SECL. Since the wooden sleepers are required regularly therefore the operations/ process of cutting of timbers and giving them shape is performed on the timber saw machines with the help of sawing mistry, helper and mazdoor and for this purpose, the timber sawing mazdoors are deployed in the permanent job. The Union submits that without the wooden sleepers and wooden planks, the exploration of the coal cannot be possible. It is submitted that before exploration of coal, the wooden sleepers and wooden planks are required for supporting of the roof and without supporting the roof, it is not at all possible to explore the coal and without supporting the roof, no employee can dare to extract the coal since there is possibility of collapse of the roof and heavy casualty in the underground mines. Ist party further submits that State of MP has inacted Madhya Pradesh Kashtha Cheeran Viniyam Adhiniyam 1984 for establishing saw mill or saw pit. Management after depositing the required licence fee under the said Act has obtained the licences from the Licensing Officer for operation of the said timber saw machines in the mines premises. Union further submits that workman Sheikh Jalil and others were employed by management in Govinda, Bhadra, Jamuna, Jamuna West and Kotma colliery in the post of temporary sawing mazdoor from the year 1982 onwards on permanent and vacant post. That all those employees were continuously performing duties under shift system in saw machines of respective collieries. The colliery management is having economic control over the workers substance, skill and continued employment. The management has shown those workers as contract workers. Any of the workers were never employed by contractors, their real employer is the management of SECL. The attendance of workers were marked in the attendance sheet of the management, salary and payments were made through the management of the respective mines directly. Union further submits that after accident, colliery management has referred them to the mines hospital issuing Form O and Form B and have also assessed their PPD and has paid compensation under Workmen Compensation Act, 1923. Management admitted workers suffered accident during course of employment was employed in their mine. All 28 workers are continuously performing their jobs of timber sawing mazdoor since 1982. Management showing them as contractor's employees not regularized/ departmentalized their service. the workers are not given benefit of NCWA. It is reiterated that workers completed 16 years service without break are entitled for regularization/ departmentalization. They have completed 240 days service from 1983 onwards.

4. Union further submits that except Jamuna and Kotma Area, in all other areas of SECL, timber saw mazdoors have been regularized/ departmentalized. Management of SECL played mischief engaging one of the mazdoors as contractor. Infact the mazdoors were not contractors. Officers of the management were looking after the work. There is prohibition of engaging contract labors to work in underground mines under CL(R&A)Act. Workers were directly working under Principal Employer, J & K Area. The contractor was not registered. Contractor was not having licence. Contract system was shown only paper arrangement. On such ground, Union is praying that the act of management not departmentalizing/ regularizing all those saw mill mazdoors is illegal. They pray for regularization/ departmentalization of those temporary workers.

5. 2nd party filed Written Statement at Page 13/1 to 13/11 opposing claim of Ist party. 2nd party submits that order of reference is vague and illegal. The list of claimants attached with order of reference is incomplete. It is not possible to identify the persons. The Union submitted statement of claim doesnot disclose the particulars of claimants, names of their father, age, sex, present address, permanent address, date of engagement & termination, place of work, nature of work. The application for better particulars was filed by management on 29-11-99. Union refused to supply particulars requested by the management. Therefore claim under dispute deserves to be rejected. Union claimed departmentalization of the services of workers contending the management of J&K Area established their own saw machines in mine premises near by pits. As per the management, Coal India is company registered under Indian Company's Act, SECL is its subsidiary. The wage structure and other conditions of services including fringe benefits of the employees of Coal India Limited are covered under the recommendations of the Central Wage Board for Coal Mining Industry and NCWA. The Government had communicated that the dispute raised by Union was not fit for reference. Said decision was challenged by Union filing Writ Petition. Thereafter the dispute has been referred.

6. 2nd party submits that Union has no locus standi to raise dispute. There is no employer employee relationship between claimants and the management. Dispute raised before conciliation Officer and failure report was submitted. 2nd party submits that to meet requirement of different mines/ colliery, the supply of timber/ logs were given to contractors under a contract. Sheikh Jalil was engaged as contractor for Govinda, Mahadeo Mishra for Bhadra, Shri Budhoo Singh and Mohanlal for Jamuna U/G and Shri Shobnath for Kotma mines. MP Government inacted Kashtha Chiran Vinnyaman Adhiniyam 1984 for regulating establishment and operation of saw mills. Section 4 of said Act prohibited establishment of saw mill, saw pit subject to conditions of licence. Section 5 of the Act declared prohibited area for not exceeding 3 years. After said enactment, there was restriction made for availability of sleepers and other timbers from Private sectors/ agency therefore after obtaining licence from the Competent Authority, the saw machines have been installed in various colliery/ premises/ work of timbers sawing was awarded for specific period and specific terms and conditions under which the contractor had to supply requisite quantity of coggine sleeper. The management denies the workers connected with dispute were engaged directly by the management. Rather they were engaged by the contractors for execution of work. Shri Deonath, Sl.No.13, Shobnath Sl.No.9, Kamla Sl.No.20, Ganesh Sl.No.21, Hiralal Sl.No.24 were engaged by the contractors under CL(R&A)Act, Principal Employer has permitted to get the work executed through a contractor of the categories excepts the prohibited categories. That job of timber mazdoor is not prohibited under CL(R&A)Act. Management was justified in awarding contract to the contractor. Only 5 persons shown as above were engaged by the contractor. There is no employer employee relation between management of SECL and Ist party workers. No ID exists between parties for adjudication. Work awarded to contractor is not of permanent nature. Management further contends that there is no relation between management of SECL and Ist party workers. Management has no control on those workers. Ist party workers cannot be said workman under ID Act. It is reiterated that engagement of workers by contractor is permissible. Ist party are trying to get employment therefore back door entry is not permissible. That every person employed in Bank has to mark attendance in Form B Register, Form B Register was not maintained w.r.t. employees of contractors of SECL. Industrial dispute regarding contract labour cannot be entertained against management of SECL for want of employer employee relationship. The person seeking employment in coal India should go through the procedure prescribed for appointment. Such appointments could be made through Employment Exchange only. It is mandatory for management to abide the guidelines for recruitment. Not only vacancy should be notified to Employment Exchange but vacancy should also be filled by candidates sponsored through Employment Exchange. The employment with management is public employment covered under Article 16 of the constitution. Such employment needs to be made through Employment Exchange and selection by the management. The provisions of ID Act cannot override constitutional rights of the persons selected. The rights of persons temporarily engaged by way of staff gap arrangement cannot betray the rights under Article 16(1) of the constitution. Chapter V-A of ID Act cannot operate claim preferential rights without following selection process. 2nd party has referred to ratio held by Apex Court in certain cases. Management reiterates that workers were not directly engaged. There is no employer employee relationship. Management had no control or supervision of work of workman. Union raised false dispute of departmentalization of these persons. Management denied that Sheikh and others were employed by the management on post temporary sawing mazdoors since 1982. Management denies that there were no contractors for looking after their work. On such contentions, 2nd party prays reference be answered in its favour.

7. 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 Ist party Union establishes that Sheikh Jalil and others were directlky engaged as timber sawing mazdoors and that object to deny regularization/ departmentalization, they were shown as contract workers	In Affirmative
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(ii) Whether the action of the management of Jamuna and Kotma Area of SECL in not departmentalizing Timber Sawing Mazdoors (List enclosed) in various units of J&K Area is legal and justified?	Redundant as services of workman were terminated in 1989 prior to the order of reference.
(iii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

8. Point No.1- Ist party Union has pleaded that Sheikh Jalil and 27 other workers (names shown in list) were directly engaged by the management of 2nd party but however with object to deny benefit of regularization, they were shown as contractor's workers only by paper arrangement. Above contentions of Union are denied by management, certainly burden to prove that workmen were directly engaged and by paper arrangement, they were shown as contractor's workers, lies on Isty party Union. On the point, Shri A.K.Shashi relied on ratio in case of

Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F and 25 B of ID Act and requirement of 240 days continuous service held burden of proof lies on workman. It is for workman to adduce evidence apart from examining himself or filing an affidavit, to prove the said factum.

In case of State of MP and others versus Arjunlal Rajak reported in 2006(2)SCC-711. Their Lordship held onus to prove that workman had not been gainfully employed during the period in question lies on the workman.

Section 101 of Evidence Act provides-

Burden of proof- whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

9. Ist party filed affidavit of evidence of workers Heeralal, Budh Singh, Ramkripal, Sheikh Jalil, Ganesh, & Kamal. All of them failed to appear for their cross-examination, their evidence cannot be considered. Ist party Union filed identical affidavit of evidence of Mohd. Nasir Khan, Shobhnath Chowdhary and Mohanlal Kewat. All of them in their affidavit of evidence have stated that they were working as timber sawing mazdoor from April 1982. They were doing work of sawing wooden logs on saw mill. They were called timber mazdoor, the work of sawing was carried on saw machine run on electricity. Wooden logs after sawing as per measurement were sent to the underground mines. They were not engaged by contractor. There was no licence taken by any contractor, the contractor was not registered. Without registration of contract, contractor cannot be engaged. That they were disengaged from 20-9-89 without notice, retrenchment compensation was not paid to them.

10. Mohd. Nasir Khan in his cross examination says he passed HSc in 1983, his date of birth is 6-2-64. He is member of NCWF from 1982, he was member of said Union till 1983, he was paid Union contribution, receipt is not produced. NCWF Union is not operating, its name is changed. He was unable to tell the changed name of Union. He was engaged by Personnel Officer Shri Gupta who was unable to tell his full name. his father was working in the colliery, his father taken him to Mr. Gupta for service, post was not advertised. He denies that he did not work on saw mill. During 1982 to 1989, he worked all day except Sunday. He was paid wages at end of the month. Payment was made by colliery cashier Ramesh. He was unable to tell name of other person who was getting the payment. That Mohanlal, Mahadeo, Sheikh Jalil were working with him, they were not engaged through contractor. He denies that since 1989, steel plates were used for underground mines.

11. Shri Shobhnath Chowdhary in his cross says his name is Shobhnath Chowdhary and not only Shobhnath, he always writes his name as Shobhnath Chowdhary. Shri B.P.Singh was not person of his acquaintance. He was working in civil section. Mr. Jain was working as Engineer in Civil Section. He was working in civil section from 1982 to 1989. He claims ignorance whether post was advertised, they have not submitted application for employment, his name was sponsored through Employment Exchange. Written intimation was not received by him. Appointment letter was not received from management. He worked regularly on saw machine during 1982 to 1985. He was not given contract for supply of wooden logs. He was unable to tell specific month of working on saw machine. He was unable to tell for how many days he was on leave from 1983 to 1989. His wages were paid by clerk in welfare office. He was unable to tell the name of clerk. He denies that he was not working on saw machine. The wooden logs were used for support in the mine. Wooden logs were not used in underground mines. He was unable to tell name of overman, in 1998, he suffered accidental injury in his eye. Thereafter he had left the work at saw machine. He had handed over his dispute to Union in

1982, workman did not give reply to the questions whether management had filed reply in conciliation proceedings, whether Union produced documents before ALC, whether he produced any documents alongwith his affidavit, what averments were made by him in his affidavit w.r.t. order of High Court.

12. Mohanlal in his cross-examination says his age is shown 54 year in affidavit. He was unable to tell his name was not included in list of employees with order of reference. That he was member of NCWF Union during 82 to 89. He was engaged by management. He submitted application for job to NCWF Union in 1987. He had not seen advertisement. As other persons were engaged for work, he submitted application. Appointment letter was not issued to him. He was paid wages by officers of the colliery. The wages were paid after end of the month for the actual working days. He was working from 1982 to 1989. He stated in his affidavit that witness was unable to give reply to the questions about the documents produced in the matter. In his further cross, witness admits that he was engaged on work as per exigency when the wooden logs were required. For log of 10 ft, 10 paise were paid. For wooden log of more length, 20 paise were paid to him. He denied that he was engaged by the contractor. He admits that steel plates are used in the coal mines. Thereafter use of wooden logs in coal mines stopped. Work of cutting logs was carried, he was engaged on said work. Shri Somnath, Kamla, Ganesh are acquainted to him. He denies that all of them were engaged by the contractor.

13. The evidence of Ist party Arun Kranti Gupta is devoted on the point that he was elected Dy. General Secretary of NCWF during 88 to 96. The affidavit is devoted that all the workers were working as timber mazdoor from April 1982. The mazdoors were not regularized despite their demands. Union had taken up matter with the management. Industrial dispute was raised on 1-10-89. Management had filed reply and Union filed rejoinder. Saw machines were established in the colliery were controlled and supervised by the officers of the management of respective mines. That Sheikh Jalil and 27 others worked on saw machines were doing job of timber saw mazdoors. Management with a view to deprive them status of regular employee used to pay them group wages. The payments were made directly by management. The duties were deployed by management. The administrative and supervisory control on workers was of the management. Workers worked as timber mazdoor during 82 to 89, they were abruptly terminated on 20-2-89 without assigning reason, no retrenchment compensation was paid. In his cross examination, Shri A.K. Das Gupta says at present he is not in employment, NCWF is working in the name of Koyla Mazdoor congress. Reason relating to raising dispute is not produced. As per Union, workers working in coal mines were members of the Union, contractor's employees were not given membership of Union, wooden log after sawing in mills were supplied to the mine. He did not work in the mine. In 1996, supply of wooden log was stopped and steel plates were used. Saw mills are still working.

14. Evidence of management's witness Kuwer Singh Arya on affidavit is on the point that the management of SECL to meet requirement of different mines of timber logs was given to contractors. Sheikh Jalil was engaged as contractor for Govinda, Mahadeo Mishra for Bhadra, Shri Budhoo Singh and Mohanlal for Jamuna U/G and Shri Shobnath for Kotma mines. After enactment of Kashtha Chiran Vinayam Adhiniyam 1984, there was prohibition establishing saw mills, saw pits except as per conditions of licence. The saw machines were installed in various collieries for specific period as per conditions of licence witness of management denies that 28 workers pertaining to dispute were working as sawing mazdoor from 1982. Their claim for regularization is denied. From evidence of management's witness documents M-1 to M-13 are admitted in evidence. In his cross examination, witness says he was working in J&K Area from 1981 to 1997 on different post. He claims ignorance about job nomenclature under NCWA. Work of saving logs was carried on saw mills in mines. He was unable to tell whether licence was required to run such mines. Saw mills are installed in mine premises, he claims ignorance about the supply of wooden, any tender was issued, whether the contractor engaged was holding licence. Management's witness admits the persons to whom work of sawing wood were assigned the contract. Witness of management was unable to explain tender and tender notice claiming he lacks technical knowledge. The person submitting quotation were invited. He claims ignorance whether after accepting quotation, any agreement was entered with person submitting quotation. Exhibit M-8 was given to Sheikh Jalil after terminating said work order, the work was entrusted to Mahadev Mishra.

15. Documents Exhibit M-1 is quotation notice w.r.t. sleepers, wooden sprags, stacking of crops in timber yard, wooden planks etc. dated 3-3-87 showing number of quantity earnest money and period of completion one year. Exhibit M-2 is copy of quotation submitted by Sheikh Jalil. Exhibit M-3 is recommendation by Tender Committee quotation submitted by Sheikh Jalil was found reasonable and accepted. Exhibit M-4 is comparative statement w.r.t. quotations received. Exhibit M-5 is letter dated 21-8-87 accepting quotation subject to various conditions. Amount of Rs. 2496/- deposited as earnest money, security deposit was to be deducted. The quantity will be in a fixed manner 1/26 per week. Deduction of 2 % Income tax. Exhibit M-6 is work order issued to Sheikh Jalil dated 12-2-89. M-7 is work order dated 19-2-89 mentioning various conditions M-8 is work order dated 12-5-84 issued to Mahadev Mishra as Sheikh Jalil was unable to proceed with work. Exhibit M-9 is letter dated 6-6-95 awarding work for total amount Rs.9900 to Budh Singh, contractor. Exhibit M-10 is letter dated 8-10-97 issued by Sub Area Manager to Shri Budh Singh awarding work for total value Rs. 9938/-, Exhibit M-11 is letter issued to Shri Budh Singh awarding work worth Rs. 10,516/- @ 49 paise. Exhibit M-12 is letter issued to Mahadev Mishra by Sub Area Manager dated 15-3-89

awarding work for total value Rs. 5000/-. On documents produced by management at Exhibit M-13 are absolutely silent how wooden logs, franks, sleeper were to be cut to appropriate size. The saw machines located payment of electric charges, license of the contractors. Management has not produced that its establishment is registered under CL(R?&A)Act. The license by contractors for relevant period are also not produced. Management's witness admits that persons who were doing the work of Sawing wooden sprags were engaged as contractors. Evidence of management's witness and documents produced Exhibit M-1 to M-13 is only a paper work. The persons engaged for timber work themselves were shown as contractors. Evidence of the Ist party workmen they were working on saw mills for sawing of timber is not shattered in their cross examination.

16. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in

Steel Authority of India Ltd and another versus State of West Bengal and others reported in 2009-I-LLJ-241(SC). Their Lordship dealing with Section 11-A of CL(R&A)Act 1970 held that no pleading by workman that contract was sham and bogus, reference was quashed.

Ratio cannot be applied to case at hand as Union has pleaded in statement of claim that workers were working during 1982. To deny benefit of regularization were shown as contract workers by paper work.

In case of Airports Authority of India Ltd Mumbai versus Indian Airport Kamgar Union and others reported in 2011-I-LLJ-211(Bom). In above case, award allowing reference and directing contract labours to be treated as permanent employees held not sustained. It is proceeded on wrong premise that said labours workmen under ID Act.

The facts of the present case are not comparable. Ratio cannot be applied to case at hand.

Ratio in case between General Manager (OSD) Bengal Nagpur Cotton Mills versus Bharat Lal and another reported in 2011(1)SCC-635. Their Lordship dealing with award passed by Labour Court directing appellant to reinstate first respondent and also holding that he was entitled to backwages. Industrial Court held that agreement between appellant and respondent was sham and directed appellant to treat first respondent as its direct employee. It was for employee to aver and prove that he was paid salary directly by principal employer and not by contractor.

In present case, evidence of Ist party witnesses is cogent that they were engaged by management, they were working under management. Their work was controlled and supervised by officers of the management. Wages were paid to him. Therefore ratio held in above case cannot be applied to case at hand.

17. Management has submitted application requesting permission to prosecute witness A.K.Dasgupta for giving false evidence. Section 340 CRPC provides-

Procedure in cases mentioned in Section 195- when upon an application made to it in this behalf or otherwise any Court is of the opinion that it is expedient in the interest of justice than an inquiry should be made into any offence referred to in clause (b) of sub section (1) of Section 195 which appears to have been committed in or in relation to a proceeding in that Court or as the case may be in respect of a document produced or given in evidence in a proceeding in that Court, such Court may after such preliminary inquiry, if any as it thinks necessary- (a) record a finding to that effect, etc.

The evidence in cross examination of Shri A.K.Dasgupta doesnot pointout which part of his evidence is false. Therefore permission for prosecution requested by management is not justified. Application is rejected.

18. From evidence and documents relied by both parties, it is clear that workmen Mohd. Nasir Khan, Shobhnath Chowdhary and Mohanlal Kewat examined before Court were employed by the management, they were not engaged by contractors. Management has prepared documentary evidence. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

19. Point No.2- The term of reference pertains to legality of SECL in not departmentalizing Timber Sawing Mazdoors is legal. The substance of the term of reference pertains to the denial of departmentalization/ regularization of the services of workman, only workmen shown above have adduced evidence. The application for better particulars was submitted by management. Better particulars were submitted by Ist party after long lapse of time donot show age, sex, date of engagement etc. management has contented in absence of such particulars, identity of workmen are difficult. Workers who have adduced evidence, they are identical is clear from the details mentioned in the affidavit of evidence. Claim of other workers who have not appeared for evidence or cross examination cannot be established. Evidence of witness No. 1 to 4 of the Ist party categorically shows that services of Ist party workers were discontinued without notice in the year 1989 itself. The order of reference doesnot include legality of the termination of their service. When Ist party workers are not in service since 1989, learned counsel for 2nd party Shri A.K.Shashi submits that Ist party workers are not entitled for departmentalization/ regularization.

20. Learned counsel relies on ratio held in

Case of Oshiar Prasad and others versus Employers in relation to the management of Sudamdih Coal Washery of BCCL, Dhanbad, Jharkhand reported in 2015-I-LLJ-513(SC). In above cited case, the appellants prayed for industrial reference claiming absorption and regularization referred by Government. Industrial Tribunal held that Appellants not entitled to seek absorption and regularization referred by Government. Industrial Tribunal held that appellants not entitled to seek absorption as regular employees, upheld by Division Bench. Their Lordship dealing with question whether appellants liable to be absorbed or regularized held no enquiry can be made on questions not specifically referred to Tribunal while answering reference. Services of appellants terminated long back prior to making of reference. Appellants not in services of either contractor or BCCL on date of making reference in question no industrial dispute that existed or apprehended in relation to appellants absorption in service of BCCL on date of making reference. Since Appellant's service discontinued or/ and retrenched long back, question of absorption or regularization did not arise. Both parties relies on ratio held in many other cases. In view of the services of Ist party workmen were terminated in 1989 itself, observation of ratio held in all those cases relied by parties is not required.

In present case also the evidence of Ist party workers and A.K.Ghosh is consistent that the services of workers were discontinued without notice in 1989. Ist party workers were not in employment of 2nd party at the time of order of reference was made. Claim of departmentalization/ regularization of services of workman is not justified. Accordingly I record my finding in Point No.2

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

- (1) Ist party workers were engaged by the management and were employees of 2nd party but workmen are not entitled to any relief as they were terminated long back in the year 1989.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 8 जुलाई, 2016

का.आ. 1469.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 134/1995) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/63/1995-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2016

S.O. 1469.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 134/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfield Limited and their workmen, received by the Central Government on 08.07.2016.

[No. L-22012/63/1995-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

NO. CGIT/LC/R/134/1995

General Secretary,
RKKMS (INTUC),
Post Chandametta,
Distt. Chhindwara (MP)

... Workman/Union

Versus

Manager,
Gajandoh Mines of WCL,
Post Parasia,
Distt. Chhindwara

...Management

AWARD

Passed on this 14th day of June 2016

1. As per letter dated 13-7-95 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-22012/63/95-IR(C.II). The dispute under reference relates to:

“Whether the action of the management of Gajandoh Colliery of WCL, Pench Area Po Parasia, Distt. Chhindwara (MP) in dismissing Shri Chandra Mohan S/o Butta, Clerk of Gajandoh Colliery of WCL Pench Area from services w.e.f. 3-5-92 is justified? If not, to what relief the worker is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through Secretary of RKKMS INTUC at page 3/1 to 3/6. Case of Ist party Union is that Union is registered under Trade Union Act. The object of Union is to safeguard and promote right of employees. Workman was working as clerk at Gajandoh colliery of WCL, Pench Area on 17-4-92. Chargesheet was issued to workman by Manager Ramchandran under Clause 17(1)(e)(g)(r) of Model Standing Order. That Ramchandra Manager himself being complainant, chargesheet issued under his signature is alleged to be illegal. Workman has not received chargesheet. He could not know any chargesheet was issued to him. Therefore he did not submit reply to the chargesheet. Chargesheet itself was not received. That FIR against workman was lodged by Shri Chandramohan. Workman was taken in police custody. He could not know about chargesheet issued in his name. he was also not aware about the publications relating to the chargesheet. Workman was confined in police custody. Management conducted exparte enquiry with ulterior motive in violation of natural justice. Exparte enquiry was conducted by management within 15 days and order of dismissal was issued. Whole chargesheet issued against workman is illegal. Enquiry Officer adopted procedure denying opportunity to the workman, enquiry is conducted violating principles of natural justice.

3. Workman further submits that chargesheet was issued while he was in judicial custody. Earlier contentions are reiterated that the complainant Shri Ramchandran had no authority to issue the chargesheet. Enquiry Officer was biased and acted under instructions of the higher officers of the management, notices of enquiry were not served on him. Workman was unable to attend Enquiry Proceedings. Taking advantage of absence of workman, enquiry was conducted. On such ground, workman prays for setting aside order of his dismissal and reinstatement in service with backwages.

4. Amendment to statement of claim was allowed. By amendment, Ist party workman had contented that while he was in judicial custody. Exparte enquiry was conducted against him. Enquiry was conducted hastily violating principles of natural justice. Order of dismissal was issued on 3-5-92. The chargesheet issued and the order of punishment of dismissal was imposed against him for short period 26-4-92 to 3-5-92.

5. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that workman was working as clerk at Gajandoh colliery. He was habitual offender. Earlier chargesheet was issued to workman on 12-4-91, punishment of confirming period of suspension was imposed on 8-5-91. Other chargesheet was issued to workman on 16-6-87 for unauthorized absence. Chargesheet dated 23-3-90 was issued for negligence in duty. Chargesheet No. 38/85 was issued. On 3-2-86, chargesheet was issued to workman alleging several charges. Chargesheet No. 1094/85 was issued on 1-1-1985. Punishment of withholding one increment was imposed. Period of suspension was confirmed with loss of wages and warning. Charge No. 505/84 was issued after conducting enquiry, punishment of confirming suspension period was imposed. Workman was given ample opportunity to improve his conduct and behavior granting several opportunities.

6. 2nd party submits that on 17-4-92, workman had come for attending duty at 9 AM in drunken condition. Manager Ramchandran did not allow him on duty. Workman got annoyed and inflicted sever injury by hot iron rod to the Manager. Chargesheet was issued to workman was sent by RPAD and through bearer. The addressee was not found on given address. Shri S.K.Puri was appointed as Enquiry Officer, Shri A.K.Singh was appointed as Management Representative. Enquiry Officer issued memorandum of enquiry by RPAD. It could not be served. Enquiry was conducted on several dates allowing opportunity for defence of the workman but workman failed to avail such opportunity. The documents were produced in enquiry. Management examined witnesses Ramchandran, Sadik-Fitter Helper, Devendra, Rajesh Kumar- General Mazdoor, Aabad Ali- Mazdoor. Enquiry Officer submitted his report holding charges against workman were proved. Considering report of Enquiry Officer, punishment of dismissal was imposed against workman. 2nd party reiterates that if enquiry is found vitiated, management be given promotion to prove misconduct. Above contentions are reiterated by management in parawise reply that the workman was given full opportunity for defence. Enquiry was conducted following principles of natural justice, punishment of dismissal is proper.

7. As per order dated 3-9-15, enquiry conducted against workman is found vitiated. As workman died during pendency, permission to prove misconduct is not granted.

8. 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 Gajandoh Colliery of WCL, Pench Area Po Parasia, Distt. Chhindwara (MP) in dismissing Shri Chandra Mohan S/o Butta, Clerk of Gajandoh Colliery of WCL Pench Area from services w.e.f. 3-5-92 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

9. As per order dated 3-9-15, enquiry conducted against deceased workman is found illegal. As workman died during pendency of reference, permission to prove misconduct could not be granted to the management. Enquiry conducted against workman is found illegal, punishment of dismissal imposed against workman cannot be sustained. Order of dismissal therefore deserves to be quashed. Copy of death certificate of workman is produced which shows that workman died on 11-1-12. Ist party workman was dismissed as per order dated 3-5-92. The order of dismissal could not be sustained as enquiry conducted against workman is found illegal. The punishment of dismissal is illegal. Accordingly I record my finding in Point No.1.

10. Point No.2- As workman had died, relief of reinstatement could not be granted. The affidavit of evidence of Mr. Girija Uike- widow of deceased workman is filed. Her affidavit of evidence is silent what deceased workman was doing after punishment of dismissal was imposed against him. The affidavit of management's witness Anil Kumar Singh is devoted on the point of enquiry conducted against deceased workman issuing chargesheet and memorandum of enquiry. Affidavit of witness of management is also silent about the deceased workman was doing any kind of work. In notes of argument submitted by counsel for Ist party Shri S.Pandey, after death of workman, monetary benefits is claimed for his widow Girija Uike.

11. Considering the factual matrix, no evidence was adduced what workman was doing after dismissal of service. In my considered view, monetary benefit of payment of 50 % backwages from date of dismissal 3-5-92 till workman died on 11-1-12 and amount of PF and other retiral benefits of deceased workman would be appropriate. Accordingly I record my finding in Point No2.

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

- (1) Action of the management is not proper and legal.
- (2) 2nd party is directed to pay 50 % wages of deceased workman from 3-5-92 to 11-1-2012 and amount of PF, Gratuity and other retiral benefits of deceased workman to widow Smt. Girija Uike.

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, 8 जुलाई, 2016

का.आ. 1470.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 02/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/56/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th July, 2016

S.O. 1470.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Khoirabad Colliery, M/s. Eastern Coalfield Limited and their workmen, received by the Central Government on 08.07.2016.

[No. L-22012/56/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL****PRESENT:** Sri Pramod Kumar Mishra, Presiding Officer**REFERENCE NO. 02 OF 2005****PARTIES :**

The management of Khoirabad Colliery of M/s. ECL.

Vs.

Md. Mustafa

REPRESENTATIVES:

For the management : Sri P. K. Das, Ld. Advocate

For the union (Workman) : Sri. S. K. Pandey, Gen. Secy.

Industry : Coal

State : West Bengal

Dated: 06.06.2006

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 letter NO. L-22012/56/2004-IR(CM-II) dated 27.12.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Khoirabad Colliery of M/s. Eastern Coalfields Limited in dismissing Md. Mustafa, U.G. Loader w.e.f. 31.01.2003 is legal and justified? If not, to what relief the workman is entitled and from which date? ”

1. Having received the Order NO. L-22012/56/2004-IR(CM-II) dated 27.12.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 02 of 2005 was registered on 12.01.2005. 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. Both the parties appeared in the Tribunal, through their representative.

2. The workman Md. Mustafa has stated in his written statement, in brief, that he was in employment at Khoirabad Colliery of M/s. Eastern Coalfields Limited as Under Ground Loader bearing his Man No. 440150. He became ill w.e.f. 13.07.2002. He reported his sickness in the colliery dispensary on 16.07.2002. The workman was charge sheeted for his alleged unauthorized absence from duty for the period 13.07.2002 to 08.08.2002 vide Charge Sheet No. KB/C-6/CS/Nil dated 08.08.2002. The workman was not allowed to take help of co-worker during enquiry proceedings. The Enquiry Officer gave his finding against the workman ignoring the sick certificate, etc submitted by the workman during enquiry proceeding. The workman was not served with 2nd Show Cause Notice by the management before awarding him the punishment of dismissal. The workman was charge sheeted for absence of only 25 days. He has never been charge sheeted on the charge of absence or habitual absence from duty. The workman was dismissed from the service of the company w.e.f. 30.01.2003. The dismissal of Md. Mustafa is illegal and unjustified. The workman has prayed that the Tribunal may kindly direct the management of Khoirabad Colliery of M/s. Eastern Coalfields Limited to reinstate the workman in service with payment of full back wages from the date of dismissal with all consequential benefits.

3. The Agent of Khoirabad Colliery of M/s. Eastern Coalfields Limited has stated in his written statement, in brief, that the dispute is not maintainable. The concerned workman in the habit of habitual unauthorized absence and he was punished for several times for the act of unauthorized absence. His past three years of attendance was as follows: in the year 1999 it was 128 days, in year 2000 it was only 173 and in year 2001 his attendance was marked only 69 days. His poor attendance indicated that the concerned workman was not willing to perform his job and even he did not state any reason what prevents him to perform the job. The management served the charge sheet which ended in domestic enquiry. The concerned workman attended and availed all the opportunities to which he was entitled. The Enquiry Officer held the workman guilty of misconduct. Workman concerned failed to produce any treatment paper in support of his illness. After perusing the enquiry report and considering other circumstances the workman was dismissed. The workman willfully left his job therefore he is not entitled to any relief. Khoirabad Colliery of M/s.

Eastern Coalfields Limited has prayed the action of management is legal and justified and the workman is not entitled to any relief.

4. Workman has filed copies of four documents in his support : (i) Copy of Charge Sheet dated 08.08.2002, (ii) Copy of Enquiry Proceeding and Report, (iii) Copy of Sick Certificate and (iv) Copy of Letter of Dismissal. Workman Md. Mustafa has filed affidavit in his oral document and he has been cross-examined by the learned advocate of the M/s. Eastern Coalfields Limited. Khoirabad Colliery of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

5. Sri S. K. Pandey, union representative appeared on behalf of workman and Sri P. K. Das, Learned Advocate appeared on behalf of M/s. Eastern Coalfields Limited. I have heard the argument of both sides and perused the record.

Sri P. K. Das has argued that workman has absented himself previously this fact has not been rebutted by filing rejoinder written statement by the workman. The fact of previous absence has been kept in mind by competent while passing order of dismissal. Whereas, Sri Pandey has argued that there is no documentary evidence regarding previous absence of concerned workman. Workman has not been charge sheeted for his previous absence. If workman has not been charge sheeted for his previous absence he cannot be punished for the same. Sri Pandey has also argued that for mere absence of 25 days, punishment of dismissal is too harsh and disproportionate. He has also challenged the impartiality of the domestic enquiry.

6. It is admitted fact by both the parties to the reference that Md. Mustafa was in employment of M/s. Eastern Coalfields Limited at Khoirabad Colliery. It is also admitted fact that due to absence the delinquent was dismissed from service after domestic enquiry. The allegation of the workman is that the enquiry was conducted without following due procedure, whereas the allegation of M/s. Eastern Coalfields Limited is that the domestic enquiry was valid and lawful. The workman participated in enquiry. Workman is habitual absentee. But workman has alleged that for previous absence he has never been charge sheeted.

7. From perusal of Charge Sheet no. KB/C-6/CS dated 08.08.2002 it is apparent that the delinquent workman Md. Mustafa has been charge sheeted for his unauthorized absence for the period 13.07.2002 till date. Charge Sheet has been issued on 08.08.2002. It means he has been charge sheeted for the absence of 26 days. Sri S. A. Khan the attendance clerk has disposed in his un-dated evidence that Md. Mustafa absented himself from duty from 13.07.2002. He did not report for his illness in colliery dispensary therefore he marked as absent. He has taken outside medical certificate from 22.08.2002 to 19.10.2002. Sri S. A. Khan has tried to tender evidence for absence of delinquent from 22.08.2002 to 19.10.2002 but workman has not been charge sheeted for his absence for period from 22.08.2002 to 19.10.2002. Even Sri S. A. Khan has not deposed that delinquent was absent from 13.07.2002 to 08.08.2002 for which delinquent has been charge sheeted. Delinquent, Md. Mustafa has not been afforded opportunity to explain the cause of his absence from 22.08.2002 to 19.10.2002 for which he was not charge sheeted. Therefore departmental enquiry cannot be conducted from 22.08.2002 to 19.10.2002. Departmental enquiry can only be conducted for from 13.07.2002 to 08.08.2002. If it is intended to be relied upon for imposing a punishment, the period of absence should be specific in the charge sheet at the first stage of enquiry itself, and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. Charge sheet is the charter of disciplinary action. The domestic enquiry commences with the service of the charge sheet. In other words, before proceeding with the domestic enquiry against an offending workman, he must be informed clearly, precisely and accurately of the charges levelled against him. It is the duty of employer to indicate to the delinquent employee not only the precise nature of the charges, but also the documents, if any, upon which the charges are based. The charge sheet should specifically set out all charges, which the workman is called upon to show cause against and should also state all relevant particulars, without which he cannot defend himself. The object of this requirement is that the delinquent workman must know what he is charged with and have amplest opportunity to meet the charge and to defend himself by giving a proper explanation after knowing the nature of offence, with which he is charged, other wise it will amount to his being condemned unheard. If the charges are imprecise or indefinite, the person charged, would not be able to understand them and defend himself effectively and the resulting enquiry would not be fair and just enquiry.

Hon'ble Apex Court in *Brij Bihari Singh v/s Bihar State Financial Corporation*, 2016 (148) FLR page 197 has held:

“ It is well settled that a person who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported. The delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. Furthermore, the materials brought on record pointing out the guilt are required to be proved. If the enquiry report is based on merely ipse dixit and also conjecture the surmise cannot be sustained in law. ”

8. After receiving reply of delinquent Md. Mustafa with regard to charge sheet issued to him, there ought to have been a formal order for appointment of Enquiry Officer, under intimation to the delinquent employee Md. Mustafa. But no formal order has been filed by M/s. Eastern Coalfields Limited regarding appointment of Enquiry Officer for the said Charge Sheet KB/C-6/CS dated 08.08.2002 issued to Md. Mustafa. After recording the statement of management witness in the presence of delinquent employee the delinquent employee must be afforded opportunity to cross-examine the management witness. But copy of statement of Sri S. A. Khan, Attendance Clerk, who has been examined as management witness, by the Enquiry Officer, it is apparent that the delinquent employee Md. Mustafa has not been afforded opportunity to cross-examine the management witness, Sri S. A. Khan. The page on which statement of Sri S. A. Khan, the management witness has been recorded there is no signature of Md. Mustafa, the charge sheeted workman. It conformed that the statement has been recorded in the absence of delinquent workman, Md. Mustafa. After examination of management witness and before conclusion of enquiry proceeding, it was mandatory for Enquiry Officer to give opportunity to the delinquent workman to submit documents, if any, or lead oral evidence in his defence, and fix a further date for it. But Enquiry Officer utterly failed to afford opportunity to delinquent workman to lead oral or documentary evidence in his support.

Hon'ble Apex Court in **State of Uttaranchal v/s V. Kharak Singh, 2008 (118) FLR page 1112** has held:

“ In an enquiry, the employer, The employer/department should take steps first to lead evidence against the workman /delinquent charged, give an opportunity to him to cross-examine the witness of the employer. Only thereafter, the workman /delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him. On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any. ”

9. The domestic enquiry has been conducted in utter violation of Principle of Natural Justice. The provisions of act are to prevent unfair labour practices and to insure that the employees are not victimized and are placed in a position to bargain for their fare share form the enterprise. This being the prime purpose of the labour legislation, any intrusion into the discretion of the employer to dispense with the services of an employee who has been found to have misconducted himself should be limited to ensure that the workman has not been unfairly treated. The enquiry against the delinquent workman or charge sheeted workman has been held in accordance with the Principle of Natural Justice and there is no informative in the decision making process. A grossly disproportionate punitive action which is not commensurate with the gravity of the misconduct is questionable and requires correction. Punishment of dismissal for mere absence of 26 days is too harsh and disproportionate. Moreover the Enquiry Officer has miserably failed to conduct domestic enquiry in compliance of natural justice. Without affording opportunity of cross-examination, to the delinquent, from the management witness and curtailing the right of delinquent to lead defence evidence, the punishment for dismissal for unauthorized absence of mere 26 days is merely disproportionate but also shocking.

10. It is settled law when the dismissal of employee is found to be illegal the reinstatement of the employee is natural consequence. Md. Mustafa has sated in Para-5 of his affidavit that he is sitting without any job from the date of his dismissal. This evidence has not been rebutted by M/s. Eastern Coalfields Limited, though he has been cross-examined at length by M/s. Eastern Coalfields Limited.

11. It appears from the evidence of charge sheeted workman that he was not gainfully employed anywhere else during period of dismissal. The copy of U. Man Number has been filed by the workman. His date of birth is 22.02.1968 and his date of appointment is 26.08.1993. He is a permanent employee. He has completed near about 10 years of service in M/s. Eastern Coalfields Limited. At this stage there is no possibility to get alternate job anywhere else. So he is entitled for full back wages from date of dismissal. The definition of wages described in Industrial Dispute Act, 1947 includes all remuneration capable of being expressed in terms of money.

12. In **Raghubir Singh v/s General Manager, Haryana Roadways, 2014 (143) FLR 469**, Hon'ble Supreme Court has referred the judgment **Surendra Kumar Verma v/s Central Government Industrial Tribunal -cum- Labour Court, New Delhi :**

“ Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too..... In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages . That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

In view of law laid down by the Hon'ble Apex court Md. Mustafa is entitled for full back wages form the date of dismissal till reinstatement including all service benefits - increment, seniority, promotion etc.

13. In view of discussion above the action of management of Khoirabad Colliery of M/s. Eastern Coalfields Limited in dismissing Md. Mustafa, Under Ground Loader is illegal and unjustified. The order of dismissal of Md. Mustafa is hereby set-a-side. M/s. Eastern Coalfields Limited is directed to reinstate Md. Mustafa. Md. Mustafa is entitled to get full back wages from the date of dismissal till his reinstatement with all consequential service benefits eg: increment, promotion, seniority etc. Md. Mustafa will be imposed punishment of stoppage of two annual increments without cumulative effect. The order will be enforced within Two months after publication under section 17 of the Industrial Disputes Act, 1947.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1471.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 80/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/40/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2016

S.O. 1471.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Johilla Area of SECL and their workmen, received by the Central Government on 11.07.2016.

[No. L-22012/40/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

NO. CGIT/LC/R/80/13

General Secretary, RCMC(NFITU) ,
Johilla Area Branch,
PO Nowrozabad,
Distt. Umaria,
Umaria (MP)

... Workman/Union

Versus

General Manager,
Johilla Area of SECL,
PO Nowrozabad,
Distt. Umaria,
Umaria (MP)

... Management

AWARD

Passed on this 11th day of May 2016

1. As per letter dated 29-5-2013 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-22012/40/2013-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Chief General Manager, Johilla Area of SECL in not granting the notional seniority to Shri D.R.Mishra w.e.f. 1-1-1991 in clerical grade I is legal and justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to appear in the reference. He was proceeded ex parte on 26-5-2015. 2nd party filed exparte Written Statement. 2nd party contends that workman has not filed statement of claim. Workman was initially appointed as General Mazdoor therefore after he was selected to clerical grade, he was given promotion time to time. Cadre scheme for clerical staff, promotion is given as per said cadre scheme. Seniority of clerical staff is at unit level, sub-area level, area level as per cadre scheme. Workman has initially raised Industrial Dispute as R/298/99. Said dispute was decided as per award dated 27-1-01. Application to withdraw claim was filed as the dispute was settled with the management. Management had agreed to give notional seniority/ promotion to the workman. In light of said award, office order dated 24-7-01 was issued. Workman along with two others working in post of Sr. clerk were given notional seniority from 1-11-96. It is mentioned in said order that they will not be entitled, arrears of notional fixation upto 21-3-01, they shall be given arrears from 21-3-01.

3. Workman had submitted representations. The same was disposed vide letter dated 13-12-07. Workman was told that as per order dated 24-7-01, workman along with two others were given notional seniority from 1-11-96. Vide order dated 1-1-05, management granted gradation to next higher category including workman. He remained in same category/ grade for period of 7-8 years from 1-1-02 to 1-1-05. Name of workman is at Sl.No.6. vide office order dated 19-1-2013, several employees including workman who remained in same grade from 7-8 years in underground/surface were granted SLP. Name of workman is at sl.No.36. as per office order dated 6-4-2013, future amendments were made in the order. DPC was held for promotion from post of clerk grade Special Johilla Area to the post of OS Grade A. On recommendation of DPC, vide order dated 27-2-2014, workman along with others were given promotion to the post of OS Grade A. name of workman is at sl.No.8. Pay slip of workman for month of December 2015 is alleged. It is clear from said pay slip that workman was other worker. On such contentions, 2nd party prays that action of 2nd party be held legal.

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 Chief General Manager, Johilla Area of SECL in not granting the notional seniority to Shri D.R.Mishra w.e.f. 1-1-1991 in clerical grade I is legal and justified?	Dispute cannot be decided on merit as workman failed to participate in the reference.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. In ex parte Written Statement submitted by 2nd party, the details of promotions and notional seniority given to the workman are narrated. Management's witness Shri P.S.Mundre filed affidavit of evidence covering all those contentions. Copies of documents are filed along with affidavit as well s Written Statement, workman is given notional seniority as per award dated 23-1-01 and said award was implemented as per order dated 24-7-01. The notional seniority was given to workman from 1-11-96 to the post of Sr. Clerk. Workman has not participated in the reference. Considering above reasons, dispute ceased to exist. Accordingly I record my finding in Point No.2.

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

- (1) The dispute ceased to exist. Hence no dispute award is passed.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1472.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 63/13) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/19/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2016

S.O. 1472.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/13) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Johilla Area of SECL and their workmen, received by the Central Government on 11.07.2016.

[No. L-22012/19/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

NO. CGIT/LC/R/63/13

General Secretary, RCMC(NFITU) ,
Johilla Area Branch,
PO Nowrozabad,
Distt. Umaria,
Umaria (MP)

... Workman/Union

Versus

General Manager,
Johilla Area of SECL,
PO Nowrozabad,
Distt. Umaria,
Umaria (MP)

... Management

AWARD

Passed on this 11th day of May, 2016

1. As per letter dated 29-5-2013 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-22012/19/2013-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Chief General Manager, Johilla Area of SECL in not promoting Shri Dayaram Mishra to the post of OS T&S Grade A is legal and justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to appear in the reference. He was proceeded ex parte on 26-5-2015. 2nd party filed ex parte Written Statement. 2nd party contends that workman has not filed statement of claim. Workman raised dispute claiming promotion to the opost of OS. Workman had already been given promotion vide order dated 27-2-2014. The reference has become infructuous. Without prejudice to above, 2nd party submits that the Ist party not filed statement of claim with documents as per rule 10B of ID Rule 1957. Workman was initially appointed as General Mazdoor. He was selected in clerical cadre. Workman was given promotion time to time. Seniority of employees covered by said cadre are maintained at unit level, subarea level & area level. R/299/99 was raised by workman. Said dispute was withdrawn as settled. Workman was given notional seniority to the post of Sr. clerk from 1-11-96. The award was implemented as per order dated 24-7-01. Workman was given SLU benefit as per order dated 1-1-05 w.e.f. 1-1-02 to 1-1-05. Name of workman is at Sl.No.6. vide office order dated 19-1-2013, several employees including workman who remained in same grade from 7-8 years in underground/surface were granted SLP. Name of workman is at sl.No.36. as per office order dated 6-4-2013, future amendments were made in the order. DPC was constituted vide order dated 4-11-09 for selection for promotion to the post of OS, name of workman is at Sl.no.36. again DPC was held in 2013 for selection of post of OS Grade A. workman was considered but his name was not recommended by DPC. Name of workman is at Sl.No.25 of DPC proceeding. Again DPC was held in 2014, name of workman is recommended by DPC. His name is at Sl.No.9. vide order dated 27-2-2013, workman along with others were promoted to the post of OS Grade A. On such contentions, 2nd party prays that action of 2nd party be held legal.

3. 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 Chief General Manager, Johilla Area of SECL in not promoting Shri Dayaram Mishra to the post of OS T&S Grade A is legal and justified?	Dispute cannot be decided on merit as workman failed to participate in the reference.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

4. In ex parte Written Statement submitted by 2nd party, the details of promotions and notional seniority given to the workman are narrated. Management's witness Shri P.S.Mundre filed affidavit of evidence covering all those contentions. Copies of documents are filed along with affidavit as well s Written Statement. Workman was given notional seniority to the post of Sr. clerk from 1-11-96. The award was implemented as per order dated 24-7-01. Workman was given SLU benefit as per order dated 1-1-05 w.e.f. 1-1-02 to 1-1-05. Name of workman is at Sl.No.6. Workman has not participated in the reference. Considering above reasons, dispute cannot be decided on merit. Accordingly I record my finding in Point No.2.

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

- (1) The dispute ceased to exist. Hence no dispute award is passed.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1473.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 31/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/103/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2016

S.O. 1473.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of SECL and their workmen, received by the Central Government on 11.07.2016.

[No. L-22012/103/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

NO. CGIT/LC/R/31/2002

Shri Chhotu,
C/o Shri M.L. Jain,
Near Panchayati Mandir,
Shahdol

...Workman

Versus

Sub Area Manager,
Chachai U.G.Mine of SECL,
PO Chachai,
Shahdol

...Management

AWARD

Passed on this 12th day of May, 2016

1. As per letter dated 29-1-02 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-22012/103/2001-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Sub-Area Manager, Amlai colliery, Shahdol (MP) in dismissing Shri Chhotu S/o Shri Brindaban, Ex-employee, Chachai U.G.Mine from company services w.e.f. 19/20-9-96 is legal and justified? If not, to what relief he is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/12. Case of workman is that he was appointed on 20-7-77 as underground time rated mazdoor Cat-I in Amlai colliery of SECL. From first day of his service he was employed to work as Trammer Cat-III till 1979. Thereafter he was promoted as clipman Cat-IV. However he was paid wages of Cat-I. on 1-1-1983, he was promoted as Trammer Cat-III. However he was doing job of clipman Cat-IV. On 3-2-84, he met with accident during course of employment. Management kept in IOD from 3-2-84 to 17-3-84. Thereafter he was declared fit for duty as security guard on humanitarian ground. That despite workman was declared fit for duty, he was unable to perform his original job. Management was constraint to adopt humanitarian positive for further employment. The injuries sustained by him resulted his left is amputated causing acute pain. He had to perform heavy work causing permanent disablement. Workman was not paid compensation under Workmen Compensation Act. Ist party workman has alleged that Mines Suptd. N.R. Shakar was insisting him to do undesirable. Workman did not oblige him in said work. That workman was issued chargesheet dated 7-10-94 by Shri N.R. Sarkar, supd of Mines giving 72 hours for explanation. Workman was constrained to said reply by RPAD on 10-10-94. Legal notice was served through his Advocate on 18-11-94. Legal notice was also sent on 8-12-94. Union had raised dispute. However Government declined to register the dispute w.r.t. charge sheet dated 18-10-94. that during pendency of conciliation proceeding, Shri N.R. Sarkar Suptd. of Mines issued charge sheet alleging absence from duty without sanctioned leave. Workman was removed from service vide order dated 20-9-96. Dispute has been referred after filing conciliation proceeding. Workman submits that he is illiterate person from background. He is subjected to unfair labour practices. Chargeheet was issued to him with malafide intention. The enquiry was conducted in violation of principles of natural justice. Workman was not acquainted with material on which the charges were found. He was not given adequate opportunity to explain his case or produce defence witness. Enquiry was not properly conducted. The authority had refused to accept his application. The findings of Enquiry Officer are perverse. Punishment of removal from service imposed against him is illegal. Charge sheet was issued by incompetent authority. On such ground, workman prays for his reinstatement with consequential benefits.

3. 2nd party filed Written Statement at page 7/1 to 7/8 opposing claim of workman. 2nd party submits that workman was appointed as casual mazdoor from 27-7-77, he was regularized in Cat-I on 25-6-80. Workman was promoted in Trammer Category-III from 1-1-1983. Workman was habitual absentee. He used to remain absent from duty without permission or sanctioned leave. Despite particulars given to him, workman did not show any interest in service. He was remaining unauthorisely absent. Charge sheet was issued to workman on 6-4-94 for unauthorized absence. From 17-2-94. Enquiry was conducted in respect of said charge sheet and punishment of withholding two annual increments was imposed.

4. Workman not shown improvement, he remained absent from 9-9-94. Chargesheet was issued to him on 7-10-94 under clause 26.30 of the standing orders. Workman did not submit satisfactory reply. Enquiry was conducted appointing enquiry Officer Shri G.K. Kodia and management representative P.N. Mehto. Enquiry was conducted on various dates. The co-worker of workman was not available. On 2-1-96, management representative submitted prosecution case. The statement was recorded. Workman did not cross-examine him. 2nd party reiterates that enquiry was conducted following principles of natural justice. Workman had given his statement. Enquiry Officer submitted his report holding charges against workman are proved. Legal notice served by workman are not disputed. Management had given reply. Workman is habitual unauthorized absence. Punishment of termination from service is imposed after workman was found guilty of misconduct. The reference be answered in favour of management.

5. Enquiry conducted against workman is found proper and legal as per order dated 3-12-2014.

6. Considering pleadings on record and findings on enquiry, 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 misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed	

against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

7. Enquiry conducted against workman is found legal. Point whether charges alleged against workman are proved from evidence in Enquiry Proceedings needs to be decided considering evidence in enquiry proceedings itself. Exhibit W-1,3 are order of punishment with holding two annual increments of workman on chargesheet dated 8-4-93. Exhibit w-2 is chargesheet dated 6-10-94 for unauthorized absence of workman from 9-9-94 under clause 26.30 of the standing orders. The period of absence alleged is from 9-9-94 to 6-10-94 which comes about 27 days. Exhibit W-4 is application submitted by Vice President of SKMS Union to Conciliation Officer. Exhibit W-6,7 are order of punishment of removal imposed against workman dated 20-9-96. Exhibit W-8 is rejoinder submitted by workman before conciliation Officer. Identical documents Exhibit M-1,2,3 pertains to the chargesheet against workman. Statement of management's representative is produced at Exhibit M-6,7. Management's representative has stated that workman was unauthorisely absent from 9-9-94 to 2-1-96. Statement of witness shri Sardaram Tiwari was recorded about absence of workman from 9-9-94 without any kind of leave, said witness had given his statement on the basis of register. Workman declined to cross examine him. Statement of Ist party workman Chhottu was recorded. Workman in his statement says he was absent from duty from 9-9-94 as he was not keeping well. His statement further shows that he was working in security department. That workman did not submit application for leave as he was suffering form illness, evidence in Enquiry proceedings is sufficient to prove charges against workman. For above reasons, I record my finding in Point No.1 in Affirmative.

8. Point No.2- the punishment of removal is imposed on workman for unauthorized absence from 9-9-94 to 6-10-94. The period of unauthorized absence is less than one month. The punishment of removal from service is harsh. The length of service of workman was not considered while imposing punishment of removal form service. In my considered view, punishment of removal from service deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

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

- (1) The action of the management is not proper.
- (2) Punishment of removal from service is modified to compulsory retirement. Ist party workman be allowed retiral benefit as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1474.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ.सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 195/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/74/2007-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2016

S.O. 1474.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 195/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 11.07.2016.

[No. L-22012/74/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI****ID No.195/2011**

1. The President,

Food Corporation of India (Handling) Workers Union
8654, Arakshan Road, Paharganj
New Delhi

2. The President,

FCI Workers Union,
58/1, Diamond Harbour Road,
Kolkata

Camp Office

8585, Arakshan Road,
Paharganj, New Delhi

...Workmen

Vs.

The Chairman – cum – Managing Director,
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi 110 001

...Management

AWARD

Brief facts giving rise to the reference are that an order was received from Ministry of Labour and Employment under sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of the reference, terms of which are as under:

‘Whether the demand of the Union for withdrawing the new incentive scheme announced vide Circular No.18/2005 dated 15.12.2005 is legal and justified? If not, to what relief is the workman entitled?’

2. It is averred in the statement of claim filed by FCI (Handling) workers union (in short the Union) that the trade union mentioned above is duly registered and primarily consists of workers employed either directly by Food Corporation of India or indirectly through contractors of Food Corporation of India in various departments. Union has a substantial number of members to the tune of around 30000 working in various in various departments and the union has been fighting for the legitimate rights and interest of the workers from time to time raising issues/grievances before the management of Food Corporation of India. FCI has sought suggestions on several occasions from the union on major issues like implementation of recommendations of McKenzie & Co. and other like issues of major importance, such as fixation of handling norms etc. It is also alleged that the union raised an industrial dispute in respect of ‘equal pay for equal work’ and ‘overtime allowance’. Departmental workers and direct payment workers are regular and permanent workers of FCI and their service conditions are governed by the instructions issued by FCI from time to time.

3. It is alleged in Para 10 of the statement of claim that the management of FCI entered into bipartite settlement dated 13.03.1999 under section 18(1) of the ID Act with FCI workers Union whereby several other things, including piece rate incentive scheme was agreed to be revised as per Annexure A, extract of which is as under:

S.No.	Handling Norms	Bags below 66 kg	Bags above 66 kg
1	Unloading from truck and stacking inside godown	105	70
2.	Unloading from wagon and stacking inside godown	90	60
3.	Unloading from wagon and dumping on platform	134	90
4.	Stacking inside godown removing the bags dumped	140	90

5.	Destacking in godown and loading into trucks	110	70
6.	Destacking into godown and loading into wagons	94	60
7.	Unloading from wagons and loading into trucks	87	60
8.	Standardization/Rebagging/42 filling bags with loose grain, including weighment	42	35
9.	Salvaging of damaged foodgrains, including weighment	30	20
10.	Breaking stack and restacking	140	90
11.	Weighment	82	60

4. It is pertinent to mention here that at the time of entering into the above settlement by the management of FCI and FCI workers union, a vast majority of the members of the above union were members of FCI Workers union, as such, settlement under section 18 of the Act is binding upon the petitioner union after coming into existence of this union.

5. It is further alleged that management of FCI came out with circular No.18/2005 dated 15.12.2005 whereby existing handling norms were revised as per the following table:

S.No.	Handling Norms	Bags below 66 kg
1	Unloading from truck and stacking inside godown	135
2.	Unloading from wagon and stacking inside godown	115
3.	Unloading from wagon and dumping on platform	170
4.	removing the bags dumped and stacking inside godown	180
5.	Destacking in godown and loading into trucks	140
6.	Destacking into godown and loading into wagons	120
7.	Unloading from wagons and loading into trucks	110
8.	Standardization/Rebagging/42 filling bags with loose grains, including weighment	055
9.	Salvaging of damaged foodgrains, including weighment	040
10.	Breaking stack and restacking	180
11.	Weighment	105

6. After issuance of the above circular, union vide its letter dated 22.12.2005 addressed to the Chairman and Managing Director of FCI made a protest against the above stated circular dated 15.12.2005 whereby revised rate incentive scheme was introduced in utter violation of settlement dated 13.05.1999. Due to contumacy and intractable attitude of the management of FCI led the union to espouse their industrial dispute vide letter dated 11.01.2006 by serving strike notice under Section 22(1) of the Industrial Disputes Act on the management of FCI. The dispute was seized in conciliation by the Regional Labour Commission vide letter dated 17.01.2006. Thereafter, conciliation proceedings were held between the parties. However, attitude of the management of FCI was not for amicable settlement, as such, conciliation failed. Subsequent to the failure of conciliation submitted by RLC(C) to Ministry of Labour and employment, dispute was referred by the appropriate Government to this Tribunal for adjudication of the above dispute.

7. It is alleged by the union that management of FCI has violated the settlement dated 13.03.1999 as under Section 19(2) of the ID Act requires two months statutory notice to terminate the settlement. It is further alleged that no such notice as per provisions of Section 19(2) of the Act was served upon the union. As such action of the management is absolutely in contravention of the provisions of the above Act. There is also violation of provisions of

Section 9A of the Act, which requires an employer to give 21 days' mandatory notice to the union before effecting any change in service conditions in respect of matters specified in the Fourth Schedule. It is the case of the union that the norms revised by way of settlement dated 13.03.1999 and incentive scheme raised there-upon have now become part of the service conditions of the workmen. Having enjoyed the scheme for more than eight years, the same virtually became a privilege as per Fourth Schedule of the Act. Issuance of circular dated 15.12.2005 to the prejudice of the interest of the workman is absolutely in contravention of provisions of Section 9A of the Act. Finally, prayer has been made to stay operation and effect of circular no.18/2005 dated 15.12.2005 of FCI.

8. FCI filed written statement to the statement of claim and took preliminary objections that workers of the union named above has relied upon the settlement dated 13.03.1999 and the said settlement was signed with another union in the name and style of FCI Workers union. As per Section 18 of the Act, settlement arrived between employers and the union otherwise than in the course of conciliation proceedings shall be binding on the parties. FCI (Handling) Union was not in existence at the time of the said settlement and as such has no locus standi to raise the present dispute.

9. Agreement dated 13.03.1999 has not been altered or changed and the same is still in vogue/force in respect of handling of bags weighing upto 66 kg. and below 66 kilos. At the time when the scheme based on the said settlement was agreed and implemented on the basis of letter dated 10.05.1999, size of food grain bag in use was 95 kg. or more and provisions in the scheme for bags of 66 kg or below was made just to meet the eventuality of handling to the tune of 66 kilos. Bags of 66 kg was or below size were not use. After the year 2000, foodgrain bags were gradually switched over to 50 kilo and now all bags of 50 kilos are used. Therefore, plea of violation of Section 19(2) of the Act raised by the Union is not based on ground reality. It is further alleged in preliminary submissions that FCI management is making excess payment for handling of bags weighing upto 50 kilos. Management, therefore, be permitted under provisions of Section 33 of the ID Act to implement the circular issued in December 2005 to regulate incentive wages for handling of 50 kilo bags. On merits, it has been admitted that settlement dated 13.12.1999 is still in vogue and has not been amended or changed or altered. Handling workers who are handling bags weighing above 65 kilo or below 65 kilos will continue to be covered by the said settlement. Management has no intention to terminate settlement dated 13.03.1999 under section 19(2) of the Act. Therefore, there is no question of violation of provisions of section 19(2) of the Act. Claim made by the union in Para 11 of the statement of claim regarding adverse impact is incorrect. Size of bag was reduced to 50 kilos on recommendations of ILO and now almost all foodgrain bags are 50 kgs. each throughout the country. Therefore, need was felt for separate handling norm (datum) for handling 50 kilo bags by the departmental workers. For this purpose, study was entrusted to Delhi Productivity Council who conducted on the spot study in various depots but the unions rejected the recommendations of the said study. Thereafter, issue was referred to Saxena Committee for evolving suitable handling norms in respect of foodgrain bags weighing upto 50 kg. Saxena Committee held discussions with various labour unions and made deliberations on this issue and suggested norms for various operations for handling of bags weighing upto 50 kg. by departmental workers. Report of the said committee has been considered in consultation with Finance Division and finally accepted by FCI. However, piece rate incentive scheme for departmental workers based on Settlement dated 13.03.1999 is still operative as it is for handling of bags above 50 kg.. Management of FCI denied the objections/protest raised by the union by alleging the same to be misplaced and misguided and conciliation proceedings failed because of adamant attitude of the union. Management has further denied the other averments contained in the statement of claim.

10. It is pertinent to mention here that an application was filed by FCI Workers Union for impleadment of the party and the same was allowed by this Tribunal vide order dated 27.07.2010. Thereafter, FCI Workers union has filed separate statement of claim, which is almost on the same lines as filed by the FCI Handling Workers union. FCI Workers union has also filed rejoinder to the reply filed by the management of FCI wherein they have denied material averments contained in the written statement filed by FCI and reasserted the stand taken in the statement of claim.

11. It is not out of place to mention here that no specific issues were framed in the above reference as my learned predecessor observed vide order dated 11.07.2011 that except the matter referred for adjudication, no other specific issue in fact arises for consideration.

12. This Tribunal vide order dated 29.10.2012 observed that evidence recorded in ID No.239/2011 titled 'President Vs. Food Corporation of India' may be read as evidence in the present reference and testimony of Shri Pramod Kumar Sharma and Shri Umesh Kumar, which remained incomplete in the case may be discarded and evidence may be borrowed from the case referred above. In fact, application has been filed by the management under Section 33 of the Act and it has been ordered to be registered as an industrial dispute but the same is required to be registered as an LCA.

13. Claimant union in support of its case examined Shri Umesh Kumar Gupta and Shri Pramod Kumar Nayak as WW1 and WW2 respectively, who have tendered in evidence affidavits Ex.WW1/A and Ex.WW2/B and also tendered in evidence documents Ex.WW1/1 to Ex.WW1/6 and Ex.MW1/W2, Ex.WW2/1 to Ex.WW2/2 respectively. To support its stand, FCI management examined Shri Tej Singh and Shri A.K. Singh as MW1 and MW2 and their affidavits are Ex.MW1/A and Ex.MW2/1 respectively. Alongwith his affidavit, Shri Tej Singh has tendered document

Ex.MW1/1 to Ex.MW1/3 and Shri A.K. Singh has tendered documents Ex.MW2/1 to Ex.MW2/3 in evidence. I would be advertng to the facts adduced by the parties in the subsequent paras.

14. I have heard Shri Inderjit Singh, A/R for the claimant union and Shri Om Prakash, A/R for the management. Parties have also filed written submissions and relied upon various judgements of the Hon'ble Apex Court.

15. Shri Inderjit Singh, appearing on behalf of FCI Handling Workers Union strongly urged that the latest circular dated 15.12.2005 issued by FCI Ex.MW1/3 is absolutely contrary to the provisions of Section 9A of the Act. It was also urged that the bipartite settlement Ex.WW1/1 arrived at between the management of FCI and FCI Workers Union is binding upon the parties and FCI is not legally competent to change the terms and conditions contained in the said settlement to the derogation of the rights of the workers. Bipartite settlement, in the submission of learned A/R for the claimant union clearly provided for handling norms for bags below 66 kg. and management has unilaterally and arbitrarily without any consultation with RLC (C) and without complying with the mandatory requirement of Section 9A of the Act changed handling norms for below 66 kg bags vide circular No.18/2005 dated 15.12.2005, Ex.MW1/3. It was further asserted that the settlement already arrived at between the parties stands on a higher pedestal than even the award passed on adjudication. In this regard, reference was made to the case of P. Virudhachalam & Ors vs The Management Of Lotus Mills & Anr (1998 (1) SCC 650).

16. Learned A/R for the claimant union also urged that having accepted the recommendations of the Saxena Committee, management cannot refer the matter to National Productivity Council, knowing fully well that there was already binding settlement dated 13.03.1995 mentioned above, between the parties. Learned A/R for the claimant union took pains to take the court through bipartite settlement of 1995 and report of Saxena Committee.

17. It was also urged on behalf of the union that FCI handling Union was not a party to the judgement passed by the Hon'ble High Court of Bombay in Case (PIL)no.84/2014 titled 'Court on its own motion Vs. Union of India and ors' decided on 20.11.2015 nor the High Court has considered all the material aspects as well as question of violation of section 9A as well as 19B of the Act. Observations made by the Hon'ble to the effect that various incentive do not fall within the definition of wages as defined under Section 2(rr) of the Act is also patently against the provisions of the statute.

18. Lastly, it was urged that judgement passed by the Hon'ble High Court of Bombay is already in appeal inasmuch as an SLP has been filed before the Hon'ble Apex Court, which is likely to be heard in the near future. Learned authorized representative, in all its fairness stated that no stay order of the judgement passed by the Hon'ble High Court of Bombay, Nagpur Bench, has been granted so far by the Hon'ble Apex Court. Reliance was also placed upon various authorities of the Hon'ble Apex Court in support of the submissions and I would be referring to the same in subsequent paras while drawing my conclusions.

19. Per contra, Shri Om Prakash, authorized representative appearing on behalf of management supported the judgement already rendered by the Hon'ble High Court of Bombay where liberty has been accorded to FCI to implement the latest circular No.18/2005 dated 15.12.2005 Ex.MW1/3. In fact, this circular remained in operation from December 2005 to March 2006. Later on, the same was kept in abeyance by the FCI on account of raising industrial disputes by the various unions. They have also served management with strike notice. Learned A/R for the management also invited attention of the Court to the evidence of WW2 wherein he has admitted that he expressed opinion on behalf of the union before the Saxena Committee.

20. It was also strongly urged on behalf of the management that there is no question of violation of provisions of section 19(2) of the Act as previous settlement of 1999 is still in operation and is binding upon the parties. It was also submitted that there is no violation of section 19(2) of the Act by FCI as there is no change in the conditions of service.

21. Lastly, learned authorized representative urged that judicial discipline requires that when direction has already been passed by the Hon'ble High Court of Bombay in the same case between the parties, subordinate court as a matter of judicial propriety is required to follow the above directions. Therefore, demand raised by the union regarding withdrawal/ revoking of the latest Circular No circular No.18/2005 dated 15.12.2005 is not legal nor justified. Learned authorized representative took pains to go through the various reports of ILC and Saxena Committee so as to buttress his submissions in the light of the changed scenario.

22. Before I proceed to consider the comparative merits of the submissions raised on behalf of either of the parties, it is necessary to refer to the judgement passed by the Hon'ble High Court of Bombay (Nagpur Bench) in 'Court of its own Motion vs. Union of India & anr.' Decided on 20.11.2015 wherein the Hon'ble High Court considered the question of implementation of the impugned circular No.18/2005 dated 15.12.2005 Ex.MW1/3 as well as other related issues regarding disparity of wages and incentives being paid to the departmental workers of FCI. A critical appraisal of the judgement would show that most of the points which have been raised during the course of arguments before this Tribunal was also the subject matter of the discussion before the Lordship of Hon'ble High Court. There is also reference to Saxena Committee, ILO Report as well as reference to M/s. Deloittee Consultancy,

who have given certain suggestions to FCI on the basis of comparative study for loading and unloading of sacks etc. It was also observed that on account of practice of engaging different types of handling system, there is glaring disparity in the matter of payment between the similarly situated departmental labours/workers of FCI who are getting approximately Rs.80,000.00 per month whereas other similarly situated workers are hardly getting Rs.10,000.00 per month. Keeping in view the report of the high level committee appointed by the Government of India, the impugned circular dated 15.12.2005 was issued by the Government, which has become the bone of contention between FCI and its workers. Finally, Hon'ble High Court of Bombay has given liberty to FCI to implement Circular No.18/2005 dated 15.12.2005 and directed in para 30 as under:

- (i) The Government of India is directed to decide the representation made by the Food Corporation of India for grant of exemption under the provisions of Section 33 of the said Act within a period of one month from today in the light of observations made by us hereinabove within a period of one month from today.
- (ii) The Government of India shall decide the issue regarding de-notification of the depots of the Food Corporation of India. In respect of which notification is issued u/s 10 of the said Act, within a period of six months from today, in the light of observations made by us hereinabove and the report of M/s Deloitte Consultancy and report of the High Level Committee appointed by the Government of India.
- (iii) We clarify that the respondent Food Corporation of India would be entitled to transfer services of departmental labourers from one Depot to another subject to protecting their salary and all other service conditions.
- (iv) We also clarify that the respondent Corporation would be at liberty to implement its policy of change in the Scheme of Incentives'.
- (v) The Government of India shall also take a decision regarding abolition of system of departmental labourers in a phased manner or absorbing their services in other establishments as recommended by the High Level Committee.

23. During the course of arguments, it was pointed out that Clause (iv) of para 30 is relevant for the purpose of the controversy in the case on hand and reference to this Tribunal, as discussed above is, 'Whether the demand of the Union for withdrawing the new incentive scheme announced vide Circular No.18/2005 dated 15.12.2005 is legal and justified?' Most of the submissions raised on behalf of the union in the case on hand were also raised and considered by the Hon'ble High Court of Bombay in the above judgement and it was only thereafter directions detailed above were passed by the Hon'ble High Court.

24. At this juncture, it is also appropriate to refer to the Bipartite Settlement Ex.WW1/1 of 13.03.1999 and incentive scheme arrived at between management of FCI and FCI Workers Union, which is as under:

S.No.	Handling Norms	Bags below 66 kg.	Bags above 66 kg.
1	Unloading from truck and stacking inside godown	105	70
2.	Unloading from wagon and stacking inside godown	90	60
3.	Unloading from wagon and dumping on platform	134	90
4.	Stacking inside godown removing the bags dumped	140	90
5.	Destacking in godown and loading into trucks	110	70
6.	Destacking into godown and loading into wagons	94	60
7.	Unloading from wagons and loading into trucks	87	60
8.	Standardization/Rebagging/42 filling bags with loose grain, including weighment	42	35
9.	Salvaging of damaged foodgrains, including weighment	30	20
10.	Breaking stack and restacking	140	90
11.	Weighment	82	60

25. During the course of arguments, it was admitted that prior to issuance of Circular No. 18/2005 dated 15.12.2005, above incentive scheme was being followed and later on considered throughout India and the same were conferring monetary benefits to the workers in the form of incentives. It is not out of place to mention here that with the change of time, need was felt to evolve a new policy for handling bags (loading and unloading) etc. and the new circular was issued by FCI after taking into consideration the recommendations of Saxena Committee, ILO Report as well as reference to M/s Deloitte Consultancy. The principal contention of Shri Inderjit Singh learned authorized representative on behalf of the Union is to the effect that the new circular has been issued by the management without any consultation with the Union and without complying with the mandatory requirement of Section 9A of the Act. The new circular has changed the handling norms for below 66 kg of bag. Learned A/R for the Union also referred to the report of Saxena Committee, which was considered by the Finance Division and ultimately the said report was accepted in respect of handling bags weighing upto 50 kg. by the departmental workers in inland godown/depots. Slabs of output beyond norms bag weight have been kept the same as they are applicable in the existing piece rate scheme in case of bags weighing above 66 kg. It is appropriate to mention here that the bipartite settlement of 13.03.1999 has not been revoked or rescinded by FCI; as such, there is no merit in the contention of the FCI Union that there is violation of provisions of Section 9A of the Act, which clearly provides that no employer, who proposes to effect any change in the conditions of service applicable to any workman shall effect such change, without giving to the workmen likely to be affected by such change a notice in the in the prescribed manner of the nature of the change proposed to be effected.

26. It is appropriate to refer to the aforesaid judgement of High Court of Bombay wherein similar contention on behalf of the workmen to the effect that withdrawal of incentive would amount to change of condition of service was considered and rejected by the High Court by observing in para 20 as under:

“Para 20 : We make it clear that we do not intend to pass any order which will have any effect on the service conditions of the departmental labourers employed by the respondent/Corporation. However, it is to be noted that the High Level Committee itself has recommended discontinuing practice of departmental labourers. The High Level Committee has noticed that there were about 370 labourers in the respondent/Corporation who had got salaries of more than Rs.Four lacks per month. The Committee has, therefore, recommended that they should be offered suitable VRS and this cadre be gradually phased out. The Committee has also recommended that there should be a cap on the incentive system, whereby no labourer is allowed to work more than 1.25 times the daily work. It is worth mentioning here that, by now it is a settled law that the incentive does not amount to a condition of service and is an additional payment to be made to an employee in addition to the salary and wages payable to him as per service conditions.”

27. Learned A/R for the management also relied upon the case of Muir Mills Co. Ltd., Kanpur Vs. Its Workmen in Civil Appeal No.305 of 1959 decided on 07.04.1960, wherein the Hon'ble Apex Court considered the question of as to whether grant of withdrawal of production bonus or incentive bonus falls within the meaning of 'basic wage'. After considering the law on the subject, it was held that the term 'basic wage' never includes additional emoluments which the workman may earn on the basis of a system of bonus related to production.

28. Yet in another case, i.e. Bharat Electronics Ltd., Bangalore Vs. Industrial Tribunal, Karnataka, Bangalore and another, decided on 13.05.1990 by Full Bench of the Hon'ble Apex Court wherein the question as to whether night shift allowance forms part of wages in the context of Section 32(2)(b) of the Act was dealt with. In the said case, drivers of the management worked on night shifts on rotational basis and workmen used to get a variable night shift allowance, which was later on altered. After referring to the definition of wages defined under Section 2(rr) of the Act, it was held that night shift allowance can never be part of wages even though the drivers had not virtually worked on night shifts. Accordingly, it was held that Section 33(2)(b) of the Act is not attracted even if night shift allowance is denied to such drivers/workmen.

29. It is also apposite to mention here that WW2 Shri Pramod Kumar Nayak has admitted in his testimony recorded on 29.10.2012 that at the time of signing of bipartite settlement Ex.MW1/W2 (1999 policy), gunny bags of 50 kg. was not in use and this witness has further clarified that he cannot affirm or deny that bag of 50 kg was accepted for handling workers by FCI after the year 2000. It is also clear from the various reports and documents and record that previously weight of the bags in use used to be above 66 kg. and in the year 1999 when bipartite settlement had become operational, bags weighing 50 kg. were not at all in use. Therefore, bipartite settlement of 1999, in fact, was meant for bags of 95 kg. or 66 kg. and above. This Tribunal cannot ignore the fact that Hon'ble High Court of Bombay has dealt at length with this aspect of the matter and observed that Central Government was sitting idle over the matter since long. No doubt, as observed by the Hon'ble High Court of Bombay, workers are required to be paid handsome wages but disparity in wages which departmental workers of FCI are getting is so high that the same warranted action from judicial side from the Hon'ble High Court. It was against this background that direction No.(iv) was issued by the Hon'ble High Court in para 30 of its judgment wherein liberty was accorded to FCI to implement circular No.18/2005 dated 15.12.2005.

30. As discussed above, FCI has, in fact, implemented the above circular in some States but later on due to raising of industrial disputes by the Unions, same was not implemented, resulting in raising of dispute by this Union.

31. Contention of FCI (Handling) Worker Union regarding violation of provisions of Section 19(2) of the Act is without any merit and is liable to be rejected for the reason that the previous bipartite settlement is still in operation, as is clear from pleadings of the parties as well as written submissions submitted on behalf of the management. Since previous bipartite settlement has neither been rescinded nor revoked, therefore, it shall be deemed to be in operation for all intent and purpose. Moreover, issue before this Tribunal is not whether Circular No.18/2005 dated 15.12.2005 Ex. MW1/3 is bad for non compliance of provisions of section 9A or 19(2) of the Act nor this Tribunal is required to decide whether incentive is part of basic wage or not or whether withdrawal of such incentive amounts to change in conditions of service of the workman. The only limited issue to be decided by the Tribunal is whether the demand of the workman in terms of the reference is legal and justified.

32. During the course of arguments, learned A/R for the claimant union heavily relied upon the case of *Air India Corporation, Bombay Vs. V.A. Rebellow and Anr.*(1972 (3) SCR 606). I have gone through the ratio of law in this case and bare perusal shows that Hon'ble Apex Court has primarily dealt with the provisions of Section 33 and Section 33A of the ID Act which deals with discharge on punishment of workman, pending dispute. Basic object of these two Sections appear to project the workman pending conciliation proceedings or proceedings by way of reference under Section 10 of the Act against victimization by the employer. To achieve this objective a ban, subject to certain conditions, has been imposed under Section 33 of the Act on the ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services during pendency of the proceedings. There is hardly any dispute with the noble object contained in the above two sections but so far as the present case is concerned, as discussed above, Hon'ble High Court of Bombay has already considered the material submissions raised by FCI union and it was only thereafter certain directions in the manner stated above, were passed by the Hon'ble High Court of Bombay. Admittedly, an appeal is pending before the Hon'ble Apex Court but fact of the matter is neither the appeal has been admitted so far nor any stay has been granted by the Hon'ble Apex Court. Law is fairly settled that though an appeal is continuation of the proceedings, but order passed by an inferior or lower court which is subject matter of appeal will not remain in abeyance for the simple reason that an appeal has been filed. A party has a right to enforce judgment, order of award passed by competent Court or Tribunal so long as it is in operation and not stayed by the higher Courts. This proposition of law was not disputed by either of the learned authorized representatives.

33. I have also gone through narration in *Gujarat Agricultural University vs. All Gujarat Kamdar Karamchari Union* (AIR 2010 SCC 2507) wherein the Hon'ble Apex Court also dealt with the provisions of Section 19 and 33 of the ID Act. Question regarding change of condition of service pending adjudication was also subject matter of dispute before the Court. In the said case, in fact, there was change in weekly off, which was held to be change in conditions of service. In para 15 and 16 of the judgement, it was held as under:

15. In *Lily Kurian* this Court said :

"13. The expression "conditions of service" covers a wide range, as explained by the Privy Council in *N.W.F. Province v. Suraj Narain* [AIR 1949 PC 112], which was approved by this Court in *State of U.P. v. Babu Ram* [AIR 1961 SC 751]. These decisions and also a later decision of this Court in *State of M.P. v. Shardul Singh*[(1970) 1 SCC 108] have made it clear that the expression "conditions of service" includes everything from the stage of appointment to the stage of termination of service and even beyond, and relates to matters pertaining to disciplinary action. Thus, the expression "conditions of services" as explained in the decisions of the Privy Council and of this Court includes the power to take disciplinary action. The rules regarding these matters are contained in Chapter 57 of the ordinances. The management of a private college under Ordinance 33(2) is constituted the appointing and the disciplinary authority in respect of imposition of punishment. In the course of any disciplinary proceeding, a right of appeal before the Vice-Chancellor is given to a teacher dismissed from service under Ordinance 33(4) of the Ordinances. The High Court thus rightly held that the right of appeal conferred by Ordinance 33(4) forms part of the "conditions of service" and, therefore, is valid."

16. It is true that daily wagers are not the holders of a post but the expression 'conditions of service' occurring in Section 33(1)(a) is not restricted to the holders of post. The expression, 'conditions of service' is of wide range and relates to the workmen who may be temporary, adhoc, daily rated, permanent, semi-permanent or otherwise. What Section 33 provides is that, inter alia, during the pendency of any proceeding before the Labour Court or Industrial Tribunal in respect of an industrial dispute, the employer shall not in regard to the matter connected with the dispute, change conditions of service prejudicially to such workmen. We find no merit in the contention that since daily rated employers do not hold any post and, therefore, there are no conditions of service for such employees.'

34. Learned A/R for the claimant union strongly urged that the impugned circular No.18/2005 dated 15.12.2005 amounts to change in conditions of service as workmen are likely to get less incentive than what they were getting under the bipartite settlement of 1999. Though there is considerable force in the submissions raised on behalf of the union, but having regard to the fact that Hon'ble High Court of Bombay has already considered all these aspects of the matter and the fact that previous bipartite settlement of 1999 is still in operation, as such, this Tribunal is not in a position to entertain the plea that the latest circular of 2005 amounts to change in conditions of service in terms of provisions of Section 33 of the Act.

35. In para 19 of the judgement in Gujarat Agricultural University (supra), Hon'ble Apex Court has dealt with provisions of Section 19(2) and 19(6) of the ID Act, which deals with the period of operation of settlement and awards. Since FCI Workers Union has also participated in deliberations of Saxena Committee as is clear from the deposition of Shri Pramod Kumar Nayak WW2 and latest circular of 15.12.2005 has been issued keeping in view the recommendations of Saxena Committee, ILO Report M/s. Deloitte Consultancy as well as High Level Committee appointed by the Government, as such, this Tribunal is of the opinion that the demand of the FCI Union is neither legal nor justified under the law. As such, the workman are held to be not entitled to any relief, particularly when liberty has been accorded to FCI under clause (iv) of para 30 of the judgement of High Court of Bombay in the PIL mentioned above, to implement the same. Judicial discipline and judicial propriety requires that subordinate court or Tribunal are legally supposed as well as required to adhere to the directions passed by the High Courts in a case between the parties and it is neither feasible nor permissible under the law for a subordinate court to take a different view than the one taken by a High Court, unless there is a pronouncement made to this effect by the Hon'ble Apex Court.

36. Having said so, the Tribunal is of the view that in the wake of the judgement of Hon'ble High Court of Bombay, discussed above, wherein recommendations of the Saxena Committee, ILO Report as well as High Level Committee appointed by the Government of India (Ministry of Food, Consumer Affairs and Public Distribution), have been discussed in extenso and grave concern expressed by the Hon'ble High Court for not implementing the recommendations contained in the said report, the Tribunal is of the considered opinion that Government as well as Food Corporation of India is well within its powers to take policy decision regarding norms to be followed in loading and unloading of sacks etc. Accordingly, it is held that demand of the FCI unions for withdrawing the new incentive scheme announced vide circular No.18/2005 dated 15.12.2005 is neither legal nor justified under the law. Reference is answered accordingly. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : July 5, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1475.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 115/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/418/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2016

S.O. 1475.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Satgram Area of Eastern Coalfields Limited and their workmen, received by the Central Government on 11.07.2016.

[No. L-22012/418/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

PRESENT: Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 115 OF 2005

PARTIES :

The management of Nimcha Colliery of M/s. E.C.L.

Vs.

Sri Baidyanath Majhi

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri. S. K. Pandey, General Secretary

Industry : Coal

State : West Beng

Dated: 20.06.2016

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 letter No. L-22012/418/2004–IR(CM-II) dated 31.08.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“ Whether the action of the management of Nimcha Colliery of M/s. ECL in dismissing Sri Baidyanath Majhi, U.G. Loader w.e.f. 30.03.1993 is legal and justified? If not, to what relief the workman is entitled? ”

1. Having received the Order No. L-22012/418/2004–IR(CM-II) dated 31.08.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 115 of 2005 was registered on 09.09.2005. 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. Both the parties appeared in the Tribunal, through their representative.
2. The workman has stated in his written statement in brief, that Sri Baidya Nath Majhi, Man No. 854015 was in employment of the company as under ground loader at Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited. He was absent from duty w.e.f. 10.07.1992, due to his sickness, which was beyond his control. Being declared fit, the workman reported to the management but he was not allowed to resume his duty rather he was informed that his services have been terminated. Workman approached for his re-instatement, but when the management did not consider his prayer, therefore he sought the shelter of law and filed an I.D. before the Assistant Labour Commissioner (Central), Asansol. During conciliation proceeding before A.L.C.(C), workman came to know, from the documents submitted by the management that the workman had been charge sheeted for his alleged unauthorized absence from duty and had been dismissed by the management. Workman has not been served with charge sheet and enquiry was conducted ex-parte. Management did not complied the Principle of Natural Justice. The termination of the workman by company is illegal and unjustified. He was forced to sit idle by his illegal and unjustified dismissal. He is without any kind of employment from the period of dismissal. Workman has prayed that the tribunal may kindly direct the management of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited to re-instate the workman in service with payment of full back wages from the period of dismissal with all consequential benefits.
3. On the other hand the agent of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited has denied the allegation of the workman. The agent of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited has stated, in brief, in his written statement that reference is bad in law. Termination of service of workman has taken place on 30.03.1993, raised the dispute on 16.08.2004 after expiry of a decade without assigning any reason. The concerned workman was absent from duty from 10.07.1992 without information. He was charge sheeted under Ref. No. NC/CS/PER/LA/93/05 dated 17.02.1993. The workman did not respond to charge sheet. He did not respond to enquiry notice served on him by I.A. The workman was served registered notices asking him to appear before Enquiry Officer but he did not appear. Therefore the enquiry proceeded ex-parte and he was found guilty of the charges levelled against him. After perusal of enquiry report and other circumstances Disciplinary Authority passed the Dismissal Order w.e.f. 30.03.1993. It is not a fact that workman being declared fit by doctor, reported for duty. The workman was served with notice of enquiry through Peon Book on 26.03.1993 and same was stated before Assistant Labour Commissioner (C). Action of management is legal and justified. Management is not bound to compensate the damage caused due to latches of the workman. Before approaching the court, delinquent was supposed to make an appeal before Appellate Authority, but appeal was not field. The action of management in dismissing Sri Baidyanath Majhi from 30.03.1993 is legal. The workman is not entitled to any relief.

4. Workman has filed three photocopies of documents as documentary evidence. He has filed (i) copy of Enquiry Proceeding, (ii) copy of Enquiry report & (iii) copy of Dismissal Order. Workman, Sri Baidyanath Majhi has filed affidavit in oral evidence. He has been cross-examined by the learned advocate of the M/s. Eastern Coalfields Limited. The Nimcha Colliery of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

5. Sri S. K. Pandey, union representative appeared on behalf of workman and Sri P. K. Goswami, Learned Advocate appeared on behalf of M/s. Eastern Coalfields Limited. I have heard the argument of both sides and perused the record.

Sri Pandey has argued that the concerned workman Sri Baidyanath Majhi was absent from 10.07.1992 due to sickness under compelling circumstances. Workman was never served with copy of charge sheet and notice of enquiry. Without service of notice and copy of charge sheet the enquiry against the workman has been conducted ex-parte in his absence. There is complete denial of Natural Justice. He has argued that Enquiry Officer being appointed on 03.03.1993. The Enquiry Officer completed whole enquiry on 26.03.1993 in one day in the absence of concerned workman. Enquiry Officer submitted his enquiry report on 26.03.1993. The Dismissing Authority passed the Dismissal Order on 30.03.1993 without issuing the 2nd show causing notice before passing the Dismissal Order. On the other hand Sri P. K. Goswami, the learned advocate has argued that if workman does not participate in enquiry naturally the enquiry proceeding will proceed ex-parte against workman. Workman has not filed any document regarding his illness. The reference has been filed after lapse of more than 10 years therefore it is not maintainable. There is compliance of Natural Justice.

6. It is admitted fact by both the parties that Sri Baidyanath Majhi the delinquent workman was in employment of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited. It is also admitted fact delinquent workman has been dismissed by order dated 30.03.1993 after domestic enquiry. The workman has assailed the domestic enquiry on ground of illegality and non-compliance of Natural Justice, being ex-parte, which has been denied by Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited. The workman has stated in his affidavit that due to sickness he was absent from 10.07.1992. On being declared fit, when he reported for duty, he was not permitted to join the duty. He was dismissed from service without giving him opportunity to defend himself.

7. Unauthorized absence from duty is one of the misconduct mentioned in Certified Standing Order of M/s. Eastern Coalfields Limited. Misconduct for unauthorized absence of an employee, can be enquired into by the employer, and if proved, the delinquent workman can be punished. Enquiry commences after issuance of charge sheet. There must be charge sheet, before initiating domestic enquiry. Before initiating domestic or departmental enquiry there must be a formal order, for appointment of Enquiry Officer, under intimation to delinquent employee, who has been charge sheeted. But there is no copy of charge sheet or order of appointment of Enquiry Officer on the file of reference.

8. It is settled law that burden of proof, to prove the misconduct of charge sheeted employee lies on the shoulder of department concerned. In order to be able to take part in the enquiry, the charge sheeted workman must have notice of the date, time and place of the enquiry. Even if the workman failed to submit his reply to the charge sheet, the enquiry officer is not absolved from his duty to send the notice to the delinquent employee, informing him about the date, time and place of enquiry which would enable him to produce his witnesses and cross-examine the witnesses produced against him. Non-compliance of this requirement would be violation of rules of Natural Justice. Fairness demands that the workman concerned should be informed, sufficiently in advance as to when and where the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the enquiry and to collect such evidence as he wishes to lead in support of his defence. It would not be proper that the workman concerned should be called on any date without previous intimation and the enquiry should begin straight away. There is no copy of notice sent to delinquent. If Notice of Enquiry was really sent by Enquiry Officer to delinquent it must have been filed. By only perusal of copy of notice it can be ascertained whether notice was sent in advance for enquiry. Whether after service of notice the workman precluded himself deliberately to appear before the Enquiry Officer. It is vital document which cannot be ignored. If notice was sent by Peon Book as stated in Para-8 of written statement of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited then copy of Peon Book must have been presented before the Tribunal. Though delinquent has specifically stated in his written statement that he was never served with the copy of charge sheet, but even if delinquent failed to submit the explanation to the charge sheet it was incumbent upon the Enquiry Officer to fix a date for his appearance in the enquiry. It is only in a case where the delinquent employee despite notice of the date fixed failed to appear then the enquiry officer can proceed with the enquiry ex-parte. If the delinquent after service of notice failed to appear before the Enquiry Officer he would clearly lose the benefit of cross-examine the witness produced by the Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited. But still he has right to produce his witness in his defence.

9. It was incumbent on the Enquiry Officer, before proceeding further to pass order to proceed ex-parte against delinquent and fix a further date for recording evidence. But it is evident from perusal of enquiry proceeding that Enquiry Officer fixed a date of enquiry on 10.03.1993 without service of notice of enquiry on delinquent. Enquiry Officer fixed another date for enquiry and fixed 26.03.1993. On 26.03.1993 the Enquiry Officer without ensuring service of notice on delinquent, proceeded with enquiry and held ex-parte enquiry against the delinquent. He concluded the entire enquiry proceeding on the very same date and submitted Enquiry Report on printed proforma on 26.03.1993. The Enquiry Officer has submitted enquiry report on printed proforma without discussing any evidence. It is apparent from record that Enquiry Officer without fixing a date for defence evidence of workman submitted his enquiry report on 26.03.1993 in which date he concluded his enquiry.

10. Hon'ble Supreme Court in State of U.P. & others v/s Saroj Kumar Sinha 2010 (124) FLR 857 has held:

“ That by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee. Departmental enquiry cannot be treated as a casual exercise. The Enquiry Officer is a quasi judicial authority in position of an independent adjudicator and not representative of the department. ”

11. The whole domestic enquiry was conducted on one day i.e. on 26.03.1993. The statement of management witness Sri Gangadhar Paul, Clerk of Nimcha Colliery of M/s. Eastern Coalfields Limited was recorded. The management witness has stated that the concerned workman was absent from 10.07.1992 but he did not state that till what date and how many days the delinquent was absent. Even Enquiry Officer has not discussed in his Enquiry Report that how many date the delinquent was absent. The gravity of misconduct can only be adjudged by period of absence and whether absence was willful or under any compelling circumstances. Even Dismissing Authority / General Manager, who passed the Dismissal Order dated 30.03.1993 did not mention the period of absence of delinquent. Before passing order of dismissal, it is apparent from record that 2nd Show Cause Notice was not issued to the delinquent, which is mandatory in law.

12. The provisions of the act are meant to protect a workman, from employer's unreasonable actions. The provisions of the act are to prevent unfair labour practices and to insure that the employees are not victimized. Before dispensing the services of the employee it should be insured that delinquent employee has not been unfairly treated. The enquiry against delinquent employee / workman has been held in accordance with the Principle of Natural Justice. The delinquent workman has not been denied opportunity to defend himself. The punishment of dismissal, for the period of absence, which has not even been established in domestic enquiry, is too harsh and disproportionate to the unproved misconduct of Sri Baidyanath Majhi, which requires correction, particularly where enquiry has been conducted in utter violation of Principle of Natural Justice.

13. The case law has been referred in Para-1 of written statement of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited regarding delay in filing evidence. But it has not been cited before me for perusal. So far as delay is concerned, it is settled law that limitation act has no application in Industrial Dispute Act, 1947. Hon'ble Supreme Court in Raghur Singh v/s General Manager, Haryana Roadways, 2014 (143) FLR 469 has held that :

“ Section 10 (1) of ID act enables the appropriate government to make reference of an industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the section. ”

In view of law laid down by the hon'ble Supreme Court there is no time limit for making the reference. If delay is caused in making the reference the workman cannot be sufferer.

15. The delinquent workman has stated in Para-6 of his affidavit that he is sitting without job from the date of dismissal. He has been cross-examined by learned advocate of adversary party to reference. In cross-examination he has not stated any statement repugnant to his non employment, during entire period of dismissal. The evidence is un-rebutted. This is undisputed fact, that before dismissal the delinquent workman was in permanent employment of at Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited. As per affidavit, his age was 43 years in 2007. At present he is near about 51 years of age. He belongs to Schedule Cast Community and is illiterate person. There is no possibility of getting alternate job. In Bhuvensh Kumar Dwivedi v/s M/s. Hindalco Industries Limited, 2014 LAB. I.C. 2643 Supreme Court has held :

“ That in case of illegal retrenchment if workman is not gainfully employed anywhere then workman is entitled to full back wages from the date of termination of service till date of reinstatement. ”

16. The term 'consequential benefits' has been interpreted by hon'ble Orissa High Court in Jute Corporation of India Limited v/s Judhistira Swain 2014 (141) FLR 746 Orissa H.C. :

“ ‘Consequential benefits’ to a person does not mean only back wages. It includes much more things beyond back wages, such as promotion, fixation of seniority and grant of financial benefits admissible to the post. If termination of workman has been declared as illegal and unjustified then workman is entitled to get all the consequential service benefits admissible to the post. Back wages may be one facet of getting monetary benefits, but that is not the conclusive one. Service benefit which would have accrued to him had he continued in service cannot be denied by the management. ”

In view of hon'ble Supreme Court and hon'ble Orissa High Court the delinquent workman Sri Baidyanath Majhi, apart from full back wages from date of dismissal to date of re-instatement is entitled to get all other financial benefits which would have been accrued to the post, had he been in service.

17. In view of discussion above, the action of the management of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited in dismissing Sri Baidyanath Majhi, Under Ground Loader from service w.e.f. 30.03.1993, is illegal and unjustified. The Dismissal Order of Sri Baidyanath Majhi dated 30.03.1993 is hereby set-aside. Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited is directed to reinstate Sri Baidyanath Majhi. Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited is directed to pay full back wages to Sri Baidyanath Majhi from the date of dismissal till his re-instatement with all consequential benefits as discussed above. Sri Baidyanath Majhi be imposed a punishment of stoppage of two annual increment with out cumulative effect.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 जुलाई, 2016

का.आ. 1476.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना के पंचाट (संदर्भ आईडी केस सं. 12/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-40011/11/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th July, 2016

S.O. 1476.—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. 12 of 2011) of the Industrial Tribunal, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 27.06.2016.

[No. L-40011/11/2011-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No.- 12 (C) of 2011

Between the management of BSNL, Bihar Telecom Circle, Sanchar Sadan, 1st Floor, Central Telegraph Office Compound, Budha Marg, Patna (Bihar)-800001 and their workmen represented through the President, (INTUC), BSNL Worker's Union, Sonapur House, Near Saroj Nurshing Home, R.N. College Road, Subhash Chowk, Hazipur

For the management : Sri Suresh Prasad Yadav, AGM, (Admn.) O/o the TDM, BSNL, Hajipur.

For the workman : Sri Arun Kumar Giri, President, (INTUC), BSNL, Workers Union, Sonapur House, Near Saroj Nurshing Home, R.N.College Road, Subhash Chowk, Hazipur.

Present : Bipin Dutta Pathak, Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, the 14th June, 2016

By notification order No.- L-40011/11/2011-IR(DU) New Delhi, dated- 05.09.2011 Govt. of India,// Bharat Sarkar Ministry of Labour/Shram Mantralaya, New Delhi referred under clause (d) of sub-section (1) and sub-section (2A) of section-10 of the Industrial Dispute Act, 1947 (hereinafter to be referred to as 'the Act') the following dispute between The Chief General Manager, Telecom, BSNL, Bihar Telecom Circle, Sanchar Sadan, Ist Floor, Central Telegraph Office Compound, Budh Marg, Patna (Bihar)-800001 and their workmen represented through the President, (INTUC), BSNL Worker's Union, Sonepur House, Near Saroj Nurshing Home, R.N. College Road, Subhash Chowk, Hazipur, for adjudication to the Industrial Tribunal, Patna.

SCHEDULE

“ Whether the action of the management of Bharat Sanchar Nigam Limited, Hazipur in adopting unfair labour practice by engaging 75 workmen as casual/temporary (list enclosed) with the object of depriving them status and privileges of permanent workmen is legal & justified? What relief the workman are entitled to?”

2. Workmen are being represented by the President (INTUC), BSNL Worker's Union, Sonepur House, Near Saroj Nurshing Home, R.N. College Road, Subhash Chowk, Hazipur.

3. Statement of claim has been filed on behalf of the union stating the reference.

It has been stated that letter of demand was placed upon the management by concerned union. Management of Bharat Sanchar Nigam Limited, Hazipur & Patna did not accept the demand.

Due to negative approach of the management, BSNL no settlement could be arrived at through conciliation proceeding. Conciliation officer sent the failure report and Govt. of India referred the dispute. Management by adopting unfair labour practice deprive them status and privileges of permanent and regular workmen since more than 20 years is quite illegal, improper. All 75 casual / temporary workers duly worked from various post of class 3 and 4 grade under the management since more than 20 years and still they are performing their duty with best efforts and performance.

The work of telecom has comes under the essential service category and all the staffs discharged their duty round the clock. The role of casual / temporary workmen has become very important. The telephone exchange of Hazipur and their various telephone centres are still running smoothly and proper with the help of workmen. Management has regularly taken duty from the workmen and in lieu of that a huge amount in respect of payment / salary of such class of workmen released. The workmen never received correct wages even the Minimum Wages as prescribed by the Govt. All the workmen are performing 8 to 12 hours duty continuously from last 20 years, but they are not get benefits of regular workmen. They are not member of E.P.F and E.S.I scheme of Govt. The post on which all the workmen are discharging the duty are permanent in nature. Workmen sat on the dharna, place the demand but the management gave false assurance.

The Labour Enforcement Officer (C), Govt. of India, Ministry of Labour, Regional Labour Commissioner (C), Patna also visited on work-spot and found a number of workmen (75) on duty and they are getting even Minimum Wage as prescribed under the Act. In pursuance of report of L.E.O (C) a preceding against the management still running under the Minimum Wages Act, 1948. The proceedings under 26 (B) of the Employees Provident Fund Scheme, 1952 is still running before the Regional Provident Fund Commissioner, Patna. Local officer of BSNL, Hazipur are liable to pay salary / wages of concerned workmen because they are controlling officer. Management of BSNL in place of regularising the service of 75 workmen, threaten the workmen for disengagement from job. The officer deputed the workmen on duty and make them payment through vouchers. In respect of payment and attendance of workmen, has kept total records and register in his own possession. 75 workmen, as defined u/s-2(s) of the I.D.Act, 1947 and the management rendered a public utility service as defined u/s-2(n) (iii) of the Act. There are clearly relationship of “Master and Servant” between the management and workmen. The post of which concerned workmen posted is permanent in nature. The post are not project work, rather it is regular in nature, under the management since the long time.

All the workmen represented through union, raised their voice on various platform and during the conciliation, the management gave false assurance, but never been denied there employment of concerned workmen. The management adopted various unfair labour practice to compel them to leave the service.

4. Written statement has been filed on behalf of the management stating therein the company (BSNL) vide letter dated- 29.03.2010 received of Labour Enforcement Officer, a list of 75 workers alleged to be working in the establishment of BSNL, Hazipur and they were not paid minimum wage. Labour Enforcement Officer did not disclose

that inspection dated- 09.03.2010 was conducted in the presence of any official of the company. He did not disclose that these workers were working at their various BSNL exchange and the offices situated under the control of the company.

Reply was filed before the Regional Labour Commissioner and it was submitted by the company that the workers mentioned in the LEO report are not their employee. Regional Labour Commissioner without deciding the issue raised by the company, sent report to the Govt. of India, is illegal and contrary to settled principle of law.

When the company had not employed any persons mentioned in the list, the allegation of unfair labour practice is meaningless. The persons mentioned in the list, have never worked for the company and the union is making false allegation against the company. The company has not paid any wages / money to the persons mentioned in the list. When they are not the employees of BSNL then getting benefit of EPF and ESI does not arise. The company has preferred a writ petition in High Court to quash the illegal report of the LEO. Company had not filed its reply before the Regional Provident Fund Commissioner. Company is not liable to pay any wages and they are not employee in the company and claim of payment made through vouchers is false and concocted. Never appointment letter was issued by the company.

BSNL is a public sector undertaking and its ownership vests with president of India. Advertisement of the post is given in newspapers, then selection process commences and person selected is given appointment letter as well as identity card. Company cannot give employment to any casual person. Moreover, labour union has interpolated eight names of the persons in the list received with reference. These names are not mentioned in the list given by LEO. The person named as serial no.- 27 also been added later on and his name is not mentioned in the list of LEO.

5. An intervenor petition was filed through Advocate which after details consideration has already been rejected. There is also an affidavit dated- 04.02.2012 of Gauri Shankar Rai, Kameshwar Ram, Ram Naresh Rai stating therein they have not filed any intervenor petition before this tribunal on 23.01.2012. They have not signed on the petition or on vakalatnama they have not authorised any Advocate for filing petition. Affidavit and vakalatnama bears forged signature.

6. It appears that eight witnesses have been examined on behalf of the workmen namely (1) Sri Kameshwar Ram, (2) Sri Dharmendra Kumar Yadav, (3) Sri Arun Kumar Giri (Union representative), (4) Sri Ram Naresh Rai, (5) Sri Sakal Rai, (6) Sri Suresh Rai, (7) Gauri Shankar Rai, and (8) Sri Roshan Kumar.

W.W-1 has stated that he is working at Kanhauli Telephone Exchange since the year 2000 on the post of lineman and generator operator till now. He does duty 24 hours all over the months in day and night and monthly salary is paid only Rs. 1500/- through Sub-divisional engineer. He is working as daily wager. Minimum Wages fixed by the Govt. of India is not paid to him. His post is permanent and sanctioned post. Without lineman and generator operator telephone exchange cannot run satisfactory. Salary is paid on getting his signature on blank stamp paper. He is member of Bharat Sanchar Nigam Ltd workers union and Arun Kumar Giri is president.

Further this witness stated that till now benefit of permanent employee and minimum wages have not given to him. He had not been member of PF and ESI.

LEO, Patna had inspected might work and work placed and record is statement and statement of other workers. His report is correct. He proved Ext.- W/1 certificate of Sri P.N. Singh Sub-Divisional Engineer issued on 25.10.2005, 01.06.2006 and 22.04.2007. He has also proved generator register which bears signature of this witness and TTA.

In cross-examination this has stated that he worked at Kanauli telephone exchange. He was not appointed, nor appointment letter was given to him. He works as lineman and generator operator. Identity card was not given to him. He further stated that since he worked day and night so he understand that service has been given to him. He further stated that payment is made through SDO. Salary slip have not been given to him. At his work place there was no regular employee. He lived at exchange. He was given in writing to work day and night. He has not filed prove that he work day and night.

W.W-2 has stated that he is lineman and cable joiner working at Mahanar Telephone Exchange. He works for whole of the months because telephone has put utility service. He works for eight to ten hours per day. Since last three months management is paid Rs. 2000/- per months. His post is permanent and sanctioned. No telephone exchange may run without helper of lineman and cable joiner. There only two permanent staff work namely Ram Murti Rawat and Ramanand Rai. Payment is made by Sub-Divisional Engineer by obtaining in signature on stamp blank paper. Appointment letter have not been given to him. He is working since 1991. He is not getting benefits of permanent employee. Even minimum wages is not paid to him. Other part evidence is similar to other witness. He has exhibited four documents Exts.- W/5,6,7,8 and 9 which are letter given from office of account officer of Dist. Engineering

Telephone Office, Muzaffarpur dated- 09.07.1993. Letter issued by the BSNL dated- 01.01.2010 signed by Satish Singh, Senior Account Officer. Certificate issued by telephone consumer dated- 31.04.2012. Certificate dated- 30.04.2006 signed by Hari Nath Singh permanent lineman and certificate dated-05.12.2009 signed by permanent employee Jagbali Rai, lineman.

In cross-examination he has stated that his name is Dharmendra Kumar Yadav, he is working since 1991. Advertisement for appointment was not published. He got information from lineman that the person wants to work may work as workman, later on appointment letter will be given. Name of lineman was Pudaina Paswan appointment letter was not given to him and identify card was not given to him. He has no pay slip. Further he stated that earlier he was paid Rs. 1500/- per months and present he is paid to Rs. 2000/- per months. He removes defects of line and cable. Staff of exchange tell about the work. Earlier lineman is now regular mazdoor. Regular mazdoor has not power to appoint but he stated that on the direction of SDO work is indicated. From Ext.-W/6 it appears that he work as daily wager. He denied that letter of Senior Account Officer was got written by wrong person. Labour Commissioner have asked for certificate issued from BSNL.

W.W-3 Arun Kumar Giri is the President of Bharat Sanchar Nigam Ltd. Workers Union and also District President Vaishali of Rastiya Congress Mazdoor (INTUC).

He has stated that he demanded from management of BSNL for regularisation of the service of daily wager workmen and to pay minimum wages to them. He had also given notice for movement. There was conciliation proceeding before the Assistant Labour Commissioner (C), Patna but that could not succeed. He identify Ext.-W/10 list of all workers of the matter under reference. He had also made complaint before (Labour Enforcement Officer, Central for not paying minimum wages to daily wages workers. LEO central made inspection of the work place of BSNL and found that minimum wages is not paid to concerned workers), he sent notice to the management, case no.- 83 of 2010 was registered which is pending. He also identified Ext.-W/10 list of workers and Ext.-W/11 letter of due wages of the named workers. BSNL Hazipur has accepted before Regional Labour Commissioner (C) for payment of due amount of workers within two months. He identified Ext.-W/12 issued by PF Commissioner, Muzaffarpur for depriving PF benefit to concerned workmen. All the workers are regular member of his union.

Work is taken for all the days and months from concerned workers and they are paid only Rs.1500/- per months. Their signature are obtained on blank stamp paper. Salary register and works slip is not used. Monthly payment of workers is paid from contingency. Local office received huge amount for wages of daily wager but that was not paid by manager. Bill of contingency was not deposited before Assistant Labour Commissioner (C). Apart from 75 workers huge dispute are pending, services of 50 other workmen is also taken by the management at daily wager workers. At present 200 post are vacant and against them permanent workers may be appointed. But that is not being done by the management. The post on which concerned worker are working are permanent and sanctioned post. Earlier daily wages worker were made permanent. Which are RM and PM.

Duty from all the concerned worker is being taken by SDE and wages are being paid by account officer. They are working since so many years. List issued by LEO central is correct. Appointment letter is not being given to daily wager while they are working regularly since 10-20 years.

In cross-examination he has stated that he is representing the workers union since 2008. Union was registered before register trade union in the year 2010. He does not know BSNL recognised this union or not.

He further stated that BSNL is under central Govt. and there is procedure for appointment and they had demanded appointment according to that procedure. Workers were appointed on muster roll. Later on he says that some workers were appointed on muster roll but muster roll was changed and appointment was made against voucher ACG-17. Later on ACG-17 was closed and payment is made from ACG- ii & iii, on which name of workers should not entered, only coolie is written. Workers are working without proper wages. They are not knowing about proper wages. They are working only because they are getting regular work and monthly payment. When dispute was raised there were 75 members in his union and now 50 other members were made. Appointment letter or identity card is not with the workers because they were not appointed and they are daily wager.

Inspection was made by LEO in pursuance of SDE Mahua, Sri P.N.Singh SDE, Hazipur and Sri Upendra Rai and SDE phones and others but inspite of request by LEO they did not put there signature. LEO had submitted report which has been filed.

W.W.-4 Ram Naresh Rai is lineman of BSNL working since 1993 and at present working at telephone exchange Sahadaiee Bujurg, Vaishali. He stated that he perform duty for the whole month and he does daily work for 8 to 10 hours. His monthly payment is 1500/- per months and since last year he is paid Rs. 2000/- per months. His post is permanent and sanctioned. Telephone exchange cannot run without help of lineman. His salary is paid by SDE by obtaining signature of blank stamp paper. Appointment letter have not given to him. He is member of BSNL workers

union. His not getting benefits of permanent employee. Minimum wages fixed by Govt. of India is not being paid to him. He has not been made member of PF and ESI for which matter is pending before labour department central and PF office at Muzaffarpur. He know to as identified other 75 workers in the list. He proved Ext.-W/13 & 14 which are certificate issued under joint signature of SDE, JTO and technician and letter dated- 29.10.2010.

In cross-examination he has stated that advertisement for lineman was not published. On the instruction of SDO he is working for cable work. Work was got done by department. Appointment letter and identity card was not given to him. SDO has stated that to work similarly. He will get service as others. His post is sanctioned. Ext.-W/13 was written by head clerk Hari Nath Singh on which TTA Brajesh Kumar has put his signature.

W.W-5 Sakal Rai has stated that he is working in BSNL since 1998. From the year 2000 telecom changed into BSNL. At present he is working in Hazipur at Jandhaha telephone exchange as linemen and generator operator. He 24 hours is performing his duty and reside at telephone exchange SDE make payment of salary Rs. 1500/- per month. Minimum wages fixed by Govt. of India is not paid to him. His post is permanent and sanctioned. Without lineman and generator operator telephone exchange cannot run. Payment is made by SDE by obtaining signature on blank stamp paper. He is not getting benefits of permanent. He has not been member of PF and ESI for which cases are pending. Appointment letter has not been given to him. He has proved Ext.- 1 & 2 which is certificate dated 01.04.1992 issued by SDE. Ext.- 2 is the certificate issued by SDE in April, 1992 to March, 1993 and April 1993 to August 1994.

In cross-examination he has stated that his name is included in list of 75 workers. For appointment there was advertisement. SDO called him and had given work. Identity card was given to him. His pay slip is muster roll. SDO had granted certificate for his work.

W.W-6 (Suresh Kumar Roy) has stated that he is working since 1992 in BSNL and at present working at Kanhauli exchange as lineman and generator operator. He performed duty for 24 hours. Monthly salary Rs. 1500/- is paid by SDO. Minimum wages is not paid to him. His post is permanent and sanctioned. By obtaining signature of blank stamp paper. SDO make payment. He is not getting benefit of permanent employee and not paid minimum wages. He has not been made member of PF and ESI. LEO inspected is work place and has record statements of other workers. He works on the order of SDE, daily work is fixed by SDE. Appointment letter has not given to him. He has Extd.- 1 & 3 which are certificate dated- 27.12.1993 given by SDE and certificate dated given by SDE dated- 22.12.1995 and 15.01.1994 and certificate given by SDE dated 25.10.2005, 01.06.2006 and 22.04.2006.

In cross-examination he has stated that his name is included in the list of 75 workers. Advertisement was not published at the time of his appointment. Lineman brought him before SDO and SDO has granted certificate for that. SDO was R.L.P Sinha at the time of inspection of Patna SDO is not in writing that workers was working.

W.W-7 (Gauri Shankar Roy) he has stated that he is working since 1998 and telecom department changed into BSNL. At present he is working at Chaiharakala Toli exchange in Hajipur as lineman and generator operator. He performs 24 hours duty and he reside at telephone exchange. He is paid monthly salary by SDE Rs. 1500/- per month. Since 1998 he is working at daily workers. Minimum wages are not paid to him. His post is permanent and sanctioned. Payment is made by obtaining signature on blank stamp paper by SDO. He is not given benefit of permanent employee he has not been made member of PF and ESI for which case is pending. _Extd.- 1 & 3 are certificate granted by SDE dated- 27.10.2010, 03.10.2006.

In cross- examination he has stated that no advertisement was published for appointment. On the instruction of SDO he worked. Certificate has been given for election duty. Log sheet has been filed, from it appears that work is being taken by him.

W.W-8 (Roshan Kumar) has stated that he is working in telecom department since 2003 which is known BSNL. He is working as lineman and generator operator and performs 24 hours duty and reside at telecom exchange, monthly salary Rs.500/- is paid by SDE. Minimum wages is not paid to him. His post is permanent and sanctioned post. Payment is made by obtaining signature an of blank stamp paper by SDO. He is not getting benefit of permanent employee. He has not been made member of PF and ESI for which cases are pending. LEO inspected work place and work and record statement of other workers is his presence. Appointment letter has not been given to him. SDE has stated that his services will be permanent.

In cross-examination he has stated that he is working since 2003. Advertisement was not published in this respect. SDO called him for work. Advertisement letter and identity card was not given to him. There is no salary slip. Department cannot run without lineman and generator operator. For entire working there is no certificate with him.

7. Management has examined eight witnesses namely (1) Panna Lal Sah, (2) Surendra Prasad Singh, (3) Alok Ranjan, (4) Shiv Kumar Singh, (5) Rajesh Kumar, (6) Upendra Kumar, (7) Sheo Kumar Rajak and (8) Raj Kappor Sinha.

M.W-1 (Panna Lal Sah) has working as Sub-Divisional Engineer in Hajipur SSA of BSNL. He has stated that name of 75 persons is mentioned in the list submitted by LEO Ext.-W/11. They never work for BSBL, Hajipur. BSNL has never employed them and there are not employee of BSNL. Documents Extd. by union witness Ram Naresh Rai are false and fabricated documents. Ram Naresh Rai has produced his own letter dated- 30.06.2004. Ext.-W/13, counter signed by JTO and SDE is false and fabricated. He is not working in BSNL. This witness had issued a letter dated- 03.04.2010 to DE (A&P) Hajipur and certified that no labour is working under his jurisdiction. He has Extd. this letter.

In cross-examination he has stated that he is posted at Hajipur since May, 2009 up till now. He identify the workers who work prior 2009. He denied that he has no personnel knowledge about the workers prior to May 2009. He further stated that he has knowledge about the file of this case. In this case there is no mention about Niranjana. He does not know the written statement (reply) filed by BSNL in this case. He further stated that the documents filed by Ram Naresh Rai containing signature of SDE and JTO are forged because related record is not available in this office. Letter has been marked as Ext.-M. He further stated that no bill is prepared in name of workers but bill is prepared and paid in name of maintainance. Payment is made to the persons who works for maintainance. No advance payment is made for maintainance. He received advanced amount for maintainance. They purchases articles and make payment for labour charge. No tariff is fixed by department. No appointment letter is given to daily wages workers because there is no need for this. Generator is run by staff. Staff maintains generator and telephone connection of subscribers. There is no record to demonstrate that there is defects in phone of subscriber. He further stated that in the year 2010 about 20-22 staff were for maintainance of telephone. He could not says about the staff who were posted.

Next witness is M.W-2 (Surendra Prasad Singh) working as Sub-Divisional Engineer in Hajipur SSA of BSNL. He has stated that list of 75 persons submitted by LEO Ext.-W/11 actually which is Ext.-W/10 have never worked for BSNL Hajipur. BSNL has never employed them and they are not employee of BSNL. Documents submitted by union witness Dharmendra Kumar Yadav are false and fabricated. Ext.-W/5 letter dated-09.07.1993 submitted by witness Dharmendra Kumar Yadav is false and fabricated. Ext.-W/6 the letter produced by witness Dharmendra Kumar Yadav said to be issued by Satish Singh is false and fabricated. Similar Ext.-W/7, W/8 and W/9 signature by subscriber, issued by Hari Nath Singh and issued by Jagbali Rai are false and fabricated. Witness Dharmendra Kumar Yadav is not working in BSNL. He has Extd. letter dated-03.04.2010 issued to DE (A&P) Hajipur. Certifying that no labour is working under his jurisdiction.

He is posted at Hajipur since 2009. Since 2009 he is posted at Mahaua sub-division and Hajipur head office. He was never posted at Biddupur and Mahanar sub-division. He knows about Biddupur and Mahanar from records. He has no personnel knowledge about Biddupur and Mahanar. He does not identify Dharmendra Kumar Yadav. He has perused the documents filed by Dharmendra Kumar Yadav. He is not officer concerned with the documents. He is not aware about those officer.

He further stated that he has no complete knowledge of the case. He further stated that documents filed by him dated- 03.04.2010 is letter sent to DE (A&P). He has stated that subject matter of the case was the contract labour and its reply is written that “ no casual labour employee under my jurisdiction as on date. He further stated that he has not studied the written statement filed by the department. Union is not recognised by the management.

Further he stated that he may identify signature of Hari Nath Singh and in his knowledge letter issued under signature of Hari Nath Singh is false. He further stated that in his department no appointment letter is issued to casual labour and they are not engaged. He further stated that BSNL recruitment rule is of year 2006. In which there is rules for TTA and JTO. He had seen the certificate filed by Jagbali Rai. He does not know that in the year 2009 employees of Mahaua sub-division had kept TDM in custody of DCM and they demanded arrear salary and they were made free by administration.

M.W-3 (Alok Ranjan) is working as Sub-Divisional Engineer in Hajipur SSA of BSNL. He has stated that list of 75 persons submitted by LEO Niranjana Singh have never worked in BSNL Hajipur. He verified from record of BSNL. BSNL never employed the person mentioned in Ext.- W/11 and they are not employee of BSNL. Documents Extd. by witness Sakal Rai are false and fabricated. Sakal Rai produced record dated-10.04.1992 (Ext.-W/15) which is false and fabricated. He verified this certificate from BSNL record and no such certificate was ever issued. Sakal Rai produced certificate from April 1992 to March,1993 which is false. Similarly certificate Ext.W/16 certificate produced witness by Sakal Rai from April 1993 to August 1994 is false. This witness verified this certificate from BSNL record and no such certificate was ever issued. Witness Sakal Rai is not working in BSNL.

In cross-examination he has stated that he is posted in main exchange at Hajipur since 2003. He does know whether prior to 01.10.2009 any worker was working or not. He stated that Ext.-W/52 is correct. In this certificate it has been written that since 01.10.2009 to 28.02.2010 no worker was engaged. He has stated that till October 2009 he was JTO and during that period he did not receive any temporary advance amount. After posting as SDE he has

received advanced temporary amount. Which was spent. He will not produce the copy of the bill by which article were purchased for adjustment of the amount. Since certificate of Sakal Rai is not available in BSNL record so he has stated that it is false and fabricated. Further he stated that he is not officer of the records. He has no knowledge of certificate of Sakal Rai.

M.W-4 is Shiv Kumar Singh Sub-Divisional Engineer. He has stated that name of persons in the list of 75 persons submitted by LEO Niranjn Singh have never worked for BSNL Hajipur. He verified it from the record. BSNL has never employed them and they are not employee of BSNL. Documents Extd by Kameshwar Ram are false and fabricated. Certificate of P.N.Singh dated- 25.10.2005 produced by Kameshwar Rai is false. No such certificate is issued. He has also stated about Ext.W/12 certificate is Sri P.N.Singh dated 01.06.2006 produced by Kameshwar Rai is false. No such certificate was issued similarly Ext.-W/3 is false. Generator register Ext.-W/2 from 01.11.2007 to 31.12.2009 is false. Witness Dharmendra Kumar Yadav is working in BSNL.

In cross-examination he stated that he is posted in Hajipur office as Sub-Divisional Engineer in transmission division. He is posted at Hajipur since 2007. He was posted since 2007 at Biddupur sub-division and in September 2014 he was posted at Hajipur. He was never deputed to Mahaua sub-division. Workers of Mahaua sub-division some time arrived at Hajipur so he identifies them. He does not know Niranjn Kumar, Kameshwar Rai. He has seen the signature of P.N.Singh and signature of P.N.Singh on certificate is not similar to signature of P.N. Singh. He had not compared the signature of P.N.Singh. P.N.Singh is alive and at present posted at Mahaua. This witness has no concern with Mahaua sub-division. This witness in question did not reply that certificate may be examined by finger print and hand writing expert and if certificate is found then this witness is responsible for false evidence. Further he has stated that if there is signature of officer on generator register and staff register then it is correct. He used to receive temporary advance amount at Biddupur. Which was utilized in purchase of materials.

He further stated that wages were paid by the Govt. There is pay slip of staff and entire amount is paid to them. He does not know Dharmendra Kumar Yadav. He has stated that he is not working.

M.W-5 is Rajesh Kumar Sub-Divisional Engineer in Hajipur in SSA of BSNL. He further stated that names of persons mentioned in the list of 75 persons submitted by Labour Enforcement Officer Niranjn Singh were never working in BSNL Hajipur. He has verified from record of Hajipur. BSNL never employed them and they are not employee of BSNL. Documents Extd by Gauri Rai is false. No such certificate was issued. According to this witness Ext.-W/20, W/21, W/17, W/18, W/19 are false and fabricated because no such certificate was issued.

In cross-examination he has stated that his name is Rajesh Kumar. He is posted in transmission branch of SAA. This witness is posted at Hajipur since 2002. He was posted till 14.01.2009 as JTO. Certificate Ext.-W/55 is written by him. He became SDO from 14.01.2009. He has stated that from 14.01.2009 to 14.01.2010 there was no casual labour under him. He received temporary advance from 14.01.2009 to 01.04.2010. Material were purchased from temporary advance. He has stated that Niranjn Singh was Govt. Officer. This witness was not posted at Mahaua. Personally, he does not know Gauri Shankar Rai. He has further stated that Gauri Shankar Rai has Extd log book and certificate which appears to be forged. He does not know Ajit Kumar, Jagarnath Prasad and others workers of Mahaua. He does not know about the workers working at Mahaua. He does not know the officer who had issued certificate on 03.07.2006. This certificate is related to administration. Suresh Rai is not related with transmission so he does not him and the document related to him.

M.W-6 is Upendra Kumar Sub-Divisional Engineer in Hajipur of SSA of BSNL. He has stated that in the list of 75 persons submitted by Labour Enforcement Officer Niranjn Singh (Ext.-W/11) have never worked for BSNL Hajipur and he has verified from record of BSNL Hajipur. BSNL never employed those person and there are not employee of BSNL. The documents Extd. by so called Trade Union are false and fabricated documents. Union has produced letter dated- 24.06.2011, 07.06.2011, (Ext.-W/25, W/26) is false and fabricated documents. No letter was received and it cannot be relied on as evidence. Union produced letter dated- 25.04.2009, 03.12.2009 (Ext.-W/33, W/34) is false and fabricated document. Similarly job card dated- 07.03.2010, 06.04.2010 (Ext.- W/49) are false and fabricated documents and no documents is present in our record. Log sheet dated- 08.06.2010, 06.02.2010, 09.09.2010 (Ext.-W/50) are false and fabricated documents. Delivery challan of Milan Enterprises dated- 17.11.2010, 24.12.2010, 17.08.2012, 31.01.2012 (Ext.W/51, W/52) are false and no such documents is present on the record. Ved Prakash was not working in BSNL. He had issued letter dated- 03.04.2010, to DE (A&P), Hajipur and certified that no labour is working in his jurisdiction. This letter has been Extd.

In cross-examination he stated that his name is Upendra Kumar and he is posted at present as Assistant Engineer under Hajipur Dist. Office since 2006. He is posted at Hajipur since the year 2000. He was JTO from 2000 to 2005. JTO means Junior Telecom Officer. He does not remember that this case is of Minimum Wages. He does Know Niranjn Singh. From record it appears that Niranjn Singh is LEO and through him this case has been filed. Case was filed for Minimum Wages.

Further he has stated that Sri S.K.Thakur, AGM Administration has verified written statement (W.S) of this case. He has stated that the documents of the workmen has been stated him by false because in his record those documents were not available. Volountarily he has stated that union has been not recognised. Three union has been recognised and this union is not among three union. He had not seen letter dated- 24.06.2011, 07.06.2011 so he has stated that this letter is false and fabricated. Which is not found on record, is assumed. He false has stated that letter dated- 25.04.2009, 05.12.2009, as false. In this letter there is mention about repair of engine. He has stated that job card dated-07.03.2010, 06.04.2010, 06.04.2010 is false but in which name these job card exist is not remembered by him. Further he has stated that he is not custodian of the record. Custodian will reply that record is maintained is properly or not. He has no concern with administration. He has written that since 01.10.2009 to 28.02.2010, he has not engaged any labourer. Prior to this he has no power to engage labourer even after 28.02.2010 he has not engaged labour.

He had taken temporary advance from department but by that advance no wages was paid. He has not made payment to casual labourer but he had made payment to contract labour. If from temporary advanced payment of wages is proved then his evidence will be wrong. Casual labourer was not under him.

When he was SDO Phone then no labourer contract labour was working under him but contract labourer worked under contractor. As per provision of RTI Act,2005 , information regarding monthly expenditure against above allotment may been seen in consultation with the u/s dated-08.12.2008 subject to information under RTI Act, 2005, document marked with objection Ext.-W/58. Planing or account section know that labourer Provident Fund were deposited or not.

He does not know those labourers who were working under contract. He has no concern with labourers. They had concerned only with work of labourer. Letter of Shankar infotect to DE (A&E) O/o TDM BSNL Hajipur dated- 31.07.2009 has been marked X-for identification. This witness has not knowledge that this case is related with labourer. Further this witness has not knowledge about agitation of union and the case lodged for assult with chief account Officer and or other officer for payment of arrear salary. This witness has not knowledge about the matter related with this case.

M.W-7 (Sheo Shankar Rajak) SDE in Hajipur SAA of BSNL. He has stated that names of persons, in the list of 75 persons submitted by LEO Niranjn Singh (Ext.-W/11) were never working for BSNL Hajipur and he has verified from record of BSNL Hajipur. BSNL never employed them. They are not employees of BSNL . The document Extd. by so called trade union are false and fabricated. Union produced letter dated- 09.07.1993, 01.01.2010, 05.12.2009, 30.04.2006 Ext.- W/43) which are false and fabricated documents. He has verified the letter from BSNL record and no such letter were issued and it cannot be relied. Arbind Kumar is not employee of BSNL. Union produce letter dated- 01.01.2010, 01.04.2003, 23.04.2009, (Ext.-44) which is false and he verified from BSNL record. Union produced log book Ext.-W/47 is false and fabricated documents and he verified these documents from BSNL record and not document is present on their record.

Raushan Kumar was not working in BSNL as employee. He has issued letter dated- 03.04.2010, to DE (A&P) Hajipur and certified that no labour is working under his jurisdiction.

In cross-examination he has stated that that he is STO Ucon and his work is to see office administration and technical work. At present he is posted at Hajipur. He is working at Hajipur as JTO Biddupur and field SDE at Hajipur. He does not look office administration. He has no knowledge about the record related with administration. He does not know Niranjn Singh, LEO. When he was posted at Biddupur then no labourer was working at Biddupur. Amount of temporary advance was spent in technical work or maintainance when he was posted as JTO then he was not entitled to receive temporary advance. He cannot say how amount of temporary advance was spent.

When he was working at Biddupur on the post of JTO, then about 25 line mens were working there and later on they were knows as phone mechine. He was not controlling officer of line men. Office of SDE is stipulated in telephone exchange. At present four line men are working there and one of them was Ajab Lal Rai.

In Mahanar telephone exchange two line man were working they were Ramanand and Rawat . Further he has stated that he does not remember whether he had seen the letter which was stated by him as false and fabricated documents. He does not maintain log book. He had not stated clearly about log book as false. He has not seen the signature of officer and permanent employee on log book. Further he has stated that he had only seen log book and there was no signature.

He does not know Raushan Kumar. About the letter issued by him dated- 03.04.2010 to DE (A&P) Hajipur this witness stated that letter was in the matter payment of less wages to the contract labour engaged in Hajipur SSA for the period 01.10.2009 to 23.02.2010 that casual labourer were not engaged. At that time in his jurisdiction group exchange in Hazipur sub-division was under him. There were 9 exchange in group of exchange. At present there are 43 exchange in Hajipur in SSA. He has knowledge that when matter was not resolved before Regional Labour

Commissioner, (Central) then case was referred here. He has also stated about the letter dated- 06.01.2010 issued by his department in the matter of revision of wages for temporary status mazdoor (casual labour) which has been marked on behalf of the workmen as Ext.-W/57. No appointment letter is issued for contract labourer or casual labourer.

M.W-8 Raj Kapoor Sinha is account officer (cash) in Hajipur SSA of BSNL. He stated that names of persons mention in the list of 75 persons submitted by LEO Niranjana Singh (Ext.-W/11) never worked for BSNL Hajipur and he verified it from the records of BSNL. Documents Extd by so called trade union are false and fabricated documents. Union has produced 4 certificate issued in the name of Sakal Rai Ext.-W/48 are false and fabricated documents and he verified the documents from BSNL record and no such certificates were issued and it cannot be relied on evidence. Sakal Rai was not working in BSNL as employee.

In cross-examination he has stated that he is at present Account Officer in BSNL Hajipur since the year 2003. Prior to 2011 he was junior account officer. He was also posted in Telecom Revenue Account. From record of this case he came to know that Niranjana Singh is Labour Enforcement Officer. He claimed that in the matter of persons related for wages were working in his department, but this is not the facts. Niranjana Singh had complaint and lodge case. Ext.-W/11 is related to Minimum Wages and in the notice of Niranjana Kumar it has been stated that “ You are requested to rectify the irregularities immediate and report compliance within a fortnight direct to the Assistant Labour Commissioner (C) Mourya Lok, A- Block, 2nd Floor, Patna endorsing a copy to the undersigned failing which legal action by way of prosecution / claim will be taken against you / your management.” He has stated that in the oath he has written that the persons mentioned in Ext.-W/11 are not employees of BSNL. Since the year 2003 no demonstration of the union was made in his office. Main gate was never closed by the union. No notice of demonstration etc was given within his knowledge because he was small officer. Question was asked from him that union related with Sakal Rai had produced 4 certificate (Ext.-W/48) and which was found false and fabricated then he has taken action against the union or Sakal Rai or not. This witness replied that when Sakal Rai was not his worker then there was no question for taking action. He has not read over of reference of this case. Further he stated that his employee mention on the file.

8. 58 documents have been Extd. on behalf of the workmen.

Ext.-W/1 to W/3 is the certificate issued on the pad of department of CTO and SDE dated- 25.10.2005, 01.06.2006, and 22.04.2007 is name of Sri Kameshwar Ram that he is engaged maintaining telecom service.

Ext.-W/4 attendance sheet from page 08 to 54 of workman for the period from 01.11.2007 to 31.12.2009.

Ext.- W/5 is the certificate issued infavour of Dharmendra Kumar Yadav through BSNL on 09.07.1993 in which it has been written that Dharmendra Kumar Yadav is working as daily wages worker from 18.12.1991 to 06.12.1992.

Ext.- W/6 is the certificate is the name of Dharmendra Kuamr Yadav stating there in that he working under SDE Mahanar from 2000-2009 which is within the knowledge of SDE from Senior Telecom Officer (A&P) Mahanar.

Ext.- W/7 is the experience certificate issued to Dharmendra Kumar Yadav signed by various customers of telephone in which he has stated that Dharmendra Kumar Yadav is sent for maintaining the telephone and for removal from complain.

Ext.- W/8 is the certificate issued was Hari Nath Singh, Line man, Mahanar stating therein that Dharmendra Kumar has worked 01.07.2002 to 30.04.2006 as daily wages worker and helper of Hari Nath Singh line man.

Ext.- W/9 is also certificate issued by line man Jagbali Rai that Dharmendra Kumar Yadav worked with him from 01.01.1995 to 30.06.2002.

Ext.- W/10 is list of 66 and 7 others workers working in Hajipur Sub-division group Mahaua west and East STE Biddupur / Mahanar, SDE (Group) Bhagwanpur Hajipur daily wages worker certified by Arun Kumar Giri, President, INTUC-cum- Bharat Sanchar Nigam Ltd. Workers Union.

Ext.- W/11 is the letter dated- 28.03.2010 annexures, Govt. of India, Ministry of Labour and Employment, office of Regional Labour Commissioner (Central) by Niranjana Kumar, LEO (C) Patna- 11/ incharge of Muzaffarpur. In which observation made particular of the establishment and irregularity detected has been mentioned alongwith list of 75 workers. All these documents has been marked without objection.

Ext.- W/12 is the letter of EPF dated- 19.05.2011 alongwith annexures this documents also been Extd. without objection.

Ext.- W/13 is the letter dated- 30.06.2004 by Ram Naresh Rai in which it has been stated that he is cable joinder in Mahanar Sub-division.

Ext.- W/14 is the letter dated- 29.01.2010 by Lalan Rai Assistant General Manager, Legal Telecom Manager in which it has been stated that it has been requested not to take co-ercive action against labourer. It has been alleged that BSNL authority has started to telerise the labourer.

Ext.- W/15 & W/16 is the certificate infavour of Sakal Rai casual labourer in Hajipur Sub-division. From April 1992 to March 1993 total 260 days certificate issued by SDO Telephone Hajipur and also period March- 1991 to March-1992, April-1993 to August-1994 February-1994, March-1994.

Ext.- W/17, W/18, W/19 is also certificate in the name of Suresh Rai issued by SDE, Hajipur that Suresh Rai worked from April-1993 to Novemeber-1993, March-1992 to March-1993, March-1994 to August- 1994. Ext.-W/19 is also certificate that Suresh Rai is engaged maintain telecom service under Mahanar jurisdiction.

Ext.- W/21& W/21 is the certificate issued by SDE Telecom West Mahua Vaishali and also by consumer that Gauri Shankar Rai has been deployed for maintaining telecom service during election period under Chaiharcala jurisdiction.

Ext.- W/22 is also out chart of Gauri Shankar Rai and Satrudhan Rai. Ext.-W/22 is also duty chart of Satrudhan Raid and Gauri Shankar Rai.

Ext.- W/23 is the letter sent to Sri Vijoy Kumar, Chief General Manager, BSNL by Dr. S.S.Sharma ALC (C) in matter of complaint by Sri Arun Kumar Giri INTUC and it has been directed to investigate the matter so that relief may be extended to the workmen.

Ext.- W/24 is the letter dated- 08.07.2011 sent to the TDM, BSNL Hajipur by the same ALC (C) for non-payment of wages and direction has been given to the make payment to concerned workmen.

Ext.-W/25 is the letter sent by Arun Kumar Giri to Dist Manager, BSNL Hajipur for permission for agitation in the compus of the Hajipur.

Ext.- W/26 is similar letter dated- 07.06.2016.

Ext.- W/27 is the proceeding under para- 26 B of the Employees Provident Fund Scheme, 1952 marked Ext-W/27. without objection.

Ext.- W/28 is letter dated- 09.08.2010 sent by ALC (C) Patna in respect of I.D and management has been directed to attend before ALC.

Ext. -W/29 is the application submitted by Arun Kumar Giri before ALC as counter reply of letter of BSNL management Hajipur dated- 08.02.2010.

Ext.- W/30 is the notice to Chief General Manager Telecom by ALC (C) Patna.

Ext.- W/31 is to the application given by Arun Kumar Giri to ALC (C) for matter of extortion by the management BSNL Hajipur to daily wagers and contract worker and also clerical staff.

Ext.- W/32 is the application given by Arun Kumar Giri before ALC (C) to investigate the matter and lodge criminal prosecution.

Ext.- W/33 is the letter sent by Arun Kumar Giri to Dist. Manager, BSNL Hajipur.

Ext.- W/34 is the letter given by Arun Kumar Giri to Dist Manager BSNL Hajipur on 15.12.2009 about one day agitation that was received by one by Mr. Thakur by the department this has also been marked without objection.

Ext.- W/35 is the photo stat of conciliation register 01 to 169 pages.

Ext.- W/36 letter dated- 19.05.2005 sent by Assistant Officer sent to Junior Account Officer to arrange to disconnect all defaulting telephone local pay phones.

Ext.- W/37 is the list of disconnection of telephone number.

Ext.- W/38 also list for disconnection of phones due to non payment.

Ext. W/39 is the manual bill issued.

Ext. W/40 is for restoration of telephone.

Ext. W/41 application of one consumer of telephone.

Ext. W/42 certificate issued that Sri Manoj Kumar Pathak is engaged to maintain telecommunications service.

Ext.- W/43 is the certificate that one Arbind Kumar in working on daily wages certificate has been issued by account officer BSNL Muzaffarpur and there is also certificate that Arbind Kumar is working under SDE, Mahnar from 2000-2009, certificate issued by Senior TOA Mahnar, and also by one Jagbali Rai line man that he is working since 15.12.1995 to 30.06.2002 along with Jagbali Rai. One Sri Hari Nath Singh given also certificate Arbind Kumar working from 01.07.2002 to 30.04.2006.

Ext.- W/44 is certificate in respect of Satya Prakash that he is working under SDE Mahnar from 2005 to 2009 certificate has been given by Senior TOA. There is certificate of in respect of Sri Ranjeet Kumar that he worked under SDET (G) Mahua for 2001 to 2002, 2002-2003 certificate has been given by SDE telecom. There is also certificate that Sri Rajesh Kumar Mishra was engaged to maintain telecommunications service.

Ext.- W/45 is documents in respect of initial deposit refund case of some persons. There are also some documents in this Exts which is need not to be considered for deciding the case. There is one letter dated- 01.04.2010 by DE (A&P) to 10 SDE Gramin phone and other and OA cach/transition in subject of loss engaged in Hajipur SSA. In which it has been stated that a list in respect of less wages payment has submitted by LEO (C) Patna vide above mentioned letter is enclosed herewith. Your are requested to go though the list has submitted employment / wages details in respect of contract / casual labourer under your jurisdiction for the period dated- 01.10.2009 to 28.10.2009 and also the present status.

Ext.- W/47 is the photo stat of log book done by several workmen in which details of all and cleaning of fault has been done by several persons of deferent exchange.

Ext.- W/48 is the certificate that Sakal Rai has worked in Hajipur sub-division. On ACG-17 has casual mazdoor. Certificate has been given by SDET Hajipur.

Ext.- W/49 is field service job card of Balaji Engineering Works for service of engine.

Ext.- W/50 is log sheet proforma signed by Engineering Operator Ved Prakash.

Ext.- W/51 is also delivery challan of Milan Enterprises receiver of Ved Prakash.

Ext.- W/52 is also Challan signed by Ved Prakash.

Ext.- W/53 is the letter sent by SDE OCV Hajipur to DE (A&P) TDM Hajipur stating that no labour was engaged during 01.10.2009 to 28.02.2010 and at present no labour is working under his jurisdiction.

Ext. W/54 is letter dated- 03.04.2010 by SDE to DE (A&P) stating that during period 01.10.2009 to 28.02.2010 no casual labour is employed under his jurisdiction.

Ext.- W/55 is also letter sent to DE (A&P) by SDE stating therein that even on 01.04.2010 no such labour is working in his jurisdiction.

Ext.- W/56 is the letter dated- 03.04.2010 by SDE (P) Hajipur to DE (A&P) Hajipur during period 01.10.2009 to 28.10.2010 no casual labourer is employed in his jurisdiction.

Ext.- W/57 is the letter sent by Assistant General Manager to 21 CGMT and others in subject of revision of wages for temporary status mazdoor/casual labourers. In which it has been stated that Kindly find enclosed herewith a BSNL/DOT, New Delhi letter no.- 40-18-2008-Pen(H) dated- 27.07.2009 on the above mentioned subject for information guidance and necessary action.

Ext. W/58 is the information under RTI,2005 regarding subject monthly fund allotted to the SDE (Gr.) Bhagwanpur at Hazipur as details below for period months by from April-2006 to August-2007.

Ext.- X for identification is the letter by Shankar Infotect sent to DE(A&P) office of DDM office of Hajipur of which it has been stated that entry operator has been provided list has been given below.

9. Three documents has been Extd. on behalf of the management.

Ext.- M is the letter dated- 03.04.2010 written by SDE (Plg.) office of the TDM Hajipur to DE (A&P) have been informed by SDE (Plg.) has stated that no such labour was working under my jurisdiction during the period of 01.10.2009 to 28.02.2010.

Ext.- M/1 is the letter dated- 03.04.2010 written by SDE (G) Mahua to the DE(A&P) office of the TDM BSNL Hajipur No.- SDE(G)/MH(E)/10-11/01 by this letter SDE (Plg.) office of the TDM Hajipur has informed to

TDE (A&P) TDM Hajipur that no such labour (contract labour) was working under his jurisdiction during the period of 01.10.2009 to 28.02.2010. Also intimated that no casual labour is employed under his jurisdiction as on date.

Ext.- M/2 is the letter dated 03.04.2010 sent by SDE (G)/HWP to the DE(A&P) office of TDM Hajipur in this letter it has been informed that no casual labour was engaged in period 01.10.2009 to 28.02.2010 and at present no labour is working under his jurisdiction.

10. Written argument has been filed on behalf of the workmen and one decision of the Hon'ble Supreme Court in Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. Life Insurance Corporation of India & Ors. has been filed.

Written argument has already been filed on behalf of the management company. In which it has been stated that union illegally added the name of Sujit Kumar, Parmendra Kumar Sharma, Rajesh Kumar, Sanjay Kumar, Dheeraj Kumar Gupta, Sanjit Mallick, Prakash Kumar and Arvind Kumar Giri, these names were not mentioned in the list of LEO.

It has also been mentioned that there is vacancy in any post, that vacancy is being advertised in the newspaper. Concerned authorities invites application for the vacant post, then either written exam or interview is being conducted and if a candidate is selected, then appointment letter is issued to that selected candidate. After appointment, the candidate is given identity card, P.F Account no and salary is paid monthly through salary slip. Niranjana Kumar, LEO, under Regional Labour Commissioner submitted a report in which it has been shown names of 75 persons found working in Hajipur for the period 01.10.2009 to 28.02.2010. The BSNL never received any notice from Labour Commissioner Office that certain inspection will be conducted. BSNL had challenged the LEO report in the Hon'ble High Court which is still pending for adjudication. LEO has given the period as 01.10.2009 to 28.02.2010 but union has illegally extended this period to last 20 years from 1991 to 2011. Union has filed claim petition on 10.01.2012 stating that 75 persons are casual / temporary. Before Regional Labour Commissioner also BSNL has stated that these 75 so called workmen are not their employees. BSNL in written statement stated that 75 persons name in the list are not the workmen of BSNL. Union claim is false and fabricated. Document Extd. by Kameshwar Ram is not of BSNL these documents are false and fabricated. Witness Dharmendra Kumar Yadav stated that he has not received the appointment letter but he is working since 1991. Documents is Extd. by him are false. Similarly management had denied the documents. LEO never made any inspection and report prepared by him are false and fabricated. LEO never met any officers of BSNL during so called inspection. Documents Extd. by Ram Naresh Rai, Sakal Rai, Suresh Rai, Gaurishankar Rai are false. Similarly documents Extd. by Raushan Kumar is false. They were never issued appointment letter. Witness on behalf of the BSNL has stated that no such labour is working under his jurisdiction. Other witness has submitted the statement of BSNL. All the matter will be considered during finding in this case.

11. While written argument filed on behalf of the workmen is that documents of the management pertaining the contract labour are not related with the case. The document related with the period from 01.02.2009 to 28.02.2009 which could not explain the issue of the case. Hence all the documents are irrelevant. Management failed to prove his case.

12. Matter under reference is "Whether the action of the management of Bharat Sanchar Nigam Limited Hazipur in adopting unfair labour practice by engaging 75 workmen as casual/temporary (list attached) with the object of depriving them status and privileges of permanent workmen is legal & justified. What relief the workmen are entitled to."

13. Documents exhibited on behalf of the management is only the related to the period from 01.10.2009 to 28.02.2010 can not reflect the period of 240 days in one calendar year. Matter for decision is pending for casual / temporary 75 workmen. So documents exhibited by the management does not cover to casual / temporary employee for matter to decide this case.

14. In statement of claim filed on behalf of the union that before the reference, letter of demand was placed upon the management by the union and management did not accept the demand through conciliation proceeding. No settlement could be arrived through conciliation proceeding. The matter was referred. Action of the management by adopting unfair labour practice deprive them status and privileges of permanent workmen since more than 20 years by the management against settled provisions of law. All the 75 casual / temporary persons worked on the various post of class 3 and 4 grade under the management since more than 20 years and still there are performing their duty with their best efforts and performance. Work of Telecom comes under the essential service category and all the staffs were discharging their duty round the clock. Such kind of duty, the role of casual / temporary workmen have become very important. Telephone exchange of Hazipur and various telephone centres are still running smoothly and properly with the help of such class of casual / temporary workmen. In lieu of duty huge amount of payment (salary) is released and

concerned S.D.O disburse the payment among the workmen time to time, but unfortunately the workmen never received correct wages even Minimum Wages as prescribed by the Govt.

They are performing 8 to 12 hours in duty continuously from last 20 years, but did not get benefits of regular workmen. They are not member of E.P.F and E.S.I and E.S.I scheme of Govt. The post on which they discharge the duty are permanent in nature. Inspite of best efforts the concerned workmen could not get their right. Labour Enforcement Officer (C) visited on work-spot and found a number of 75 workmen on duty and they were not getting Minimum Wages. In pursuance of report, proceeding against the management is running under the Minimum Wages Act. A proceeding under para 26B of the Employees Provident Fund Scheme, 1952 is still running. Management of BSNL inspite of regularising the services of 75 workmen, threaten them from disengagement from job. All the workmen are workmen as defined u/s 2(s) of the Industrial Dispute Act, 1947 and the management rendered a public utility services. There are clearly relationship of "Master and Servant" between the management. Management had not issued any appointment letter to concern workmen with view to victimise them. The post on which the concerned workmen are working, is permanent in nature. The post are not a project work, rather it is regular in nature.

15. In the written statement of the management of the company it has been stated that vide letter dated- 29.03.2010 received from Labour Enforcement Officer, a list of 75 workers alleged to be working in the establishment of BSNL, Hajipur and they were not paid minimum wages. The Labour Enforcement Officer did not disclose that inspection dated- 09.03.2010 was conducted in the presence of any official of the company. He did not disclose where these workers were working as there are various BSNL exchanges and offices situated under the control of the company. Reply was filed before Regional Labour Commissioner and it was submitted by the company that the workers mentioned in the LEO report are not their employee. Regional Labour Commissioner without deciding the issue raised by the company in their reply, sent the report to the Govt. of India, is illegal and contrary to settled principle of law. Company have not employed any persons mentioned in the list attached, the allegation of unfair labour practice is meaning less. Persons mentioned in the list have never worked for the company and Labour Union is making false allegation against the company. Company has preferred writ petition in the Hon'ble High Court to quash the illegal report of LEO. Company is not liable to pay any wages and they are not employees of the company and claim of payment made through vouchers is false. Labour union accepted that the persons mentioned in the list were never issued any appointment letter by the company. Labour union has interpolated eight names of the persons in the list received with reference.

16. W.W-1 (Kameshwar Ram) has stated that he is working under BSNL, Hajipur at Kanhauli Telephone Exchange as lineman and generator operator. He is paid to Rs. 1500/- monthly by SDE. He is also stated that without lineman and generator operator exchange can not run smoothly. He has not been given benefits of permanent employee.

In cross-examination he has also stated that he works in Kanhauli Telephone Exchange though appointment letter has not been given to him but it has not been denied that he is not working in Kanhauli Telephone Exchange. As such it will be assumed that he is working since 2000 in Kanhauli Telephone Exchange as lineman and generator operator. It has also been challenged that without lineman and generator operator telephone exchange cannot run. This witness in examination in chief has stated that LEO, Patna has inspected his work place and of his work and that has not been challenged in cross-examination.

W.W-2 (Dharmendra Kumar Yadav) has also stated that he is working since 1991 at Mahanar Telephone Exchange on the post of lineman cable joiner. He has also stated that without lineman and cable joiner telephone exchange cannot run.

In cross-examination he has also stated that he is working since 1991. No advertisement was published for appointment. He was informed by lineman the person who wants to work may work later on appointment letter will be given, name of lineman was Pudaina Paswan. It has not been challenged in cross-examination that he was not working since 1991 as lineman and cable joiner. In cross-examination he has stated that from Ext.-W/6 it appears that he was daily wages workers. In cross-examination he has stated that Senior Account Manager Sri Satish Singh has issued the letter but he has not taken from him.

W.W-3 (Arun Kumar Giri) is the President of BSNL Workers Union. He has stated that along with notification there is list of workmen he identifies all of them which is Ext. W/10. He has also proved Ext.-W/11 letter issued by L.E.O (C) list of name of workmen and their arrear of salary. On 21.01.2011 BSNL Hajipur has accepted before Regional Labour Commissioner, central that he will pay arrear amount of all the workmen within two months. He has also stated that work is taken from related workmen for the whole day in months. He has also stated that Head Office allots advance amount for the salary of daily wage workmen but management does not make payment. He has also stated that about 200 are vacant post under management and permanent appointment may be made on all the permanent post. The post, on which related workmen are working, are permanent and sanctioned. Maximum permanent

employee RM and PM were daily wagers. He has stated that LEO had prepared list all the workmen working during inspection. But apart from that list names of all the workmen is not in the list.

In cross-examination he has stated that he is representing since 2008. Union was registered in 2010. He does not know whether BSNL recognised this union or not. He has also stated that BSNL is under Central Govt. and there is regulation for appointment and under this process they have demanded for appointment of the workmen. Some of workmen were appointed on muster roll but due to conspiracy, muster roll was changed and payment was made through voucher ACG-17. Later on this system was closed and payment is made through ACG-II & III on which name of workmen is not mentioned only Coolie is written. Workmen are daily wages workmen. SDO granted certificate to some workmen. During inspection of LEO SDE, Biddupur, Shiv Kumar, SDE, Mahua, Sri P.N.Singh, SDE, Hajipur, Sri Upendra Roy and subdivisional engineer phone were present. They have not signed even on request of LEO. LEO has prepared report which have been filed. In cross-examination it has not been challenged the report of LEO and that work is taken from all the workmen on all the date in months. It has also been not challenged that all the workmen work since many years.

W.W-4 (Ram Naresh Rai) is working since 1993 at Sahadai Bujurg, Vaishali Telephone Exchange that has not been challenged in cross-examination. Only he has stated that appointment letter and identify card were not issued to them. He has also stated that Ext.- W/13 was prepared by Head Clerk, Hari Nath Singh and he has put his signature.

W.W-5 Sakal Rai has stated that he is working since 1990 in Jandhaha Telephone Exchange on the post of lineman and generator operator, that has not been challenged in cross-examination.

W.W-6 Suresh Rai has stated that he is working since 1992 is Kanhauli Telephone Exchange on the post of lineman and generator operator, that has not been challenged in cross-examination.

W.W-7 Gauri Shankar Rai has stated that he is working since 1998 in Chaiharakala Telephone Exchange on the post of lineman and generator operator. This facts has not been challenged in cross-examination.

In cross-examination he has stated that he works all the 30 days and 24 hours.

W.W-8 Raushan Kumar has stated that he is working since 2003 in Hajipur Telephone Exchange on the post of lineman and generator operator. He works for 24 hours. In cross-examination this facts has not been challenged.

17. Exts.- W/1, W/2 & W/3 are certificates that has been exhibited without objection and management should have challenged it from the concerned persons who has granted the certificate but that has not been done. There is list attached Ext.-W/4 also signed by Kameshwar Ram. When Kameshwar Ram had not been working then why signature obtained from him as operator. As operator Ramji Rai has also signed it means he is working in BSNL. This documents is of 54 pages and not challenged by the management. Ext.-W/4 is the attendance sheet it has not been challenged. Ext.-W/5 is the certificate granted by SDE is name of Dharmendra Kumar Yadav stating therein that he works under the department as daily wagers worker, that have not been challenged. Ext.-W/6 is the certificate granted senior TO (A&P). This documents have been marked without objection. There is also Ext. W/7 signed by various customer of telephone exchange marked without objection. Ext.-W/8 is also certificate granted by Hari Nath Singh, lineman is name of Dharmendra Kumar Yadav. Ext.-W/9 is certificate granted by lineman Jagbali Rai, that has not been challenged. Ext.-W/10 is the list of 7 & 66 persons which has been marked Exts without objection. Ext.-W/11 is the letter of Niranjan Singh, LEO (C) sent to BSNL stating about the inspection report by which it has been stated that in respect of minimum rates of wages irregularities were observed, that has also been marked without objection. He has mentioned the list of 75 workmen, that has been marked without objection. Ext.-W/12 is the letter of RPFC-II/OIC in which it has been stated that, non represented the establishment in proceedings under para 26 B of the Employees Providents Fund Scheme 1952, list of the workmen has not mentioned who attended the proceeding. But Sri Arun Kumar Giri, President INTUC as President. Ext.-W/13 is the letter to District Manager Telephone Hajipur for payment of arrear of salary, this was received by TTA / DSI this documents has been marked Exts. without objection. Ext.-W/14 is the letter given by Lalan Rai, Assistant General Manager (Legal) to Telecom District Manager, Hajipur directing not to take co-ercive action against the workmen. Ext.-W/15 is certificate of SDO Telegraph this is the certificate that Sakal Rai has worked as casual mazdoor in Hajipur sub-division, this has also been Extd. without objection. Exts.- W/16, W/17, W/18, W/19 are the certificate in name of Sakal Rai, Suresh Rai, on different dates that has been Extd. without objection. Ext.-W/20 is the certificate granted in name of Gauri Shankar Rai that he has been deployed for the maintaining telecom service granted by SDE, Mahua, Vaishali. Ext.-W/21 is the certificate granted by Mukhiya and signed by several customers. Ext.-W/22 is the duty chart in favour of Gauri Shankar Rai. This has also been marked Ext. without objection. Ext.-W/22 demonstrates change of mobil etc. Ext.-W/23 is the letter given to Sri Vijoy Kumar the Chief General Manager, BSNL, Patna by Assistant Labour Commissioner, Central in subject matter of payment of outstanding wages to daily rated workers & reinstatement their services. Ext.-W/24 is the letter given to the TDM, BSNL, Hajipur by Assistant Labour Commissioner (C), Patna regarding complaint of workers and direction has been

given to make payment to the concerned workers. Ext.-W/25 & W/26 is the letter by Arun Kumar Giri given to Dist. Manager, BSNL, Hajipur stating about agitation in the compus of BSNL. Ext.-W/27 is about statement of complaint in proceeding under para-26B of the Employees Provident Fund Scheme, 1952. Ext.-W/28 is the letter given to the Chief General Manager Telecom, Patna by Assistant Labour Commissioner Central, Patna in subject of unfair labour practice. It has been stated that Sri Ravindra Kumar DE (Admn), BSNL was authorised to attend the joint discussion in conciliation proceedings. It was felt that Sri Ravindra Kumar is not in a position to take decision and implement the commitment made by him before the conciliation officer. Ext.-W/29 Counter reply of BSNL by Arun Kumar Giri. Ext.-W/30 is the letter given to the Chief General Manager Telecom, Patna about unfair labour practice against contract labourer. Ext.W/31 is the application is given by Arun Kumar Giri before Assistant Labour Commissioner and it has been stated that wrong information has been given by BSNL against the demonstration by workmen. Ext.-W/32, W/33, W/34 are also letters given by union to Assistant Labour Commissioner, Central, Patna, District Manager, BSNL, vaishali. Ext.-W/35 to Ext.W/41 are not related to decide the this case because it is Rahat and conciliation register and for about disconnection or defaulting telephone due to non payment of bills. Ext.-W/42 is the certificate granted by SDE to Manoj Kumar Pathak about his engagement to maintain telecommunication service. Ext.-W/43 is the certificate granted by office of SDE infavour of Arbind Kumar that he was working at daily wages worker. There is also certificate granted by Senior T.O A & P Mahnar, that Arbind Kumar is working under SDE GR Mahnar from 2000-2009. There is also certificate granted by lineman Jagbali Rai that Arbind Kumar was working with him since 05.12.1995 to 30.06.2002. There is also certificate granted by Sri Hari Nath Singh lineman, Mahnar, that Arbind Kumar working since 01.07.2002 to 30.04.2006 with him as daily wages worker, His work was satisfactory. Ext.-W/44 is certificate granted by Senior T.O (A&P) that Satya Prakash was working under SDE (GR) Mahnar from 2005 to 2009. There is also certificate granted by SDE west Mahua that Sita Ram Rajak has worked in Mahua Telephone Exchange for two years 2001 to 2002 and 2002-2003. There is also similar certificate granted to Rajesh Kumar Mishra who was maintain telecommunication service. Ext.-W/45 is the order sheet of refund case of submission of completed A/ notes and a letter given by Umesh Patel to SDE Mahaua East for changing the cable. Ext.-W/46 is the letter sent to SDE and AO cash sent by DE (A&P) office of TDM Hajipur for payment of less wages. It has been mentioned that LEO (C) Patna has submitted letter in respect of less wages payment. As such less wages payment was found by the LEO (C) and SDE has asked to submit employment of wages in respect of contract casual labour for the period 01.10.2009 to 28.02.2010. Ext.- W/47 is log book from the period 01.01.2007 to 31.07.2010. Ext.-W/48 is certificate about the work of Sakal Roy granted by SDET Hajipur. Ext.-W/49 are related to the work done by kirloskar Oil Engines Ltd. Pune and Ext.-W/50 is also log sheet proforma by Balaji Engineering Works which indicate that work was being done. Ext.-W/51 is work done by Milan Enterprises. Ext.-W/52 is the challan of Sharma Industries. Ext.-X for identification is the letter given by Shankar Infotech sent to DE (A&P) in respect of data entry work under SSA. Ext.-W/55 is the letter given by SDE (Inst) to SDE office of TDM, Hajipur about none engagement of such contract / casual labour in his jurisdiction. Ext.-W/56, letter sent to DE (A&P) the TDM BSNL, Hajipur written by SDE (P) H.P dated- 08.04.2010 for payment of labour minimum wages to the contract labour engaged in BSNL. Ext.-W/58 is the letter sent by Assistant General Manager to 21 officers regarding revision of wages for temporary status mazdoor/casual labourers by which information guidance and necessary action has been directed by BSNL / DOT, New Dehli. Ext.-W/58 is the documents about the monthly fund allotted to the S.D.E, Hajipur.

18. Witness examined on behalf of the management M.W-1 has stated that name of the persons in the list of 75 persons submitted by LEO Niranjan Singh never worked for BSNL, Hajipur. No reason has been explained how the LEO has mentioned the list of 75 persons. Even the documents relied by Ram Naresh Rai has been stated as false and fabricated documents. Persons who is said to have given the document have not been examined by the management. So evidence of this witness cannot be relied upon. Further in cross-examination he has stated that he has no knowledge about case file of this case. He does not know the written statement filed by Ram Naresh Rai. The person as signed as SDE and JTO has not been examined. So this witness is not reliable. Further he has stated in para-16 stated that there is no record about maintenance of generator and telephone connection of subscriber. He has also stated that when complaint is made before SDO then he sends casual labourer to work. In para-17 he has stated that in the year 2010 at Hajipur there were 20-22 staff for maintenance of telephone.

M.W-2 has not stated how the list of 75 persons submitted by LEO is false. He has not stated that persons who had signed letter and certificate, how had not been examined, so witness is not reliable. In cross-examination he has stated that he was never posted at Biddupur and Mahanar sub-division. He has also stated that he has signed the document filed by Dharmendra Kuamr Yadav and the authority to whom document is related and where they are post was not known to him. He has also stated that record is not available in the office that Dharmendra Kumar Yadav was working on muster roll. Since the record was not found in the office of BSNL Hajipur, he was stated that Ext.-W/5 is false. The record which were not found in his office, is false. He has also stated about signature of Hari Nath Singh but Hari Nath Singh not been examined. As such evidence is also not to the point and not reliable.

M.W-3 Alok Ranjan has also stated that Ext.- W/11 list of 75 persons submitted by LEO (C) Niranjn Singh never worked for BSNL, Hajipur. He verified from the record but how the list of persons submitted by the LEO is false has not been stated. In cross- examination he has stated that he is posted in main exchange in the Hajipur. This witness has no knowledge whether prior to 01.10.2009 any workmen worked there or not. He has stated Ext.-W/53 is correct and it has been stated that no workmen worked for period from 01.10.2009 to 28.02.2010. This period is of four months but the case is not related to four months. So his evidence is also not reliable. Similar is the evidence of M.W-4. He does not know Niranjn Singh (LEO). He has stated that there was no need to compare signature of P.N.Singh and P.N.Singh is alive and it is posted at Mahua. This did not reply to the question whether finger and handwriting of P.N.Singh may be examined by the expert. This witness has been arrived only to give evidence against Kameshwar Ram. Further he has stated that if there is signature of officer and staff on generator register, then it is correct. In para-17 he has stated that wages is being paid by Govt. and full amount was paid. Report is wrong that less payment was made. He has stated that he has knowledge that prior to 01.10.2009 to 28.02.2010 no labourer was working.

M.W-5 Rajesh Kumar is the SDE he has also stated that persons mentioned in the list of 75 persons submitted by LEO, never worked for the BSNL. He verified it from record. He has also stated that certificate produced by Suresh Rai is false. In cross-examination he has stated that he worked at Hajipur from the year 2002. He has proved Ext.-W/55 written by him. He has stated that from temporary advance articles were purchased. Wages were not paid. Evidence is not clear & specific.

M.W-6 Upendra Kumar who also stated that list of 75 persons submitted by LEO (C) (Ext.-W/11) corrected as (Ext.-W/10) never worked for BSNL Hajipur. This witness also stated that job card Ext.-W/49 are also false log sheet Ext.-W/50 are false, how the log sheet are false has not been explained. If the documents is not available with the office of BSNL Hajipur then cannot be said as false. Delivery challan of Millan Enterprises are false, it has not been stated that Millan Enterprises and other company came into collusion with the union. In para-14 it has been stated that from record it appears that Niranjn Singh is LEO. Niranjn Singh Govt. Officer and independent body, then his report cannot be denied. Further in para-19 he has stated that he is not custodian of records. Only custodian will reply whether record has been maintained properly or not. In para 23, he has stated that he does not know the labourers who were working under contractor. He has also stated that letter of Shankar infotech is not related with him.

M.W-7 Sheo Kumar Rajak is SDE in Hajipur SSA. He has also stated that name of the persons mentioned in the list of 75 persons submitted by Niranjn Singh never worked for BSNL. He has also stated about the document submitted by union but he has not challenged the Ext.-W/11 corrected as Ext.-W/10 list of 75 persons submitted by LEO.

M.W-8 Raj Kapoor Sinha has also stated that persons mentioned in the list of 75 persons submitted by the Niranjn Singh has never worked in the BSNL but that has not been challenged by the management and this witness. In cross-examination he has stated that when he was posted in telecom revenue account, then he came to know that Niranjn Singh is posted at LEO. In para-9 he has stated that in notice sent by Niranjn Singh, it has been stated that “ You are requested to rectify the irregularities immediate and report compliance within a fortnight direct to the Assistant Labour Commissioner (C) Maurya Lok, A- Block, 2nd Floor, Patna endorsing a copy to the undersigned failing which legal action by way of prosecution/ claim will be taken against you/ your management but whether conciliation has been made/done has not been brought on record.

Ext.-M is the letter dated-03.04.2010 sent by SDE (Plg) office of TDM, Hajipur to the DE (A&P) by which it has been stated that during the period 01.10.2009 to 28.02.2010 no casual labour was employed under his jurisdiction as on date. Similar is the letter Ext.-M/1 sent by SDE (G) Mahua (E) to DE (A & P) office of the TDM, BSNL, Hajipur and Ext.-M/2 is the similar letter sent by SDE (U) Hajipur. This letter are related only for the period of four months.

FINDINGS

19. Since there is specific evidence of the witnesses of the workmen that Kameshwar Rai was working since 2000 at Kanhauli telephone exchange as lineman and generator operator which has not been challenged.

Similarly the evidence of Dharmendra Kumar Yadav that he was working as lineman and cable joiner since 1991, have not been specifically challenged even in cross-examination of this witness. W.W-3 Arun Kumar Giri is the president of union. He has stated that about the case of the workman. Evidence of W.W-4 Ram Naresh Rai that he worked since 1993 have not been challenged, even in cross-examination. Evidence of Sakal Rai that he worked since 1990, have not been challenged in the cross-examination. Evidence of M.W-6 Suresh Rai that he worked since 1992, has not been challenged in cross-examination. Evidence of W.W-7 Gauri Shankar Rai that he was working since 1998, has not been challenged in cross-examination. Evidence of W.W-8 Raushan Kumar that he is working since 2003, has not been challenged in cross-examination.

Result of cross-examination goes in favour of workmen. There is no protest on the report of LEO (C). As such matter is adjudicated and award is passed infavour of the workmen on the basis of list of LEO that less payment is given to the workmen who was working in different exchanges of BSNL, Hajipur. It has also been not challenged that list is wrong because nothing has been demonstrated by the management during evidence in this regards.

Hence award is passed that action of the management of Bharat Sanchar Nigam Limited, Hazipur in adopting unfair labour practice by engaging 75 workmen as casual / temporary (list enclosed) with the object of depriving them status and privileges of permanent workmen is not legal & not justified. The workmen are entitled to get relief in view of decision of the Hon'ble SC of India in Civil Appeal No.- 6950 of 2009 in case of Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. Life Insurance Corporation of India & Ors. Minimum wages has fixed by Govt. of India. They are entitled to get status and benefit of permanent and regular workmen of BSNL Hajipur.

The judgement mentioned above of the case of Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. Life Insurance Corporation of India and Ors in also reported in 2015-II-LLJ-335 (SC) and it has been held tha award in relation to absorption of the workmen as permanent workmen in the company got statutory force. Company was directed to absorb workmen in permanent post and consequential benefit to be paid if workmen attend superannuation. It has also been held that company have to absorb the concerned workmen in permanent post and if they have attained the age of superannuation, the company will be liable to pay all consequential benefits including monetary benefits taken into consideration the pay scale and revised pay scale from time to time by company. Such benefits should be paid by the management also in this case. It is needless to say that they have workmen have got no appointment letter and no identity card because management failed to prove that they have not working under the management since long.

Further in view of 2015-II-LLJ-257 (SC) in this case Industrial Tribunal held that non regularisation of the workmen not justified and directed the company to regularise the services which was upheld by Hon'ble High Court. Further it has been held that Industrial Tribunal got every power to adjudicate Industrial Dispute and impose upon employer new obligations to strike balance and secure Industrial peace and harmony. Tribunal rightly passed award directing company to regularise service of concerned workmen. In this case concerned workmen are all victim of unfair labour practice having been employed by the company for several years on temporary basis and even though they were not appointed by following procedure laid down by corporation for recommitment. They were entitled for regularisation and that their appointment cannot be stated in illegal.

In 2001 1AD SC 327 it has been hold that working for long period on ad-hoc basis without any complaint and by itself is a sufficient requisit qualification. It has been further held that if work is taken by the employer continuously from daily wage workers for a long number of years without considering there regularisation for its financially gain as against employees legitimately claim has been held by this court repeatedly as a unfair labour practice. In facts taking work from daily wage workers or ad-hoc appointee is in always viewed to be only for the short period or as a stop gap arrangement.

Pattern shows work to be taken continuously year after year, there is no justification to keep such persons hanging as daily rate workers, and if continuously work is required it could only do so by creating permanent post.

Further case is reported in 2004 (3) PLJR in case of Awadesh Kumar and State of Bihar it has been held that daily wagger working for a long period on sanctioned post but have not been regularised and deppicts a sad picture of harrashment to the inferior service employees-- direction issued for their regularisation.

AWARD

20. Considering all the evidence and law points and decisions in several cases of the Hon'ble Supreme Court it appears that all the 75 workmen have been deprived from status and privileges of permanent workmen and management company has done unfair labour practice. In this circumstances the award is answered the action of the management of Bharat Sanchar Nigam Limited, Hazipur in adopting unfair labour practice by engaging 75 workmen as casual / temporary (list attached) with the object of depriving them status and privileges of permanent workmen was not legal and not justified. All the workmen are entitled to be regularised with immediate effect they will get all the privileges of permanent workmen they will also entitled to get all consequential benefits.

This is my award accordingly.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 13 जुलाई, 2016

का.आ. 1477.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान साल्ट्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ आईडी सं. (सीजीआईटीए) 71/2014] को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-42011/40/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2016

S.O. 1477.—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. (CGITA) 71/2014] 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 Hindustan Salts Limited and their workman, which was received by the Central Government on 12.07.2016.

[No. L-42011/40/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 24th June, 2016

Reference: (CGITA) No. 71/2014

The General Manager,
Hindustan Salts Ltd.,
Kharagoda, Surendranagar

...First Party

V/s

The Secretary,
New Gujarat Mazdoor Manch,
28-B, Narayan Park,
B/h Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat) – 332424

...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/40/2014-IR (DU) dated 15.07.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Hindustan Salts Ltd., Kharagoda, Surendranagar in terminating the services of Shri Prahaladbhai Chundabhai and Shri Chandubhai Karmanbhai and not granting the benefit of wages and service condition to all other employees is justified? If not, what relief the employees of Hindustan Salts Ltd are entitled to?”

The reference dates back to 15.07.2014. The second party workmen Prahladbhai Chundabhai and Chandubhai Karmanbhai filed the settlement document Ext. 3 with the oral request to dismiss the reference as not pressed.

The reference is said accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 जुलाई, 2016

का.आ. 1478.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट ऑफिस, जामनगर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ आईडी सं. (सीजीआईटीए) 34/2005] को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-40012/129/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2016

S.O. 1478.—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. (CGITA) 34/2005] 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 Post Office, Jamnagar and their workman, which was received by the Central Government on 12.07.2016.

[No. L-40012/129/2004-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 23rd June, 2016

Reference: (CGITA) No. 34/2005

The Superintendent of Post Office,
Central Sub Division,
Jamnagar (Gujarat) – 361001

...First Party

V/s

Ms. Nayanaben K Karena,
Residence Rental,
Kalawad, Tal. Jam Bhanvad,
Jamnagar (Gujarat)

... Second Party

For the First Party : Shri P.M. Rami

For the Second Party : Shri I.C. Khan

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/129/2004-IR (DU) dated 24.03.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Department of Posts, Jamnagar in terminating the services of Ms. N.K. Karena, EDBPM, w.e.f. 06.08.2003 is legal and justified? If not, what relief the workman is entitled to?

1. The second party, workman named N.K.Kareena submitted his Statement of Claim Ex-3. Brief facts of the case are that he was appointed as EDBPM (Extra Department Branch Post Master) in one of the sub post office in the district on 9th December 1999 where he served the department from 9th December 1999 to 6th August 2003. He further stated that he was recruited in the department through Employment Exchange of the said district. He served the department for more than 240 days in each year. But she was relieved from the service without following the due procedure of law on 6th August 2003 by way of termination order by way appointing regularly appointed employee despite the fact that she served the department for more than 240 days in each last three years.
2. The first party, Superintendents of Post Offices vide his Written Statement Ex-10 stated that the provisions of The Industrial Disputes Act 1947 do not apply in the matter of second party, being Extra Departmental Agent as applicant/second party was not appointed by way of regular selection. His appointment was purely provisional as Extra Department Branch Post Master, Rentala Kalavad purely on temporary basis from 3rd January 2000 to 1st June 2000. Thereafter her father, Kanjibhai N Kareena worked as Extra Department Branch Post Master, Rentala Kalavad from 2nd June 2000 to 16th August 2000. He was also terminated on 16th August 2000.
3. The first party, Superintendents of Post Offices further submitted that regular selection of Post Master was still pending on 16th August 2000, therefore applicant/ second party was again appointed as Extra Department Branch Post Master o 17th August 2000 purely on temporary and provisional basis only for the period of 60 days making very much clear to her that she will not have claim on the said post.
4. Meanwhile the regular selection on the said post was made and regularly selected candidate named Ramshi H Vashra was appointed but the applicant/ second party approached the Central Administrative Tribunal by filing OA No.689 of 2000 and obtained stay order/status quo on 27.10.2000 from the Tribunal. The said petition OA No.689 of 2000 was finally disposed of on 6.6.2001 as dismissed. Thus the service of the second party for more than 240 days in each year was due to the reason of the status quo order of the Central Administrative Tribunal obtained by her and not in the due course of period. Thus second party can take the benefit of the same.
5. It is further submitted that regular selection was made by inviting application through Employment Exchange by way local advertisement and notification and on completion of process, one Rh Vasra was selected and appointed. But the applicant/second party was appointed under the provisions of Post and Telegraph, Extra Departmental Agents, Conduct and Service Rules, 1984.
6. As the applicant/second has been legally and rightly relieved from the service, therefore her termination cannot be said to be illegal.
7. By perusal of the pleadings following issues arise:
 - (A) Whether the applicant/second party has any claim or right on the questioned post being appointed under Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other Rules applicable to Extra Departmental Agents?
 - (B) Whether the questioned termination order is illegal and unjustified?
8. Both issues are inter related, therefore, are taken up together. The applicant/second party, N.K.Kareena herself was examined, she supported the pleadings and admitted to be appointed as Extra Departmental Agents, thus presumably under Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other Rules applicable to Extra Departmental Agents.
9. I have perused the whole oral and documentary evidence of both the parties. It is noteworthy that second party/ workman has not submitted her appointment letter issued to her by the opposite/second party. But the First party has filed the appointment letters of second party workman as well as her father both reveal that both were appointed under Extra Departmental Agents(Conduct and Service) Rules, 1964, as amended from time to time and all other Rules applicable to Extra Departmental Agents. These both appointment letters reveal that both of them were offered the appointment on provisional basis having no claim on the said posts also making it clear that they will be relieved from service as soon as regular appointment on the said posts are made. As the second party has not filed any contrary evidence, therefore this tribunal has no option but to believe the appointment letters submitted by first party and fully proved by Satywadi Biswal, Superintendent of Post Offices in his testimony. Thus it is proved that the second party/workman as well as her father were appointed under Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other Rules applicable to Extra Departmental Agents and have no right to continue to serve on the said post after regular appointment is made of one of the regularly selected candidate.
10. The second party made an argument that despite being appointed under Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other Rules applicable to Extra Departmental Agents; she served the department for more than 240 days in each three years, therefore, entitled to be appointed as regular employee. The said fact has not been disputed by the first party. But it has been argued that second party served for

more than 240 days under the protection of stay/ status quo order passed by Central Administrative Tribunal by filing OA No.689 of 2000. Had this order not been passed by Central Administrative Tribunal by filing OA No.689 of 2000, she would not have served for more than 180 days. Therefore, the second party cannot be said to be entitled of this benefit as the aforesaid Extra Departmental Agents (Conduct and Service) Rules, 1964, as amended from time to time and all other Rules applicable to Extra Departmental Agents makes it very clear that Extra Departmental Agents has no right on appointed posts specially it has also been made clear in appointment letter as well. Thus the contention of first party that she cannot be said to have served for more than 240 days as she served for more than 240 days under the protection of stay/ status quo order passed by Central Administrative Tribunal by filing OA No.689 of 2000, is legally tenable.

11. Thus in the light of the aforesaid discussion, I come to the conclusion that the action of the Department of Posts, Jamnagar in terminating the services of Ms. N.K. Karena, EDBPM, w.e.f. 06.08.2003 is legal and justified.

12. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 जुलाई, 2016

का.आ. 1479.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ आईडी सं. (सीजीआईटीए) 1249/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-40012/60/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2016

S.O. 1479.—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. (CGITA) 1249/2004] 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 Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 12.07.2016.

[No. L-40012/60/2003-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 29th June, 2016

Reference: (CGITA) No. 1249/2004

The General Manager,
BSNL, New Telephone Exchange Building, Jorawal Palace,
Banaskantha,
Palanpur (B.K) – 385001

...First Party

V/s

Shri Dinesh V. Nayak & others,
C/o Shramjivi Kamdar Sangh, Pitamber Mehta Madh,
Moti Bazar Road,
Palanpur (B.K) – 385001

...Second Party

For the First Party : Mr. Punil I. Shah and Mr. Sunil J. Parikh

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/60/2003-IR (DU) dated 22.03.2004 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of BSNL, Palanpur not to give employment to Shri Dinesh Nayak and three other (Sh. K.C. Thakor, Sh. M.K. Solanki & Sh. M.B. Solanki) is justified or legal? If not, what relief the workmen are entitled for and since when?”

1. The reference dates back to 22.03.2004. Second party submitted the vakalatpatra Ext. 3 of his advocate on 12.10.2004. First party also submitted the vakalatpatra Ext. 4 of his advocate on 07.12.2004. Second party submitted the statement of claim Ext. 6 on 04.01.2005. First party also submitted the written statement Ext. 8 on 13.12.2005. Second party submitted the affidavit Ext. 11 as examination in chief on 19.03.2010 after a lapse of 5 years. Since then, the second party has not been turning up to get himself cross-examination by the first party. Advocate of the first party is also present today. Thus, it appears that second party is not willing to prosecute the reference and reference is fit to be dismissed in default of the second party.
2. Thus, the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 जुलाई, 2016

का.आ. 1480.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिपार्टमेंट, राजकोट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ आईडी सं. (सीजीआईटीए) 990/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-40012/112/95-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2016

S.O. 1480.—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. (CGITA) 990/2004] 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 Telecom Department, Rajkot and their workman, which was received by the Central Government on 12.07.2016.

[No. L-40012/112/95-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 23rd June, 2016

Reference: (CGITA) No. 990/2004

The General Manager,
Telecom, Rajkot Distt,
Near Girnar Cinema, Rajkot – 360001

...First Party

v/s

Shri Premkishore J. Soni
C/o M.K. Parmar,
12, Mahatma Gandhi Road,
Road – 360001

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/112/95-IR(DU) dated 30.11.1995 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the G.M., Telecom, Rajkot in terminating the services of Shri Premkishor J. Soni is legal and justified? If not, to what relief the workman is entitled?”

The reference dates back to 30.11.1995. Second party submitted the statement of claim Ext. 3 on 29.01.1996 and first party submitted the written statement Ext. 6 on 09.12.1996. Thereafter both the parties submitted their documents. A witness Dinesh was party examined on 22.09.1997. Then he stopped coming to the tribunal despite the fact that the first party submitted the affidavit-cum-examination in chief Ext. 56 on 11.11.2011 but since then second party has not been appearing in the case for cross-examination of the witness of the first party. Thus, it appears that the second party is not willing to prosecute/proceed the reference.

Thus, the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 जुलाई, 2016

का.आ. 1481.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट ऑफिस, अहमदाबाद के प्रबंधन के संबंधित नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ आईडी सं. (सीजीआईटीए) 303/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2016 को प्राप्त हुआ था।

[सं. एल-40012/05/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 13th July, 2016

S.O. 1481.—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. (CGITA) 303/2004] 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 Post Office, Ahmedabad and their workman, which was received by the Central Government on 12.07.2016.

[No. L-40012/05/2000-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 29th June, 2016

Reference: (CGITA) No. 303/2004

The Assistant Supdt. of Post Office,
AM Division,
Ahmedabad (Gujarat) – 380009

...First Party

V/s

Shri Laxman K. Galsar,
687/4, Bakarali's Wadi, Mirzapur Road,
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri D.R. Patel

For the Second Party : Shri B.N. Dave

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/5/2000-IR (DU) dated 30.05.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the Asstt. Supdt. Of Post Office, Ahmedabad Division in terminating/discontinuing Shri Laxman K. Galsar, E.D. Packer, Gujarat Vidhyapith Post Office, Ahmedabad w.e.f. 07.04.1998 is legal and justified? If not, to what relief the concerned workman is entitled to?”

1. The reference dates back to 30.05.2000. The second party submitted the statement of claim Ext. 9 on 19.03.2004 along with the vakalatpatra Ext. 10 of his advocate. First party submitted the written statement Ext. 12 along with the vakalatpatra Ext. 13 on 25.01.2005. Since then, the second party has been absent for leading evidence despite the fact that advocate for the first party moved an application Ext. 18 for closure of the evidence of the second party. Thus, it appears that second party is not willing to prosecute the reference and reference is fit to be dismissed in default of the second party.

2. Thus, the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 14 जुलाई, 2016

का.आ. 1482.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरिएण्टल सिक्वोरिटी सर्विस एंड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ केस सं. 08/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2016 को प्राप्त हुआ था।

[सं. एल-42012/156/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 14th July, 2016

S.O. 1482.—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. 08/2014) of the Central Government Industrial Tribunal-cum-Labour-Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Oriental Security Service and Others and their workman, which was received by the Central Government on 06.07.2016.

[No. L-42012/156/2013-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

Present:

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

INDUSTRIAL DISPUTE CASE NO. 08/2014

L-42012/156/2013-IR (DU), dated 12.02.2014/18.02.2014

Date of Passing Order – 13th June, 2016**Between :**

1. The Managing Director,
M/s. Oriental Security Services,
Plot No. 65, Po. Sahidnagar,
Bhubaneswar.
2. The Principal,
Regional Institute of Education,
RIE Campus, Po. Bhoi Nagar,
Bhubaneswar – Orissa

...1st Party-Managements**(And)**

The President, Regional Institute of
Education Workers Union, CITU,
Odisha State Office, VR-5/1, Unit-3,
Kharvela Nagar, Bhubaneswar-Orissa

...2nd Party-Union.**Appearances :**None ... For the 1st Party- Managements.None ... For the 2nd Party- Union.**ORDER**

Case taken up. Parties are absent. The 2nd Party-Union has not filed any statement of claim despite sending notices through regd. post. In order to give a last opportunity to the 2nd party-Union notice was issued on 22.01.2016 fixing to 13.06.2016 for appearance and for filing of statement of claim, but neither the 2nd party-Union caused appearance today has filed any statement of claim. As such it seems that the 2nd party-Union is not interested in prosecuting its case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2016

का.आ. 1483.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आर्कियोलॉजिकल सर्वे ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ केस सं. 04/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.07.2016 को प्राप्त हुआ था।

[सं. एल-42011/158/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 14th July, 2016

S.O. 1483.—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. 04/2015) of the Central Government Industrial Tribunal-cum-Labour-Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Archaeological Survey of India and their workman, which was received by the Central Government on 06.07.2016.

[No. L-42011/158/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

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

INDUSTRIAL DISPUTE CASE NO. 04/2015

No. L-42011/158/2014-IR(DU), dated 04.02.2015

Date of Passing Order – 1st June, 2016

Between :

The Dy. Superintending Horticulturist,
Archaeological Survey of India,
Division – IV, Toshali Apartment,
Satyanagar, Bhubaneswar – 751 007

...1st Party-Management.

(And)

The President,
Archeological Survey of India
Workers' Union, 32, Ashok Nagar,
Bhubaneswar (Orissa) 751 009

...2nd Party-Union.

Appearances:

None. ... For the 1st Party- Management.

None ... For the 2nd Party- Union.

ORDER

Case taken up. Parties are absent. The 2nd Party-Union has not filed any statement of claim despite sending notices through regd. as well as ordinary post. In order to give a last opportunity to the 2nd party-Union notice was issued on 02.5.2016 fixing 01.06.2016 for appearance and for filing of statement of claim, but neither the 2nd party-Union caused appearance today nor has filed any statement of claim. As such it seems that the 2nd party-Union is not interested in prosecuting its case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2016

का.आ. 1484.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जामिया मिलिया इस्लामिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 175/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.07.2016 को प्राप्त हुआ था।

[सं. एल-42012/58/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 14th July, 2016

S.O. 1484.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 175/2012) of the Central Government Industrial Tribunal-cum-Labour-Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation

to the management of the Jamia Milia Islamia and their workman, which was received by the Central Government on 13.07.2016.

[No. L-42012/58/2012-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 175/2012

Shri Ashok Kumar,
S/o Shri Sant Ram,
C/o Shri R.K. Pandit, Advocate,
Chamber No.232, Civil Wing, Tis Hazari Court,
Delhi

...Workman

Versus

The Registrar,
Jamia Milia Islamia,
Jamia Nagar,
New Delhi 110 025

...Management

AWARD

A reference was received from Ministry of Labour, Government of India vide letter No.L-42012/58/2012-IR(DU) dated 08.11.2012 under clause (d) of sub-section (1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication, terms of which are as under:

‘Whether the action of the management of Jamia Milia Islamia, New Delhi in terminating the services of Shri Ashok Kumar, S/o Shri Sant Ram, Safai Karamchhari with effect from 10.11.2006 is justified or not? If not, what relief the workman is entitled to and from which date.’

2. Brief facts giving rise to the present reference are that Shri Ashok Kumar, claimant herein, was appointed as Safai Karamchhari per due process of law by the management on 27.01.1992. Since then he has been performing his duties with the management with no break in service honestly and sincerely. Workman was on medical leave due to illness in 2005, which was duly sanctioned by the management. After availing the said leave, claimant herein returned to report for duty when he was declared to be medically fit vide certificate dated 10.05.2006. Officials of the management have not allowed claimant to resume his duties without any order. Workman was told that his file pertains to reinstatement and has been sent to the higher authorities for getting sanction and then only he can be allowed to resume his duties. Unfortunately, management never called the workman thereafter so as to join duties. Workman gave several representations to the higher officials of the management with a request to allow him to resume duties but of no use. He even approached officials of the management as well as office of the Registrar in the month of August 2010 and he was orally intimated that his services have been terminated. Aforesaid termination of services of the workman is in completion violation of principles of natural justice as no show cause notice was served upon the workman nor any domestic enquiry was conducted. Termination even otherwise is in violation of Section 25F, G and H of the Industrial Disputes Act, 1947 (in short the Act). Workman had also filed conciliation proceedings before the Conciliation Officer but the attitude of the management was non-cooperative resulting in failure of conciliation.

3. Management filed reply to the statement of claim and took preliminary objections that reference is bad as this Tribunal has no jurisdiction in the matter. The reference is otherwise not maintainable in view of Clause 29 of Jamia Milia Islamia Act, 1988, according to which disputes between answering management and employer have to be resolved by arbitration. Workman has not approached the Tribunal with clean hands nor any demand notice was served on the management by the claimant before filling of the present reference. There is neither valid espousal by the workman nor the matter has been sponsored by substantial number of workmen in the establishment, as such there is no industrial dispute. On merits, management admitted factum of engagement of the workman as safai karamchhari with effect from 27.01.1992 as casual worker and later in in pursuance of letter dated 22.04.1998 workman was conferred temporary status. There were complaints against the workman for stealing fan regulators on 24.08.2001 for which he was served memo on 24.08.2001 but no reply was filed by the workman. Thereafter there was continuous absence from duty by the workman without prior information/sanction of leave with effect from 08.06.2005. As such, memo was issued on 01.08.2005 seeking his explanation for his unauthorized absence. It is averred in Para 4 of the reply that the workman filed reply dated 23.09.2005 to the show cause notice alongwith medical certificates regarding his illness and

as such he was granted admissible leave of 55 days with effect from 08.06.2005 with warning to follow leave rules, failing which he will render himself for disciplinary action. There was again complaint against the workman regarding his absence without leave from duty with effect from 09.03.2006 and he was issued memo by the management on 11.05.2006. No reply was filed by the workman. Thereafter, legal communication was sent to him on 11.08.2006 in which it was clarified that in the absence of any cogent explanation by the workman for his unauthorized absence, it would be presumed that he is no longer interested in service of the University. In the subsequent memo dated 10.10.2006, workman was asked to show cause as to why his services should not be terminated and he was asked to file reply within 10 days, failing which his services shall be deemed to be terminated. It is further alleged that on 23.11.2006 his services from Jamia Milia Islamia were terminated as per provisions contained in Ordinance 6(VI)(47)(ii). Management has denied other averments made in the statement of claim.

4. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide a order dated 06.08.2013 framed the following issues.

- (i) Whether dispute has not acquired status of an industrial dispute for want of service of demand notice on the management?
- (ii) Whether disputed dispute has not acquired status of industrial dispute for want of espousal by the union or considerable number of workmen in the establishment of the management?
- (iii) As in terms of reference

5. Workman, in support of his case examined himself as WW1 and tendered evidence his affidavit, Ex.WW1/A. He has tendered in evidence documents Ex.WW1/1 to Ex.WW1/5. It is apposite to mention here that there was no cross examinant of the workman herein by the authorized representative for the management. Record of the case shows that as many as six opportunities were granted for examination of the claimant, but most of times original authorized representative for the management, Shri Feroze Ahmed was not present and his proxy was not ready to cross examine the workman.

6. Though management was granted more than three opportunities to adduce evidence, no evidence was led by the management to counter the case of the workman. As such, evidence of the management was closed by the Tribunal on 04.05.2016.

7. Issue No.3, which is the main issue in terms of the reference received from the appropriate Government is taken up for the purpose of discussion first. It is neither in doubt nor in dispute that the claimant herein was engaged as safai karamchari by the management on 27.01.1992 and this fact stands duly admitted by the management in Para 1 of the reply filed by the management. It is clearly admitted that he was engaged as casual worker, safai karamchari, and thereafter vide UGC letter dated 22.04.1998/Government of India, Department of Personnel & Training OM No.51016/2/90-Estab.(C) dated 10.09.2003, adopted by Executive Council of the management, workman was conferred temporary status. Workman has also tendered in evidence letter dated 22.04.1998 which deals with grant of temporary status and regularization of casual labour in Central Universities. It is clear that Jamia Milia Islamia is admittedly a Central University and the said letter is fully applicable to casual labour who have worked beyond 89 days. This is clear cut mention in the above letter that whenever vacancies occur, University is required to absorb such employees who have been granted temporary status. Further, as per grant of temporary status regulations scheme, temporary status is to be conferred on casual employees who have worked atleast 240 days (206 days in the cases of offices observing 5 day week). It is also clear from the list of employees attached with the letter that the name of the workman finds mention ad serial No.28 and his date of birth is mentioned as 13.05.1964 and his date of joining as 27.10.1992. Designation of the workmen is mentioned as safaiwala. There is an ID card of the workman issued by Jamia Milia Islamia Ex.WW1/2. Workman has also tendered in evidence is sick leave certificate Ex.WW1/3, which shows that he was advised medical rest from 01.10.2005 to 15.10.2005. Workman has also issued notice Ex.WW1/4 dated 25.09.2010 to the management wherein workman has alleged similar facts as mentioned in statement of claim, alleging the action of the management in terminating him from the job as wrong and illegal.

8. It is clear from resume of evidence discussed above that the workman herein is in the employment of the management since 27.01.1992 and vide letter dated 10.09.1993, he was granted temporary status. He has also filed proof of his medical illness ExWW1/3. Now, the vital question which requires determination is whether termination of the job of the workman herein without an proof of domestic enquiry is legally valid. Admittedly, no show cause notice has been placed on record or proof in accordance with law by the management. There is no proof any domestic enquiry on record against the workman. In such a situation, action of the management in terminating services of the workman can only be termed to be highly arbitrary and illegal and cannot sustain in law.

9. It is further clear from pleadings of the parties that there was relationship of employer and employee between the management and the workman and workman herein falls within the definition of workman as he was admittedly in the employment of the management at the relevant time. In such circumstances, management was also required to serve

show cause notice or pay one month's salary in lieu thereof, in terms of Section 25F of the Act. Since there is no proof of any notice of having been served on the workman before ordering his termination, as such there is no merit in the contention of the management that order of termination must be legally sustained. This is rather unfair labour practice on the part of the management who has sacked the workman completely in violation of principles of natural justice, when records also shows that he has filed medical proof regarding his illness. There is no evidence regarding of regulator of fans by the workman. Hence, it is held that action of the management of Jamia Milia Islamia in terminating services of the workman, Shri Ashok Kumar, on 10.11.2006 to be totally illegal and is not justified in law.

10. Now, the next residual question which requires determination by this Tribunal is whether the dispute in the present has not acquired status of an industrial dispute for want of service of demand notice on the management and whether dispute in the present case has not been espoused by the union. Both issues No.1 and 2 and being taken up together as they are legal in nature and can be conveniently disposed of. So far as question regarding industrial dispute is concerned, it is clear from perusal of notice Ex.WW1/4 that the workman has served notice on the management of Jamia Milia Islamia through its Registrar wherein request has been made to reinstate the workman with full back wages. There is no reply to the said notice on record. Therefore, by no stretch of reasoning, it can be said that the dispute in the present case is not an industrial dispute. It is clear from the definition of 'industrial dispute' under Section 2(k) of the act that any dispute or difference between a worker and his employer, which is connected with employment of the workman or conditions of his services, falls within the definition of 'industrial dispute'. Management has not brought any evidence on record to suggest that any notice was served on the workman by the management before raising the above dispute through the union. In fact, workman has thereafter approached the Assistant Labour Commissioner through the Union which has also tried to reconcile matter between the parties, but the management has adopted an non-conciliatory approach resulting in failure of conciliation. It was only thereafter reference was received by this Tribunal in terms of sub-section 2 of Section 10 of the Act. No doubt case of the workman is normally espoused through the union of which workman is a member. Expression 'espousal means that now the dispute of the individual workman has been adopted by the union as its own dispute and substantial number of workman gives support to the cause of such dispute raised by the workman. Expression union normally indicates the Union to which the workman belongs even though it may be union of minority workmen. Hon'ble Apex Court in the case of J.H. Yadav vs. M/s Forbes Gokak Ltd (2005 III AD SC61) considered the question of raising of industrial dispute by a union as well as ambit and scope of espousal. In the said case, it was observed that if evidence on record suggest that the cause of the workman has been espoused by the union, either in writing or orally, same is sufficient compliance of the provisions of the Act. Since dispute of the workman herein has been considered by the Conciliation Officer, Ministry of Labour, as such it is apparent that the workman has approached the union first for espousal of the dispute.

11. Question of raising of demand by the workman through union was also considered by the Hon'ble High Court of Delhi in Workmen of MCD vs. South MCD in WP(C) No.13023/2005 decided on 06.08.2007. Claim filed by the workman was dismissed by the Tribunal as workmen had not raised any demand with the management, as such, there was no dispute or difference in the eyes of law when there is no proper and valid demand on behalf of the workman. Industrial dispute will arise only when such a demand is refused arbitrarily or illegally by the management. Industrial Tribunal held that in the absence of any valid demand and refusal thereof by the management, there is no industrial dispute existing between the parties; as such, no relief was granted. However, when the matter was taken to the Hon'ble High Court, decision of the Tribunal was set aside and heavy reliance was placed on the case of Shambunath Goyal vs. Bank of Baroda (1978 2 SCR 793) wherein it was held as under:

'A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the disputes or difference is connected with the employment or non-employment or the terms of employment or, with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute Would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service, because section 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are 'dispute' or 'difference'. What is the connotation of these two words. In Beetham v. Trinidad Cement Ltd.(1). Lord Denning while examining the definition of expression 'Trade dispute' in section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:

"by definition a 'trade dispute' exists whenever a 'difference' exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening".

12. It is clear from the ratio of the above judgement that dispute would be deemed to no existent when the matter has been taken to the Conciliation Officer(ALC) and there is no legal requirement under that Act that the dispute is required to be raised in a specific manner so as to term it as an industrial dispute. It can even be orally raised. It is for the Government to decide whether in the absence of proper raising of dispute or insufficient material on record, whether any reference can be sent to the Industrial Adjudicator. Thus, in view of the ratio of the law discussed above, there is no specific requirement under the Act that industrial dispute is to be raised only by making a demand in writing and any such interpretation given Section 2(k) of the Act is not legally permissible.

13. In Ultra Tech Cement Vs. Industrial Tribunal, (2016 LLR 523), legal consequences of non-compliance of provisions of section 2A(2) of the Act was considered with the workman has directly filed claim before the Industrial Tribunal without first filing application before the Conciliation and waiting for expiry of 45 days, as provided under the Act. Management in the said case raised objections of non-maintainability of the reference petition on account of non-compliance of the provisions of Section 2A(2) of the Act. It was held by the High Court such a provision is simply an enabling one and is directory in nature and not mandatory so as to held that reference is not legally maintainable. Mere fact that the case has been referred in terms of section 10 of the Act for adjudication of the dispute before this Tribunal itself shows that parties have appeared before the Conciliation Officer and thereafter when no suitable settlement could be arrived at between the parties regarding disposal of the dispute, as such same was referred to this Tribunal.

14. It is pertinent to mention here that in Para 10 of the statement of claim as well as affidavit of the workman, there is mention of conciliation proceedings before the Conciliation Officer (office of the Regional Labour Officer) wherein attitude of the management was alleged non-cooperative and management in Para 10 of the reply though denied the averments made in the statement of claim, yet the management has clarified that it is vehemently denied that conciliation failed due to the management. Rather, claimant wanted to compel the management to act according to his dictates. This shows that there were conciliation proceedings before the Government, as required under the law. In view of the above discussions, it is clear that there was espousal and union has raised demand for redressal of his grievances. Both issues, No.1 and 2 are decided against the management.

15. As a sequel to the detailed discussion hereinabove, it is held that the order of termination dated 10.11.2006 passed against the workman is held to be wrong and illegal; as such the same is not justified. An award is accordingly passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

July 6, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2016

का.आ. 1485.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 35/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/30/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th July, 2016

S.O. 1485.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Mithapur (R) Colliery of M/s. ECL and their workmen, received by the Central Government on 14.07.2016.

[No. L-22012/30/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

PRESENT: Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 35 OF 2008

PARTIES :

The management of Nageshwar Satgram, Mithapur (R) Colliery of M/s. E.C.L.

Vs.

Late Siba Bouri

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri. Rakesh Kumar, Union representative

Industry : Coal

State : West Bengal

Dated: 01.07.2006

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 letter No. L-22012/30/2008–IR(CM-II) dated 19.06.2008 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. E.C.L. in denying employment to the son of Late Sri Siba Bouri is legal and justified? To what relief the claimant is entitled to?”

1. Having received the Order No. L-22012/30/2008–IR(CM-II) dated 19.06.2008 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 35 of 2008 was registered on 01.07.2008. 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. Both the parties appeared in the Tribunal, through their representative.

2. The workman represented by union has stated in his written statement, in brief, that Late Siba Bouri, Ex-Haulage Operator of Nageshwar Satgram Colliery of M/s. Eastern Coalfields Limited was a permanent employee of the company. He died on 03.11.1993 while he was in service of the company. As per provision of the Wage Agreement / N.C.W.A. (National Coal Wage Agreement) in the event of death of an employee one dependent is entitled to get the employment, accordingly the wife of deceased employee claimed employment for her son-in-law namely Sri Pradip Bouri and submitted all required documents. The area management after screening at colliery level decided that since, son of the deceased is available so employment to his son-in-law can not be provided. Management of Satgram Area directed to the wife of Late Siba Bouri to submit the claim of employment of her son and accordingly she submitted the claim of his son, Sri Bhairab Bouri. After receiving the claim form wife of Late Siba Bouri the proposal was sent to area office after proper screening at colliery level. Area level management completed the required formalities i.e. screening at area level and sent the dependent son for medical exam and I.M.E. board declared him fit for duty. Medical examination proposal was processed and forwarded to Head Quarter of M/s. Eastern Coalfields Limited, but management regretted the claim on the ground that dependent was less than 18 years of age on the date of death of the employee, Late Siba Bouri. On the date of application for providing employment dependent son was adult and more than 18 years of age, therefore he should be provided employment in place of his father. As per provision of Wage Agreement / N.C.W.A. if dependent son is 12 years of age on the date of death of employee then the name of son will be kept in the live roster and wife of the deceased will be paid Rs.6,000/- (Rupees Six Thousand only) per month till the son attain the age of majority. After attaining majority dependent son will be provided employment. But in the said case management did not provide employment and due to this reason entire family of Late Siba Bouri is in the stage of starvation. The long period of 19 years has been passed and the family of Late Siba Bouri is begging practically. As per Wage Agreement / N.C.W.A., that if age of dependent of deceased is not more then 35 years of age the dependent will be eligible for appointment. The dependent of deceased Sri Bhairab Bouri is fit in all respect of employment. The entire family of Late Siba Bouri is in the stage of starvation. The union has prayed that dependent son of Late Siba Bouri be provided employment as per provision of N.C.W.A. and till getting employment the widow of Late Siba Bouri should be paid the monetary compensation from the date of death of Late Siba Bouri till joining of his son dependent of deceased.

3. The Agent of Mithapur (R) Colliery of M/s. Eastern Coalfields Limited has stated, in his written statement that one Late Siba Bouri was an employee of Nageshwar Satgram Colliery, one of the units of Mithapur (R) Colliery of

M/s. Eastern Coalfields Limited designated as Haulage Operator. The said employee Late Siba Bouri expired 03.01.1993 while he was in service. Sri Bhairab Bouri claiming to be son of deceased Late Siba Bouri applied for the employment under the provision of N.C.W.A. After scrutinizing the documents and papers submitted in support of claim of Sri Bhairab Bouri his pre-appointment medical examination was conducted. His age was ascertained between 21 years to 26 years as on 01.08.2001. It was presumed that at the time of death of Late Siba Bouri the age of Sri Bhairab Bouri was 15 years. As per Circular Letter Ref. No. ECL/CMD/C-6B/ CGM(P)/94/1133 dated 28.11.1994 it was expressed that employment could on be considered if the age of claimant is 17 years. Since the age of Sri Bhairab Bouri was not according to circular letter his claim was not considered by the management. Union has raised the dispute after 15 yrs for which it deserves to be rejected. The union is not entitled to any relief. The Mithapur (R) Colliery of M/s. Eastern Coalfields Limited has prayed that the Tribunal may kindly hold that the action of management is justified and legal.

4. Union on behalf of the dependent son of deceased has filed:

(i) Xerox Copy of the Service Excerpt Records of Late Siba Bouri, (ii) Xerox Copy of the Postmortem report of Late Siba Bouri, (iii) Xerox Copy of the Death Registration certificate of Late Siba Bouri, (iv) Xerox Copy of the Application of Smt. Sobha Bouri, wife of Late Siba Bouri for providing employment to Sri Pradip Bouri, son-in-law, (v) Xerox Copy of the Letter of Personnel Officer of Benalee (R) Colliery dated 17.04.1998, (vi) Xerox Copy of the letter of Personnel Officer of Mithapur (R) Colliery dated 27.09.1999, (vii) Xerox Copy of the Letter of Personnel Officer of Mithapur (R) Colliery addressed to Sri Pradip Bouri, son-in-law of Late Siba Bouri for nominating the name of his son Sri Bhairab Bouri for providing employment in place of Late Siba Bouri, (viii) Xerox Copy of the Letter of Sri Bhairab Bouri addressed to Agent of Mithapur (R) Colliery along with all required documents for providing employment to him in place of Late Siba Bouri, (ix) Xerox Copy of the Letter of Personnel Officer of Mithapur (R) Colliery addressed to Sri Bhairab Bouri dated 01.06.2001, (x) Xerox Copy of the Letter of Personnel Officer of Satgram Area addressed to the Agent of Mithapur (R) Colliery for sending Sri Bhairab Bouri son of Late Siba Bouri for Medical Examination (IME) dated 15/16.06.2001, (xi) Xerox Copy of the Medical Fitness Examination report in which Sri Bhairab Bouri was declared Medically Fit, (xii) Xerox Copy of the Letter of Sri S. K. Chatterjee, P.O. of Mithapur (R) Colliery addressed to Personnel Officer of Satgram Area dated 09/10.07.2003, (xiii) Xerox Copy of the Letter of Screening Committee dated 14.08.2013, (xiv) Xerox Copy of the of P. O. of Mithapur (R) Colliery dated 17.10.2003, (xv) Xerox Copy of the S. D. raised by the union dated 19.04.2004, (xvi) Xerox Copy of the Memorandum of Settlement signed by the management before RLC(C), Asansol in which it was agreed to pursue the proposal of employment pending at ECL Head Quarter, (xvii) Xerox Copies of the S.D. raised by the union on 10.05.2006, 02.11.2006 and 30.08.2007, (xviii) Xerox Copy of the Order of the Hon'ble High Court in similar case, (xix) Xerox Copy of the Reasoned Order passed by the management of Satgram Area, (xx) Xerox Copy of the Clause of employment on Wage Agreement / N.C.W.A., (xxi) Xerox Copy of the Provision of employment to the dependent of the deceased employee under Social Security Clause, Chapter - IX in which provision of keeping the name of dependent son in Live Roaster is given, (xxii) Xerox Copy of the Reasoned Order passed by the General Manager of Satgram Area in the matter of WP No. 1202(W) of 2010 dated 17.05.2012 in which General Manager of Satgram Area given direction to provide the employment to dependent son of Late Sitaram Singh, (xxiii) Xerox Copy of the Memorandum of Settlement signed by the management before R.L.C.(C) on 22.05.2007 in which management agreed to process all pending case.

Sri Bhairab Bouri the dependent son of deceased employee filed affidavit in his oral evidence. He has been cross-examined by learned advocate of Mithapur (R) Colliery of Eastern Coalfields Limited. Mithapur (R) Colliery of M/s. Eastern Coalfields Limited has not filed any oral or documentary evidence.

5. I have heard Sri Rakesh Kumar, learned union representative on behalf of workman and Sri P. K. Goswami, learned advocate on behalf of Mithapur (R) Colliery of M/s. Eastern Coalfields Limited.

6. The union representative has argued that deceased of Late Siba Bouri applied for employment of her son-in-law but M/s. Eastern Coalfields Limited directed her that since her son was available she should apply job of her son-in-place of her son in law. Her son Sri Bhairab Bouri whose age was more than 12 years of age was eligible for job as per N.C.W.A. As per medical report his age was accessed and it was 15 years at that relevant time. But management wrongfully denied the claim of employment of her son. Her son is entitled for job as per N.C.W.A. On the other hand Sri P. K. Goswami has argued that Late Siba Bouri was expired on 1993. Sri Bhairab Bouri the son of deceased, Late Siba Bouri did not apply for the job. At present as per circular letter the age of dependent son should be 17 years at relevant time but age of Sri Bhairab Bouri was less than 17 years, therefore he is not entitled for the job.

7. It is not disputed that Late Siba Bouri was a permanent employee, Ex-Haulage Operator of Nageshwar Satgram Colliery under Satgram Area of M/s. Eastern Coalfields Limited. It is admitted fact that he expired in the year 1993 while he was in employment of Nageshwar Satgram Colliery under Satgram Area of M/s. Eastern Coalfields Limited. As per service excerpt maintained by M/s. Eastern Coalfields Limited it is evident that Sri Bhairab Bouri is the son of Late Siba Bouri. The name of Sri Bhairab Bouri is entered in the Service Excerpt maintain by the M/s.

Eastern Coalfields Limited. The claim of employment of Sri Bhairab Bouri has been denied on the basis of Circular Letter Ref. No. ECL/CMD/C-6B/CGM(P)/94/1133 dated 28.11.1994. As per this circular letter the age of dependent of deceased employee should be 17 years at the time of death of deceased employee.

8. In chapter Social Security of N.C.W.A.-V the relevant provisions are described :

“ Clause 9.3.2 of N.C.W.A.-V refers to appointment of dependants of the deceased employees working in the coal mines’ sub-clause (iii) of Clause 9.5.0 whereof reads as under:

“ (iii) In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 12 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at Para (i) and (ii). This will be effective from 01.01.2000.”

9. The term ‘settlement’ has been defined under section 2 (p) of Industrial Dispute Act, 1947 as under :

“ ‘settlement’ means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorized in this behalf by] the appropriate Government and the conciliation officer.”

As per section 18 of Industrial Dispute Act, 1947 the settlement arrived at by agreement between the employer and the workman shall be binding on the parties to the agreement.

10. As per Medical Examination Report of M/s. Eastern Coalfields Limited the age of Sri Bhairab Bouri the son of deceased employee, Late Siba Bouri has been assessed between 21 to 26 years. He has been found fit for job. The medical examination was conducted on 01.08.2001. If middle age between 21 and 26 years is accepted, then it will be 23 years on 01.08.2001. Late Siba Bouri the ex-employee expired in 1993 therefore as per medical report, assuming the age of Sri Bhairab Bouri 23 years as on 01.08.2001 then he would have been 15 years of age in 1993. As per N.C.W.A. the name of Sri Bhairab Bouri ought to have been entered in Live Roaster till he attains majority. After attaining majority he ought to have been given employment. Till he is employed the widow of deceased should get compensation.

11. Sri Bhairab Bouri has stayed in his affidavit in Para-7 of his affidavit that after proper screening at area level his employment proposal was forwarded to Head Quarter of M/s. Eastern Coalfields Limited, but in spite of repeated requests he was not provided employment till date. At present he did not have any source of income to maintain his livelihood. His entire family is at the stage of starvation. He should be provided employment so that he can save his family from starvation. He is young and energetic and can perform any duty provided to him by the management of M/s. Eastern Coalfields Limited. He is entitled to get the employment in place of his deceased father Late Siba Bouri and his mother should be paid monetary compensation till date of his joining.

12. Sri Bhairab Bouri, the dependent son of Late Siba Bouri has filed many documents from which it is evident that he applied for the job and he was directed by Competent Authority to appear before Screening Committee. Personnel Officer of Mithapur (R) Colliery of M/s. Eastern Coalfields Limited sent letters to the dependent vide Ref. No. BC/AGENT/PER/EMPL/99/1477 dated 27.09.1999, Ref. No. BC/AGENT/PER/EMPL/00/37 dated 11.01.2000, Ref. No. BC/Agent/PD/Screening/2000/949 dated 06.12.2000, Ref. No. MG/MGR/P.O./01/503 dated 01.06.2001 & Letter....2001/3436 dated 15/16.06.2001. As per direction of Personnel Officer of Mithapur (R) Colliery of M/s. Eastern Coalfields Limited he appeared before Area Medical Officer of Satgram Area of M/s. Eastern Coalfields Limited. He was medically examined on 01.08.2001. He was found fit for job by the Area Medical Officer vide the Medical Examination Report WE-XI.

13. Hon’ble Supreme Court in Sushma Gosain and others v/s Union of India and others, 1989 (59) FLR page 626 has held;

“ We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is not suitable post for appointment supernumerary post should be created to accommodate the applicant. ”

14. Circular Letter, Ref. No. ECL/CMD/C-6B/CGM(P)/94/1133 dated 28.11.1994 as referred in Para-6 of written statement of Mithapur (R) Colliery of M/s. Eastern Coalfields Limited has not been filed before the Tribunal. Even if it is presumed that such letter is in existence, though not filed, which prescribes age limit as 17 years instead of 12 years as described in N.C.W.A. At this juncture question arises for consideration, what is the statutory force of such letter? The N.C.W.A.-V is Bipartite Agreement between representative of management namely; Coal India Limited and its subsidiaries, Singareni Collieries Company Limited, Tata Iron and Steel Company Limited & Indian Iron and Steel Company Limited and representative of labour union namely Indian national Trade Union Congress, All India Trade Union Congress, Center of Indian Trade Unions, Hind Mazdoor Sabha & Bharatiya Mazdoor Sangh. If any amendment is required in provision of N.C.W.A. then it can only be given effect to by subsequent Bipartite Agreement between concerned representatives of management and Trade union. A unilateral administrative direction can not overwrite the N.C.W.A. provision which is the result of Bipartite Agreement. Hon'ble Supreme Court in Public service commission, Uttaranchal v/s Jagdish Chandra Singh Bora and others, 2014 (141) FLR 966 has held that :

“ It is settled proposition of law that the executive orders cannot supplant the statutory rules framed under the proviso to article 309 of constitution. ”

15. Sri Bhairab Bouri dependent son of Late Siba Bouri the ex-employee of Nageshwar Satgram Colliery, one of the units of Mithapur (R) Colliery of M/s. Eastern Coalfields Limited applied for the Compassionate Appointment within the stipulated age as per N.C.W.A.-V. As per direction by Personnel Officer of Mithapur (R) Colliery of M/s. Eastern Coalfields Limited, he appeared before the Area Medical Officer of Satgram Area of M/s. Eastern Coalfields Limited. The Area Medical Officer by his Medical Examination Report declared him fit for the employment.

16. As per discussion above the action of management of M/s. Eastern Coalfields Limited in denying employment to Sri Bhairab Bouri, the dependent son of Late Siba Bouri is illegal and unjustified. Sri Bhairab Bouri the dependent son Late Siba Bouri is entitled for employment in M/s. Eastern Coalfields Limited.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2016

का.आ. 1486.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 79/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/40/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th July, 2016

S.O. 1486.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfield Limited and their workmen, received by the Central Government on 14.07.2016.

[No. L-22012/40/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

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

PRESENT: Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 79 OF 2006

PARTIES :

The management of Satgram Project of M/s. E.C.L.

Vs.

Sri Iliyas Khan

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Ld. Advocate
 For the union (Workman) : Sri. S. K. Pandey, Union representative

Industry : Coal

State : West Bengal

Dated: 04.07.2006

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 letter No. L-22012/40/2006–IR(CM-II) dated 30.10.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“ Whether the action of the management of Satgram Project of E.C.L. in dismissing Sri Iliyas Khan from service w.e.f. 02.09.2005 is legal and justified? If not, to what relief is the workman entitled? ”

1. Having received the Order No. L-22012/40/2006–IR(CM-II) dated 30.10.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 79 of 2006 was registered on 11.12.2006. 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. Both the parties appeared in the Tribunal, through their representative.

2. The delinquent workman Sri Iliyas Khan has stated, in brief, in his Written Statement that Sri Iliyas Khan was a permanent employee of the company and posted under Satgram Project of M/s. Eastern Coalfields Limited. Unfortunately Sri Iliyas Khan fell ill and due to suffering from illness, he could not attend his duty from 04.10.2003 to 25.11.2004. He was under the treatment of Sub-divisional hospital, Asansol under the Government of West Bengal. After being declared fit, Sri Iliyas Khan reported for duty but he was not allowed to join the duty. He was issued charge sheet No. SP/Mgr/Per/CS/2004/4791 dated 18.11.2004. During the enquiry proceeding Sri Iliyas Khan explained the reason for which he could not attend the duty and submitted the medical treatment certificate issued by the Superintendent of Sub-divisional Hospital, Asansol in support of his illness. General Manager ignoring the prolonged illness of Sri Iliyas Khan, terminated the services of Sri Iliyas Khan vide Letter No. SAT/GM/PER/LAB-C/2005/2290 dated 18.05.2005. The 2nd Show Cause Notice has not been served, as per verdict of hon'ble Supreme Court. The action of the management is motivated. His absence was beyond his control due to his illness. Due to dismissal his entire family is at the stage of starvation. Dismissal of Sri Iliyas Khan from the services of the company is illegal and unjustified. Sri Iliyas Khan has prayed that management of Satgram Project of M/s. Eastern Coalfields Limited be directed to reinstate him in service with payment of full back wages and other consequential benefits for the period from the date of his dismissal.

3. The Agent of Satgram Project of M/s. Eastern Coalfields Limited has denied the allegation of Sri Iliyas Khan by filing written statement. He has stated, in brief, that Sri Iliyas Khan is in habit of absence from duty. He was absent from 04.10.2003 to 18.11.2004 therefore he was charge sheeted vide charge sheet Ref. SP/Mgr/Per/cs/04/4791 dated 18.11.2004 under C.L. 26:29 and 26:23 of Certified Standing Order. The concerned workman replied the charge sheet on 29.11.2004. He had stated that he was ill and was under the treatment of Sub-Divisional Hospital at Asansol. Workman attended the enquiry. Management after perusal of enquiry report and other circumstances was reluctant to show any leniency. The service of the workman was terminated on 02.09.2005. The enquiry officer held the workman guilty of the charges levelled against him. The past performance of the workman was as follows: In the year 2001 he attended only 149 days, in the year 2002 he attended only 04 days and in the year 2003 he attended only 190 days. In the year 2001 punishment of stoppage of three increments was inflicted and again by letter no. 3616 dated 27.12.2002 he was punished by stoppage of three increments. In spite of this the workman did not amend his manner. The action of management is legal and justified and the workman is not entitled to any relief.

4. Workman has filed the following documents :

(i) Copy of the Charge Sheet, (ii) Copy of the Reply to the Charge Sheet, (iii) Copy of the Sick Certificate, (iv) Copy of the Enquiry Proceeding.

Workman Sri Iliyas Khan has filed affidavit in his oral evidence. He has been cross-examined by the learned advocate of Satgram Project of M/s. Eastern Coalfields Limited.

The Agent of Satgram Project of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

5. I have heard Sri S. K. Pandey, learned union representative on behalf of workman and Sri P. K. Goswami, learned advocate on behalf of Satgram Project of M/s. Eastern Coalfields Limited.

6. Sri Pandey has argued that the Enquiry Officer has not considered the Medical Certificate of Sri Iliyas Khan. Sri Iliyas Khan due to his illness was not in a position to attend his duty. After recovering his health, when he reported for duty he was not allowed to join the duty. In enquiry proceeding his Medical Certificate which has been issued by the medical authority has not been considered. His defence evidence has also not been considered. Before passing Order of Dismissal 2nd Show Cause notice was not issued to him. Whereas Sri P. K. Goswami has argued that the workman is a habitual absentee. The enquiry is fair and bona fide.

7. It is admitted fact that Sri Iliyas Khan was a permanent employee of Satgram Project of M/s. Eastern Coalfields Limited. It is also admitted fact that he was terminated w.e.f. 02.09.2005. The workman has challenged the validity of enquiry proceeding on basis of non-issuance of 2nd Show Cause Notice. Non-issuance of 2nd Show Cause Notice has not been denied by the Agent of Satgram Project of M/s. Eastern Coalfields Limited in his written statement. The Agent of Satgram Project of M/s. Eastern Coalfields Limited has stated that the workman has been habitual absentee.

8. The workman has been issued charge sheet No. SP/Mgr/Per/CS/2004/4791 dated 18.11.2004 for his absence from the duty w.e.f. 04.10.2003. The charge sheet No. SP/Mgr/Per/CS/2004/4791 dated 18.11.2004 describes his previous absence in year 2001, 2002, and 2003. The Enquiry Officer has examined Sri Debraj Das, Time Keeper and Sri Dipak Dutta, Leave Clerk both as MW1. They have deposed in there evidence about present absence (for which delinquent has been dismissed). There is no copy of documentary evidence regarding previous absence. The delinquent employee can not meet the charges in departmental enquiry unless the copies of the relevant documents to be used against him are made available to him. In the absence of such copies the concerned employee can not prepare his defence, cross-examine the witness and point out the inconsistencies with a view to show that the allegations are incredible. If the delinquent workman has been charge sheeted for his present as well as for his past absence then copy of past absence must be supplied to the delinquent before taking oral evidence. As per written statement of the Agent of Satgram Project of M/s. Eastern Coalfields Limited the delinquent workman has been punished for his previous past absence. The management witness has deposed in their evidence regarding previous absence of the workman. Therefore these documents are vital documents. It is evident from perusal of enquiry proceeding that the delinquent workman Sri Iliyas Khan was present on all dates of enquiry. His signature is present on the statement of the witness. But Enquiry Officer did not permit him to cross-examine the management witness. The Enquiry Officer has denied the opportunity of cross-examination to delinquent. Opportunity of cross-examination to the delinquent employee is an essential and paramount element of departmental enquiry. Observance of natural justice and due opportunity has been held to be an essential ingredient in the disciplinary proceeding. Natural justice ordains that the enquiry should be held impartially, objectively and after giving an opportunity of hearing to the delinquent workman. Fair opportunity and fair trial are elements of the principles of natural justice which are always applied to the departmental enquiry. The two elements of reasonable opportunity of being heard are: that Firstly, an element of be heard must be given, and Secondly, this opportunity must be reasonable.

9. In *S. C. Girotra v/s United Commercial Bank*, 1995 Supp (3) SCC 212, the Supreme Court set-a-side the Dismissal Order which was passed without giving the employee an opportunity of cross-examination. After conclusion of enquiry proceeding the delinquent must be supplied with the copies of Enquiry Report and he must be required to submit his explanation. If upon receiving the explanation the competent authority is not satisfied with the explanation of the delinquent workman then he can pass the order of punishment. But before imposing punishment the Dismissing Authority is required by law to issue 2nd Show Cause Notice to the delinquent employee. But it is apparent from the perusal of the record that 2nd Show Cause Notice has not been issued to the delinquent workman which is mandatory (*Managing Director, ECIL, Hyderabad and others v/s B. Karunakar and others* 1993 (67) FLR 1230 (SC)).

10. The Enquiry Officer has not considered the Medical Certificate submitted by the delinquent employee during enquiry proceeding. Though, the Enquiry Officer is not bound to believe on the Medical Certificate submitted by the delinquent workman. Off course Enquiry Officer can very well disbelieve on the defence evidence or documents filed by the delinquent. But he must consider the documents submitted by the delinquent employee and should give reasons. The Enquiry Officer should record his finding whether absence of concerned workman is a result of compelling circumstances under which it was not possible to perform the duty or whether the absence of the concerned workman was wilful. If the absence of the delinquent workman was wilful then he can very well record his finding by disbelieving the defence document. But Enquiry Officer must give finding that absence of delinquent workman was wilful.

11. Hon'ble Apex Court in *Krushnakant B. Parmar v/s Union of India and Another* 2012 (132) FLR 1023 has held :
- “ 17. *If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful.*
18. *Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.*
19. *In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.*
20. *In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorizedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty. ”*
12. From perusal or enquiry proceeding and enquiry report it is manifest that the Enquiry Officer has not complied the principle of natural justice in conducting the domestic enquiry against the delinquent workman Sri Iliyas Khan. Even the dismissing authority has not issued 2nd Show Cause Notice to the delinquent before passing order of dismissal. The punishment of dismissal for absence of duty without a valid and unbiased enquiry is too harsh and rather disproportionate which requires correction by the Tribunal. The principle of "Doctrine of Proportionality" is a well recognized one to ensure that the action of the employer against employees does not impinge their fundamental and statutory rights. The said important doctrine has to be followed by the employer at the time of taking disciplinary action against their employees to satisfy the principles of natural justice and safeguard the rights of employees. The punishment of dismissal ought to be set aside.
13. The workman has alleged in Para-8 of his written statement that due to his dismissal his entire family is in the stage of starvation. The workman in his affidavit stated that, all the family members are dependent on him. This fact has not even been rebutted by the Agent of Satgram Project of M/s. Eastern Coalfields Limited in his written statement. If any fact is not specifically denied then it can not be disbelieved. It is admitted fact that the workman Sri Iliyas Khan was a permanent employee of Satgram Project of M/s. Eastern Coalfields Limited. As per his affidavit filed his age is 50 years on April, 2013.
14. The hon'ble Supreme Court in *Mackinnon Mackenzie and Company Ltd. Vs Mackinnon Employees' Union*, 2015 (145) FLR 184 has held :
- “ *The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him / her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. ”*
15. It is settled law that “consequential benefits” to a person does not mean only back wages. It includes much more things beyond back wages, such as promotion, fixation of seniority and grant of financial benefits admissible to the post. If termination of workman has been declared as illegal and unjustified then workman is entitled to get all the consequential service benefits admissible to the post. Back wages may be one facet of getting monetary benefits, but that is not the conclusive one. Service benefit which would have accrued to him had he continued in service cannot be denied by the management.
16. In the view of discussion above, the action of the management of Satgram Project of M/s. Eastern Coalfields Limited in dismissing Sri Iliyas Khan, from service w.e.f. 02.09.2005 is illegal and unjustified. The Dismissal Order of Sri Iliyas Khan w.e.f. 02.09.2005 is hereby set-a-side. Satgram Project of M/s. Eastern Coalfields Limited is directed to reinstate Sri Iliyas Khan, with full back wages from the date of dismissal, till his reinstatement, with all consequential benefits as discussed above. Sri Iliyas Khan be imposed a punishment of stoppage of 3 (Three) Annual Increments with cumulative effect.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 15 जुलाई, 2016

का.आ. 1487.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रिचर्डसन एंड क्रूडस इंडिया लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ सं. सीजीआईटी-1/07 of 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.07.2016 को प्राप्त हुआ था।

[सं. एल-42011/95/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 15th July, 2016

S.O. 1487.—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-07 of 2012) of the Central Government Industrial Tribunal-cum-Labour-Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Richardson and Cruddas India Ltd. and their workman, which was received by the Central Government on 15.07.2016.

[No. L-42011/95/2011-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present :

JUSTICE S.P. MEHROTRA, Presiding Officer

REFERENCE NO.CGIT-7 OF 2012

Parties :

Employers in relation to the management of Richardson & Cruddas India Ltd.

And

Their workman

Appearances :

For the first party/Management	:	Shri S.Z. Choudhary, Adv.
For the second part /workman	:	Workman present in person.
State	:	Maharashtra

Mumbai, dated the 1st day of July, 2016.

AWARD

1. The present Reference has been made by the Central Government by its order dated 24.1.2012 passed 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. The Terms of Reference as per the Schedule to the said Order are as under:

“Whether the action of Management of Richardson & Cruddas by terminating the service and not treating Doctor Shri M.S.Gajbhiye as workman is proper and justified? What relief he is entitled for?”

2. By the Order dated 13.2.2012, this Tribunal directed for issuance of notice to the parties in respect of the present Reference.

3. Mr.M.S.Gajbhiye, (hereinafter also referred to as “Dr.M.S.Gajbhiye” or the “second party /person concerned”), filed his **Statement of Claim** on 29.2.2012. It is, inter-alia, stated in the Statement of Claim read with Annexure ‘A’ thereto that the second party / person concerned (“Dr.M.S.Gajbhiye”) was employed as a Part-time Medical Officer with the Company, namely, Richardson & Cruddas India Limited (i.e. “first party/Management”) by Letter of Appointment dated 7.11.1989; and that by Letter dated 7.11.1992, the second party / person concerned was given benefits of Regular Pay Scales, DA, Re-imbursement of Rental Charges for telephone at his residence as well as benefit of Provident Fund. It is , inter-alia further stated in the Statement of Claim that the second party / person concerned is entitled to receive an amount of Rs. 21,29,032/- from the first party/Management by way of legal dues

payable to him upon his dismissal from Service on 23.6.2006 which was after his date of Retirement which is 30.9.2005 which is bad in law and null and void and is done with the intention to avoid the legal payments of the dues of the second party/person concerned. It is, inter-alia, further stated in the Statement of Claim that the Central Government Industrial Tribunal No.2 confirmed the status of the second party/person concerned as workman and asked the second party/person concerned to challenge the illegal termination.

4. In view of the averments made in the Statement of Claim and Annexure 'A' thereto, it is, inter-alia, prayed by the second party /person concerned that the first party/Management be called upon to furnish full particulars of the legal dues payable to the second party / person concerned; and that the amount of Rs.21,29,032/- payable to the second party / person concerned towards legal dues be directed to be paid by the first party/Management to the second party / person concerned alongwith the interest thereon at the available market rate.

5. **Written Statement dated 5.10.2012**, was filed on behalf of the first party/Management. In paragraphs 2 to 8 of the Written Statement, various Preliminary Objections have been raised on behalf of the first party/Management. It is, inter-alia, stated that the Appropriate Government in relation to the Industrial Dispute in respect of the first party/Management is the State Government, i.e., State of Maharashtra and hence the Reference made by the Central Government is without jurisdiction and hence the same deserves to be dismissed as not maintainable.

6. It is, inter-alia, further stated in the Written Statement that "the Doctor is not a Workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947 and hence the Reference made to this Tribunal deserves to be dismissed for want of jurisdiction.

7. It is, inter-alia, further stated in the Written Statement that the second party / person concerned (Doctor) was issued a charge-sheet for the misconducts committed by him and the enquiry in relation to the same was pending; and that during the pendency of the enquiry, the second party / person concerned (Doctor) attained the age of superannuation and hence his employment came to an end by efflux of time; and that since the employment of the second party / person concerned (Doctor) came to an end due to efflux of time, there is no positive act on the part of the first party/Management to terminate services of the second party / person concerned (Doctor) and hence there cannot be any industrial dispute in this regard.

8. It is, inter-alia, further stated in the Written Statement that admittedly the date of retirement of the second party/ person concerned (Doctor) was 30.9.2005 on which date he ceased to be an employee of the first party/Management on account of attaining the age of superannuation; and that however, since departmental enquiry was in progress against him, a letter of dismissal was issued against him; and that as more than 5 years had elapsed from the date of his employment coming to an end, the challenge to the same is a product of after-thought; and that as such no industrial dispute can be said to exist after such long lapse of time.

9. It is, inter-alia, further stated in the Written Statement that the Statement of Claim has not been signed/verified and hence the claim of the second party / person concerned (Doctor) deserves to be rejected.

10. After raising various Preliminary Objections in paragraphs 2 to 8 of the Written Statement, as noted above, the first party/Management has raised various Objections on Merits of the case in the subsequent paragraphs of the Written Statement.

11. It is, inter-alia, further stated in the Written Statement that the second party / person concerned has filed a Statement of Claim dated 29.2.2012 claiming monetary benefits, and that no such relief can be granted in favour of the second party / person concerned (Doctor).

12. It is, inter-alia, further stated in the Written Statement that the second party / person concerned (Doctor) is not falling within the definition of "workman" contained in Section 2(s) of the Industrial Disputes Act, 1947; and that the judgement of the learned Single Judge of the Kerala High Court based on which the second party / person concerned (Doctor) was considered as "workman" in the Judgement dated 12.3.2010 of the Central Government Industrial Tribunal No.2 has been reversed by the Division Bench of the Kerala High Court, and hence, the Judgement dated 12.3.2010 of the Central Government Industrial Tribunal No.2 referred to by the second party / person concerned (Doctor) is of no relevance.

13. It is, inter-alia, further stated in the Written Statement that admittedly the second party/person concerned (Doctor) attained age of superannuation on 30.9.2005 and, thereafter, the letter of dismissal dated 23.6.2006 was issued against him; and that due to oversight, the said letter of dismissal was issued to the second party/ person concerned (Doctor); and that since the second party/person concerned (Doctor) was no more in employment after 30.9.2005, the said letter of dismissal is non-est in the eyes of law and hence is of no relevance or consequence.

14. It is, inter-alia, further stated in the Written Statement that the prayer contained in the Statement of Claim cannot be considered in these proceedings; and that the prayer has been made as if the present proceedings are of the nature of recovery proceedings.

15. It is, inter-alia, further stated in the Written Statement that the claims mentioned in Annexure 'A' to the Statement of Claim were subject-matter of proceedings which were initiated by the second party / person concerned (Doctor) under Section 33 C(2) of the Industrial Disputes Act, 1947 which were numbered as Application LC-2/13 of 2006; and that the said Application was decided by a Judgement dated 12.3.2010 whereby the entire claim of the second party/ person concerned (Doctor) was rejected; and that on account of this, the claim of the second party / person concerned (Doctor) preferred in these proceedings is barred by the principle of res-judicata.

16. It is, inter-alia, further stated in the Written Statement that the second party / person concerned (Doctor) was appointed as Part-Time Medical Officer by letters in writing and the benefits as applicable and agreed to were given to the second party / person concerned (Doctor) from time to time; and that the second party / person concerned (Doctor) was not deprived of any benefit.

17. It is, inter-alia, further stated in the Written Statement that all dues payable to the second party / person concerned (Doctor) have been paid and he has received the same unconditionally; and that the second party / person concerned (Doctor) is not entitled to receive a sum of Rs.21,29,032/- or any part thereof on any count whatsoever with or without any interests.

POINTS FOR CONSIDERATION

18. On the basis of the Pleadings exchanged between the parties and having regard to the contents of the Reference made to this Tribunal, ***FOLLOWING POINTS ARISE for consideration*** in the present case:

- (1) *Whether the action of Management of Richardson & Cruddas India Limited (first party/Management) in not treating Dr.Shri M.S.Gajbhiye (second party / person concerned) as workman is proper and justified?*
- (2) *Whether the action of the first party/Management by terminating the service of the second party / person concerned (Dr.Shri M.S.Gajbhiye) is proper and justified?*
- (3) *To what relief, if any, the second party / person concerned (Dr.Shri M.S.Gajbhiye) is entitled?*

EVIDENCE

19. Both the sides have led ***evidence*** in support of their respective cases.

20. The second party / person concerned filed documentary evidence in support of his case. Further, the second party/ person concerned (M.S.Gajbhiye, WW-1) filed his affidavit, sworn on 7.8.2012, in lieu of Examination-in-Chief. He was cross-examined by Mr.S.Z.Choudhary, learned counsel for the first party/Management.

21. The first party/Management filed documentary evidence in support of its case. Further, the first party/Management filed affidavit of Ravindra Ganpat Satam (MW-1), sworn on 4.4.2014, in lieu of Examination-in-Chief. The said Ravindra Ganpat Satam (MW-1) was cross-examined by the second party / person concerned (M.S.Gajbhiye). The first party/Management also filed affidavit of Shrikant Devidas Umrikar (MW-2), sworn on 31.7.2014, in lieu of Examination-in-Chief. The said Shrikant Devidas Umrikar (MW-2) was cross-examined by the second party / person concerned (M.S.Gajbhiye).

22. I have heard Shri M.S.Gajbhiye (second party/person concerned) in person and Shri S.Z.Choudhary, learned counsel for the first party/Management, and perused the record.

23. ***Submissions*** made on behalf of the parties will be dealt with at the appropriate places while recording findings on various points mentioned above.

FINDINGS:

24. **POINT NO.1** : Point no. 1, as noted earlier, is as to "Whether the action of Management of Richardson & Cruddas India Limited (first party/Management) in not treating Dr.Shri M.S.Gajbhiye (second party / person concerned) as workman is proper and justified?"

25. It is submitted by Shri S.Z.Choudhary, learned counsel for the first party/Management that Dr. M.S.Gajbhiye (second party / person concerned) was not covered within the definition of the word "Workman" as contained in Section 2(s) of the Industrial Disputes Act, 1947, and as such, the present Reference at the instance of Dr. M.S.Gajbhiye (second party / person concerned) and in regard to his alleged dispute or difference with the first party/Management is not maintainable. It is further submitted that the action of the first party/Management, in not treating Dr.M.S.Gajbhiye (second party/ person concerned) as workman is proper and justified.

26. In reply, the second party / person concerned (M.S.Gajbhiye) submits that the second party / person concerned was covered within the definition of "Workman" as contained in Section 2(s) of the Industrial Disputes Act,

1947, and the present Reference is maintainable. It is further submitted that the action of the first party/Management in not treating the second party / person concerned (M.S.Gajbhiye) as workman is neither proper nor justified.

27. In order to appreciate the above submissions made on behalf of the parties in regard to Point No. 1, it is pertinent to refer to *certain provisions of the Industrial Disputes Act, 1947*.

28. **Preamble** to the Industrial Disputes Act, 1947, inter alia, states: “An Act to make provision for the Investigation and Settlement of Industrial Disputes, and for certain other purposes”.

29. **Sub-section (1) of Section 10** of the Industrial Disputes Act, 1947, inter alia, provides that where the Appropriate Government is of opinion that any Industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court or to a Tribunal for adjudication as per the provisions contained in the said sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

30. Thus, Section 10 contemplates adjudication of an “Industrial Dispute”. It is, therefore, relevant to refer to the definition of “**Industrial Dispute**” as contained in **Section 2(k)** of the Industrial Disputes Act, 1947 which is as under:

“2(k) “**industrial dispute**” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;”

31. The word “**employer**” occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(g)** of the said Act as follows:

“2 (g) “**employer**” means-

(i) *in relation to any industry carried on by or under the authority of any department of [the Central Government or a State Government,] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*

(ii) *in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”*

32. The word “**Workman**” occurring in **Section 2(k)** of the Industrial Disputes Act, 1947 is defined in **Section 2(s)** of the said Act 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.”*

33. From a combined reading of **Section 2(k)**, **Section 2(g)** and **Section 2(s)** of the Industrial Disputes Act, 1947, it is evident that “Industrial Dispute”, inter alia, means any dispute or difference between “employer” [as defined in **Section 2(g)** of the Industrial Disputes Act, 1947] and “Workman” [as defined in **Section 2(s)** of the Industrial Disputes Act, 1947]. Hence, for a dispute or difference between an employer and the person employed by him (i.e. employee) to be an “Industrial Dispute”, it is necessary that the person employed i.e. employee must be covered within the definition of the word “Workman” as contained in **Section 2(s)** of the Industrial Disputes Act, 1947.

34. In the present case, the question arises as to whether the second party/person concerned (M.S.Gajbhiye) was covered within the definition of the word “Workman” as contained in **Section 2(s)** of the Industrial Disputes Act, 1947. If the second party/person concerned was covered within the definition of the word “Workman” as contained in **Section 2(s)** of the Industrial Disputes Act, 1947, then the Reference at his instance and in regard to his alleged dispute or difference with the first party/Management may be maintainable. However, if the second party/person concerned

(M.S.Gajbhiye) was not covered within the definition of the word “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947, then the present Reference at his instance and in regard to his alleged dispute or difference with the first party/Management would not be maintainable.

35. As noted earlier, the Reference made to this Tribunal has referred to the second party/person concerned as “Dr. Shri M.S.Gajbhiye”. It is, inter alia, averred in the Statement of Claim read with Annexure “A” thereto filed by the second party/person concerned in the present Reference that the second party / person concerned (Dr.M.S.Gajbhiye) was employed as a Part-time Medical Officer with the Company, namely, Richardson & Cruddas India Limited (i.e. first party/Management) by Letter of Appointment dated 7.11.1989; and that by Letter dated 7.11.1992, the second party/person concerned was given benefits of Regular Pay Scales, DA, Reimbursement of Rental Charges for Telephone at his residence as well as benefit of Provident Fund. Copies of the said Letter dated 7.11.1989 and the said Letter dated 7.11.1992 have been filed by the second party/person concerned as Document No.1 with his Statement of Claim.

36. A perusal of the said Letter dated 7.11.1989 addressed to Dr.M.S.Gajbhiye (second party/person concerned) shows that in Clause 1 thereof, it is stated that “*Your appointment is as Part-time Medical Officer at a monthly fixed basic pay of Rs.2,190 for medical assistance to the employees of Richardson & Cruddas (1972) Ltd., Bombay (Byculla/Mulund Works).*” In the said Letter dated November 7, 1992 addressed to Dr.M.S.Gajbhiye (second party/person concerned), it has again been stated in Clause 1 that “*Your appointment is as Part-time Medical Officer at a Monthly Fixed Basic pay of Rs.4,600/- for medical assistance to the employees of Richardson & Cruddas (1972) Ltd, Bombay (Byculla/Mulund Works).*”

37. Again, in his affidavit sworn on 7.8.2012, filed in lieu of Examination-in-Chief, the second party/ person concerned (M.S.Gajbhiye) has, inter alia, stated in paragraph 1 that “*I say that I was employed with the Opponent Company as a Part-Time Doctor by virtue of Appointment letters given to me by the Opponent Company from time to time*”.

38. From the above, it is evident that there is no dispute between the parties that the second party/person concerned (M.S.Gajbhiye) is a Doctor, and he was employed as a Part-Time Medical Officer with Richardson & Cruddas India Limited (first party/Management) for medical assistance to the employees of the said Company.

39. With this factual background, let us consider as to whether the second party/person concerned i.e. Dr.M.S.Gajbhiye would fall within the definition of the word “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947.

40. In order to consider the said question, it is relevant to refer to certain *Decisions of the Supreme Court*.

41. In *Miss A.Sundarambal vs. Government of Goa, Daman & Diu and Others, 1989 1 LLJ 61 (SC) :AIR 1988 SC 1700*, their Lordships of the Supreme Court considered the question as to whether “a teacher employed in a School falls within the definition of the expression ‘Workman’ as defined in Section 2(s) of the Industrial Disputes Act, 1947”.

42. In this case, the Appellant, Miss A.Sundarambal, was employed as a teacher in a School conducted by the Society of Franciscan Sisters of Mary at Caranzalem, Goa. Her services were terminated by the Management by a letter dated 25.4.1975. The Government of Goa, Daman and Diu declined to make a Reference under Section 10 of the Industrial Disputes Act, 1947 on the ground that the Appellant was not a ‘Workman’ as defined in the Industrial Disputes Act, 1947. Thereupon, the Appellant filed a Writ Petition before the High Court of Bombay, Panaji Bench, Goa for issuance of Writ in the nature of mandamus requiring the Government to make a Reference under Section 10 of the Industrial Disputes Act, 1947 to a Labour Court to determine the validity of the termination of her services. The Writ Petition was dismissed by the High Court holding that the Appellant was not a ‘Workman’ by its judgement dated 5.9.1983. Thereupon, the Appellant, Miss.A.Sundarambal, filed Appeal by Special Leave before the Supreme Court. Their Lordships of the Supreme Court agreed with view taken by the High Court that the Appellant was not a ‘workman’, and dismissed the Appeal filed by the Appellant. Their Lordships of the Supreme Court held as under:

“7. In order to be a workman, a person should be one who satisfies the following conditions: (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e., (i) to (iv) mentioned in the definition of ‘workman’ in Section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute”.

“9. We are of the view that the teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, graduate or post-graduate education, cannot be called

as 'workman' within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workman' as defined under the Act."

43. This decision thus lays down that the teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, graduate or post-graduate education, cannot be called as 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It has been emphasized that imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers.

44. In *The Management of Heavy Engineering Corporation Limited v/s Presiding Officer, Labour Court and Others, 1997 I LLJ 167 (SC): (1996) 11 SCC 236*, the Appellant had appointed Respondent No.2 as a Doctor in the General Duty Medical Officer, Grade II on May 17, 1978. The appointment was on ad-hoc basis for a period of six months w.e.f. May 18, 1978. The Respondent No.2 was posted at the First Aid Post maintained by the Appellant Corporation (Heavy Engineering Corporation Ltd) for providing emergency medical services in case of accidents, etc. The ad-hoc appointment to the temporary post was first extended for a period of 3 months by Order dated November 30, 1978. Second extension was granted for a period of 2 months by Order dated March 7, 1979. By Office Order dated April 17, 1979, the Respondent No. 2 was informed that on the completion of his term of appointment on ad-hoc basis, he would be relieved of his duties w.e.f. the afternoon of May 18, 1979 (sic). The Respondent No. 2 raised an Industrial Dispute regarding the alleged illegal termination of his services by Order dated April 17, 1979. The Government of Bihar made a Reference to the Labour Court under Section 10 of the Industrial Disputes Act, 1947 for deciding the dispute regarding the termination of services of the Respondent No.2. The Labour Court gave Award dated 25.2.1986 in favour of the Respondent No.2. Thereupon, the Appellant filed a Writ Petition before the Patna High Court. The Patna High Court dismissed the Writ Petition filed by the Appellant. Thereafter, the Appellant filed an Appeal before the Supreme Court by Special Leave. The principal contention urged on behalf of the Appellant was that the Respondent No.2 could not be regarded as being a "Workman" within the meaning of the expression as defined in Section 2(s) of the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court accepted the said contention and allowed the Appeal filed by the Appellant and set-aside the judgement of the High Court and the decision of the Labour Court. Their Lordships of the Supreme Court held as under:

"12. *The aforesaid facts, in our opinion, clearly go to show that respondent No.2 could not be regarded as a workman under Section 2(s) of the Act as he was working in a supervisory capacity. While it is no doubt true that respondent No.2, alongwith the other doctors, used to work in shifts nevertheless during the time when he was in the shift he was the sole person in-charge of the first-aid post. He had, under him male nurse, nursing attendant, sweeper and ambulance driver who would naturally be taking directions and orders from the in-charge of the first-aid post. These persons obviously could not act on their own and had to function in the manner as directed by respondent No.2, whenever he was on duty. They were, in other words, under the control and the supervision of the respondent. When a doctor, like the respondent, discharges his duties of attending to the patients and in addition thereto supervises the work of the persons subordinate to him, the only possible conclusion which can be arrived at is that the respondent cannot be held to be regarded as a workman under Section 2(s) of the Act.*"

45. This decision thus lays down that a Doctor appointed as General Duty Medical Officer, Grade-II and posted at the First-Aid Post maintained by the Appellant Corporation for providing emergency medical services in case of accidents etc was not covered within the definition of "Workman" as contained in Section 2(s) of the Industrial Disputes Act, 1947.

46. In *Muir Mills Unit of N.T.C (U.P.) Ltd vs. Swayam Prakash Srivastav and Another, 2007-I LLJ 801 (SC) : AIR 2007 SC 519*, the facts were as follows:

The Appellant before the Supreme Court, i.e. Muir Mills was a subsidiary of the National Textile Corporation Ltd of State of U.P. The Respondent No.1 was offered appointment as Legal Assistant in the Litigation Section on a probation period of one year on 4.6.1982. On the expiry of the probation period of the Respondent No.1, a letter dated 4.6.1983 was issued to the Respondent No.1 stating that, "Your performance has not been found satisfactory and as such, you have failed to complete the probationary period successfully".

47. On 6.2.1985, the Respondent No.1 raised an Industrial Dispute which was referred by the State of U.P. to the Labour Court for adjudication. The Labour Court delivered an Award on 25.5.1987 holding that the Respondent No.1 was a workman and the termination was illegal, and that the Respondent No. 1 be reinstated within a month of the Order with back wages. Aggrieved by the Award of the Labour Court, the Appellant (Muir Mills) preferred a Writ Petition before the Allahabad High Court. On 1.11.2002, the Allahabad High Court dismissed the Writ Petition.

48. Thereupon, the Appellant (Muir Mills) filed an Appeal before the Supreme Court by Special Leave. One of the issues for consideration before their Lordships of the Supreme Court was as to “whether ‘legal assistant’ falls under the definition of workman under the Industrial Disputes Act, 1947?”. Their Lordships of the Supreme Court allowed the Appeal preferred by the Appellant and set-aside the Award of the Labour Court and the Order of the High Court. Their Lordships of the Supreme Court held that the Respondent No. 1 was not a workman under the Industrial Disputes Act, 1947. Their Lordships of the Supreme Court opined as under:

- “36. Furthermore if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge, and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine, and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore “professing” to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value, and importance of its particular oath in the practice of that profession.
37. A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one’s living, so in that sense sport is a profession.
38. Therefore, it is clear that respondent No.1 herein is a professional and never can a professional be termed as a workman under any law.”

49. Thus this decision lays down that there is a distinction between occupation and profession. An occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge, and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine, and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore “professing” to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value, and importance of its particular oath in the practice of that profession. A member of a profession is termed a professional. The Respondent No. 1 who was a Legal Assistant was a professional and, therefore, he could not be termed as a workman under the Industrial Disputes Act, 1947. It has been emphasized that a professional can never be termed as a workman under any law. This decision also mentions medicine as one of the professions.

50. From this decision, it follows that a Doctor is a professional and as such, he cannot be termed as a workman under the Industrial Disputes Act, 1947.

51. In *E.S.I.C. Medical Officer’s Association vs. E.S.I.C. and Another, 2014 1 LLJ-I (SC)*, the question for consideration before their Lordships of the Supreme Court was as to “whether Medical Doctors discharging functions of Medical Officers i.e. treating patients in Employees State Insurance Corporation’s dispensaries / hospitals are workmen within the meaning of expression contained in Section 2(s) of the Industrial Disputes Act, 1947”. The facts of the case were as follows:

52. The petitioner ESIC Medical Officer’s Association was an Association of Medical Officers employed in the Employees State Insurance Corporation (E.S.I.C.) after the year 1974. The Association raised a claim for ESIC allowance of Rs.200/- p.m. on the ground that they were performing the same duties as those by Doctors who were getting the said allowance and, therefore, could not be discriminated against. The Central Government referred the said dispute on 19.11.1992 for adjudication by the Central Government Industrial Tribunal, New Delhi. The Central Government Industrial Tribunal, New Delhi answered the Reference in favour of the Petitioner Association holding that the Medical Doctors discharging functions of Medical Officers were workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

53. Aggrieved by the Award of the Tribunal, the Employees State Insurance Corporation filed Writ Petition before the Delhi High Court. The Delhi High Court allowed the Writ Petition holding that the Tribunal was in error in holding that Medical Doctors fell within the expression workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

54. Thereupon, the Petitioner Association filed Special Leave Petition before the Supreme Court. Their Lordships of the Supreme Court dismissed the Special Leave Petition. Their Lordships referred to the decisions in *Miss A.Sundarambal vs. Government of Goa, Daman & Diu and Others (supra)*, *The Management of Heavy Engineering Corporation Ltd vs. Presiding Officer, Labour Court and Others (supra)* and *Muir Mills Unit of N.T.C. (UP) Ltd vs. Swayam Prakash Srivastav and Another(supra)*. Their Lordships of the Supreme Court held as under:

“8. We notice, the medical officers appointed in the various dispensaries/hospitals are entrusted with the task of examining and diagnosing patients and prescribing medicines to them and they are basically and mainly engaged in professional and intellectual activities to treat patients.....”

“11. We are of the view that a medical professional treating patients and diagnosing diseases cannot be held to be a workmen within the meaning of Section 2(s) of the ID Act. Doctors profession is a noble profession and is mainly dedicated to serve the society, which demands professionalism and accountability. Distinction between occupation and profession is of paramount importance. An occupation is a principal activity related to job, work or calling that earns regular wages for a person and a profession, on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. Persons performing such functions cannot be seen as a workman within the meaning of Section 2(s) of the ID Act. We are of the view that the principle laid down by this Court in *A.Sundarambal v. Govt. of Goa, Daman and Diu (supra)* and in *Muir Mills Unit of NTC (UP) Ltd. v. Swayam Prakash Srivastava (supra)* squarely applies to such professionals. That being the factual and legal position, we find no reasons to interfere with the judgment of the High Court. The SLP lacks merit and is dismissed accordingly.”

55. This decision thus lays down that a Medical Professional treating patients and diagnosing diseases cannot be held to be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Doctors profession is a noble profession and is mainly dedicated to serve the Society, which demands professionalism and accountability. Distinction between occupation and profession is of paramount importance. An occupation is a principal activity related to job, work or calling that earns regular wages for a person and a profession, on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. Persons performing such functions cannot be seen as a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

56. Keeping in view the principles laid down in the above decisions, let us consider the present case. As noted earlier, there is no dispute between the parties that the second party/person concerned (M.S.Gajbhiye) is a Doctor, and he was employed as a Part-Time Medical Officer with Richardson & Cruddas India Ltd (First party/Management) for medical assistance to the employees of the said Company. Thus, the second party/ person concerned (M.S.Gajbhiye) is a professional, and in view of the principles laid down in the above decisions, he is not covered within the definition of “workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. Hence, the present Reference at the instance of the second party/person concerned and in regard to his alleged dispute or difference with the first party/Management is not maintainable.

57. *It is, however, necessary to deal with various submissions made on this point on behalf of the parties. The said submissions are being dealt with as under:*

(1) It is submitted by Shri S.Z.Choudhary, learned counsel for the first party/Management that the second party/person concerned (Dr.M.S.Gajbhiye) was not covered within the definition of the word “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. Shri S.Z.Choudhary, learned counsel for the first party/Management, in support of his submission, has placed reliance on the following decisions:

(i) *E.S.I.C. Medical Officer’s Association vs. E.S.I.C. and Another, 2014-I-LLJ-1(SC).*

(ii) *Mar. Baselios Medical Mission Hospital vs. Dr. Joseph Babu, 2010 (125) FLR 151 (Kerala) (DB)* whereby the decision of the learned Single Judge in *Mar. Baselius Medical Mission Hospital vs. Joseph Babu, 2007 II CLR 130 (Kerala)* was over-ruled by a Division Bench of the Kerala High Court.

58. In reply, the second party/person concerned (Dr.M.S.Gajbhiye) submits that the second party/person concerned was covered within the definition of “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. In this regard, he has placed reliance on the following decisions:

- (i) *Mar. Baselius Medical Mission Hospital vs. Joseph Babu, 2007 II CLR 130 (Kerala).*
- (ii) *Bengal United Tea Company Ltd vs. Ram Labhaya and Others, 1962-II-LLJ-37 (Assam) (DB).*
- (iii) *Arun Mills Ltd vs. Dr.Chandraprasad C.Trivedi, 1976 (32) FLR 323 (Gujarat)(DB).*
- (iv) *Shankarbhai Nathalal Prajapati vs. Maize Products, 2002 III CLR 919 (Gujarat).*
- (v) *National Engineering Industries Ltd vs. Shri Shri Kishan Bhageria and Others, 1988-I-LLJ - 363 (SC).*
- (vi) *Mrs. Pramodini Patkar vs. Indian Cancer Society and Another, 1992 (81) FJR 231 (Bombay).*

59. As regards the decision of the Supreme Court in *E.S.I.C. Medical Officer’s Association vs. E.S.I.C. and Another, 2014-I-LLJ-1(SC) (supra)*, relied upon by Shri .S.Z.Choudhary, learned counsel for the first party/Management, the said decision has already been considered in the earlier part of this Award. As noted earlier, the said decision lays down that a Medical Professional treating patients and diagnosing diseases cannot be held to be a Workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

60. Coming now to the decision in *Mar. Baselius Medical Mission Hospital vs. Joseph Babu, 2007 II CLR 130 (Kerala)*, a learned Single Judge of the Kerala High Court held that a Doctor performing the duties of examining patients, diagnosing diseases and prescribing medicines would be a ‘Workman’ as defined in Section 2(s) of the Industrial Disputes Act, 1947. The said decision of the learned Single Judge of the Kerala High Court was challenged in Appeal before a Division Bench of the Kerala High Court. The Division Bench of the Kerala High Court over-ruled the said decision of the learned Single Judge, and held that a Doctor being a Professional could not be termed as a workman. The said view of the Division Bench of the Kerala High Court is in consonance with the view of their Lordships of the Supreme Court in *E.S.I.C. Medical Officer’s Association vs. E.S.I.C. and Another(supra)*. In the circumstances, the decision of the learned Single Judge in *Mar. Baselius Medical Mission Hospital vs. Joseph Babu, 2007 II CLR 130*, relied upon by the second party/person concerned, no longer holds the field, and the same cannot be relied upon.

61. In *Bengal United Tea Company Ltd vs. Ram Labhaya and Others, 1962-II-LLJ-37*, a Division Bench of the Assam High Court held that a Doctor employed as an Assistant Medical Officer was a ‘Workman’ within the definition of ‘Workman’ as contained in Section 2(s) of the Industrial Disputes Act, 1947. The said decision is evidently not in consonance with the decisions of the Supreme Court noted in the earlier part of this Award particularly, the decision of the Supreme Court in *E.S.I.C. Medical Officer’s Association vs. E.S.I.C. and Another (supra)*. In the circumstances, with deep respect to the Honourable Judges of the Assam High Court who gave decision in the said case, the said decision cannot be relied upon and applied in the present case.

62. In *Arun Mills Ltd vs. Dr.Chandraprasad C.Trivedi, 1976 (32) FLR 323 (Gujarat)*, a Division Bench of the Gujarat High Court held that a Doctor who was engaged as a Physician In-charge of the Dispensary of the Arun Mills Ltd was a “Workman” as defined in Section 2(s) of the Industrial Disputes Act, 1947. The said decision is evidently not in consonance with the decisions of the Supreme Court noted in the earlier part of this Award particularly, the decision of the Supreme Court in *E.S.I.C. Medical Officer’s Association vs. E.S.I.C. and Another (supra)*. In the circumstances, with deep respect to the Honourable Judges of the Gujarat High Court who gave decision in the said case, the said decision cannot be relied upon and applied in the present case.

63. In *Shankarbhai Nathalal Prajapati vs. Maize Products, 2002 III CLR 919 (Gujarat)*, the question was as to whether the Petitioner who was working as a Shift Chemist in the Respondent- Company was a Workman within the meaning of the word “Workman” as defined in Section 2(s) of the Industrial Disputes Act, 1947. The Labour Court by its Award dated 9.11.2001 held that the Petitioner was not a Workman, and dismissed the Reference. Thereupon, the Petitioner filed Writ Petition before the Gujarat High Court. The learned Single Judge of the Gujarat High Court held that the Petitioner who was working as a Shift Chemist in the Respondent-Company was covered within the definition of the word “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. Accordingly, the Award of the Labour Court was set-aside by the learned Single Judge of the Gujarat High Court, and the matter was remanded to the Labour Court. The said decision of the Gujarat High Court, was concerning a person working as a Chemist in the Company in question. The said decision is not relevant in the present case as the question involved in the present case is as to whether a Doctor is covered within the definition of “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947.

64. In *National Engineering Industries Ltd vs. Shri Shri Kishan Bhageria and Others, 1988-I-LLJ-363 (SC)*, their Lordships of the Supreme Court considered the question as to whether a person employed as an Internal Auditor

of a Company was covered within the definition of “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. Upholding the Division Bench decision of the Rajasthan High Court, their Lordships of the Supreme Court held that an Internal Auditor of a Company was covered within the definition of “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. The said decision of the Supreme Court was thus concerning the question as to whether an Internal Auditor of a Company was a “Workman” within the meaning of the word as defined in Section 2(s) of the Industrial Disputes Act, 1947. The said decision is, therefore, not relevant in the present case where the question is as to whether a Doctor is covered within the definition of the word “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947.

65. In *Mrs. Pramodini Patkar vs. Indian Cancer Society and Another, 1992 (81) FJR 231 (Bombay)*, the question for consideration was as to whether the Petitioner who was employed by the Respondent (Indian Cancer Society) as a Temporary Part-Time Teacher in Handicrafts, was covered within the definition of the word “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. It was held by the Bombay High Court that “although the Petitioner was described as a Teacher, her work was not essentially that of a Teacher in an academic field and she was not exercising intellectual skill of a Teacher as we understand the term when one works in an Educational Institution imparting instructions to the students to build up their scholastic careers”. Accordingly, it was held that the Petitioner was covered within the definition of the word ‘Workman’ as contained in Section 2(s) of the Industrial Disputes Act, 1947. The said decision thus pertained to the question as to whether a person employed as a Temporary Part-Time Teacher in Handicrafts by Indian Cancer Society was a ‘Workman’ within the meaning of the word as defined in Section 2(s) of the Industrial Disputes Act, 1947. The said decision is thus not relevant in the present case. Here, the question is as to whether a Doctor is covered within the definition of the word “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947.

66. (2) It is submitted by the second party/person concerned (M.S.Gajbhiye) that in the Judgement and Order dated 12.3.2010 passed by the Central Government Labour Court No.2, Mumbai in Application No. LC-2/13 of 2006, the said Labour Court has recorded a finding that the second party/person concerned is a ‘Workman’ and he is entitled for taking shelter under Section 33-C(2) of the Industrial Disputes Act, 1947”. The said finding, the submission proceeds, is binding between the parties to the present Reference who were also parties to the said Application No. LC-2/13 of 2006 before the Central Government Labour Court No.2, Mumbai. Reliance in this regard is placed on a decision of the Bombay High Court in *Mohammed Yunusuddin Shaik vs. Manganese Ore (India) Ltd., 2008 II CLR 96 (Bombay)*.

67. In reply, Shri S.Z.Choudhary, learned counsel for the first party/Management submits that even though in the said Judgement and Order dated 12.3.2010 passed in Application No. LC-2/13 of 2006, the Central Government Labour Court No.2, Mumbai recorded a finding that the second party/person concerned (who was Applicant in the said Application) was a “Workman” but by the said Judgement and Order dated 12.3.2010, the said Application filed by the second party/person concerned as Applicant under Section 33-C(2) of the Industrial Disputes Act, 1947 was ultimately dismissed. In the circumstances, the submission proceeds, it was not open to the first party/Management to challenge before High Court the said finding recorded in the said Judgement and Order dated 12.3.2010 regarding the second party/person concerned being a “Workman” and as such, the said finding cannot operate as res judicata between the parties in the present Reference.

68. In order to appreciate the rival submissions made on behalf of the parties, it is relevant to note certain facts. It appears that the second party/person concerned (Dr.M.S.Gajbhiye) herein filed an Application as Applicant under Section 33-C(2) of the Industrial Disputes Act, 1947 against the first party/Management [M/s.Richardson & Cruddas (India) Limited] herein as the Opposite Party. The said Application filed before the Central Government Labour Court No.2, Mumbai was numbered as Application No. LC-2/13 of 2006. By the Judgement and Order dated 12.3.2010 passed by the Central Government Labour Court No.2, Mumbai (Ex.W-2 on the Record of the present Reference), the said Application namely, Application No. LC-2/ 13 of 2006 filed by the second party/person concerned herein as Applicant under Section 33-C(2) of the Industrial Disputes Act, 1947 was rejected. Thus, the ultimate Order passed in the said Application No. LC-2/13 of 2006 as contained in the said Judgement and Order dated 12.3.2010 was in favour of the first party/Management herein (Opposite Party in the said Application).

69. One of the questions considered by the Central Government Labour Court No.2, Mumbai in the said Judgement and Order dated 12.3.2010 was as to whether the Applicant in the said Application No. LC-2/13 of 2006 (second party/person concerned herein) was a “Workman” or not. The finding recorded by the Central Government Labour Court No.2, Mumbai on the said question in the said Judgement and Order dated 12.3.2010 was that the second party/person concerned who was the Applicant in the said Application No. LC-2/13 of 2006 was a “Workman”. Question arises as to whether the said finding recorded in the Judgement and Order dated 12.3.2010 would operate as res judicata between the parties in the present Reference who were also parties in the said Application No. LC-2/13 of 2006 and would be binding between the parties to the present Reference.

70. It is true that normally finding on a particular issue recorded in an earlier proceeding/case/suit between the parties is binding in a subsequent proceeding/case/suit between the same parties wherein the same issue is involved between the parties. This follows from the Principle analogous to the Principle of Res Judicata as contained in Section 11 of the Code of Civil Procedure.

71. In *Mohammed Yunusuddin Shaik vs. Manganese Ore (India) Ltd, 2008 II CLR 96 (Bombay)*, relied upon by the second party / person concerned, a Reference was made to the Labour Court (Central) regarding dispute in respect of termination of services of the petitioner-employee at the instance of the respondent-employee. The respondent-employer preferred a Writ Petition, being Writ Petition No. 678 of 2000, challenging the Government's Order making the Reference. One of the grounds of challenge was that the petitioner-employee was not a Workman within the purview of Section 2(s) of the Industrial Disputes Act, 1947 and hence Reference was incompetent.

72. By Judgment and Order dated 6.7.2001, the Bombay High Court dismissed the said Writ Petition No. 678 of 2000 filed by the respondent-employer. The said Judgment and Order dated 6.7.2001 was not challenged by the respondent-employer in the Supreme Court, and thus, the said Judgment and Order became final between the parties.

73. Thereafter, Reference proceeded before the Labour Court.

74. On the objection of the respondent-employer, a Preliminary Issue as to the status of the petitioner-employee as a 'workman' was framed. The respondent-employer sought hearing of Preliminary Issue as to whether the petitioner-employee was a "Workman" under Section 2(s) of the Industrial Disputes Act, 1947.

75. In the midst of the hearing on the said Preliminary Issue, the petitioner-employee took objection to the hearing of the Preliminary Issue by filing an Application dated 7.2.2007. The Labour Court rejected his Application. Thereupon, the petitioner-employee filed Writ Petition, being Writ Petition No. 3396 of 2007, before the Bombay High Court. The Bombay High Court by the Judgment and Order dated 25.1.2008 [reported in 2008 II CLR 96 (supra)] allowed the said Writ Petition No. 3396 of 2007, set-aside the impugned Order of the Labour Court, and allowed the said Application dated 7.2.2007 filed by the petitioner-employee before the Labour Court. It was held by the Bombay High Court that the finding recorded by the Bombay High Court in Writ Petition No. 678 of 2000 in which the respondent-employer was a party that the petitioner-employee was a "workman" was binding on the respondent-employer, and as such, the question of the petitioner-employee being "workman" was not open for enquiry.

76. The question, however, arises as to whether the finding recorded by the Central Government Labour Court No.2, Mumbai in its Judgement and Order dated 12.3.2010 regarding the second party/person concerned herein (Applicant in Application No. LC-2/13 of 2006 before the Central Government Labour Court No.2, Mumbai) being "Workman" would operate as res judicata between the parties to the present Reference and would be binding between them on account of the Principle analogous to the Principle of Res Judicata.

77. In the present case, as noted earlier, even though in the course of the Judgement and Order dated 12.3.2010, the Central Government Labour Court No.2, Mumbai recorded a finding that the second party/person concerned herein (Applicant before the Central Government Labour Court No.2) was a "Workman", but the ultimate decision given in the said Judgement and Order dated 12.3.2010 was in favour of the first party/Management herein (Opposite Party before the Central Government Labour Court No.2, Mumbai) as the Application namely, Application No. LC-2/13 of 2006 filed by the second party/person concerned herein as Applicant under Section 33-C(2) of the Industrial Disputes Act, 1947 was dismissed.

78. It is settled position that "*a person who has entirely succeeded before a Court or Tribunal below cannot file an appeal solely for the sake of clearing himself from the effect of an adverse finding or an adverse decision on one of the issues as he would not be a person falling within the meaning of the words 'person aggrieved'*" (See: *Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai and Another, 2004 (3)SCC 214 (paragraph 35)*).

79. In view of the above legal position, it is evident that as the ultimate decision given by the Central Government Labour Court No.2, Mumbai by its Judgement and Order dated 12.3.2010 was in favour of the first party/Management, it was not open to the first party/Management to file any Writ Petition before the High Court for getting set-aside the finding recorded in the said Judgement and Order dated 12.3.2010 regarding the second party/person concerned being a workman even though the said finding was adverse to the first party/Management.

80. As it was not open for the first party/Management to challenge the said finding recorded in the Judgement and Order dated 12.3.2010, regarding the second party/person concerned being a 'workman' by filing Writ Petition before the High Court, the said finding would not operate as res judicata between the parties in the present Reference and would not be binding between the parties in the present Reference. This conclusion follows from the following decisions:

81. In *Midnapur Zamindari Company Ltd vs. Naresh Narayan Roy, AIR 1922 Privy Council 241*, the Zamindar in 1877 sued the tenant for khas possession. The tenant pleaded; (i) An Occupancy Right and (ii) that the Suit was

pre-mature. The Trial Court held that there was no occupancy right but that the suit was pre-mature. The High Court affirmed the Trial Court's judgement. The Zamindar brought another Suit for *khas* possession of the land, after giving the necessary notice to terminate the tenancy. The tenant again claimed occupancy rights. One of the question for consideration was as to whether the finding recorded in the earlier Suit filed by the Zamindar in 1877 that there was no occupancy right would operate as *res judicata* in the subsequent Suit filed by the Zamindar. The Privy Council held that the question of occupancy right was not *res judicata* in the subsequent Suit because the tenant having succeeded on the other plea in the Suit of 1877, had no occasion to go further as to the finding recorded against him on the question of occupancy rights.

82. From the above decision of the Privy Council, it follows that in case certain adverse findings are recorded in a Suit against a party but the ultimate decision in the Suit is in favour of that party, then the findings recorded in the Suit against that party would not operate as *res judicata* in a subsequent Suit between the same parties.

83. In *Smt. Tarabai Mohata and Ors. Vs Union of India*, AIR 1971 Calcutta 225, the appellants before the Calcutta High Court were heirs and legal representatives of a deceased judgment-debtor Radhakissen Mohta. A Compromise Decree was passed on August 24, 1949 in a First Appeal before the Calcutta High Court. In or about the year 1951 the respondent before the Calcutta High Court in the above case put the aforesaid Compromise Decree into Execution in Title Execution No.43 of 1951 claiming to recover a sum of Rs.1,98,250/- from the appellants before the Calcutta High Court in the above case who were the heirs and legal representatives of the deceased Radhakissen Mohta. In the said Execution Case, two objections under Section 47 of the Code of Civil Procedure were filed on behalf of the appellants which were registered as Miscellaneous Case Nos. 136 and 137 of 1951. These objections succeeded and the learned Subordinate Judge by the Judgement dated April 16, 1952 held that the Execution Application as framed was not maintainable. Few years thereafter on April 12, 1955, the respondent before the Calcutta High Court in the above case, filed a fresh Application for Execution which was registered as Title Execution Case No. 16 of 1955 claiming recovery of a sum of Rs. 1,67,012-8 annas. In this Application for Execution, an objection was again raised under Section 47 of the Code of Civil Procedure by the appellants before the Calcutta High Court in the above case. The learned Subordinate Judge upheld the objection in part. However, the learned Subordinate Judge over-ruled the objection of the appellants that the decree was not executable and held that the decree was final and was capable of being executed for the value of the shares now claimed. Thereupon, the appellants i.e. the heirs of Radhakissen Mohta filed Appeal before the Calcutta High Court against the said Judgement and Order of the learned Subordinate Judge. The Calcutta High Court in the above case, allowed the Appeal filed by the appellants and held that the execution could not proceed as there was no executable decree. A plea was raised on behalf of the Revenue Authorities that the objection raised on behalf of the appellants that there was no executable decree was barred by principles of *res judicata*. Their Lordships of the Calcutta High Court rejected the said plea raised on behalf of the Revenue Authorities and held as under:

“16. In upholding the second contention we have also considered the objection of Mr. Pal that this objection is barred by principles of *res judicata*. We are however unable to accept this contention of Mr. Pal for the simple reason that his claim of bar of *res judicata* based as it is on the judgment of the learned Subordinate Judge dated April 16, 1952 in the earlier Misc. Cases under Section 47 of the Code of Civil Procedure cannot be entertained for the simple reason that the present appellants who were the judgment-debtor's objectors in the said proceedings had succeeded and the learned Subordinate Judge had found the execution itself to be not maintainable. Therefore in the facts no finding however adverse against the present appellants who were the successful parties in that litigation can operate as *res judicata*. Reference may be made in the case of *Kumar Pasupati Nath Malia v. Sankariprosad, and Midnapur Zamindari Co. v. Nares*, 48 Ind App 49 (AIR 1922 PC 241)”.

This decision, thus lays down that in case a finding is recorded against a party in an Execution Proceedings but the ultimate decision in the Execution Proceedings is in favour of that party, then such finding would not operate as *res judicata* against that party in any subsequent Execution Proceedings between the same parties because the ultimate decision in the earlier Execution Proceedings having been given in favour of that party, it was not open to that party to challenge the said finding recorded against that party in earlier Execution Proceedings by filing any Appeal.

84. In *M/s. Ram Mohan and Co. and another vs. M/s. Ganesar Ginning Co. P. Ltd., Coimbatore and others*, AIR 2000 Madras 1, a learned Single Judge of the Madras High Court held as under:

“22. Another issue argued by both sides pertains to whether the finding rendered in O.S. No. 512 of 1983 could be held as binding on the parties. That was a suit filed by the lessee/first respondent for eviction which was ultimately dismissed for want of proper notice under S. 106 of the Transfer of Property Act. In considering the merits of the case the Court held that the lease was a composite

lease. This finding is sought to be utilized by the lessee/first respondent and it is contended that the finding would operate as res judicata and was binding on the lessee/appellant. Mr. K. Alagiriswamy, learned Senior Counsel, however contends and in my opinion rightly, that inasmuch as the suit ended in their favour and there was no scope for the lessee to have filed an appeal against a mere finding, the said findings cannot operate as res judicata. In support of his contention that no appeal can be filed against a mere finding by a party in whose favour the suit has been concluded, and that in such circumstances the finding cannot operate as res judicata, Learned Senior Counsel had relied on the following rulings:-

- (i) (1969) 1 Mad LJ 573 (*Marisami v. Bluemount S. Associates (P) Ltd.*)
- (ii) AIR 1971 Cal 225 (*Tarabai V. Union of India*)
- (iii) (1974) 2 SCC 393 : (AIR 1974 SC 1126) (*Smt. Ganga Bai v. Vijay Kumar*)
- (iv) AIR 1977 Madras 25 (*Madras Corporation v. P.R. Ramachandriah*)
- (v) 1990 Supp SCC 633: (AIR 1991 SC 264) (*Ramesh Chandra v. Shiv Charan Dass*)

A perusal of the above judgments leads to a clear conclusion that a party in whose favour the proceedings have ended, could not have filed an appeal against a finding and such a finding cannot operate as res judicata. An appeal can lie only as against the decree or Order for which an appeal is expressly provided under Order 43, Rule 1, CPC and no appeal can be allowed as against a mere finding.

This decision, thus, reiterates the principle that a party in whose favour the proceedings have ended, could not have filed an Appeal against a finding and such a finding cannot operate as resjudicata.

85. Applying the principles laid down in the above decisions to the present case, it will be noticed that the ultimate decision in Application No. LC-2/13 of 2006 filed by the second party/person concerned herein as Applicant under Section 33-C(2) of the Industrial Disputes Act, 1947 against the first party/Management herein (Opposite Party in the said Application) as given by the Central Government Labour Court No.2, Mumbai by the Judgement and Order dated 12.3.2010 was in favour of the first party/Management (Opposite Party in the said Application) as the said Application filed by the second party/person concerned (Applicant in the said Application) was dismissed.

86. In the circumstances, the first party/Management (Opposite Party in the said Application No. LC-2/13 of 2006) could not file any Writ Petition before the High Court challenging the finding recorded in the said Judgement and Order dated 12.3.2010 that the second party/person concerned was a workman. Hence, the said finding cannot operate as res judicata between the parties in the present Reference and cannot be binding between the parties in the present Reference.

87. Reverting to the case ***Mohammed Yunusuddin Shaik vs. Manganese Ore (India) Ltd*** (supra), relied upon by the second party/person concerned, it has already been noted that by the Judgment and Order dated 6.7.2001, the Bombay High Court dismissed Writ Petition No. 678 of 2000 filed by the respondent-employer. The respondent-employer did not challenge the said Judgment and Order dated 6.7.2001 in the Supreme Court, and as such, the said Judgment and Order dated 6.7.2001 became final between the parties. Consequently, it was held that the finding recorded regarding the petitioner-employee being workman in the said Judgment and Order dated 6.7.2001 passed in Writ Petition No. 678 of 2000, was binding between the parties in the Reference Proceedings before the Labour Court. The said case ***Mohammed Yunusuddin Shaik vs. Manganese Ore (India) Ltd*** (supra) is thus not applicable to the present case.

88. It is also noteworthy that one of the main decisions relied upon by the Central Government Labour Court No.2, Mumbai in the Judgement and Order dated 12.3.2010 for holding the Applicant (second party/person concerned herein) to be a workman was the decision of the learned Single Judge of the Kerala High Court in ***Mar. Baselius Medical Mission Hospital vs. Joseph Babu, 2007 II CLR 130 (Kerala)***(supra). The said decision, as noted earlier, was over-ruled by a Division Bench of the Kerala High Court in ***Mar. Baselius Medical Mission Hospital vs. Dr. Joseph Babu, 2010 (125) FLR 151 (Kerala)***(supra).

89. It is also noteworthy that the finding recorded by the Central Government Labour Court No.2, Mumbai in the Judgement and Order dated 12.3.2010 that the second party/person concerned (Dr.M.S.Gajbhiye) was a "Workman", is not in consonance with the law laid down in various decisions of the Supreme Court including the decision in ***E.S.I.C. Medical Officer's Association vs. E.S.I.C.*** (supra). Law laid down by the Supreme Court is binding on this Tribunal in view of Article 141 of the Constitution of India.

90. (3) It is submitted by the second party/person concerned (M.S.Gajbhiye) that the first party/Management issued a Charge-sheet dated 23.10.1996 to the second party/person concerned for alleged misconducts committed by

the second party/person concerned and an enquiry was allegedly held and thereafter a letter of dismissal dated 23.6.2006 was issued in respect of the second party/person concerned. Hence, the submission proceeds, the first party/Management treated the second party/person concerned as a “Workman”, and the first party/Management is now estopped from raising a plea that the second party/person concerned is not a workman in the present Reference. The second party/person concerned in this regard has placed reliance on a decision of the Madras High Court in ***M.Ganesan vs. Management of Tamil Nadu Electricity Board, 2009 II CLR 406 (Madras) (DB)***.

91. In reply, Shri.S.Z.Choudhary, learned counsel for the first party/Management submits that there was no proper pleading on behalf of the second party /person concerned raising the plea of estoppel as is sought to be raised by him during arguments. In his statement as WW-1 also, the second party/person concerned did not specifically make any such assertion. In the circumstances, the submission proceeds, the second party/person concerned cannot be permitted to raise the said plea at the stage of arguments. It is, further contended by Shri.S.Z.Choudhary, learned counsel for the first party/Management that the first party/Management never treated the second party/person concerned as a “Workman”. Mere issuance of charge-sheet and holding of enquiry and passing Dismissal Order could not be construed to mean that the first party /Management treated the second party/person concerned as a “Workman”. It is further submitted by the learned counsel for the first party/Management that the decision in ***M.Ganesan vs. Management of Tamil Nadu Electricity Board(supra)***, is not applicable to the facts and circumstances of the present case.

92. I have considered the submissions made on behalf of the parties.

93. In my opinion, the submission made by the second party/person concerned that the first party/Management is estopped from raising the plea that the second party/person concerned is not a workman, cannot be accepted for the following reasons:

- (A) The Reference made to this Tribunal is as to “*Whether the action of Management of Richardson & Cruddas by terminating the service and not treating Doctor Shri M.S.Gajbhiye as workman is proper and justified? What relief he is entitled for?*” Thus, the Reference itself contemplated that the first party/Management was not treating the second party/person concerned (Dr.M.S.Gajbhiye) as Workman. In the circumstances, it was for the second party/person concerned to raise the plea of estoppel in his Statement of Claim as is sought to be raised during arguments before the Tribunal. A perusal of the Statement of Claim shows that while the second party/person concerned relied upon the judgement and Order dated 12.3.2010, passed by the Central Government Labour Court No.2, Mumbai in Application No. LC-2/13 of 2006 filed by the second party/person concerned herein (Applicant in the said Application) against the first party/Management herein (Opposite Party in the said Application) to raise the plea that the finding recorded regarding the second party/person concerned being workman in the said Judgement and Order was binding, the second party/person concerned in his Statement of Claim did not raise any specific plea that the first party/Management treated the second party/person concerned as a “Workman” and, therefore, the first party/Management was estopped from raising the plea in the present Reference that the second party/person concerned was not a workman. A perusal of the Statement of the second party/person concerned as WW-1 shows that no such specific assertion was made by the second party/person concerned in his Statement. In the circumstances, it is not open to the second party/person concerned to raise the said plea of estoppel for the first time during arguments.
- (B) As regards the decision in ***M.Ganesan vs. Management of Tamil Nadu Electricity Board(supra)***, the facts of the said case were that the appellant (M.Ganesan) who was working as an Assistant Engineer (Electrical) was removed from service. Reference was made to the Labour Court. The first respondent/Management filed a counter statement wherein one of the grounds taken was that the appellant was not falling under the definition of “Workman” as contained in Section 2(s) of the Industrial Dispute Act, 1947 and as such the Industrial Dispute was not maintainable. An Application was filed on behalf of the first respondent/Management being I.A. No. 508 of 1997 praying the Labour Court to frame the following preliminary issue namely, “Whether the respondent M.Ganesan is a ‘Workman’ within the meaning of Section 2(s) of the Industrial Disputes Act, 1947?” and decide it alongwith the issue “Whether the enquiry was fair?”. The appellant filed his counter affidavit contending that the first respondent/Management was estopped from raising the preliminary issue since it had all along admitted that the appellant was a ‘workman’. After considering the rival contentions, the Labour Court held that the first respondent/Management was estopped from raising the said preliminary issue. Thereupon, the first respondent / Management filed a Writ Petition which was allowed by the learned Single Judge by the Order dated 21.8.2006.

94. Thereafter, the appellant filed Writ Appeal before the Division Bench. The Division Bench of the Madras High Court allowed the Writ Appeal and sustained the Labour Court's Order. It was held by their Lordships of the Madras High Court sitting in the Division Bench that the first respondent/Management was estopped from taking stand that the appellant was not a Workman when the first respondent/Management itself treated the appellant as a 'Workman' while issuing the charge-sheet for the alleged misconduct and for violation of the provisions of the Standing Orders applicable to the Workman.

95. The said decision, in my view, is not applicable to the facts and circumstances of the present case. In the present case, as noted earlier, the second party/person concerned has not raised any specific plea in his pleadings that the first party/Management treated him as a Workman and charge-sheet was issued to him for violation of Standing Orders treating him to be a Workman. Even in his Statement as WW-1, no such specific averments have been made by the second party/person concerned. Thus, the facts and circumstances of the present case are not similar to those of *M.Ganesan vs. Management of Tamil Nadu Electricity Board(supra)*. Hence, the decision in *M.Ganesan vs. Management of Tamil Nadu Electricity Board(supra)*, is not applicable to the present case.

96. It is relevant to note that in *M.Ganesan vs. Management of Tamil Nadu Electricity Board(supra)*, reference was made to a decision of the Bombay High Court in *S.A.Sarang vs. W.G.Forge and Allied Industries Limited and Others, 1996-1-LLJ-67*. In the said decision, it was held by the Bombay High Court as under:

“6.....If an employer continuously and consistently proposes and takes action against its employee on the footing that he is covered by the Model Standing Orders (thereby implying that the employee is a “workman” within the meaning of the Act), then such employer must be estopped from denying the said fact when a dispute regarding to the dismissal of the employee finally lands up before an industrial adjudicator.....”

97. The above decision is again not applicable to the facts and circumstances of the present case. In the present case, as already noted, there is neither any specific pleading nor any specific assertion in the Statement of the second party/person concerned that the first party/Management took any action against the second party/person concerned on the footing that he was covered by the Standing Orders.

98. As regards issuance of charge-sheet and holding of enquiry and passing Dismissal Order, which acts are being relied upon by the second party/person concerned to raise the plea of estoppel, it is note-worthy that even if an employee is not a Workman, still the Management may in order to comply with the principles of natural justice issue charge-sheet to such an employee for his alleged misconducts, hold enquiry regarding the charges levelled against such an employee and thereafter pass Order awarding punishment to such employee. These acts as such, on the part of an employer cannot be construed to mean that the employee has been treated as a Workman by the Employer. Similarly, in the present case, merely because the first party/Management issued charge-sheet to the second party/person concerned, held alleged enquiry against him and thereafter passed the Dismissal Order, it cannot be construed to mean that the first party/Management treated the second party/person concerned as a Workman.

(C) It is well settled that there cannot be any estopped against law [*See: State of Rajasthan and Another vs. Surendra Mohnot and Others, AIR 2014 SC 2925.*]. As noted earlier, in various decisions, particularly the decision in *E.S.I.C. Medical Officer's Association vs. E.S.I.C. (supra)*, their Lordships of the Supreme Court have laid down that a Doctor is not a Workman. The law laid down by the Supreme Court is binding in view of Article 141 of the Constitution of India. Hence, the first party/Management cannot be estopped from raising the plea in the present Reference that the second party/person concerned is not a “Workman” within the definition of the word as contained in Section 2(s) of the Industrial Disputes Act, 1947.

99. In view of the above discussion, it is concluded that the second party/person concerned (M.S.Gajbhiye) is not covered within the definition of “Workman” as contained in Section 2(s) of the Industrial Disputes Act, 1947. Hence, the present Reference at the instance of the second party/person concerned and in regard to his alleged dispute or difference with the first party/Management is not maintainable. The action of the first party/Management (Management of Richardson & Cruddas India Limited) in not treating the second party/person concerned (Dr.Shri.M.S.Gajbhiye) as Workman is proper and justified.

100. **Point No.1** is decided accordingly.

POINT NO.2:

101. Point No.2, as noted earlier, is as to “Whether the action of the first party/Management by terminating the service of the second party / person concerned (Dr.Shri.M.S.Gajbhiye) is proper and justified?”

102. The said Point thus pertains to the merits of the case of the second party/person concerned as set-up in his Statement of Claim filed in the present Reference.

103. In view of the finding recorded in respect of Point No.1 that the present Reference at the instance of the second party/person concerned and in regard to his alleged dispute or difference with the first party/Management is not maintainable, it will neither be proper nor permissible for this Tribunal to express any opinion on the merits of the case as set-up in the Statement of Claim filed by the second party/person concerned in the present Reference. Therefore, no opinion is expressed by the Tribunal in respect of Point No. 2 as framed above.

104. **Point No.2** stands disposed of accordingly.

POINT NO. 3:

105. Point No. 3 is as “To what relief, if any, the second party/person concerned (Dr.Shri.M.S.Gajbhiye) is entitled?” In view of the finding recorded above in respect of Point No.1 that the present Reference at the instance of the second party/person concerned and in regard to his alleged dispute or difference with the first party/Management is not maintainable, no relief can be granted by this Tribunal in the present Reference.

106. **Point No. 3** stands disposed of accordingly.

107. In view of the above discussion, it is concluded that the present Reference at the instance of the second party/person concerned (Dr.Shri.M.S.Gajbhiye) and in regard to his alleged dispute or difference with the first party/Management is not maintainable.

108. The present Reference is, therefore, answered by stating that the present Reference is not maintainable and no Relief can be granted to the second party/person concerned (Dr.Shri M.S.Gajbhiye) in the present Reference.

109. Award is passed accordingly.

Justice S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 18 जुलाई, 2016

का.आ. 1488.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच.एम.टी. वाच फैक्ट्री, बंगलुरु के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सीआर सं. 03/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.07.2016 को प्राप्त हुआ था।

[सं. एल-42011/116/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 18th July, 2016

S.O. 1488.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. CR No. 03/2015) of the Central Government Industrial Tribunal-cum-Labour-Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the HMT Watch Factory, Bengaluru and their workman, which was received by the Central Government on 15.07.2016.

[No. L-42011/116/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

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

DATED : 8th JULY, 2016

PRESENT : Shri MURALIDHAR PRADHAN, Presiding Officer (i/c)

C R No. 03/2015

Ist Party

The President,
HMT Watch Factory
Employees Union, No. 1, D-1,
HMT Watch Factory Colony,
HMT Post, Bengaluru-13

II Party

The General Manager,
HMT Watch Factory,
Jalahalli,
Bengaluru-560013

Appearances :

I Party : Shri M N Chandrashekar, President
II Party : None

AWARD

1. The Central Government vide Order No. L-42011/116/2014-IR(DU) dated 02.01.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“whether the action of the management of HMT Specialized Watch Case Division, Bangalore, postponing the promotion of 17 workman detailed in Annexure-2, to the Industrial Dispute dated 17.10.2012 raised by the HMT Specialized Watch Case Division is legal and justified. If not, what relief the workmen are entitled for?”

2. On receipt of reference while registering it in CR 03/2015 when notices were issued on 25.01.2016 the President of the I Party Union filed Application this dispute in respect of 17 workmen relating to their promotion being settled by the management the reference may be closed. In view of the Application filed by I Party Union President reporting amicable settlement the reference is liable for rejection as settled out of court. Accordingly, I pass the following

ORDER

The reference is rejected by virtue of the Application filed by the I Party.

(Dictated to U D C, transcribed by him, corrected and signed by me on 8th July 2016)

MURALIDHAR PRADHAN, Presiding Officer (i/c)